

MARIA S. TUASON ET AL., PETITIONERS, VS. PEDRO CONCEPCION, JUDGE OF COURT FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.

G. R. No. 32423. February 07, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } This is a petition for a writ of certiorari to set aside the appointment of a receiver. In a memorandum in support of the petition, counsel for the petitioners makes the following clear and accurate preliminary statement: "On February 25, 1794, Don Antonio Tuason founded a mayorazgo in Manila and vicinity by an instrument duly executed by him and approved by the King of Spain. He provided, among other things, that the revenues of the mayorazgo properties should be distributed in the proportion of four-fifths to his first-born child and his successors and one-fifth to the other eight children of the founder and their successors. The said mayorazgo properties consist of what is known as 'Haciendas de Santa Mesa y Diliman' and 'Hacienda de Mariquina' and two 'fincas' on Calle Rosario, Manila. The tax assessment values of the said properties are as follows:

Haciendas de Santa Mesa y Diliman.....	P3,560,640.00	Hacienda de Mariquina
.....	1,507,140.00	Two 'fincas' in Calle Bosario.....
542,382.00		

"On August 22, 1923, Antonio Ma. Barretto y Rocha and twenty-one other individuals filed suit against Augusto Humberto Tuason y de la Paz and fourteen other defendants, civil case No. 24803, of the Court of First Instance of Manila, alleging that plaintiffs are the descendants of the second born children of the founder of said mayorazgo, and further alleging, among other things, that the said mayorazgo constitutes a family trust, and that the defendants had fraudulently obtained a Torrens title in their favor upon the entailed real estate. The plaintiffs prayed for an accounting of receipts, expenses, and profits of the mayorazgo properties from and after February 4, 1874.

"The defendants in that case interposed several defenses —among others, that they possessed a Torrens title to the properties in question, free from charges or encumbrances, and prescription of the action, and alleged a counterclaim for the pensions received by the plaintiffs after the year 1917.

"The Court of First Instance (Judge Pedro Concepcion), after trial, rendered judgment dismissing the complaint and the counterclaim, without costs.

"Both plaintiffs and defendants appealed to the Supreme Court. On March 23, 1926, this Honorable Court reversed the said decision and declared that the plaintiffs are entitled to participate in a fifth of the properties of

said mayorazgo and its revenues in certain proportions, and that the registration of the properties under Act No. 496 is not an impediment to its division and the transfer of said portions to the plaintiffs, as beneficiaries, in accordance with said decision.

"This Honorable Court, in its decision, further discussed the Disentailing Law of October 11, 1820, which became effective in the Philippines on March 1, 1864, and held that among the effects produced upon this mayorazgo by said Disentailing Law, on the one hand, and the conduct of the interested parties, on the other, there is, in the first place, the abolishment of the trust of the naked ownership in favor of the descendants of the founder in an indefinite succession, and, in the second, the conversion of the family trust on one-fifth of the revenues into a trust of the ownership of one-fifth of all the properties in favor of the younger children and other relatives of the founder. (*Barretto vs. Tuason*, 50 Phil., 888, 890, 928-938.)

"A motion for reconsideration was filed by defendants in the Supreme Court, and certain parties filed complaints in intervention in the Supreme Court, claiming an interest as beneficiaries in the one-fifth of said mayorazgo.

"On October 5, 1926, this Honorable Court denied the motion for reconsideration, but set aside the dispositive part of its decision of March 23, 1926, and ordered the case returned to the Court of First Instance, with the complaints in intervention, to the end that the new parties may intervene, and in order that the original plaintiffs may, if they so desire, amend their complaint; and this Honorable Court further ordered that the plaintiffs take the necessary steps toward the inclusion as parties[^] of all who may claim the right to participate in the fifth part of said properties, requiring them to appear and establish their rights, and ordered that the Court of First Instance proceed to the trial of the case as to the amount of the participation which the original parties and the intervenors may have in the fifth part of the properties of said mayorazgo.

"In this state of the case in the Court of First Instance, the plaintiffs, on May 18, 1928, filed therein a petition for the appointment of a receiver. The petition was verified by the oath of Antonio Ma. Barretto, one of the plaintiffs, and it alleged certain grounds for the appointment of a receiver. The petition was set for hearing. The attorneys for defendants appeared and argued orally and in writing as to the insufficiency of the petition, but did not file any answer thereto or offer any evidence or affidavits to prove that the allegations of the petition were not true. The court (vacation judge) held that the verified allegations of the petition were sufficient to justify the appointment of a receiver and on June 26, 1928, made an order appointing a receiver. On the same date the attorneys for the defendants indicated to the court their intention to file a motion for reconsideration of said order, and the court thereupon ordered the receiver to postpone taking possession of said properties until July 2, 1928, or until further orders of the court. On June 28, 1928, the defendants filed a verified motion for reconsideration, making certain denials of the allegations of the petition and making certain allegations tending to show why the appointment of a receiver should be set aside, and prayed that upon the presentation of evidence upon the allegations of the parties the court set aside its order of June 26, 1928, appointing a receiver. Upon the hearing of said motion for reconsideration the court made an order which, among other things, recited as follows:

" 'In view of the fact that in the motion for reconsideration the defendants have made allegations under oath in contradiction to the verified allegations of the plaintiffs' petition and supplementary petition, it is incumbent upon the court to grant a hearing for the purpose of taking evidence to enable the court to determine under the evidence whether a receiver should be appointed under the prayer of the plaintiffs' petition.'

"The record shows that, with the consent of the parties, a referee was appointed by Judge Concepcion on July 26, 1928, to take evidence; that depositions were taken; that on December 14, 1928, the court (Judge Concepcion) made an order denying the petition for the appointment of a receiver upon the ground that the new petition, like the preceding ones, was based upon mere conclusions without specification of any concrete facts to sustain them, and because the lack of means for controlling and intervening in the management of the

properties of the mayorazgo to protect their rights and interests is not a sufficient ground for the appointment of a receiver; but the court ordered the defendants to set aside every month one-fifth of the income of the mayorazgo after deducting expenses, and to deposit it in a bank subject to the orders of the court; and thereafter, on January 5, 1929, in passing upon a petition of the attorneys for the plaintiffs, the court ordered the defendants to submit to the court an account of the administration of the mayorazgo properties, such account to cover each and every month, and that the said accounting be submitted on or before the 10th day of each month for the preceding month, commencing with February, 1929, for the month of January, 1929.

"On or about December 7, 1928, the majority in interest of the co-owners who had executed powers of attorney to Augusto H. Tuason to manage the mayorazgo properties, being dissatisfied with his management, revoked such powers and thus removed the said Augusto Tuason as manager, and by a resolution adopted by the majority in interest of the coowners decided to constitute all the co-owners into a board of management for the administration of said properties, each coowner to have voting power according to his interest in the properties. Dona Maria S. Tuason was elected president of the board of management."

On August 5, 1929, Gregorio Maga, Concepcion Rosel, Saturnina Rosel, Tiburcia Rosel, Engracia Rosel, Rufina Rosel, Andrea Tuason, Antonio Tuason, and Marciano Tuason, alleging that they had proven their rights in the aforesaid one-fifth of the mayorazgo property, filed a new petition in the aforesaid civil case No. 24803 for the appointment of a receiver. Five days later, some of the plaintiffs in said civil case filed a statement expressing their conformity to the proposed receivership, but upon the condition that Maria S. Tuason be appointed receiver. On the same date, Attorney Gregorio Araneta of the law firm of Araneta & Zaragoza, attorneys for all of the defendants in said civil case No. 24803, appeared in court and stated that Augusto Tuason and Jose Ma. Tuason, who are defendants and his clients in said case, had instructed him to support the petition for a receivership and that Jose Ma. Tuason alone, as administrator of the estate of the deceased Demetrio Tuason, represented fifty per cent of the properties in Manila, forty per cent of the Haciendas Santa Mesa y Diliman, and 13/30 of the Hacienda of Mariquina, and that in view of their instructions and by reason of his connections with the other defendants, he desired to withdraw from the case. His motion seems to have been granted and on August 16, Attorney Eusebio Orense filed his appearance as attorney for the rest of the defendants in the case, and eight days later, he presented an extensive memorandum in support of his answer to the petition for the appointment of a receiver. On September 21, 1929, Judge Pedro Concepcion issued an order in which he expressed as his opinion that an orderly and pacific administration of the properties in question could not be had by reason of the strained relations among the co-participants in the four-fifths part of the mayorazgo. For that and for other reasons stated in the order, his Honor granted the petition for a receivership and appointed the Bank of the Philippine Islands as receiver. Two days later, an exception to said order was duly noted, and a motion for reconsideration filed.

Upon receiving the motion for reconsideration, Judge Concepcion set it down for hearing on September 28, and suspended the effects of the execution of the appointment of the receiver. When the motion was called for hearing, Attorney Orense announced to the court that after filing his motion for reconsideration, certain of his clients, who were defendants in the case, had notified him in writing that they desisted from the opposition to the appointment of a receiver, and that he therefore desired to be allowed to withdraw as attorney for the defendants who were opposed, to the appointment of a receiver. Apparently, there was no objection to Orense's withdrawal, and on the same date, the law firm Harvey & O'Brien filed their appearance as attorneys for the parties still opposing the receivership, namely, Maria S. Tuason, Teresa E. Tuason, Antonio M. Tuason, Angel M. Tuason, and Albina Tuason, who are now the petitioners in the present case. The hearing of the motion for reconsideration was thereupon continued until October 5, 1929, and on that date, Harvey & O'Brien presented an exhaustive memorandum in opposition to the appointment of a receiver. In a lengthy order dated October 16, 1929, and setting forth the reasons for the appointment of the receiver, Judge Concepcion denied the motion for reconsideration. In the meantime, the receiver does not appear to have entered upon its functions as such.

On October 23, Maria S. Tuason and her sons Antonio M. Tuason and Angel Tuason together with Teresa E. Tuason and Albina Tuason instituted the present proceeding.

In most of the United States the issuance of writs of certiorari is governed by statutes which vary considerably in different jurisdictions, and some states have gone so far as to use certiorari as a substitute for appeal where the appeal is lost without the fault of the petitioner (See *Hill vs. Faison*, 277 Ex., 428; *Scroggs vs. Alexander*, 88 U. C, 64). In this jurisdiction the statutory provisions on the subject are taken from the California Code of Civil Procedure and strictly confined the use of the writ of certiorari to cases where an inferior tribunal has exceeded its jurisdiction. It is true that section 220 of our Code of Civil Procedure provides that the courts shall "determine whether the inferior tribunal * * * has not regularly pursued its authority," and it may, perhaps, be argued that that expression increases the scope of the writ. But to so hold would be repugnant to the provisions of section 217, which confer the authority to issue such writs, and it seems perfectly clear that the expression mentioned has reference only to irregularities affecting the jurisdiction of the court. It may be noted that the California statute used practically the same language (sec. 1074, California Code of Civil Procedure), and it has there been uniformly held that there must have been an excess of jurisdiction before the court can interfere by writs of certiorari and that mere errors in the exercise of the court's jurisdiction are not sufficient. (*Clary vs. Hoagland*, 5 Cal., 476; *Coulter vs. Stark*, 7 Cal., 244; *Henshaw vs. Supervisors of Butte County*, 19 Cal., 150; *Wratten vs. Wilson*, 22 Cal., 466; *People vs. Johnson*, 30 Cal., 98; *Winter vs. Fitzpatrick*, 35 Cal., 269; *Muir vs. Superior Court*, 58 Cal., 361; *Hutchinson vs. Superior Court of Inyo County*, 61 Cal., 119; *State vs. Fifth Judicial District Court*, 18 Nev., 286; *Sherer vs. Superior Court*, 94 Cal., 354; *Reagan vs. Justice's Court*, 75 Cal., 253; *Alexander vs. Municipal Court*, 66 Cal., 387.)

From what has been said, it follows that the only question here to be determined is whether the respondent judge, in appointing the receiver, exceeded his jurisdiction, and in answering that question, we must necessarily follow the laws of this country.

In the appointment of receivers, the Philippine Code of Civil Procedure gives the judges of the Courts of First Instance a wide discretion, perhaps more so than in any other jurisdiction under the American flag. The appointment before us falls under subsection 4 of section 174 of the Code which provides that a receiver may be appointed "whenever in other cases it shall be made to appear to the court that the appointment of a receiver is the most convenient and feasible means of preserving and administering the property which is the subject of litigation during the pendency of the action."

The subsection quoted has no direct counterpart in any American or English statute, and, as may be seen, it is very broad. Of course, the wide discretion thus conferred upon the courts must not be exercised arbitrarily, and sound reasons for the appointment of the receiver should appear in the record of the case in which the receivership is initiated.

Counsel for the petitioner vigorously asserts that the appointment of the receiver in the present case was improvidently made inasmuch as the allegations of the petition for the receivership were denied in the defendant's answer and that no evidence was presented in its support. That is true in part; the answer contained a qualified general denial, and no oral evidence was taken. We agree with counsel that in such circumstances, the petition, standing alone, would not constitute grounds for the appointment of a receiver and would, no doubt, have been denied by the court.

But the record before us shows undisputed facts which, in our opinion, justify the action of the respondent judge. Thus it is conceded that on May 18, 1928, claimants of the one-fifth, abovementioned, filed a petition for the appointment of a receiver and that after the reception of oral evidence and after extensive arguments of the

attorneys, the petition was finally denied on December 14, 1928; that in the same month of December, the majority of the co- owners of the four-fifths of the property being¹ dissatisfied with the management of Augusto H. Tuason, who until that time had managed the principal properties, revoked the powers under which he was acting and removed him as manager; that by a resolution adopted at the same time by the majority of the co-owners, a board of management, consisting of the eleven principal cobwners, for the administration of said properties was created, each co- owner to have voting power according to his interest in the properties, and Maria S. Tuason was elected president of the board. It is also shown by the statements of Augusto H. Tuason and Jose Ma. Tuason, who represented a very large part of the property, that they were dissatisfied with the new management and had lost all confidence in it; that they, at the time of the filing of the petition for a receiver in the present case, were on the point of bringing an action for the partition of the properties and that they intended to warn the numerous tenants of the mayorazgo against paying rents to the persons who then pretended to administer the properties; and that they now were in favor of the appointment of a receiver.

It is also a matter of record which cannot be disputed that before the issuance of the order of October 16, 1929, the other members of the aforesaid board, except the herein petitioners, declared their conformity with the appointment of the receiver, and subsequently they filed an affidavit stating among other things that "if in the beginning they opposed the appointment of a receiver this was due to the fact that they were uncertain who the person of the receiver would be, but since the announcement made by the court that the Bank of the Philippine Islands would be appointed, as in fact it was, receiver of the Mayorazgo Tuason properties, they have withdrawn their opposition to said receivership proceedings because they have special trust and confidence in the impartiality, efficiency, integrity, and solvency of the Bank of the Philippine Islands, and they hereby adhere and conform to the appointment of said receiver;

"That all these deponents representing as they do the majority interest in said properties agree to, as they hereby authorize, the said Bank of the Philippine Islands to administer the aforesaid properties either as a receiver Under the provisions of section 174 of the Code of Civil Procedure, or as an impartial administrator under the provisions of article 398 of the Civil Code."

From the facts stated, it is plain that the relations between Augusto H. Tuason and Jose Ma. Tuason on one side and Maria S. Tuason on the other, were strained, and it seems likely that if a receiver had not been appointed, Augusto and Jose Ma. Tuason would have brought their contemplated action for a partition of the four-fifths of the mayorazgo. From a legal point of view, they had the right to bring such an action. In the present state of the original mayorazgo case such litigation would have been both inconvenient and expensive to all of the parties and would probably have led to further litigation in the collection of rents and to additional friction among the co-owners. Considering the surrounding circumstances, we should hesitate to hold that the respondent judge abused his discretion to such an extent as to exceed his jurisdiction in appointing the receiver upon this ground alone.

But there are other grounds for withholding the writ of certiorari in this case. Article 898 of the Civil Code provides that "the decision of the majority of the part owners as to the management and enjoyment of the common property shall be binding on all. To constitute a majority the decision must have been made with the concurrence of owners representing the greater part of the interests which constitute the thing held in common." In the present case a large majority in interest is in favor of surrendering the management of the property to the receiver appointed, and it follows that their decision in that respect must be considered binding on the other co-owners.

It is argued that the majority of the co-owners joined in the petition for the receivership too late and that, consequently, their adherence to it should not be taken into consideration. We do not think so. They manifested their conformity before the final order of the court dated October 16, 1929, was issued. In that order the court referred to the fact that the majority was in favor of the appointment, and it was one of the grounds for denying

the motion for reconsideration.

The petitioners, cite a number of cases which, in our opinion, have little or no bearing on the present case; the facts differ and so do the laws and the circumstances. With the exception of the case of *Sweeney vs. Meyhew* (6 Ida., 445) all of the cases cited were decided on appeals and not on certiorari. The Idaho case was brought before the Supreme Court of the state on a writ of review, a substitute for certiorari. There, too, the statutes differ from ours; the writ of review has a somewhat wider scope than our certiorari, and instead of the language of subsection 4 of section 174 of our Code of Civil Procedure, the language employed in the Idaho statute is that receivers may be appointed "in all other cases where receivers have heretofore been appointed by the usages of courts of equity." The difference is obvious.

We are not unmindful of the general rule that extreme caution must be observed in appointing receivers of real property against a defendant in possession and that whenever a contest over real property is merely a question of dispute of title, as in actions of ejectment, the plaintiff asserting a legal title in himself as against a defendant in possession, who is receiving the rents and profits under a claim of legal title, a receiver will not ordinarily be appointed to take possession of the property or to receive the rents and profits thereof.

But that rule cannot apply with great force to the present case. There is here no question as to the rights of the defendants in regard to the title to the four-fifths of the mayorazgo property; that has already been definitely determined by our decision in the original case. None of the co-owners claimed right to the exclusive possession of any of the properties nor can any of them individually claim exclusive rights to the management thereof and to collect the rents. There is consequently no forestalling of the decision on the merits, which is one of the principal reasons for the reluctance of the courts to appoint receivers of real property.

In our opinion, the respondent judge did not exceed his jurisdiction in appointing the receiver; on the contrary, his judgment and discretion in doing so seems quite sound. It is, indeed, difficult to see how he could have found a better solution of the problem with which he was confronted. In the midst of the remaining litigation in the original case, he was also burdened with litigation as to the management of the property in question, and such litigation would probably have the effect of delaying the final determination of the disputed points in the original or principal case. The last petition for the appointment of a receiver culminated in the withdrawal of the majority of the co-owners from the so-called board of management thus creating a situation in which no one had clear authority to collect the rents, the principal part of the management.

Judge Concepcion has had charge of civil case No. 24803 from the beginning. From past experience, as well as from the record, he must have known that managers selected from among the co-owners had been objects of suspicion on the part of the other co-owners, and that such suspicions led to bickerings and eventually to useless and expensive litigation, detrimental to the interests of all of the parties. In these circumstances, we cannot hold that he erred in appointing as manager a disinterested person or entity who enjoyed the confidence of the owners. We can take cognizance of the fact that the receiver selected is a solvent and reliable institution and that it has a trust department adequately equipped for the task with which it has been entrusted; it undoubtedly has better facilities for keeping proper accounts than has any of the co-owners, a matter of great importance when it is taken into consideration that the properties in question are extensive and valuable and that the management consists principally in collecting rents.

It has been suggested that the property in question is so large and valuable, and the expenses of administration so heavy, that the interests of the co-owners will be seriously prejudiced by the receivership. We cannot place much weight on this contention. The fact that the estate is large is no obstacle; on the contrary, the larger the estate, the more important it becomes to provide for competent and satisfactory management. And the expenses of the

receivership need not be much greater than the cost of the co-owners' management, especially so where the trouble and expense of the litigations resulting from the latter are taken into consideration; paid clerks and collectors of rents would, of course, be necessary in either event.

As we have already pointed out, in this jurisdiction the powers of the courts in appointing receivers are somewhat broader than usual, and no special procedure in regard to such appointments is provided for in our statutes. In fact, the practice is so divergent in the different States that it is practically impossible to reduce the various rules to an harmonious system, but assuming for the sake of the argument, that in the appointment of the receiver in the present case, the respondent judge did not observe the technical niceties, his failure to do so would hardly affect the question of his jurisdiction to appoint. (*Presidio Mining Co. vs. Overton*, 286 Fed., 848; citing *Sage vs. Memphis, etc. Ry.*, 125 U. S., 361; and *Sullivan Timber Co. vs. Black*, 159 Ala., 570.) The appointment was not arbitrary, and the possession of the property involved was not "wrested" from the controlling majority of the co-owners. There is nothing¹ drastic about the proceedings. Certainly, it is not a case for review on certiorari under our statutes. To hold otherwise would amount to a violation of our laws and, considering the fact that the respondent judge acted within his jurisdiction, it would be contrary to the former decisions of this court in regard to certiorari.

The petition for a writ of certiorari is denied with the costs against the petitioners. So ordered.

Malcolm, Villamor, Johns and Villa-Real, JJ., concur.

Johnson, J., dissents.

DISSENTING

Sreet, J., with whom concurs Avanceña, C. J. :

Under section 220 of the Code of Civil Procedure this court has authority to review and vacate any order of a Court of First Instance when it appears that such court has not regularly pursued its authority, and under this section we have heretofore exercised a wholesome restraint over the Courts of First Instance in the matter of the appointment of receivers. The power to appoint a receiver is one of the most drastic exercised by courts, and if such orders are improvidently made great damage results. A receivership is easily created and difficult to abolish; and in matters of this sort the time to be conservative is at the beginning.

In the case now before us this court has approved the appointment of a receiver for a solvent multimillionaire estate, when it is self-evident that the interests of the litigants in whose name the motion was brought are in no wise threatened with danger. The situation in brief is this: The Tuason Estate, formerly subject to entail, is vested in a number of co-owners, who appear to have been lately managing the estate through what we might call a committee of the whole. Some time ago an action was brought against the holders of the legal title in behalf of those descendants of the founder who do not pertain to the preferred line. These litigants asserted that, under a certain clause of the instrument creating the entail, they had become, upon the abolition of the entail, entitled to an equitable one-fifth interest in the property, which fifth was alleged to be held in trust for said claimants by the defendants, the owners of the legal title. This contention was sustained in this court, and the cause was remanded for the admission of new parties and for the taking of certain procedural steps necessary to a conclusion of the litigation and the enforcement of the rights pertaining to the plaintiffs and others in interest. It is in this case that the receiver has been appointed.

It will be noted that the property which is the subject of this contention consists of real estate and the, income now being earned. The litigants who are¹ seeking the appointment of a receiver do not contend that the holders of the

legal title are attempting or intending to convey the real property away in fraud of the plaintiffs. Indeed the pendency of this litigation would be a sufficient safeguard against that. With respect to the income the management of the estate had been depositing, under order of the court, one-fifth of the income derived from the property. Under these circumstances it would be absurd to claim that the interests of the litigants are in any danger.

It appears, however, that dissension has arisen among the holders of the legal title and an element in this class is cooperating in the motion which seeks the appointment of a receiver. Others pertaining to the class of owners appear to have been intimidated by the threat of partition proceedings from the hostile quarter, with the result that these persons also have lent their adherence to the proposition for the appointment of a receiver. But even if all of the owners had been shown to favor the appointment of the receiver, this fact would not have justified the assumption of this grave responsibility by the court. The holders of the legal title ought to be left to their own devices in the management of the common property, under article 398 and related provisions of the Civil Code.

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