

**LEO C. ROMERO AND DAVID AMANDO C. ROMERO, PETITIONERS,
VS. HON. COURT OF APPEALS, AURORA C. ROMERO AND VITTORIO
C. ROMERO, RESPONDENTS.**

G.R. No. 188921. April 18, 2012

Ponente: SERENO, J.

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SERENO, J.:

This is a Petition filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision[1] of the Court of Appeals dated 14 April 2009 and the subsequent Resolution[2] dated 21 July 2009.

The Court of Appeals (CA) dismissed the Petition for Certiorari filed by petitioners which alleged grave abuse of discretion in the Resolutions dated 14 December 2007 and 29 January 2008 issued by Judge Maria Susana T. Baua in her capacity as presiding judge of the Regional Trial Court (RTC) of Lingayen, Pangasinan. The said Resolutions dismissed petitioners' complaint against private respondents Aurora C. Romero and Vittorio C. Romero.

Petitioners allege that upon their father's death on 18 October 1974, their mother, respondent Aurora Romero, was appointed as legal guardian who held several real and personal properties in trust for her children.[3] Since that year until the present, she continues to be the administrator of the properties, businesses, and investments comprising the estate of her late husband.

Sometime in 2006, petitioners Leo and Amando discovered that several Deeds of Sale were registered over parcels of land that are purportedly conjugal properties of their parents. These included the following real and personal properties:

- A parcel of land identified as Lot 3-G of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 16142 and Transfer Certificate of Title (TCT) No. 290013 in the name of Vittorio C. Romero. A warehouse stands on the lot, covered by Declaration of Real Property No. 16142.
- A parcel of land identified as Lot 3-D of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 405, and TCT No. 77223 in the name of Spouses Dante Y. Romero and Aurora Cruz-Romero.
- A parcel of land identified as Lot 3-E of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 407 and TCT No. 77224 in the names of Spouses Dante Y. Romero and Aurora Cruz-Romero.
- A parcel of land identified as Lot 3-H of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 406, and TCT No. 77225 in the name of Spouses Dante Y. Romero and Aurora Cruz-Romero.

- A parcel of land identified as Lot 3815-A of Subdivision Plan Psd-227224 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of four hundred ninety-four square meters under TCT No. 113514 in the name of Aurora Cruz vda. de Romero.
- A parcel of land located in Barangay Burgos, Mangatarem, Pangasinan, containing an area of more or less three hundred seventy-nine square meters under Declaration of Real Property No. 16136. It is not yet registered under Act 496 or the Old Spanish Mortgage Law, but registrable under Act 3344 as amended. The improvement thereon, a building classified as a warehouse, is covered by Declaration of Real Property No. 16136 A.
- A parcel of land located in Brgy. Burgos, Mangatarem, Pangasinan, containing an area of more or less two hundred four square meters under Declaration of Real Property No. 16139. It is not yet registered under Act 496 or Act 3344 as amended. The improvement thereon is covered by Declaration of Real Property No. 16140.
- A parcel of land located in Brgy. Pogon-lomboy, Mangatarem, Pangasinan, containing an area of more or less eleven thousand six hundred forty-six square meters under Declaration of Real Property No. 724 and TCT No. 284241 in the name of Aurora P. Cruz vda. de Romero.
- A parcel of land located in Brgy. Pogon-lomboy, Mangatarem, Pangasinan, containing an area of more or less one thousand two hundred fifty-six square meters under Declaration of Real Property No. 725 and TCT No. 284242 in the name of Aurora P. Cruz vda. de Romero.[4]

Petitioners claim that sometime in August of 2005, their brother Vittorio – through fraud, misrepresentation and duress – succeeded in registering the above-mentioned properties in his name through of Deeds of Sale executed by their mother, Aurora.[5] Vittorio allegedly employed force and threat upon her, and even administered drugs that rendered her weak and vulnerable. Thus, Aurora signed the Deeds of Sale without reading or knowing their contents.

On 18 December 2006, petitioners filed a Complaint for Annulment of Sale, Nullification of Title, and Conveyance of Title (Amended)[6] against private respondents Aurora C. Romero and Vittorio C. Romero. Respondents filed their Answer, arguing that the properties in question were acquired long after the death of their father, Judge Dante Romero; hence, the properties cannot be considered conjugal. They allege that the lots covered by TCT Nos. 290010, 290011, 113514, and Tax Declaration Nos. 16136 and 11639 were paraphernal properties of Aurora which she had mortgaged. Vittorio purportedly had to shell out substantial amounts in order to redeem them. The lots covered by TCT Nos. 77223, 77224, and 77225 were sold by Aurora herself as attorney-in-fact of her children on 23 November 2006, since her authority to do so had never been revoked or modified.

On 14 December 2007, the RTC rendered its Resolution dismissing petitioners' complaint, stating thus:

xxx(T)he case under Special Proceedings No. 5185 remains pending in that no distribution of the assets of the estate of the late Dante Y. Romero, nor a partition, has been effected among his compulsory heirs. Thus, the contending claims of plaintiffs and defendants in this case could not be adjudicated nor passed upon by this Court without first getting a definitive pronouncement from the intestate court as to the share of each of the heirs of the late Dante Y. Romero in his estate.

Even the claim of defendant Aurora C. Romero that some of the properties being claimed by plaintiffs in this case are her own, the same being paraphernal, is an issue which must be taken up and established in the intestate proceedings.[7] (Emphasis supplied.)

The RTC denied their Motion for Reconsideration, citing Section 3, Rule 87 of the Rules of Court which bars an heir or a devisee from maintaining an action to recover the title or possession of lands until such lands have

actually been assigned. The court ruled that “plaintiffs must first cause the termination of Special Proceedings No. 5185 to its logical conclusion before this case could be entertained by the Court.”[8]

Alleging grave abuse of discretion on the part of the trial court in rendering the said Resolutions, petitioners filed for certiorari under Rule 65 with the CA. On 14 April 2009, the CA rendered the assailed judgment dismissing the Petition, ruling that the properties involved in this case are part of the estate left to the heirs of Judge Romero, the partition of which is already subject of an intestate proceeding filed on 6 January 1976 in the then Court of First Instance (CFI).[9] The CA based its judgment on the findings of the RTC that the inventory of the estate of Judge Romero submitted to the CFI included the same parties, properties, rights and interests as in the case before it.

Petitioners now come to us on a Rule 45 Petition, arguing that the probate court may rule on issues pertaining to title over property only in a provisional capacity. They assert that the CA erred in dismissing their appeal, just because the intestate proceeding has not yet terminated. Petitioners, as heirs, are purportedly allowed to exercise their option of filing a separate civil action in order to protect their interests.

Thus, the singular issue in the case at bar is whether or not petitioners in this case may file a separate civil action for annulment of sale and reconveyance of title, despite the pendency of the settlement proceedings for the estate of the late Judge Dante Y. Romero.

Ruling of the Court

The probate court has jurisdiction to determine the issues in the present case

Petitioners assert that the jurisdiction of the RTC sitting as a probate or intestate court relates only to matters having to do with the settlement of the estate of deceased persons or the appointment of executors, but does not extend to the determination of questions of ownership that arise during the proceedings.[10] They cite *Ongsingco v. Tan*,[11] *Baybayan v. Aquino*[12] and several cases which state that when questions arise as to ownership of property alleged to be part of the estate of a deceased person, but claimed by some other person to be his property, not by virtue of any right of inheritance from the deceased but by title adverse to that of the deceased and his estate, the intestate court has no jurisdiction to adjudicate these questions. Petitioners conclude that the issue of ownership of the properties enumerated in their Petition and included in the inventory submitted by respondent Aurora Romero to the intestate court, must be determined in a separate civil action to resolve title.[13]

The rulings in *Ongsingco* and *Baybayan* are wholly inapplicable, as they both arose out of facts different from those in the case at bar. *Baybayan* involved a summary settlement for the estate of the decedent, in which a parcel of land representing the share of decedent’s nephews and nieces was already covered by a TCT under the name of a third party. To defeat the writ of partition issued by the probate court, the third party, petitioners *Baybayan et al.*, had to file a separate civil action for quieting of their title and for damages. The issue before the Court then devolved upon the propriety of the probate court’s order to amend the Complaint for quieting of title before the regular court. More importantly, *Baybayan* pertained to a civil action involving third parties who were not heirs, and not privy to the intestate proceedings in the probate court. The present action was instituted precisely by heirs of Judge Romero, against their brother, who is also an heir, and their mother, who is the administrator of the estate.

In *Coca v. Borromeo*,[14] this Court allowed the probate court to provisionally pass upon the issue of title, precisely because the only interested parties are all heirs to the estate, subject of the proceeding, viz:

It should be clarified that whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited probate jurisdiction is in reality not a jurisdictional question. In essence, it is a procedural question involving a mode of practice "which may be waived."

As a general rule, the question as to title to property should not be passed upon in the testate or intestate proceeding. That question should be ventilated in a separate action. That general rule has qualifications or exceptions justified by expediency and convenience.

Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action.

Although generally, a probate court may not decide a question of title or ownership, yet if the interested parties are all heirs, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to decide the question of ownership.

We hold that the instant case may be treated as an exception to the general rule that questions of title should be ventilated in a separate action.

Here, the probate court had already received evidence on the ownership of the twelve-hectare portion during the hearing of the motion for its exclusion from (the) inventory. The only interested parties are the heirs who have all appeared in the intestate proceeding.[15] (Citations omitted.)

While it is true that a probate court's determination of ownership over properties which may form part of the estate is not final or ultimate in nature, this rule is applicable only as between the representatives of the estate and strangers thereto. Indeed, as early as *Bacqual v. Amihan*,[16] the court stated thus:

xxx The rulings of this court have always been to the effect that in the special proceeding for the settlement of the estate of a deceased person, persons not heirs, intervening therein to protect their interests are allowed to do so protect the same, but not for a decision on their action. In the case of *In re Estate of the deceased Paulina Vasquez Vda. de Garcia, Teresa Garcia vs. Luisa Garcia, et al.*, 67 Phil., 353, this court held:

A court which takes cognizance of testate or intestate proceedings has power and jurisdiction to determine whether or not the properties included therein or excluded therefrom belong prima facie to the deceased, although such a determination is not final or ultimate in nature, and without prejudice to the right of interested parties, in a proper action, to raise the question on the ownership or existence of the right or credit.

To this same effect are rulings in various states of the United States.

* * * That the probate court is without jurisdiction to try the title to property as between the representatives of an estate and strangers thereto is too well established by the authorities to require argument.

There is also authority abroad that where the court is without jurisdiction to determine questions of title, as for example, as between the estate and persons claiming adversely, its orders and judgments relating to the sale do not render the issue of title *res judicata*. [17] (Citations omitted, emphasis supplied.)

In any case, there is no merit to petitioners' claim that the issues raised in the case at bar pertain to title and ownership and therefore need to be ventilated in a separate civil action. The issue before the court is not really one of title or ownership, but the determination of which particular properties should be included in the inventory of the estate. In Civil Case No. 18757, the RTC has listed the properties alleged by petitioners to have been conjugal properties of their parents and, therefore, part of the estate that was illegally sold to the respondent. Some of these real properties identified seem to be the same real properties that form part of the inventory of the estate in the intestate proceedings.[18]

Not only do petitioners assert their legal interest as compulsory heirs, they also seek to be the owners, pro indiviso, of the said properties. To anchor their claim, they argue that the properties are conjugal in nature and

hence form part of their inheritance. For his defense, Vittorio contends that the lots are the paraphernal properties of Aurora that she had mortgaged, and that Vittorio subsequently redeemed.

In *Bernardo v. Court of Appeals*,^[19] the Supreme Court declared that the determination of whether a property is conjugal or paraphernal for purposes of inclusion in the inventory of the estate rests with the probate court:

xxx (T)he jurisdiction to try controversies between heirs of a deceased person regarding the ownership of properties alleged to belong to his estate, has been recognized to be vested in probate courts. This is so because the purpose of an administration proceeding is the liquidation of the estate and distribution of the residue among the heirs and legatees. Liquidation means determination of all the assets of the estate and payment of all the debts and expenses. Thereafter, distribution is made of the decedent's liquidated estate among the persons entitled to succeed him. The proceeding is in the nature of an action of partition, in which each party is required to bring into the mass whatever community property he has in his possession. To this end, and as a necessary corollary, the interested parties may introduce proofs relative to the ownership of the properties in dispute. All the heirs who take part in the distribution of the decedent's estate are before the court, and subject to the jurisdiction thereof, in all matters and incidents necessary to the complete settlement of such estate, so long as no interests of third parties are affected.

In the case now before us, the matter in controversy is the question of ownership of certain of the properties involved — whether they belong to the conjugal partnership or to the husband exclusively. This is a matter properly within the jurisdiction of the probate court which necessarily has to liquidate the conjugal partnership in order to determine the estate of the decedent which is to be distributed among his heirs who are all parties to the proceedings.^[20] xxx (Emphasis supplied.)

In the present case, petitioners assume that the properties subject of the allegedly illegal sale are conjugal and constitute part of their share in the estate. To date, there has been no final inventory of the estate or final order adjudicating the shares of the heirs. Thus, only the probate court can competently rule on whether the properties are conjugal and form part of the estate. It is only the probate court that can liquidate the conjugal partnership and distribute the same to the heirs, after the debts of the estate have been paid.

Section 3, Rule 87 bars petitioners
from filing the present action

Petitioners next contend that even if the probate court has the power to rule on their Complaint, the submission of the issues in this case to the probate court is merely optional, and not mandatory upon them. Hence, they argue, they still have the right to bring these issues in a separate civil action, if they so choose. They argue further that Section 3, Rule 87 of the Revised Rules of Court is not applicable to the present case.

The said provision states that:

Sec. 3. Heir may not sue until share assigned. – When an executor or administrator is appointed and assumes the trust, no action to recover the title or possession of lands or for damages done to such lands shall be maintained against him by an heir or devisee until there is an order of the court assigning such lands to such heir or devisee or until the time allowed for paying debts has expired.

Petitioners believe that the above rule is subject to certain exceptions. They invoke the doctrine that while heirs have no standing in court to sue for the recovery of property of the estate represented by an administrator, these heirs may maintain such action if the administrator is unwilling to bring the suit, or has allegedly participated in the act complained of.

On this contention, petitioners' theory must again fail. There is nothing on the record that would prove that Aurora defied the orders of the probate court or entered into sale agreements in violation of her trust. In fact,

petitioners are really accusing a co-heir, their brother Vittorio, of having acquired certain properties which they allege to be properties of their parents.

Even if we assume the property to be conjugal and thus, part of the estate, Aurora Romero's acts as the administrator of the estate are subject to the sole jurisdiction of the probate court. In *Acebedo v. Abesamis*,^[21] the Court stated:

In the case of *Dillena vs. Court of Appeals*, this Court made a pronouncement that it is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication. Hence, it is error to say that this matter should be threshed out in a separate action.

The Court further elaborated that although the Rules of Court do not specifically state that the sale of an immovable property belonging to an estate of a decedent, in a special proceeding, should be made with the approval of the court, this authority is necessarily included in its capacity as a probate court.^[22]

Again, petitioners do not pose issues pertaining to title or ownership. They are, in effect, questioning the validity of the sales made by the administrator, an issue that can only be properly threshed out by the probate court. Paragraph 13 of petitioners' Complaint alleges as follows:

13. The purported transfers and sales executed by Defendant Aurora C. Romero to and in favor of Defendant Vittorio C. Romero are nullities since all were simulated, entered into without the intent and volition of Defendant Aurora C. Romero, attended by force, intimidation, duress and fraud and not supported with any valid or sufficient consideration and with the sole depraved intentions of depriving the other compulsory heirs of the late Judge Dante Y. Romero of their rightful share in the estate.^[23] (Emphasis omitted.)

Indeed, implicit in the requirement for judicial approval of sales of property under administration is the recognition that the probate court has the power to rescind or nullify the disposition of a property under administration that was effected without its authority.^[24] That petitioners have the prerogative of choosing where to file their action for nullification – whether with the probate court or the regular court – is erroneous. As held in *Marcos, II v. Court of Appeals*:

xxx (T)he authority of the Regional Trial Court, sitting, albeit with limited jurisdiction, as a probate court over the estate of deceased individual, is not a trifling thing. The court's jurisdiction, once invoked, and made effective, cannot be treated with indifference nor should it be ignored with impunity by the very parties invoking its authority.

In testament to this, it has been held that it is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication; to determine who are the heirs of the decedent; the recognition of a natural child; the status of a woman claiming to be the legal wife of the decedent; the legality of disinheritance of an heir by the testator; and to pass upon the validity of a waiver of hereditary rights.^[25] (Citations omitted.)

Thus, the validity of the sales made by Aurora, allegedly orchestrated by petitioners' co-heir, Vittorio, can only be determined by the probate court, because it is the probate court which is empowered to identify the nature of the property, and that has jurisdiction over Aurora's actions and dispositions as administrator. In *Peñaverde v. Peñaverde*,^[26] the Court even adjudged the petitioners guilty of forum-shopping for filing a separate civil action despite the pendency of the said petitioners' own case seeking that letters of administration be granted to them. Similar to the case at bar, the petitioners in *Peñaverde* also sought the annulment of titles in the name of their co-heir:

The two cases filed by petitioners are: (1) Sp. Proc. No. Q-94-19471, which seeks letters of administration for the estate of Mariano Peñaverde; and (2) Civil Case No. Q-95-24711, which seeks the annulment of the

Affidavit of Self-Adjudication executed by Mariano Peñaverde and the annulment of titles in his name as well as the reopening of the distribution of his estate.

Evidently, in filing Sp. Proc. No. Q-94-19471, petitioners sought to share in the estate of Mariano, specifically the subject land previously owned in common by Mariano and his wife, Victorina. This is also what they hoped to obtain in filing Civil Case No. Q-95-24711.

Indeed, a petition for letters of administration has for its object the ultimate distribution and partition of a decedent's estate. This is also manifestly sought in Civil Case No. Q-95-24711, which precisely calls for the "Reopening of Distribution of Estate" of Mariano Peñaverde. In both cases, petitioners would have to prove their right to inherit from the estate of Mariano Peñaverde, albeit indirectly, as heirs of Mariano's wife, Victorina.

Under the circumstances, petitioners are indeed guilty of forum-shopping.

xxx xxx xxx

In the case at bar, it cannot be denied that the parties to Sp. Proc. No. Q-94-19471 and Civil Case No. Q-95-24711 are identical. There is also no question that the rights asserted by petitioners in both cases are identical, i.e., the right of succession to the estate of their aunt, Victorina, wife of Mariano. Likewise, the reliefs prayed for --- to obtain their share in the estate of Mariano --- are the same, such relief being founded on the same facts ---their relationship to Mariano's deceased wife, Victorina.[27]

WHEREFORE, the instant Petition is DENIED. As the properties herein are already subject of an intestate proceeding filed on 6 January 1976, the 14 April 2009 judgment of the Court of Appeals in CA-G.R. SP No. 104025 finding no grave abuse of discretion on the part of the RTC is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson) Brion, Perez, and Reyes, JJ., concur.

[1] In CA-G.R. SP No. 104025, penned by Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justices Japar B. Dimaampao, and Ramon R. Garcia, SC rollo, pp. 25-33.

[2] CA rollo, pp. 116-117.

[3] Amended Complaint, CA rollo, p. 31.

[4] Id. at CA rollo, pp. 27-30.

[5] Id. at 31.

[6] Amended Complaint, CA rollo, pp. 26-30.

[7] CA rollo, p. 20.

[8] RTC Resolution, 29 January 2008, CA rollo, p. 60.

[9] CA Decision, p. 7; CA rollo, p. 95.

[10] Petition for Review, SC rollo, pp. 9-20.

[11] 97 Phil. 330 (1955).

[12] 232 Phil. 191 (1987).

[13] Supra note 9, at 16.

[14] 171 Phil. 246 (1978).

[15] Id. at 251-252.

[16] 92 Phil 501 (1953).

[17] Id. at 503-504.

[18] CA rollo, p. 16.

[19] 117 Phil. 385 (1963).

[20] Id. at 390-391.

[21] G.R. No. 102380, 18 January 1993, 217 SCRA 186.

[22] Id. at 193.

[23] Amended Complaint, CA rollo, p. 33.

[24] Spouses Lebin v. Mirasol, G.R. No. 164255, 7 September 2011.

[25] 393 Phil. 253, 265(1997).

[26] 397 Phil. 925 (2000).

[27] Id. at 930-932.

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