

MANILA ROQUE BAIRAN, PETITIONER, VS. AGUSTIN TAN SIU LAY, FRANCISCO TAN, EXECUTOR AND HON. ANTONIO CAÑIZARES, PRESIDING JUDGE OF BRANCH IV, COURT OF FIRST INSTANCE OF MANILA, RE...

G.R. No. 19460. December 28, 1966

Ponente: DIZON, J.

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DIZON, J.:

Original petition for certiorari filed by Roque Bairan, with a prayer for the issuance of a writ of preliminary injunction, to set aside the following orders of the Hon. Antonio Cañizares, as judge of the Court of First Instance of Manila, in Special Proceedings No. 31360: (1) order of January 4, 1961 requiring petitioner to post a surety bond in the sum of P100,000.00; (2) order dated February 9, 1961 denying petitioner's motion for reconsideration thereof; (3) order dated June 8, 1961 to the effect that the order of January 4, 1961 was interlocutory and, therefore, not appealable; (4) order of June 17, 1961 requiring petitioner to surrender and deliver to the executor the possession of all the estate properties in his hands for failure to file the aforementioned bond; (5) order dated July 31, 1961 likewise declaring the order of June 17, 1961 to be merely interlocutory and, therefore, not appealable, and (6) the order dated August 12, 1961 denying petitioner's motion for reconsideration.

On October 13, 1947, respondent Francisco Tan was appointed by his father, Tan Chiong Pun (now deceased), as his attorney-in-fact, to administer, supervise, control and to sell on installment basis a certain real property, otherwise known as the "Mabuhay Subdivision", covered by Transfer Certificate of Title No. 20912 of the Register of Deeds of Rizal. On October 22, 1934 said respondent, with the knowledge and consent of his principal, entered into an agreement with petitioner whereby the latter was appointed as his substitute attorney-in-fact, to administer, supervise, control and to sell on installment basis the abovementioned property, the contract to last "during and while there are lots left to be sold or there are still pending collections of prices or considerations of lots or portions thereof sold".

When Tan Chiong Pun died on November 25, 1956, testate proceedings for the settlement of his estate were instituted in the Court of First Instance of Manila, then presided by the herein respondent judge (Special Proceedings No. 31360), and Francisco Tan was appointed executor of the estate.

On March 15, 1960, the other respondent, Agustin Tan Siu Lay, one of the heirs of the deceased, filed a petition with the probate court to require petitioner to post a bond of P250,000.00 in connection with his administration of the subdivision mentioned heretofore, alleging: that on September 9, 1957, the executor, Francisco Tan, had filed a motion praying that Bairan be allowed to collect the outstanding accounts pertaining to the Habuhay Subdivision and for the approval of the basic contract of administration dated October 22, 1954 (Agreement for the appointment of Bairan as Substitute Attorney-In-Fact, etc.), but resolution thereof was held in abeyance by the court pending examination of petitioner In connection with his report and accounting covering the period from October 22, 1954, when he took over the administration of the said property, up to and Including May 31, 1959;

that out of the amounts collected by petitioner from the sale on Installment of the lots comprising the subdivision, the latter, without court authority, had been retaining as deductions alleged administration and other expenses, in the total amount of P120,000.00; that the outstanding collectible amount covering the period from June 1959 to February, 1960, was around P200,000, from which amount petitioner would continue to deduct the sums authorized under the contract of October 22, 1954; and that, unless he was required to post a bond of P250,000.00, the estate would have no assurance that petitioner will be able to make good any liability he may incur as trustee of the deceased.

Despite petitioner's objection, the respondent judge issued the order of January 4, 1961, requiring him to post a surety bond of P100,000.00 in favor of the estate "conditioned upon the payment by said Roque Bairan to the estate of any amount or amounts that may be found due from him in his individual capacity and/or as attorney-in-fact administering the estate property covered by Transfer Certificate of Title No. 20912 (Now Transfer Certificate of Title No. 27613) of the Office of the Register of Deeds of Rizal". Petitioner's motion for reconsideration was denied on February 9, 1961.

On February 21 of the same year, petitioner filed a notice of appeal, appeal bond and record on appeal in connection with the order of January 4, 1961 requiring him to file a bond in the sum of P100,000.00, but the respondent judge, in his order of June 8, 1961, ruled that said order was interlocutory and unappealable.

Meanwhile, upon motion of petitioner, the respondent judge issued an order dated November 12, 1960 allowing him "to surrender and deliver to the executor whatever property or properties he desires to so surrender and deliver; and the executor is hereby directed to accept the same under proper inventory, subject to the condition that such delivery to and acceptance by the executor will not in any way impede or hinder the continuation of the hearing before Commissioner Antillon on the above-mentioned reports and accounts".

On February 24, 1961, respondent Francisco Tan filed a report and motion with the court praying that Bairan be required to deliver and/or turn over all his collections as Administrator of the "Mabuhay Subdivision", covering the period between the month of September, 1960 and January, 1961, inclusive, and the collections from February 1961 and successively thereafter until these proceedings are terminated, without prejudice to the delivery of those already collected by him, together with all the unauthorized deductions made, all of which were covered by his accounts then pending hearing in Court, and were objected to by the Executor and all the heirs to testate estate. On June 17, 1961, the respondent judge issued the following order:

"After a consideration of the report and motion filed on February 24, 1961, by the Executor, the answer thereto filed on March 2, 1961, by Roque Bairan, the counter-reply filed by Roque Bairan, the compliance filed on March 20, 1961 by the executor, and it appearing from the record of this proceeding that said Roque Bairan has not up to now filed the bond called for in the order of January 4, 1961, that the surrender and delivery of the estate properties (cash or otherwise) have not as yet been effected by him despite the order of November 12, 1960, and despite, further the willingness of the Executor to take delivery thereof under proper inventory, and that, in the meantime, large sums of money belonging to the estate are accumulating in his hands without any security against loss, the Court hereby orders said Roque Bairan to surrender and deliver to the executor, within five (5) days from the notice of this order, the possession of all the estate properties in his hands, and the executor shall take delivery thereof under proper inventory in accordance with the terms of the aforementioned order of November 12, 1960."

On July 6, 1961, petitioner filed a notice of appeal from the above-quoted order and on the following day he also filed an appeal bond and record on appeal, but on July 31 of the same year, the respondent judge likewise ruled that said order was interlocutory and, therefore, not appealable, and on August 12, 1961, denied petitioner's motion for reconsideration thereof. Finally, on July 31, 1961, the respondent judge issued an order threatening to

hold petitioner in contempt and have him arrested should he fail to comply with his order of June 17, 1961, on or before August 15, 1961.

The principal orders involved in this appeal are that of January 4, 1961 - which requires petitioner to file a surety bond in the sum of P100,000.00—and the order of January 17 of the same year - which requires him to surrender and deliver to the executor the possession of all the properties of the estate found in his hands. Petitioner attempted to appeal from both but the respondent judge refused to give due course to his appeals upon the ground that said orders were merely of an Interlocutory character.

We disagree with the view adopted by the respondent judge.

It is settled that a court order is final in character if it puts an end to the particular matter resolved, leaving thereafter no substantial proceeding to be had in connection therewith except its execution; and, contrary wise, that a given court order is merely of an interlocutory character if it is provisional and leaves substantial proceedings to be had in connection with its subject in the court by whom it was issued.

It will be noted that in connection with the order of January 4, 1961, the court decided, over petitioner's objection, that the latter must file a surety bond as prayed by his adversary. Thus, upon the question of whether or not petitioner should file a bond, there was nothing left to be done except to have the order aforesaid carried out. It is clear, therefore, that said order is final in character and, as such, is appealable within the period of appeal provided by law.

On the other hand, the order of June 17, 1961 similarly determined with finality the question of whether petitioner should or should not surrender and deliver to the executor the possession of all estate properties found in his possession. Obviously, after the court's affirmative ruling on the matter, there was nothing left to be done in the premises except to carry out the order of the court. It is similarly clear, therefore, that said order is final in character and, therefore, appealable within whatever period is provided by law for the purpose.

But while we believe that petitioner's contention on the matter of the nature of the two orders mentioned heretofore is correct, we have come to the conclusion that it is unnecessary to issue the writs prayed for because the orders from which petitioner attempted to appeal are correct and right.

Considering the fact that petitioner, in accordance with his agreement with the executor of the estate, was in possession of estate properties; that in connection with the sale thereof on installment he had authority to collect considerable sums of money, and that, as a matter of fact, the estate had made claims against him for amounts that he had deducted from the proceeds of the sales actually collected by him, it was perfectly within the jurisdiction of the respondent judge to require him to file a surety bond for the protection of the estate. In doing so it seems clear that his Honor did not commit a grave abuse of discretion.

It appears in connection with the order of June 17, 1961 that petitioner himself had made the respondent judge understand that he was willing, if not anxious, to surrender to the executor the possession of the properties of the estate found in his hands, and that the aforesaid order—now complained of—was issued precisely in connection with a motion of his own where he had expressed such willingness. Consequently, in ordering him to deliver said properties to the executor, the respondent judge did not commit a grave abuse of discretion. As a matter of fact, it does not seem proper, generally speaking, for a probate court to allow estate properties to be or to continue in possession of parties other than the executor, who is the one entitled to have full possession thereof.

WHEREFORE, the writs prayed for are denied and the petition under consideration is dismissed, with costs. The writ of preliminary injunction issued herein is hereby set aside.

Concepcion, C.J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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