

**JULITA SARAYBA DE ARNALDO, ASSISTED BY HER HUSBAND
CRISPULO F. ARNALDO, PETITIONER, VS. DIEGO LOCSIN, JUDGE OF
FIRST INSTANCE OF CAVITE, BENIGNO T. SARAYBA, MARTINA
SARAYBA DE F...**

G.R. No. 46616. November 04, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present petition for a writ of certiorari has been filed by Julita Sarayba de Arnaldo, assisted by her husband Crispulo F. Arnaldo, against the Hon. Diego Locsin, as Judge of First Instance of Cavite, Benigno T. Sarayba, Martina Sarayba de Ferrer, Luis Ferrer, Jr., Amparo Sarayba de Trias, and Miguel F. Trias. It asks that, after proper proceedings, judgment be rendered setting aside the order of February 1, 1939 given by the aforementioned respondent, Hon. Judge Diego Locsin, whereby the clerk of said court is ordered to issue a subpoena duces tecum requiring the petitioner, Julita Sarayba de Arnaldo, to appear before notary public Felicisimo S. Ocampo for the taking of her deposition, bringing with her the following documents:

- The list of supposed debts in the name of Julita Sarayba Arnaldo, and exhibited by her to her brother and sisters at the time document Exhibit "A" was being prepared and from which the amount of P19,243.32 was taken;
- List of obligations Julita Sarayba de Arnaldo has been paying from the different dates of the donations executed in her favor by Julita Trias up to the present.
- The different deeds of donation executed by Julita Trias in favor of Julita Sarayba de Arnaldo;
- List of net income received by Julita Sarayba de Arnaldo from the different properties donated to her by Julita Trias, from 1932 to 1933, inclusive.
- Any document or papers showing Julita Sarayba de Arnaldo's alleged title to the ring subject of her second counter-claim;
- Original or true copy of Income Tax return of Julita Sarayba de Arnaldo singly or jointly with her husband Crispulo F. Arnaldo from 1923 to 1938;
- All books, papers, and documents showing income of the drug store of Julita Sarayba de Arnaldo from 1920 to 1938;
- Final statement of accounts of Julita Sarayba de Arnaldo as administratrix of the estate of the late Julita Trias in civil case No. 2514, Court of First Instance of Cavite; and
- All papers and documents showing the obligations of Julita Sarayba de Arnaldo and/or Crispulo F. Arnaldo from 1929 to 1934.

On September 25, 1939, the herein respondent, Benigno T. Sarayba, filed against the herein petitioners, Julita

Sarayba de Arnaldo and Crispulo F. Arnaldo, a complaint docketed as civil case No. 3258 of the Court of First Instance of Cavite, alleging briefly that the therein plaintiff Benigno T. Sarayba and therein defendant Julita Sarayba de Arnaldo, and the sisters of both, Amparo Sarayba de Trias and Martina Sarayba de Ferrer, were nephew and nieces, respectively, of one Julita Trias, a spinster, who died on November 18, 1931; that, as Julita Trias had, in life, distributed the mass of her properties among her said nephew and nieces, the latter agreed that should she be in need of money they would borrow the necessary amount, mortgaging and encumbering, as security for its payment, the properties which they had received; that by virtue of said agreement, the aforementioned nephew and nieces took a loan with which to pay the debts of their late aunt, putting as security for its payment all the properties they had received from her; that on January 21, 1934, the aforesaid nephew and nieces made a liquidation of all the debts which they had incurred for the benefit of their late aunt and executed a private document in Tagalog (Exh. A), whereby the herein petitioner, Julita Sarayba de Arnaldo, assumed the payment of three debts of her deceased aunt which appeared in the name of Benigno T. Sarayba; that, since the said Julita Sarayba de Arnaldo would not pay the debts referred to, the aforementioned complaint has been filed against her, including her husband Crispulo F. Arnaldo as party defendant in view of the promise which he and his wife had made to pay, jointly and severally, the sums in which Julita Sarayba de Arnaldo was indebted; and that the full amount claimed reached the total sum of P25,000 in round figures, excluding the interest which may be due from the time of the filing of the complaint.

On March 25, 1938, the herein petitioners, as defendants in civil case No. 3258 above-mentioned, filed an amended answer with special defense, counterclaim and cross-complaint against the herein respondent Benigno T. Sarayba, alleging, among other things, that the liquidation of the debts Exhibit A is void and without any force, inasmuch as the debts therein mentioned were the personal and private ones of the parties in the liquidation; that the partition of said debt among the interested parties was unjust, leonine, illegal and void; that the signature of Julita Sarayba de Arnaldo appearing on document Exhibit A referred to was obtained through false statements and deceitful representations made by the herein respondents, Benigno T. Sarayba, Amparo Sarayba de Trias and Martina Sarayba de Ferrer; that in 1934, Benigno T. Sarayba took from Julita Sarayba de Arnaldo, as a loan, a solitaire ring which was worth P4,000 and that the former did not return the ring to the latter, for which she was responsible; and that Julita Sarayba de Arnaldo, as administratrix of the estate of the deceased Julita Trias, paid Atty. James Ross the sum of P1,000, which the respondent Sarayba should reimburse her.

On June 13, 1938, the herein respondents Sarayba, as cross-defendants in civil case No. 3258, above-mentioned, filed a reply to the aforesaid amended answer, in which they alleged, among other things, that the statement made by Julita Sarayba de Arnaldo that she had been deceived by her brother and sisters, the herein respondents Saraybas, in the execution of Exhibit A is false; that if any one had committed fraud and deceit in said execution it was Julita Sarayba de Arnaldo herself, inasmuch as she was able to include in the liquidation of the debt of the late Julita Trias a supposed debt of hers in the sum of P19,243.34, which debt was fictitious; that the partition of the debts set forth in Exhibit A is not unjust, leonine, illegal, or void; that the diamond ring claimed by Julita Sarayba de Arnaldo belonged to Benigno T. Sarayba; that the sum of P1,000 paid by Julita Sarayba de Arnaldo to Atty. James Ross was the proportional amount which she should pay personally for the services rendered by said attorney to her and to her brother and sisters, the herein respondents Saraybas, in the probate of the will of the late Julita Trias.

At the trial of civil case No. 3258 held on March 18, 1938, the defendant Benigno T. Sarayba presented as evidence Exhibit A with its translation into Spanish Exhibit A-1, whose genuineness and due execution had been impliedly admitted for the reason that they were not specifically denied under oath. The plaintiff referred to, Benigno T. Sarayba, testified concerning the three debts of Julita Trias, mentioned in the document Exhibit A, which appeared in his name, and whose payment the latter had undertaken, but which she did not pay. With the

presentation of said documentary and oral evidence, the plaintiff Benigno T. Sarayba rested his case in the morning of March 18, 1938.

On September 20, 1938, the herein petitioners, as defendants in civil case No. 3258, filed with the Court of First Instance of Cavite, which was then presided by the Honorable Judge Marcelo T. Boncan, a petition *ex parte* wherein they prayed for an order for the taking of the deposition of the respondent Benigno T. Sarayba, as cross-defendant in said civil case No. 3258, and for the production of the books, papers and documents therein mentioned, including, among others, the public deeds of donation executed by Julita Tria? in favor of Benigno T. Sarayba, as well as the various documents which had been used by the parties in the execution of Exhibit A, in the liquidation of the debts of Julita Trias which appear in said document, in accordance with section 355, par. 1, of the Code of Civil Procedure, which authorizes the filing of a petition in the nature of a bill of discovery. The purpose of said deposition was to give opportunity to the petitioners, as defendants and cross-complainants in civil case No. 3258, to show, among other things, that they had been induced, through deceit, to sign Exhibit A, that the debts which appeared in said Exhibit A were the personal ones of the parties who took part in its execution and were not those of the deceased Julita Trias; that the participation of said debts was unjust, leonine, illegal and void. The taking of deposition prayed for was carried out on September 24, 1938.

Much later, the herein respondents, as plaintiffs and cross-defendants in said civil case No. 3258, asked, in turn, for the taking of the deposition of the defendant Julita Sarayba de Arnaldo, which should have taken place on September 26, 1938. On September 22, the Court of First Instance, then presided by the Hon. Judge Marcelo T. Boncan, made an order commanding the issuance of a subpoena *duces tecum*, addressed to the petitioner Julita Sarayba de Arnaldo, requiring her to produce in the taking of her deposition the papers, books and documents which constitute the larger portion of those which were the subject of the prior subpoena *duces tecum*, Julita Sarayba de Arnaldo did not oppose the taking of the deposition, neither did she ask for the setting aside of the subpoena *duces tecum*, issued in accordance with the order of the court dated September 22, 1938.

As the subpoena *duces tecum* issued pursuant to the order of the Court dated September 28, 1938 had elapsed without the deposition having been taken, the herein respondents Saraybas sent, on December 2, 1938, a notice for the taking of the deposition of Julita Sarayba de Arnaldo on December 12, 1938, and filed a petition for the issuance of the corresponding subpoena addressed to Julita Sarayba de Arnaldo, so that she would bring the same documents which were the subject of the subpoena *duces tecum* here in question. In view of said petition, the Court of First Instance of Cavite, then presided by Hon. Judge Arsenio A. Roldan, issued on December 3, 1938 an order of the following tenor:

"After consideration of the petition *ex parte* filed today by the cross-defendants' counsel, praying for the issuance of subpoena *duces tecum* to the defendant Julita Sarayba de Arnaldo and the Manager of the Philippine National Bank, or the latter's duly authorized representative, in order that they may appear and testify by deposition before Notary Public Felicisimo S. Ocampo of the City of Manila, in said Notary's office at 1217 Pennsylvania, of the same city, on the twelfth of this month, at 9 a. m., bringing with them certain documents more particularly described in said petition,

"Petition granted, and the clerk of this court is ordered to issue immediately the corresponding subpoena *duces tecum*.

"It is so ordered."

On December 7, 1938, the herein petitioners, as defendants and cross-complainants in civil case No. 3258, filed a motion wherein they prayed for the setting aside of the subpoena *duces tecum* issued in accordance with the order of the court of December 3, 1938, upon the following grounds:

"(1) The taking of the deposition of the defendant Julita Sarayba de Arnaldo by the plaintiff was improper for the reason that the plaintiff had already rested his case;

"(2) The documents specified in the subpoena duces tecum are, in their most parts, exclusive evidence of the defendants;

"(3) Many of the documents listed in the subpoena are irrelevant; and

"(4) Some of the documents mentioned in the subpoena are public record."

The first additional document whose production by subpoena duces tecum had been asked by the respondents from the Court of First Instance of Cavite, and which the latter had required in the order which is the subject of the present petition, is the sixth, that is, the original or an authentic copy of the statement of receipts subject to income tax, filed by Julita Sarayba de Arnaldo, alone or jointly with her husband Crispulo F. Arnaldo from the year 1923 to the year 1938.

This court, in the case of *People vs. Topacio* (59 Phil., 356), has held that the lower court was not authorized by law to require the production of the income tax returns by virtue of the provisions of section 14(b) of Act No. 2833, known as the Income Tax Law, and sections 11 and 12 of Regulations No. 33, prescribed by the Secretary of Finance pursuant to the authority conferred on him by said section 14(6), except in the cases specified in said regulation. It is true that in section 12 of said regulation the Collector of Internal Revenue is authorized to furnish a copy of the income tax returns to the person who may have filed it; but the latter may not be compelled through a subpoena duces tecum to ask the Collector of Internal Revenue for said copy, but only to produce it to the Court which may have issued the subpoena if he had it in his possession and were obliged by law to produce it as evidence (sec. 402, Act 190; 70 C. J., 48, pars. 32 and 36). The copy whose production is ordered has to be authenticated. However, the petitioner neither has nor owns it, but has to obtain it from the Collector of Internal Revenue, which she cannot be compelled to do.

With respect to the production of the other additional books and documents mentioned in the subpoena duces tecum in question, the syllabus of the decision of this court rendered in the case of *Sy Jong Chuy vs. Reyes* (59 Phil., 244), says the following;

"Philippine law makes the production of documents, under a subpoena duces tecum by an administrative officer like an internal revenue officer, 'subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character.' (Administrative Code, sec. 580.) In order to entitle a party to the issuance of a subpoena duces tecum, it must appear, by clear and unequivocal proof, that the book or document sought to be produced contains evidence relevant and material to the issue before the court, and that the precise book, paper or document containing such evidence has been so designated or described that it may be identified.

"In the absence of a showing of materiality, and in the absence of all particularity in specifying what is wanted by a subpoena duces tecum, the refusal of a merchant to obey a subpoena, commanding him to produce his commercial books, will be sustained. The courts function to protect the individual citizen of whatever class or nationality against an unjust inquisition of his books and papers."

The complaint filed by the respondents Benigno T. Sarayba et al, against the petitioner Julita Sarayba de Arnaldo was for the fulfillment by the latter of the agreement whereby Julita Sarayba de Arnaldo undertook to pay certain obligations of the respondent Benigno T. Sarayba, who alleges to have contracted them for the benefit of the deceased Julita Trias, the payment of whose obligations had been assumed by the petitioner and the respondents surnamed Sarayba. The petitioner, answering the complaint, denies in her amended answer that she has ever undertaken the payment of those obligations or incurred any obligation under said agreement, inasmuch as her

consent has been obtained through false representations, and moreover the supposed debt of Julita Trias was, in truth, the personal and private debts of the respondent Benigno T. Sarayba. The litigation between the petitioner Julita Sarayba de Arnaldo and the respondents Benigno T. Sarayba et al., has to do with the obligations contracted by the late Julita Trias and those contracted for her benefit in her lifetime, as well as with the property left by her and its fruits, and that inherited by the parties from their ancestors and held by them as owners pro indiviso, the partition of which is sought by the petitioner.

In the allegations of the complaint no mention whatever has been made of the drug store of Julita Sarayba de Arnaldo as portion of the property of Julita Trias which has been allotted to her. Accordingly, the books, papers and documents showing the receipts of petitioner's drug store and her other obligations do not have any relevancy or materiality in this litigation, and in ordering the issuance of a subpoena duces tecum the respondent judge exceeded his jurisdiction, violating the provisions of section 402 of the Code of Civil Procedure, as it has been construed by this court in the case of *Liebenow vs. Philippine Vegetable Oil Co.*, (39 Phil., 60), in paragraph 3 of the syllabus of which, the following is said:

"Where a subpoena duces tecum is improperly issued to enforce the production of books, documents, or things which the witness is not bound to produce, a proper remedy on the part of the person against whom such subpoena is directed is to move that it be vacated or set aside."

Neither have the papers and documents showing the obligations of Julita Sarayba de Arnaldo alone or jointly with her husband Crispulo F. Arnaldo, contracted from the year 1929 to the year 1934, any relevancy or importance in the case.

As regards the statement of accounts of Julita Sarayba de Arnaldo as administratrix of the property left by the deceased Julita Trias in civil case No. 2514 of the Court of First Instance of Cavite, said statement appears in the corresponding record of the administration proceedings, which is under the control of the Court.

For the foregoing considerations, we are of the opinion and so hold: 1st, that a litigant may not be compelled, through subpoena duces tecum, to produce the original of the income tax returns filed by him and recorded in the Bureau of Internal Revenue, nor an authenticated copy thereof which is not in his possession; and 2nd, that neither may a litigant be compelled, through subpoena duces tecum to produce books, papers and documents which do not have any relevancy or materiality in the question in litigation.

Wherefore, the writ prayed for is granted and the order of the respondent Judge, Hon. Diego Locsin, dated February 1, 1939, commanding the issuance of a subpoena duces tecum, addressed to the petitioner Julita Sarayba de Arnaldo, for the production of the additional books and documents, is set aside, with costs against the respondents. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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