

**REMEDIOS CUENCO VDA. DE BORRROMEO, JOSE CUENCO
BORRROMEO, CRISPIN BORRROMEO, VITALIANA BORRROMEO, LILA
MORRE DE TABOTABO, LAMBERTO MORRE, PATRICIA MORRE DE
RANARIO, AURORA MORRE DE ...**

G.R. No. 25010. March 30, 1967

Ponente: DIZON, J.

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DIZON, J.:

This is an original action for prohibition with a prayer for the issuance of a writ of preliminary injunction filed by Remedios Cuenco Vda. de Borrromeo and others against the Honor-able Mateo Canonoy as Judge of the Third Branch of the Court of First Instance of Cebu, and Tomas, Fortunato, and Amelia, all surnamed Borrromeo, for the purpose of "prohibiting res-pondent judge from further proceeding with Civil Case No. R-7646" of his Court. A supplement to the original petition was subsequently filed by petitioners.

After hearing the parties on the question of whether a writ of preliminary injunction should be issued, We granted the petition for injunction but making the writ effective only until December 21, 1965, upon the filing of a bond by petitioners. Upon the latter's motion, however, our resolution on the matter was amended on December 22, 1965 so as to make the preliminary injunction effective until a decision on the merits is rendered in this case.

The issues having been joined with the filing of an answer for respondents the case was set for hearing but, instead of arguing the case orally, the parties prayed for and were allowed to submit, as they did submit written memoranda.

The case at bar is intimately related with G. R. No. L-18498 entitled "Testate Estate of Vito Borrromeo, Jose H. Junquera, Petitioner-Appellee vs. Crispin Borrromeo, et al., Oppositors-Appellants and Republic of the Philippines, Inter-venor-Appellant," in which the lower court, besides denying probate to a document submitted as the last will of the deceased Vito Borrromeo, denied a motion filed on February 11, 1954 by Tomas, Amelia, and Fortunato Borrromeo for the exclusion from the inventory of the Estate submitted by the Special Adminis-trator of thirteen lots or parcels of land mentioned in said motion, claiming that the same had been sold by Vito Borrromeo, during his lifetime, to the Cebu Arcade, T. L. Borrromeo y Cia. Said motion was first denied by the lower court in its order of July 16, 1954 and was reiterated in the decision on the merits referred to above. Thereafter, Tomas, Fortunato and Amelia, all surnamed Borrromeo, commenced Civil Case No. R-7646 in the Court of First Instance of Cebu against Jesus R. Gaboya, Special Administrator of the Estate of the deceased Vito Borrromeo, for the recovery of ownership and possession of the thirteen lots already mentioned. After issues had been joined therein, the respondent judge set the case for trial, but before the trial could be held the defendant filed a motion for a preliminary hearing on certain affirmative defenses averred in his answer and, in effect, asked for the dismissal of the case on the ground principally that the questions of ownership and right of possession over the thirteen lots subjectmatter of the action were already involved in G. R. No. L-18498 - the appeal inter-posed by both parties from the decision rendered by the same Court in the special proceeding for the probate of the will

of the deceased Vito Borromeo. This motion was denied and, as a result, the present action for prohibition was instituted.

In our decision in G.R. No. L-18498 we said the follow-ing on the question of whether the Court of First Instance of Cebu, exercising its jurisdiction as a probate court, had authority to determine the question of ownership in relation to the thirteen lots mentioned heretofore:

"We shall now consider the appeal taken by the oppositors and the Republic of the Philippines from that portion of the decision where the lower court declined to decide with finality the question of who owns the thirteen parcels of land subjectmatter of the confirmatory sale Exhibit F-1 and whether or not they should be included in or excluded from the in-ventory of properties of the Estate of the deceased Vito Borromeo.

"It appears that on February 11, 1954 Tomas, Amelia, and Fortunato Borromeo, through counsel, filed a motion for the exclusion from the inventory of the Estate of the thirteen lots therein mentioned, with a total area of 2,348 square meters, claiming that the same had been sold by the deceased Vito Bor-romeo during his lifetime to the Cebu Arcade, T. L. Borromeo y Cia. This motion for exclusion was denied by the lower court in its order of July 16, 1954, and the ruling was reiterated in the appealed decision 'for the same reasons and considerations' upon which it rejected the probate of the will. The ruling on the matter, however, was expressly made provisional in nature.

"We believe, and so hold, that the resolution of the lower court on this matter is correct because said court, acting in its capacity as a probate court, had no jurisdiction to determine with finality the question of ownership involved. That such matter must be litigated in a separate action has been the es-tablished jurisprudence in this jurisdiction (Ongsinco vs. Borja, G.R. No. L-7635, 1955; Mallari vs. Mallari, G.R. No. L-4656, February 23, 1953; Garcia vs. Martin G. R. No. L-9233, June 29, 1957; Cordova vs. Ocampo, 73 Phil. 661; Pas-cual vs. Pascual, 73 Phil. 561 and others), except where a party merely prays for the inclusion or ex-clusion from the inventory of any particular property, in which case the probate court may pass upon, provi-sionally, the question of inclusion or exclusion, but without prejudice to its final determination in an appropriate separate action (Garcia vs. Garcia, 67 Phil. 353; Marcelino vs. Antonio, 70 Phil. 388; Guin-guing vs. Abuton, 48 Phil. 144, 147)."

In view of the pronouncement thus made in G. R. No. L-18498, it is clear that the present action for prohibition can not stand. Consequently, the writ prayed for in the petition is denied, and the writ of preliminary injunction issued herein is hereby set aside. With costs against respondents except respondent judge.

Concepcion, C.J., Reyes, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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