

**POMPILLO VALERA AND EUMELIA VALERA CABADO, PETITIONERS,
VS. HON. JUDGE SANCHO Y. INSERTO, IN HIS CAPACITY AS
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ILOILO, BRANCH
I, AND MA...**

G.R. No. 56504. May 07, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

Conflicting claims over a fishpond asserted by the administrators of the estate of deceased spouses, on the one hand, and by the heirs of a daughter of said spouses and their lessee, on the other, have given rise to the proceedings now docketed in this Court as (1) G.R. No. 56504 and (2) G.R. Nos. 59867-68.

Sp. Proc. No. 2223, CFI, Iloilo

In the proceedings for the settlement of the intestate estate of the decedent spouses, Rafael Valera and Consolacion Sarrosa[1] — in which Eumelia Cabado and Pompillo Valera had been appointed administrators[2] — the heirs of a deceased daughter of the spouses, Teresa Garin, filed a motion asking that the Administratrix, Cabado, be declared in contempt for her failure to render an accounting of her administration.[3] Cabado replied that no accounting could be submitted unless Jose Garin, Teresa's husband and the movant heirs' father, delivered to the administrators an 18-hectare fishpond in Baras, Barotoc Nuevo, Iloilo, belonging to the estate;[4] and she in turn moved for the return thereof to the estate, so that it might be partitioned among the decedents' heirs. Jose Garin opposed the plea for the fishpond's return to the estate, asserting that the property was owned by his children and this was why it had never been included in any inventory of the estate.

The Court, presided over by Hon. Judge Midpantao Adil, viewed the Garin Heirs' motion for contempt, as well as Cabado's prayer for the fishpond's return to the estate, as having given rise to a claim for the recovery of an asset of the estate within the purview of Section 6, Rule 87 of the Rules of Court.[5] It accordingly set said incidents for hearing during which the parties presented evidence in substantiation of their positions.[6] Thereafter, the Court issued an Order dated September 17, 1980 commanding the Heirs of Teresa Garin "to reconvey immediately the fishpond in question * * * to the Intestate Estate of the Spouses." [7]

The Order was predicated upon the Court's factual findings mainly derived from the testimony of the two administrators that:

- 1) the fishpond originally belonged to the Government, and had been given in lease to Rafael Valera in his lifetime;
- 2) Rafael Valera ostensibly sold all his leasehold rights in the fishpond to his daughter, Teresa Garin; but the sale was fictitious, having been resorted to merely so that she might use the property to provide for her children's support and education, and was subject to the resolutory term that the fishpond should revert to Rafael Valera upon completion of the schooling of Teresa Garin's children; and

3) with the income generated by the fishpond, the property was eventually purchased from the Government by the Heirs of Teresa Garin, collectively named as such in the Original Certificate of Title issued in their favor.

Upon these facts, Judge Adil ruled that an implied trust had been created, obligating Teresa Garin's heirs to restore the property to the Valera Spouses' Estate, in accordance with Articles 1453 and 1455 of the Civil Code providing as follows:

"Article 1453. When property is conveyed to a person in reliance upon his declared intentions to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person for whose benefit it is contemplated."

"Article 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes a conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the fund belongs."

The Court also held that the action for reconveyance based on constructive trust had not yet prescribed, Cabado's motion for the fishpond's reversion to the estate having been filed well within ten (10) years from June 30, 1980, the date on which Teresa Garin's heirs allegedly acquired title over it.[8]

There seems little doubt, however, that the Court's pronouncement regarding the estate's title to the fishpond was merely provisional in character, made solely to determine whether or not the fishpond should be included in the inventory of estate assets. So it was evidently understood by the administrators who have more than once asserted that "the probate court has jurisdiction to determine the ownership of the fishpond for purposes of inclusion in the inventory of the properties." [9] So it was made clear by the Probate Court itself which, at the outset, stated that the hearing on the matter [10] was meant "merely to determine whether or not the fishpond should be included as part of the estate and whether or not the person holding it should be made to deliver and/or return ** (it) to the estate." [11] And so it was emphasized in another Order, denying reconsideration of the Order of September 17, 1980, which states that:

*** (i)t is never the intendment of this court to write a finis to the issue of ownership of the fishpond in dispute. The movants may pursue their claim of ownership over the same in an ordinary civil action. Meanwhile, however, it is the finding of this probate court that the fishpond must be delivered to the estate.

"Clearly, there is no incompatibility between the exercise of the power of this probate court under Section 6 in relation to Section 7, both of Rule 87, and the contention of the movants that the proper forum to settle the issue of ownership should be in a court of general jurisdiction." [12]

Judge Adil afterwards granted the administrators' motion for execution of the order pending appeal, and directed the sheriff to enforce the direction for the Garin Heirs to reconvey the fishpond to the estate. [13] The corresponding writ was served on Manuel Fabiana, the supposed encargado or caretaker. Voicing no objection to the writ, and declaring to the sheriff that he was a mere lessee, [14] Fabiana voluntarily relinquished possession of the fishpond to the sheriff. The latter, in turn, delivered it to the administrators. [15]

Later however, Fabiana filed a complaint-in-intervention with the Probate Court seeking vindication of his right to the possession of the fishpond, based on a contract of lease between himself, as lessee, and Jose Garin, as lessor. [16] But Judge Adil dismissed his complaint on the following grounds, to wit:

- 1) it was filed out of time because not only had judgment been rendered, but execution as regards transfer of possession had already taken place; and
- 2) the lease contract had not been registered and hence was not binding as against the estate. [17]

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Fabiana thereupon instituted a separate action for injunction and damages, with application for a preliminary injunction. This was docketed as Civil Case No. 13742 and assigned to Branch I of the Iloilo CFI, Hon. Sancho Y. Inserto, presiding.[18] Judge Inserto issued a temporary restraining order enjoining the estate administrators from disturbing Fabiana in the possession of the fishpond, as lessee.[19]

The estate administrators filed a motion to dismiss the complaint and to dissolve the temporary restraining order, averring that the action was barred by the Probate Court's prior judgment which had exclusive jurisdiction over the issue of the lease, and that the act sought to be restrained had already been accomplished, Fabiana having voluntarily surrendered possession of the fishpond to the sheriff.[20] When Judge Inserto failed to act on their motion within what the administrators believed to be a reasonable time, considering the circumstances of the case, the administrators filed with the Supreme Court a special civil action for certiorari and mandamus, with a prayer for preliminary mandatory injunction and temporary restraining order, which was docketed as G.R. No. 56504.[21] In their petition, the administrators contented that Branch I of the Iloilo CFI (Judge Inserto, presiding) could not and should not interfere with the Probate Court (Branch II, Judge Adil, presiding) in the legitimate exercise of its jurisdiction over the proceedings for the settlement of the estate of the Valera Spouses.

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In the meantime, Jose Garin — having filed a motion for reconsideration of the above mentioned order of Judge Adil (declaring the estate to be the owner of the fishpond), in which he asserted that the Probate Court, being of limited jurisdiction, had no competence to decide the ownership of the fishpond,[22] which motion had been denied[23] — filed a notice of appeal from said Order.[24] But he quickly abandoned the appeal when, as aforesaid,[25] Judge Adil authorized execution of the order pending appeal, instead, he initiated a special action for certiorari, prohibition and mandamus (with prayer for preliminary injunction) in the Court of Appeals, therein docketed as CA-G.R. No. SP-1154-R

Fabiana followed suit. He instituted in the same Court of Appeals his own action for certiorari and injunction, docketed as CA-G.R. NO. SP--11577-R; this, notwithstanding the pendency in Judge Inserto's sala of the case he had earlier filed.[26]

These two special civil actions were jointly decided by the Court of Appeals. The Court granted the petitions and ruled in substance that:

1. The Probate Court indeed possessed no jurisdiction to resolve the issue of ownership based merely on evidence adduced at the hearing of a "counter-motion" conducted under Section 6, Rule 87;
2. The original and transfer certificates of title covering the fishpond stand in the names of the Heirs of Teresa Garin as registered owners, and therefore no presumption that the estate owns the fishpond is warranted to justify return of the property on the theory that it had merely been borrowed; and
3. Even assuming the Probate Court's competence to resolve the ownership question, the estate administrators would have to recover possession of the fishpond by separate action, in view of the lessee's claim of right to superior possession, as lessee thereof.

From this joint judgment, the administrators have taken separate appeals to this Court by certiorari[27], docketed as G.R. Nos. 59867 and 59868. They ascribe to the Appellate Court the following errors, viz:

- 1) in holding that the Probate Court (Judge Adil, presiding) had no jurisdiction to take cognizance of and decide the issue of title covering a fishpond being claimed by an heir adversely to the decedent spouses;

2) in ruling that it was needful for the administrators to file a separate action for the recovery of the possession of the fishpond then in the hands of a third person; and

3) in sanctioning the act of a CFI Branch in interfering with and overruling the final judgment of another branch, acting as Probate Court, and otherwise frustrating and inhibiting the enforcement and implementation of said judgment.

Jurisdiction of Probate Court

As regards the first issue, settled is the rule that a Court of First Instance (now Regional Trial Court), acting as a Probate Court, exercises but limited jurisdiction,[28] and thus has no power to take cognizance of and determine the issue of title to property claimed by a third person adversely to the decedent, unless the claimant and all the other parties having legal interest in the property consent, expressly or impliedly, to the submission of the question to the Probate Court for adjudgment, or the interests of third persons are not thereby prejudiced,[29] the reason for the exception being that the question of whether or not a particular matter should be resolved by the Court in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (e.g., probate, land registration, etc.), is in reality not a jurisdictional but in essence a procedural one, involving a mode of practice which may be waived.[30]

The facts obtaining in this case, however, do not call for the application of the exception to the rule. As already earlier stressed, it was at all times clear to the Court as well as to the parties that if cognizance was being taken of the question of title over the fishpond, it was not for the purpose of settling the issue definitely and permanently, and writing "finis" thereto, the question being explicitly left for determination "in an ordinary civil action", but merely to determine whether it should or should not be included in the inventory.[31] This function of resolving whether or not property should be included in the estate inventory is, to be sure, one clearly within the Probate Court's competence, although the Court's determination is only provisional in character, not conclusive, and is subject to the final decision in a separate action that may be instituted by the parties.[32]

The same norm governs the situation contemplated in Section 6, Rule 87 of the Rules of Court, expressly invoked by the Probate Court in justification of its holding a hearing on the issue arising from the parties' conflicting claims over the fishpond.[33] The examination provided in the cited section is intended merely to elicit evidence relevant to property of the decedent from persons suspected of having possession or knowledge thereof, or of having concealed, embezzled, or conveyed away the same. Of course, if the latter lays no claim to the property and manifests willingness to turn it over to the estate, no difficulty arises; the Probate Court simply issues the appropriate direction for the delivery of the property to the estate. On the other hand, if the third person asserts a right to the property contrary to the decedent's, the Probate Court would have no authority to resolve the issue; a separate action must be instituted by the administrator to recover the property.[34]

Parenthetically, in the light of the foregoing principles, the Probate Court could have admitted and taken cognizance of Fabiana's complaint in intervention, after obtaining the consent of all interested parties to its assumption of jurisdiction over the question of title to the fishpond, or ascertaining the absence of objection thereto. But it did not. It dismissed the complaint in intervention instead. And all this is now water under the bridge.

Possession of Fishpond Pending

Determination of Title Thereto

Since the determination by the Probate Court of the question of title to the fishpond was merely provisional, not binding on the property with any character of authority, definiteness or permanence, having been made only for

purposes of inclusion in the inventory and upon evidence adduced at the hearing of a motion, it cannot and should not be subject of execution, as against its possessor who has set up title in himself (or in another) adversely to the decedent, and whose right to possess has not been ventilated and adjudicated in an appropriate action. These considerations assume greater cogency where, as here, the Torrens title to the property is not in the decedents' names but in others, a situation on which this Court has already had occasion to rule.

"In regard to such incident of inclusion or exclusion, We hold that if a property covered by Torrens title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title." [35]

Primary Jurisdiction over Title Issue in Court Taking Cognizance of Separate Action

Since, too, both the Probate Court and the estate administrators are one in the recognition of the proposition that title to the fishpond could in the premises only be appropriately determined in a separate action, [36] the actual filing of such a separate action should have been anticipated, and should not therefore have come as a surprise, to the latter. And since moreover, implicit in that recognition is also the acknowledgment of the superiority of the authority of the court in which the separate action is filed over the issue of title, the estate administrators may not now be heard to complain that in such a separate action, the court should have issued orders necessarily involved in or flowing from the assumption of that jurisdiction. Those orders cannot in any sense be considered as undue interference with the jurisdiction of the Probate Court. Resulting from the exercise of primary jurisdiction over the question of ownership involving estate property claimed by the estate, they must be deemed superior to otherwise contrary orders issued by the Probate Court in the exercise of what may be regarded as merely secondary, or provisional, jurisdiction over the same question.

WHEREFORE, the petition in G.R. No. 56504 is DISMISSED, for lack of merit. The petitions in G.R. No. 59867 and G.R. No. 59868 are DENIED, and the judgment of the Appellate Court, subject thereof, is affirmed in toto. The temporary restraining order dated April 1, 1981 is lifted. Costs against petitioners.

Yap, (Chairman), Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Docketed as S.P. No. 2223 of the Court of First Instance of Iloilo, Branch II

[2] Rollo, G.R. NO. L-59867-68, P. 21

[3] Rollo, G.R. NO. L-56504, P. 25

[4] Initially covered by Original Certificate of Title No. S-43 in the name of "the Heirs of Teresa Garin," which was afterwards replaced by Transfer Certificate of Title No. T-3243 in favor of said heirs, named individually, to wit: Consolacion G. Joven, Santiago Garin, Natividad de Jesus, Jose Garin, Jr., and Teresa Garin: Rollo, G.R. No. 56504, pp. 20-21

[5] Rollo [G.R. No. 56504, p. 25]. The cited rule pertinently provides that "(i)f an executor or administrator * * complains to the court * * that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, * * the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint * *."

[6] Rollo, id., pp. 25-27

[7] Id., p. 32

[8] However, the date of issuance of the certificate of title, as appears therefrom, is June 30, 1970.

[9] Rollo [G.R. No. 59867-68], p. 234; [G.R. No. 56504] pp. 1003, 1150

[10] See footnote 1, *supra*

[11] Rollo [G.R. No. 59867-68], p. 276

[12] Id., pp. 276-277

[13] Rollo (G.R. NO. 456504), p. 44

[14] Id., p. 46

[15] Id., p. 48

[16] Id., pp. 49-60

[17] Id., pp. 38-43

[18] Id., pp. 61-69

[19] Id., p. 70

[20] Id., pp. 71-78

[21] Filed pursuant to Rule 65, Rules of Court; rollo, p. 3

[22] Rollo (G.R. No. 59867-68), pp. 274-277

[23] Id., p. 279

[24] Id., pp. 50-63

[25] See footnote 13 and related text, *supra*

[26] See footnote 18 and related text, *supra*

[27] Under Rule 45, Rules of Court

[28] Bauermann v. Casas, 10 Phil. 386; Devesa v. Arbes, 13 Phil. 273; Guzman v. Amog, 37 Phil. 61; Lunsod v. Ortega, 46 Phil. 664; Adapon v. Maralit, 69 Phil. 383; Pascual v. Pascual, 73 Phil. 56; Manalac v. Ocampo, 73 Phil. 661; Cunanan v. Amparo, 80 Phil. 227; Mallari v. Mallari, 92 Phil. 694; Bernardo v. Court of Appeals, 7 SCRA 368, 371; de la Cruz v. Camon, 16 SCRA 886, 888; cf Franco v. Monte de Piedad & Savings Bank, 7 SCRA 660; City of Manila v. Tarlac Development Corporation, etc., 24 SCRA 467

[29] Pascual v. Pascual, 73 Phil. 56; Manalo v. Mariano, 69 SCRA 80, 89-90; see also, Franco v. Monte de Piedad & Savings Bank, 7 SCRA 660; City of Manila v. Tarlac Development Corp., etc., 24 SCRA 467

[30] Cunanan v. Amparo, 80 Phil. 227, 232, *supra*, cf, Reyes v. Diaz, 73 Phil. 484

[31] See footnotes 9 to 12, *supra*

[32] Garcia v. Garcia, 67 Phil. 353; Guinguing v. Abuton, 48 Phil. 144, 147; Marcelino v. Antonio, et al., 70 Phil. 388; Baquial v. Amihan, 92 Phil. 501, 503; Sebial v. Sebial, 64 SCRA 385, 392; Bolisay v. Alcid, 85 SCRA 213, 220.

[33] See footnote 5, *supra*

[34] *Alafriz v. Mina*, 28 SCRA 137, 143; *Cui v. Piccio*, 91 Phil. 712, 719; *Changco v. Madrelajos*, 12 Phil. 543, 546; *Guangco v. PNB*, 54 Phil. 244, 246; *Modesto v. Modesto*, 57 O.G. 4092, 4094-4095

[35] *Bolisay v. Alcid*, 85 SCRA 213, 220

[36] See footnotes 9-12, *supra*

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