

BENITO M. ARCILLA, ETC., ET AL., PETITIONERS, VS. PABLO ANGELES DAVID, JUDGE OF FIRST INSTANCE OF PAMPANGA, ET AL., RESPONDENTS.*G.R. No. 49190, December 12, 1946*

Ponente: PERFECTO, J.

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Petitioners pray for the annulment of the orders issued on December 6, 1943, and on February 29, 1944, by Judge P. Angeles David, of the Court of First Instance of Pampanga, in the Intestate of Amada Hilario, special Proceedings No. 6976 of said court.

Upon motion filed by the administratrix of the estate of Manuel Ilen Gungoo, respondent judge issued the order of December 6, 1943, authorizing the administrator of the Intestate of Imada Hilario to sell, within ten days, to said administratrix lots Nos. 822 and 892, and 4/9 of lot No. 583, located in Angeles, Pampanga, and respectively registered under Transfer Certificates Nos. 9379, 9380, and Original Certificate No. 360, of the Register of Deeds of Pampanga, for the amount of P6,750.00.

Upon motion of the same administratrix of the Testate of Manuel Tan Cungco, the respondent Judge issued the order of February 29, 1944, ordering Benito M. "Arcilla, administrator of the Intestate of Imada Hilario, to issue a deed of sale in favor of the Testate of Manuel San Cungco of the properties above mentioned and to submit said deed of sale to the court for approval within ten days, it appearing that the administratrix had deposited with the clerk of Court the amount of P6,750.00 as consideration for the same.

Petitioners impugn the validity of the two orders in question on the ground that they were issued in violation of Section 7 of Rule 90, because the administrator of the Intestate of Imada Hilario did not file the petition as required in subsection (a) thereof, the court did not fix the time and place for hearing as provided in subsection (b), and has not declared that the sale in question appears to be necessary or beneficial, and in violation of Section 5 of Rule 26, because seven of the eight petitioners who are the legitimate children and legal heirs of the deceased Amada Hilario were not notified of the motion filed by administratrix Mercians Escoto of the Testate of Manuel Tan Cungco on November 3, 1943, nor of the order which, upon said motion, was issued by the respondent judge on December 6, 1943.

Section 7 of Rule 90 and Section 5 of Rule 26 provide:

"SEC. 7. Regulations for granting authority to sell, mortgage, or otherwise encumber estate.— the court having jurisdiction of the estate of the deceased may authorize the executor or administrator to sell personal estate, or to sell, mortgage, or otherwise encumber real estate, in cases provided by these rules and when it appears necessary or beneficial, under the following regulations:

"(a) The executor or administrator shall file a written petition setting forth the debts due from the deceased, the expenses of administration, the legacies, the value of the personal estate, the situation of the estate to be sold, mortgaged, or otherwise encumbered, and such other facts as show that the sale, mortgage, or other

encumbrance is necessary or beneficial;

"(b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;

"(c) If the court requires it, the executor or administrator shall give an additional bond, in such sum as the court directs, conditioned that such executor or administrator will account for the proceeds of the sale, mortgage or other encumbrance;

"(d) If the requirements in the preceding subdivisions of this section have been complied with, the court, by order stating such compliance, may authorize the executor or administrator to sell, mortgage, or otherwise encumber, in proper cases, such part of the estate as is deemed necessary, and in case of sale the court may authorize it to be public or private, as would be most beneficial to all parties concerned. The executor or administrator shall be furnished with a certified copy of such order;

"(e) If the estate is to be sold at auction, the mode of giving notice of the time and place of the sale shall be governed by the provisions concerning notice of execution sale;

"(f) There shall be recorded in the registry of deeds of the province in which the real estate thus sold, mortgaged, or otherwise encumbered is situated, a certified copy of the order of the court, together with the deed of the executor or administrator for such real estate, which shall be as valid as if the deed had been executed by the deceased in his lifetime." (Rule 90.)

"SEC. 5. Contents of notice.—The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion." (Rule 26.)

The violations of Section 7 of Rule 90 and Section 5 of Rule 26, as alleged by petitioners, are conclusively borne out by the record and, therefore, there can not be any question that the respondent judge, in issuing the two orders complained of, acted in excess of his jurisdiction.

Respondents' contention to the effect that the motion of administratrix Marciana Escoto dated November 3, 1943, need not comply with the rule provisions above mentioned, because it is a mere reproduction of a petition filed by administrator Benito M. Arcilla in August, 1941, with the express conformity of the guardian ad item of the minor children of Imada Hilario, which was denied on August 11, 1941, is without merit, not only because there are substantial differences between the two pleadings, but the order of denial had disposed of finally said petition, so much so that months later, that is, on November 17, 1941, Manuel Tan Cungco filed in the Intestate of Imada Hilario a petition to authorize the sale of the properties above mentioned to Dr. Magdalano Bundalian at the same price of P6,750.00, alleging that he had transferred his right to buy and acquire the properties to him.

Since then, it appears that no further action had been taken until administratrix Marciana Escoto filed her motion on November 3, 1943, about two years later, during which time many important events happened — the Philippines was invaded by the Japanese Armed Forces, prices and values were hiked to unbelievable levels, and the currency in 1943 was not the currency in 1941 before the war broke out. As a matter of fact, petitioners alleged that the value of the properties has increased to P20,000.00.

Besides, even in the hypothesis that the theory of reproduction can be accepted, it is no reason for dispensing with the rules, which are effective and applicable to original motions and to reproduced ones alike.

The allegation of respondents that the legitimate children of the deceased Amada Hilario were not entitled to be notified of the motion of administratrix Marciana Escoto dated November 3, 1943, because said children are not

parties that must be notified, is unacceptable in law. Are there more and better interested parties in a proposed sale of the properties of the deceased than the children and universal heirs of the same?

The orders of December 6, 1943, and February 29, 1944, issued by the respondent Judge in the Intestate of Irate Hilario, Special Proceedings No. 6976 of the Court of First Instance of Pampanga, are declared null and void, with costs against administratrix Marciana Escoto of the Estate of Manuel Tap. Cungco.

Moran, C.J., Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

CONCURRENTE

PABLO M., con quien esta conforme FERIA, M.:

En el intestado de Amada Zilario (Actuacion Especial No. 6976 del Juzgado de Primera Instancia de Pampanga) fue nombrado administrador su conyugue superstite, Benito H. Arcilla y curador ad lit en de sus siete hijos menores, Artemio Hilario.

En febrero 10, 1941 Benito M. Arcilla, por si como curador ad lit en de sus hijos menores otorgo una escritura de convenio del tenor siguiente:

"IV. Que en consideracion de la suma de quinientos pesos. (P600.00) que en este acto ha recibido Benito M. Arcilla de Manuel Tan Cungco, el primero se compromete;

"1.[o], A incoar en el Juzgado de Primera Instancia de Pampanga dentro de un plazo razonable la tramitacion del interesado de la difunta Da. Amada Hilario de Arcilla; y

"2.[o], A gestionar, unavez nombrado el administrador de los bienes rictos de la difunta Da. Amada Hilario de Arcilla, para que conceda el juzgado autorizacion para la venta de los bienes en cuestion a favor de Manuel Tan Cungco con la condiciones siguientes:

"(a) El precio de la venta sera el seis mil setecientos cincuenta pesos (P6,750.00), ademas de la cantidad de quinientos pesos (P500) que se acaba de entregar;

"(b) Correran por cuenta de Manuel Tan Cungco los gastos de la escritura de venta, con los derechos de ratificacion y sellos, todos los derechos que se cobren por el Registrador de Titulos relacionados con la inscripcion de la venta asi como todos los derechos por las copias certificadas de documentos que fueren necesarios para su inscripcion debida;

"(c) Manuel Tan Cungco realizara el pago del precio de la venta dentro termino de diez (10) dias a partir de la fecha que el fuese notificado debidamente de la autorizacion judicial para la venta a su favor; y

(d) El intestado de la difunta Da. Amada Hilario de Arcilla no respondera del saneamiento de las fincas en caso de eviccion siempre que esta fuere motivada por perfecto de titulo del mismo Manuel Tan Cungco.

"V. Que Manuel Tan Cungco no tendra derecho a repetir la cantidad de quinientos pesos (P500) de la cual acaba de hacer entrega, ni parte de la misma, si despues de tener conocimiento debido de la autorizacion judicial para la venta a su favor con las condiciones mas arriba espresadas, dejare el de hacer valer si opcion de comprarn las fincas dentro del termino ultimamente concedido.

"VI. Que, era porque el juzgado se negare a autorizar la venta no obstante los esfuerzos que se desplieguen para ello, era tambien porque, dado que el juzgado autorizare tal venta, dejare Manuel Tan Cungco de de Hacer valer se opcion de comprar dentro del termino ultimamente convenido, o sea, dejare de realizar el pago del precio de la venta dentro del termino ultimamente concedido, entonces hara entrega de las fincas a Benito M.

Arcilla al requerimiento; y puesto caso que se negare a ello, pagara a los demandantes en la causa num. 731 del Juzgado de Paz de Angeles, Pampanga, la suma de mil pesos (P1,000) en concepto de indemnizacion de daños y perjuicios por la retencion de la fincas.

"En testimonio de lo cual, firmamos la presente por duplicado en Angeles, Pampanga, a 10 febrero de 1941.

(Fdo.) " MANUEL TAN CUNGO

(Fdo.) " BENITO M. ARCILLA

" En su propia representacion y como curador ad item de los menores Flodserfina Arcilla y otros.

(Fdo.) " EUFRACIO OCAMPO

"Abogado de Benito M. Arcilla

(Fdo.) " VALERIANO SILVA

" Abogado de banito M. Arcilla

En agosto 2, 1941 Benito M. Arcilla por medio del abogado Eufasio Ocampo, pidio de acuerdo con el convenio transcrito, automation para vender a Manuel Tan Cungco por la cantidad de P6,750 los siguientes lotes: Lote No. 822, certificado de transferencia de titulo No. 9379, Pampanga; Lote No. 892, certificado de transferencia de titulo No. 9380; y 4/9 del Lote No. 585, certificado original de titulo No. 360.

En agosto 11, 1941 el Hon. Juez Magsalin, despues de oir a las partes en la vista de la mocion anterior dijo que "el Juzgado esta convencido que la venta propuesta redundaria en beneficio de los interesados en esta herencia." "Resultando, sin embargo,—añadio—que el comprador Manuel Tan Cungco es ciudadano chino, el juzgado no podra autorizar esta venta."

En noviembre 17, 1941 Manuel Tan Cungco presento una mocion pidiendo que los lotes sean vendidos al Dr. Magdaleno Bundalian, a quien, segun el, habia cedido su derecho de opcion de compra; pero los menores Maria y Ramon Arcilla, de 18 y 16 anos de edad respectivamente se opusieron a dicha mocion, manifestando que preferian que se hiciese la venta al mismo Manuel Tan Cungco. No se actuó sobre la mocion. Manuel Tan Cungco fallecio en mayo 12, 1943.

En noviembre 3, 1943 Marciana Escoto, administradora del finado Manuel Tan Cungco, presento una mocion pidiendo que se ordene al administrador del intestado de Amada Hilario que cumpla el convenio en cuanto a la venta de los lotes. De esta motion no fue notificado el curador ad litem de los menores Artemio Hilario. . En diciembre 6, 1943 el Hon. Juez Angeles David autorizo al administrador Benito M. Arcilla a vender los referidos lotes a favor de la Marciana Escoto, administradora de los bienes intestados de Manuel Tan Cungco por la suma de P6,750 dentro del plazo de diez dias.

En enero 14, 1944 Marciana Escoto presento, sin notificar al curador de los menores Artemio Hilario, una motion, alegando que deposito en la escribania del juzgado la cantidad de P6,750 que es el importe de la venta de los tres lotes, autorizada por el juzgado en su orden de diciembre 6, 1943 y que a pesar de haber sido notificado de dicha orden el administrador Benito M. Arcilla, no lo ha cumplido aun. Pidio que el juzgado ordene a dicho administrador Benito M. Arcilla que otorgue la escritura de venta correspondiente. En febrero 29, 1944 el Hon. Juez Angeles David dicto una orden accediendo a esta petition.

El administrador del intestado de Amada Hilario presento mociones de reconsideration que fueron denegadas.

Ambas partes admiten que la cantidad de P6.750 consignada en la escribania del juzgado ya no tiene valor alguno. Sin embargo, el abogado del intestado de Manuel Tan Cungco esta dispuesto a depositar o entregar la

misma cantidad en dinero legal corriente, si se ordena la venta.

Los tres lotes, segun se desprende de los escritos, son bienes gananciales de Benito M. Arcilla y de la finada Amada Hilario. Si despues de la liquidation quedaren aun estos tres lotes, una parte alicuota de los mismos corres-pondera al viudo Benito M. Arcilla y otra, a los menores.

Artemio Hilario, nombrado curador ad litem de dichos menores en el Intestado de Amada Hilario no ha sido notificado de las dos mociones que dieron lugar a la expedicion de las ordenes del Juzgado de Primera Instancia de Pam-panga de diciembre 6, 1943 que autoriza al administrador Arcilla a vender los Iotes y la de febrero 29, 1944 que ordena al mismo administrador que otorgue la escritura de venta correspondiente. . Estas dos drdenes no pueden afectar, ni afectan la participacion de los menores en dichos Iotes. Benito M. Arcilla, como padre, es solamente tutor natural de las personas de sus hijos menores; pero de esto no puede deducirse necesariamente que fuera, al mismo tiempo, tutor de los bienes de estos con poderes para obligar con su consentimiento a la enagenacion de tales bienes. Artemio Hilario, como curador ad litem, era el represen-tante legal de los menores en el Intestado de la difunta Amada Hilario y era el unico que podia dar su consentimiento a las mociones de Marciana Escoto de noviembre 3, 1943 y enero 14, 1944. El consentimiento tacito del administrador Benito M. Arcilla a lo pedido en estas dos mociones—pues no se opuso a pesar de haber sido debida-mente notificado—no puede obligar a los menores porque estos tienen su representante legal en el intestado de su madre Amada Hilario, que es su curador ad litem Artemio Hilario. Es verdad que Benito M. Arcilla, era curador ad litevi de los menores en la causa civil No. 731 del Juzgado de Paz de Angeles, Pampanga; pero sus poderes, como curador, se reducian solo a representar a sus hijos en dicho asunto; no quedaba autorizado para vender los bienes inmuebles o celebrar contratos sobre los mismos. El Juzgado de Paz no tiene poderes para autorizar la venta de bienes inmuebles de menores.

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered." (17 C. J., 1133.)

Esta sana doctrina sostiene las decisiones dictadas en las causas de Lerma contra Antonio (6 Jur. FiL, 244); Muerteguy y Aboitiz contra Delgado (22 Jur. FiL, 111); Lavitoria contra Juez de Primera Instancia de Tayabas y Director de Terrenos (32 Jur. Fil., 214) y Villegas contra Roldan y Almario 76 Phil., 349).

La orden del Juzgado de Primera Instancia de Pampanga en la actuacion especial No. 6976 de diciembre 6, 1943 autorizando al administrador Benito M. Arcilla a vender los tres lotes y la de febrero 29, 1944 ordenando al mismo administrador que otorgue la escritura de venta correspondiente son nulas y de ningun valor en cuanto a la participation de los menores, porque aun en el supuesto de que la mocion presentada por la administradora de los bienes del finado Manuel Tan Cungco, era para obligar al administrador Benito M. Arcilla a cumplir con el convenio acotado en las paginas 1 y 2 de esta opinion y no para pedir autorizacion del juzgado para que se vendan dichos bienes, habia necesidad de notificar al curador ad litem de los menores: dicho convenio es nulo en cuanto a estos porque la conformidad dada al mismo por su padre en su concepto de curador ad litem, nombrado por el Juez de Paz de Angeles, Pampanga no fue aprobada por un juzgado competente, el Juzgado de Primera Instancia de Pampanga.

Por estas razones concurre con la parte dispositiva de la decision de la mayoria.

DISSENTING

PARAS, J.:

Equity should influence the decision of this case. The three parcels of land in question and their improvements were originally the property of Manuel Tan Cungco who sold them to the spouses Benito M. Arcilla and Amada Hilario for the sum of ₱5,500 under a pacto de retro contract. The alleged vendor continued in possession of the premises as lessee. The period of redemption seemed to have been extended or at least an option had been given to Manuel Tan Cungco to buy back the lots at a higher price. In any event, a detainer suit was filed against the latter by the purchasers. These soon became apprehensive about the duration and success of the suit. In the meantime Amada Hilario died. Undoubtedly to protect their interest or otherwise secure an advantage, Benito M. Arcilla and his children (heirs of Amada Hilario) executed on February 10, 1941, a contract whereby they undertook to institute the intestate proceedings of the deceased and, upon the application of the administrator, to obtain judicial approval of the sale of the lots to Manuel Tan Cungco at the price of ₱6,500 in addition to the sum of ₱500 then and there paid to Benito M. Arcilla and his children. Accordingly, in special proceeding No. 6976 of the Court of First Instance of Pampanga, subsequently brought, the administrator filed a petition dated August, 1941, praying that he be authorized to sell the lots in question to Manuel Tan Cungco under the conditions set forth in the contract of February 10, 1941. This petition bore, the conformity of the guardian ad litem of the minor heirs of Amada Hilario and was heard on August 11, 1941. At the hearing, the administrator, the guardian ad litem, and two minor heirs (aged 16 and 18 years) appeared and there gave their consent to the sale. Even so, the Judge of First Instance, who was convinced that "la venta propuesta redundaria en beneficio de los interesados en esta herencia," denied the petition on the ground that Manuel Tan Cungco was a Chinese citizen. A petition dated November 17, 1941, was filed by the attorney for Manuel Tan Cungco, of which the attorney for the administrator was notified, praying that the latter be authorized to sell the properties to one Magdaleno Bundalian alleged to be the assignee of the rights of Manuel Tan Cungco under the contract of February 10, 1941. The court re-solved to postpone action on this petition "hasta nueva gestion de la parte interesada." Nothing was done on the matter until November 3, 1943, when Marciana Escoto, whose husband Manuel Tan Cungco had in the meantime died, filed a motion praying that the administrator be ordered to sell the properties to the heirs of Manuel Tan Cungco who are all Filipino citizens, of which the administrator was duly notified. It is the resolution of the Court of First Instance of Pampanga granting said motion and ordering the administrator to execute the necessary deed of sale in favor of the intestate estate of Manuel Tan Cungco that gave rise to the present petition for certiorari instituted by Benito M. Arcilla and the heirs of Amada Hilario. It is noteworthy that the sum of ₱6,750 was deposited in court on December 14, 1943, by the said Marciana Escoto, administratrix of the estate of her husband.

In annulling the orders complained of, the majority argue that the heirs of the deceased Amada Hilario had not been notified of the motion of Marciana Escoto, in violation of section 7 of Rule of Court No. 90. I would not say that this provision is unduly strict, and will limit myself to the statement that the equities of the respondents' case far outweigh petitioners' adherence to technicalities.

The heirs did not need any notice, because they signed, through their guardian ad litem, the petition of August, 1941, filed by the administrator, praying for authority to sell the lots to Manuel Tan Cungco, aside from the circumstances that they also signed, through their guardian ad litem, the contract of February 10, 1941, binding themselves to sell said lots, and that, at the hearing held on August 11, 1941, said heirs (again through their guardian ad litem)—two heirs, aged 16 and 18, appearing personally—gave their express consent to the sale. Of what use could any further notice be when the heirs bound themselves to sell, signed the petition to sell, and in open court agreed to sell? Moreover, the motion of Marciana Escoto may fairly be said to be merely a continuation or incident of the petition of the administrator and the heirs of August, 1941, since the order of

November 24, 1941, warned the parties to await "nueva gestion de la parte interesada." If what has been said is not enough, let it be recalled that notice was given by said Marciana Escoto to the administrator, who is a conjugal owner of the properties and the father of the heirs of Amada Hilario, and that the sum of P500 had already been paid to said administrator and heirs under the contract of February 10, 1941.

And, lastly, when it is remembered that, during the argument of this case, the attorney for the respondents had signified his willingness to make another payment in present Philippine currency, notwithstanding the previous deposit made in the lower court in 1943, it will only be the bad faith on the part of the herein petitioners that can induce them to refuse to sell and thereby disavow their formal and valid covenant of February 10, 1941.

I don't think the majority would favor multiplicity of suit and indirectly want the respondents to bring another action for the enforcement of the contract of February 10, 1941.

My vote, therefore, is to dismiss the petition and to require the respondents to pay P6,500, Philippine currency, before the petitioners can be compelled to execute the necessary deed of sale in favor of the intestate estate of Manuel Tan Cungco.

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