

**PATRIA PACIENTE, PETITIONER, VS. HON. AUXENCIO C. DACUYCUI,
PRESIDING JUDGE OF THE JUVENILE AND DOMESTIC RELATIONS
COURT OF LEYTE AND SOUTHERN LEYTE; FELICIANA CALLE,
COURT-APPO...**

G.R. No. 58319. June 29, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari and prohibition challenging the validity of an April 24, 1981 order of the respondent Juvenile and Domestic Relations Court of Leyte which required the petitioner and Conchita Dumdum to -

" give and deposit with the clerk of this court the amount of TEN THOUSAND PESOS (P10,000.00) more as additional consideration of Lot No. 3085-G of the Tacloban Cadastre which the court believes to be fair and reasonable price of the property. This amount should be deposited with the clerk of this court on or before June 24, 1981; otherwise TCT No. T-13238 in the name of Patria Paciente now subject of a mortgage in favor of the Consolidated Bank and Trust Corporation to guarantee an obligation in the amount of P30 ,000.00, dated December 27, 1978, will be can-celled."

as well as the validity of its resolution dated August 21, 1981 which denied the motion for recon-sideration of the petitioner and Conchita Dumdum of the aforesaid order and directed the Register of Deeds of Tacloban City -

"to cancel TCT No. 13238 of Patria Paciente and issue in lieu thereof a new transfer certificate of title to the following present owners of Lot 3085-G of the Tacloban Cadastre: Patria Paciente, of legal age, Filipino, married, resid-ing in Tacloban City, 1/3; Shirley Homeres, 10 years old, residing in Tacloban City, 1/3; and, Leandro Homeres, 10 years old, residing in Tacloban City, Philippines, 1/3, subject to the mortgage lien of the Consolidated Bank and Trust Corporation."

because of their failure to comply with the same aforestated order.

The facts of the case are as follow:

In 1972, Leonardo Homeres died leaving his wife, Lilia Samson Homeres, and two minor children, Shirley and Leandro, a parcel of land known as Lot No. 3085-G situated in Sagkahan, Tacloban City, covered by TCT No. 12138. This lot which he had inherited from his deceased father, Felizardo Homeres, has an area of one thousand seven hundred one (1,701) square meters.

On September 9, 1976, Lilia S. Homeres, sold Lot No. 3085-G to Conchita Dumdum for P10 ,000.00.

On November 11, 1976, Lilia S. Homeres filed a petition for guardianship over the persons and estate of the minors. The petition was granted on August 9, 1977. Lilia S. Homeres took her oath as guardian on September 13, 1977.

On September 21, 1977, Conchita Dumdum sold Lot No. 3085-G, which had been titled in her name under TCT No. T-13121, to petitioner Patria Paciente for the amount of P15 ,000.00. Consequently, Patria Paciente was issued TCT No. T-13238 by the Register of Deeds of Tacloban City .

On December 27, 1978, the petitioner mortgaged the lot to the Consolidated Bank and Trust Corporation for P30 ,000.00.

On September 12, 1980, the Acting City Register of Deeds of Tacloban City, filed a manifestation informing respondent court that Lot No. 3085-G which is the subject of the guardianship proceedings had been registered in the name of the petitioner under TCT No. T-13238 and that it was mortgaged to the Consolidated Bank and Trust Corporation to guarantee petitioner's loan of P30 ,000.00.

Upon being thus informed by the Register of Deeds, the respondent court issued an order on November 14, 1980, directing the petitioner and the manager of the Consolidated Bank and Trust Corporation to appear before the court on January 21, 1981 and show cause why TCT No. T-13238, covering a parcel of land co-owned by the minors, Shirley and Leandro Homeres, should not be cancelled for having been alienated without authority from the court.

When January 21, 1981 came, the petitioner and the manager of Consolidated Bank and Trust Corporation did not appear before the court. Instead, Conchita Dumdum appeared and explained to the respondent court that she sold the lot which she acquired from Lilia S. Homeres to the petitioner without obtaining the approval of the court because she was not aware of such requirement regarding the properties of the minors. On the same date, the respondent court again issued an order requiring the petitioner and the manager of the Consolidated Bank and Trust Corporation to explain why TCT No. T-13238 should not be cancelled for their failure to first secure judicial authority before disposing of the said property.

At the hearing on April 24, 1981, George Go, the petitioner's husband, apprised the court that the petitioner was an innocent purchaser for value of the lot in question. Respondent court then issued the questioned order.

A motion for reconsideration filed by her and Conchita Dumdum having been denied, petitioner filed the present petition.

The issue in this case is whether the respondent court acting as a guardianship court has jurisdiction to order the Register of Deeds to cancel the transfer certificate of title of petitioner and to order the issuance of a new title to include the minors as co-owners with the petitioner for her having failed to comply with the court's order directing her to pay the minors the reasonable price of their property that their mother alienated without authority of a competent court.

Relying on the cases of Cui, et al. vs. Piccio , et al., 91 Phil. 712, and Parco and Bautista vs. Court of Appeals, G.R . No. L-33152, January 30, 1982, petitioner contends that respondent court in hearing a petition for guardianship is not the proper situs for the cancellation of a Torrens Title. In the Cui case, this Court ruled:

"x x x Out of the cases cited, the only one we find to have some relevancy is that of Castillo vs. Bustamante, 64 Phil. 839. In this case, the court made a distinction between the provisions of sections 709 and 593 of the Code of Civil Procedure which now correspond to section 6, Rule 88 and section 6 of Rule 97 of the Rules of Court. This Court in that case said in effect that while in administration proceedings the court under section 709 may only question the person suspected of having embezzled, concealed or conveyed away property belonging to the estate, section 593 of the same Code of Civil Procedure authorizes the Judge or the court to issue such orders as may be necessary to secure the estate against concealment, embezzlement and conveyance, and this distinction is now given emphasis by respondents' counsel. The way we interpret section 573 of the Code of Civil Procedure as now embodied in Rule 97, section 6 of the Rules of Court in the light of

the ruling laid down in the case of *Castillo vs. Bustamante*, supra, is that the court may issue an order directing the delivery or return of any property embezzled, concealed or conveyed which be-longs to a ward, where the right or title of said ward is clear and indis-putable.

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"In conclusion, we hold that the respondent Judge had no jurisdiction to issue his order of September 5, 1951, in the guardianship proceedings requiring the petitioners to deliver the rentals collected by them to the guardian and authorizing the latter to collect rentals in the future, for the reason that the jurisdiction of the court in guardianship proceedings, ordinarily, is to cite persons suspected of having embezzled, concealed or conveyed property belonging to the ward for the purpose of obtaining information which may be used in an action later to be instituted by the guardian to protect the right of the ward; and that only in extreme cases, where property clearly belongs to the ward or where his title thereto has already been judicially decided, may the court direct its delivery to the guardian."

and in the case of *Parco and Bautista* the ruling reads as follows:

"In *Cui vs. Piccio, et al.*, supra, this Court held that the jurisdiction of the court in guardianship proceedings, ordinarily, is to cite persons suspected of having embezzled, concealed or conveyed the property belonging to the ward for the purpose of obtaining information which may be used in an action later to be instituted by the guardian to protect the right of the ward. Generally, the guardianship court exercising special and limited jurisdiction cannot actually order the delivery of the property of the ward found to be embezzled, concealed, or conveyed. In a categorical language of this Court, only in extreme cases, where property clearly belongs to the ward or where his title thereto has been already judicially decided, may the court direct its delivery to the guardian. In effect, there can only be delivery or return of the embezzled, concealed or conveyed property of the ward, where the right or title of said ward is clear and undisputable. However, where title to any property said to be embezzled, concealed or conveyed is in dispute, under the *Cui* case, the determination of said title or right whether in favor of the per-sons said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in a guardianship proceedings."

Insofar as the acts of the guardianship court intended to effect the delivery or return of the property conveyed are concerned, We find the orders of the respondent court valid. The petitioner's contentions in this regard are untenable. Even the aforecited cases relied upon do not support her argument. While it is true that in these two cases We ruled that where title to any property said to be embezzled, concealed or conveyed is in question, the determination of said title or right whether in favor of the ward or in favor of the person said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in guardianship proceedings, We also emphasized that if the right or title of the ward to the property is clear and indisputable the court may issue an order directing its delivery or return.

In the present case the right or title of the two minors to the property is clear and indisputable. They inherited a part of the land in question from their father. The sale of this land, where they are co-owners, by their mother without the authority of the guardianship court is illegal (*Yuson de Pua vs. San Agustin*, 106 SCRA 7, 16).

In issuing the above questioned order and resolution, the respondent court did not exceed its jurisdiction but merely exercised its duty to protect persons under disability.

The respondent court's order directing the deposit of an additional consideration of P10 ,000.00 is a different matter. It was issued without a hearing to determine not only the valuation of the property but the time frame for fixing said valuation which is not clear. It is, consequently, null and void.

It is true that when the petitioner and Conchita Dumdum failed to give the additional amount, the second order directing the cancellation of the petitioner's title may be said to have superseded or cancelled the first order. The

second order directed the issuance of a new title over the land inherited by Leandro Homeres from his late father with each heir getting title to one-third of the property. Considering, however, the petitioner's protestations of violations of due process and the guardianship court's unusual procedures in dealing with the properties under guardianship, the respondent court is directed to conduct regular hearings and take evidence on the reasonable price of Lot No. 3085-G, if its alienation is found to be in the best interests of the wards and consistent with the rights of all parties involved.

WHEREFORE, the petition is dismissed. The guardianship court in Special Proceedings No. JP-0156 of the Juvenile and Domestic Relations Court of Leyte is hereby ordered to conduct further hearings of the case as above indicated.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Vasquez, and Relova, JJ., concur.
Melencio-Herrera, J., is on leave.

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