

FRANCISCO E. POBRE, PETITIONER, VS. HON. JUDGE ARSENIO M. GONONG, COURT OF FIRST INSTANCE OF ILOCOS NORTE, BRANCH IV, ILUMINADA P. LLANES AND FELIX G. LLANES, RESPONDENTS.

G.R. No. 60575. March 16, 1987

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court, with prayer for preliminary injunction, seeking to annul and set aside the Orders of the Court of First Instance of Ilocos Norte, Branch IV (now Regional Trial Court) through Respondent Judge, dated February 19, 1982, February 24, 1982, and July 29, 1982, which ordered, allegedly without trial, (1) the exclusion of certain parcels of land from the administration of the regular administrator of the estates of Maxima Pobre de Quianzon and Jovita Pobre, in Special Proceedings No. 754-IV, and likewise (2) ordered that possession of said properties be maintained in favor of Private Respondent Iluminada P. Llanes. The petition also assails the order of Respondent Judge, dated April 15, 1982, enjoining Petitioner to desist from interfering with the possession of the properties excluded from the Inventory, and ordering the tenants of the estates to deliver all shares of the harvests from said properties including 3 sheep to respondent Iluminada P. Llanes, under pain of being declared in contempt of court.

It is indicated that the parties-litigants in this case are related to each other, tracing their common ancestry from the original owners of the properties involved, who appear to be Bonifacio Pobre and Irene Blanco, to whom was born an only son, Isidoro Pobre. Petitioner avers that Irene Blanco predeceased Bonifacio Pobre and later Bonifacio Pobre married Teresa Blanco, to which marriage Maxima Pobre and Jovita Pobre were born (Memorandum of Petitioner, Rollo, p. 135). Maxima Pobre later was married to Basilio Quianzon. Isidoro Pobre married Maria Evangelista and out of this marriage were born the following: Petitioner Francisco E. Pobre; Respondent Iluminada Pobre Llanes; Violeta Pobre; Josefina Pobre; and Cresencio Pobre.

After the death of Bonifacio Pobre and later, Teresa Blanco, all properties left by them intestate, consisting of 35 parcels of untitled agricultural lands, located mostly in the towns of Paoay and Pinili, Ilocos Norte, were inherited by Maxima Pobre de Quianzon and Jovita Pobre. Maxima Pobre de Quianzon died on January 19, 1959 without any issue and without any will. Thus, Jovita Pobre inherited the entire estate of her sister, Maxima.

Upon the death of Jovita Pobre on August 5, 1976, Petitioner Francisco E. Pobre, Respondent Iluminada Pobre Llanes, Violeta Pobre, Cresencio Pobre, who are all children of the late Isidoro Pobre, (half-brother of Jovita Pobre and Maxima Pobre de Quianzon) became the surviving heirs of the intestate estate of Jovita Pobre as they were the latter's nephews and nieces.

On May 28, 1977, Petitioner Francisco E. Pobre filed a Petition for Letters of Administration with the Court of First Instance of Ilocos Norte, praying that after due hearing and publication, letters of administration be issued to him for the administration of the intestate estate of Maxima Pobre de Quianzon and Jovita E. Pobre, and that the said estates of Maxima Pobre de Quianzon and Jovita E. Pobre be settled and distributed among their legal heirs.

This Intestate Proceedings was docketed as Special Proceedings No. 754-IV.

On October 7, 1977, Respondent Iuminada P. Llanes, assisted by her husband, Felix G. Llanes, filed her opposition to the Petition. She alleged that Maxima Pobre de Quianzon was only an illegitimate child of the deceased Bonifacio Pobre; that Jovite Pobre was the only legitimate child of the spouses Teresa Blanco and Bonifacio Pobre and, therefore, it should be Jovita Pobre alone who should succeed to the entire estate left by her mother Teresa Blanco, except for such portion that may be allotted to an illegitimate child as prescribed by Art. 895 in relation to Article 983 of the New Civil Code; that at the time of the death of Maxima Pobre, her only legal heir was her husband Basilio Quianzon; that Petitioner Francisco Pobre and the other heirs mentioned in the Petition are precluded from inheriting the estate of Maxima Pobre who was an illegitimate child; that furthermore Jovita Pobre had disposed of all her properties before her death and Respondent spouses Llanes, acquired by purchase from Jovita Pobre parcels 3, 5, 6, 8, 10, 11, 12, 13, 19, 22, 23 (to the extent of 1/3 of the whole only) and parcels 25, 26, 27, and 32, in the Inventory of Properties co-owned by Maxima Pobre de Quianzon and Jovita B. Pobre; and that Francisco Pobre was disqualified to be appointed as administrator.

The lower court on February 20, 1978, appointed the Clerk of the lower court, Atty. Julian Duco, as special administrator of the intestate estate in question but on January 13, 1979, said appointment was revoked and petitioner Francisco Pobre was appointed administrator of the estate. The latter then submitted to the Court an Inventory and Appraisal of the Real and Personal Estate of the decedents Maxima Pobre and Jovita Pobre.

A Motion for Reconsideration of the Order of January 13, 1979 appointing Francisco E. Pobre, as the regular administrator was filed by Respondent Iuminada Llanes who insisted that they are the legal owners and possessors of the real properties in the Inventory to the extent of one-third of the whole of the real properties in paragraphs 3, 5, 6, 8, 10, 11, 12, 13, 19, 22, 23 of said Inventory and the whole of those in paragraphs 25, 26, 27 and 32 of the same.

On November 16, 1979, the lower court issued an order denying said motion for reconsideration for lack of merit.

This development led Respondent Iuminada Llanes, along with her husband and her daughter Evangeline Llanes to file an independent Civil Action to Quiet Title with damages in Branch IV of the CFI of Ilocos Norte, alleging therein that respondent spouses purchased most of the lots in question from deceased Jovita B. Pobre; that the other lots were donated by the late Jovita Pobre to Evangeline P. Llanes, daughter of the spouses Iuminada Llanes and Felix Llanes. It was, therefore, prayed that the properties described in paragraphs 3, 4, 5, 6, 7, and 8 of their complaint be excluded from the Inventory of the Estate of Jovita B. Pobre and that a judgment be decreed in their favor, declaring them as the absolute and exclusive owners and legal possessors of the stated properties. This case was docketed as Civil Case No. 1128-IV in the lower court.

In his Answer to the complaint in Civil Case No. 1128-IV, Francisco Pobre disputed the claim of Llanes regarding the ownership and possession of the properties in question. He contended that the instruments of sale and donation in favor of the Llaneses are fictitious, that the house and lot claimed in the said Civil Case No. 1128-IV by respondents Llanes is titled under O.C.T. No. 0-44 which is still registered in the name of Teresa Blanco; and that the properties allegedly sold by the late Jovita Pobre to the Llaneses were not exclusive properties of Jovita Pobre, as the same were owned by Teresa Blanco.

Civil Case No. 1128-IV is said to be still pending in the trial court.

In Special Proceedings No. 754-IV, Respondent Iuminada P. Llanes filed on September 10, 1980 a Motion to Exclude from the administration of Petitioner the properties being claimed by her.

The lower court treated said motion as a Motion-Complaint and thus Petitioner Francisco Pobre filed his Answer

thereto. He once again denied the allegations of movant Llanes and stressed the fact that the properties covered by O.C.T. No. 0-44 are still registered in the name of Teresa Blanco. He insisted that the other properties were never validly transferred to Oppositors as the referred deeds of conveyances are fictitious.

On January 22, 1981, Respondent Judge issued an order denying respondent Llanes' motion to exclude properties. However, under date of August 29, 1981, respondent Llanes, through counsel, filed a pleading entitled "Rejoinder to: Motion to Exclude Oppositor's Properties from Administration and Rejoinder to: Opposition for Admission to Inventory and Appraisal of Real Estate Dated December 12, 1980 and January 15, 1981 (See page 71, Rollo). To this pleading, petitioner filed his Reply.

Respondent Judge, in his order of February 19, 1982, reconsidered his order of January 22, 1981, and his order of November 16, 1979. His finding was that respondents Llanes have been in actual possession under claim of ownership of the properties in question to the extent of 1/3 of the whole of Lots 3, 5, 6, 8, 10, 11, 12, 13, 19, 22, 23 and the whole of Lots Nos. 25, 26, 27, and 32, in the Inventory. He ordered, therefore, that these properties be excluded from the inventory under administration, and maintained the possession asserted by Iluminada Llanes.

On February 24, 1982, the lower court issued an order amending its February 19, 1982 order by directing the total exclusion from the inventory of the properties under administration to the extent of not only 1/3 of each of said lots but the whole of each of Lots 3, 5, 6, 8, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 25, 26, 28, 29, 30, 31, 32, 34, and 35, and 1/3 of parcels 23, 24, and 27; and ordering also that the possession thereof by respondent Iluminada Llanes be maintained (Annex N, Rollo, p. 76).

Petitioner herein filed a Motion for Reconsideration of the above order but the same was denied by the trial court in its order dated March 19, 1982.

On April 25, 1982, the lower court, acting on the Manifestation filed by counsel for respondent Llanes, issued an order directing Administrator Francisco E. Pobre to desist from interfering with the possession of the properties excluded from the Inventory and ordered the tenants of said properties to deliver the owner's share in the harvests thereon to Iluminada Llanes and not to Francisco Pobre.

As the motion for reconsideration of Administrator Francisco Pobre was denied, the present petition for Certiorari was, therefore, filed with this Court.

Under the Resolution of April 13, 1983 (Rollo, p. 125) of this Court, the Petition was given due course.

Petitioner avers in his Petition that the issues are: (1) whether or not the Court orders, alleged to have been issued without trial, excluding the properties claimed by respondents Llanes from the Inventory submitted, are null and void; (2) whether or not the exclusion of the properties in question by virtue of the court orders of February 1982, allegedly to be based mainly on the "Special Administrator's Inventory-Report on the Status and Possessors of Properties" was arbitrary; (3) whether or not private respondent's claims of possession and/or ownership based on the alleged documents of sale, donation and oral contract of sale have any factual or legal basis.

On the first issue regarding denial to petitioner of his right to due process because there was no actual trial conducted on the Private Respondents' motion-complaint and the Respondent Court simply disposed of the matter by issuing the orders of exclusion complained of, Petitioner argues that pursuant to the pronouncements in the case of *Coca vs. Pangilinan*, L-29547, January 31, 1978 (81 SCRA 278-286), "it became the duty of the trial court, after the issues have been joined and no amicable settlement has been reached, to receive evidence or conduct a full dress hearing and if necessary to pass upon the validity of the donations of the portions of the estate." Petitioner contends that if a hearing had been held, due process could have been rightfully accorded him and his co-heirs.

We find no merit in the above submissions of Petitioner.

Due process was properly observed by the Respondent Judge because Petitioner in fact made a Reply to private respondents' pleading, entitled "Rejoinder to: Motion to Exclude Oppositor's Properties from Administration and Rejoinder to: Opposition for Admission to Inventory and Appraisal of Real Estate dated December 12, 1980 and January 15, 1981."

Further to this, in the order of February 24, 1982, it appears that the case was called for hearing on said date, but only Oppositor's counsel, Wilfredo Guerrero, appeared; that Petitioner-Administrator, through counsel, was notified of the hearing of the motion for reconsideration, amending the order of February 19, 1982, but neither petitioner nor his counsel appeared. Thus, Respondent Judge amended his order of February 19, 1982, so that the whole of parcels 3, 5, 6, 10, 11, 12, 13, 15, 16, 18, 19, 21, 22, 25, 26, 28, 30, 31, 32, 33, 34, and 35; and one-third of parcels 23, 24, and 27 were excluded from the Inventory and the possession thereof in Oppositor Iluminada Llanes was maintained (Annex N, Rollo, p. 76). Petitioner's Motion for Reconsideration of the above order was later denied for want of merit (Annex O, Rollo, 77).

Another hearing of the case was called on April 15, 1982 but only Atty. Wilfredo Guerrero for Private Respondents herein appeared. Petitioner and his counsel were both absent.

In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of opportunity to be heard (*Cornejo vs. Secretary of Justice*, L-32818, June 28, 1974, 57 SCRA 663). Respondent Judge afforded Petitioner and his counsel ample opportunity to be heard at the hearings of February 24, 1982 and April 15, 1982, but Petitioner and his counsel were absent at those hearings. The fact remains that petitioner was afforded opportunity to be heard and he even later filed motions for reconsideration of the challenged orders. Even assuming that Petitioner was not given prior notice of the various motions of private respondents or her rejoinders, it has been held that there is no denial of due process where the adverse parties were given the opportunity to file a motion for reconsideration of an order which was issued pursuant to a petition filed without prior notice to them (*Dormitorio vs. Fernandez*, L-25897, August 21, 1976, 72 SCRA 388).

As the assailed orders of February 19, 1982, February 24, 1982 and April 15, 1982, do not appear to have been issued with grave abuse of discretion, said orders cannot be set aside. In said orders, Respondent Judge provisionally passed upon the question of exclusion of property from the Inventory. His conclusions regarding the ownership of said properties are not final but provisional. In *Barreto Realty Development, Inc. vs. Court of Appeals*, 131 SCRA 606, this Court stated:

"x x x even with such presumption and refusal, the respondent court still acted within its jurisdiction and not with grave abuse of discretion. After all, the jurisprudence and rule are both to the effect that the probate court 'may' provisionally pass upon the question of exclusion, not 'should'. The obvious reason is the probate court's limited jurisdiction and the principle that questions of title or ownership, which result to inclusion in or exclusion from the inventory of property, can only be settled in a separate action. Hence, even if respondent court presumed all the way that the properties sold by Drepin to petitioner were part of Drepin's estate, that would not prevent nor defeat petitioner's remedy in a separate suit." (*Pio Barreto Realty Development, Inc. vs. Court of Appeals*, L-62431-33, August 31, 1984, 131 SCRA 606, 608).

The final determination of the ownership of the properties in question in the case at bar, is not to be made in the Intestate Proceedings, Sp. Proc. 754-IV, but in Civil Case No. 1128-IV which is the separate Civil Action to Quiet Title, filed by respondent Iluminada Llanes in the Court of First Instance of Ilocos Norte. The assailed orders of exclusion in the intestate proceedings are merely interlocutory orders, because the question of title of the properties excluded from the Inventory of the Administrator cannot be determined by the intestate court. In an earlier case, this Court held:

"We hold that the order of exclusion dated August 9, 1973 was not a final order. It was interlocutory in the sense that it did not settle once and for all the title to the San Lorenzo Village lots. The probate court in the inclusion incident could not determine the question of title." (Valero Vda. de Rodriguez vs. Court of Appeals, L-39532, July 20, 1979, 91 SCRA 540).

Reliance of Petitioners on the pronouncements made in the case of Coca vs. Pangilinan, L-29547, January 31, 1978 (81 SCRA 278-285) that after the issues have been joined and in case no amicable settlement had been reached, the probate court should receive evidence or conduct a full dress hearing on the motion in the form of complaint, is not applicable to the case at bar. In Coca vs. Pangilinan, the appellees therein did not institute a separate action to determine the ownership of the twelve (12) hectares or portion of the estate involved. Because of this circumstance, it was ruled that it would be just, expeditious and inexpensive solution to require the heirs of Francisco Pangilinan to file in the intestate proceedings, a motion in the form of complaint setting forth therein their claim for the twelve (12) hectares portion which the heirs of Concepcion Pangilinan, should then file their Answer thereto. After the issues have been joined and no amicable settlement reached, the probate court should receive evidence.

However, in the case at bar, there was already a separate action that had been filed by respondents Llanes in Civil Case No. 1128-IV of the CFI of Ilocos Norte for the quieting of title over the properties excluded from the Inventory before the assailed orders in this case were issued. Respondent Llanes opted to file a separate civil action and this was aright she could exercise.

"The general rule is that question of title to property cannot be passed upon in a testate or intestate proceeding. However, when the parties are all heirs of the decedent, it is optional upon them to submit to the probate court the question of title to property and, when so submitted, the probate court may definitely pass judgment thereon." (Sebial vs. Sebial, L-23419, June 27, 1975, 64 SCRA 385).

The second issue raised by Petitioner Administrator as to whether or not the exclusion of the properties in question by the lower court was arbitrary for being based mainly on the Special Administrator's Inventory-Report on the Status and Possession of Properties, which report has no valid basis. Petitioner is raising a factual issue which is not a proper subject of certiorari proceedings. (Ygay vs. Escareal, L-44189, February 28, 1985, 135 SCRA 78, 82).

As to whether or not private respondents' claim of possession and/or ownership based on the alleged documents of sale, donation and oral contract of sale has any factual or legal basis, again the same should not be resolved at this time and by means of a special civil action for certiorari. The resolution of the conflicting ownership claims should be threshed out in the separate civil action (Civil Case No. 1128-IV), already filed by Private Respondent Iluminada Pobre. On a similar question, We ruled:

"Even assuming the truth of the private respondents' allegations that the sale of December 29, 1971 was effected under suspicious circumstances and tainted with fraud and that the right of Rufina as alleged half-sister and sole heir of Irene remains open to question, these issues may only be threshed out in a separate civil action filed by the respondent administrator against the petitioner and not in the intestate proceedings." (Quizon vs. Ramolete, L-51291, May 29, 1984, 129 SCRA 495; 501).

WHEREFORE, the petition for certiorari in this case is hereby DISMISSED for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

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