

**MARIA VELASQUEZ, MARY GEORGE, NELLIE GEORGE, NOBLE GEORGE, AND MAYBELLE GEORGE, PLAINTIFFS-APPELLANTS, VS. WILLIAM GEORGE, ROBERT GEORGE, ANDRES MUÑOZ, ISAGANI BRIÑAS AND CIRILO...**

*G.R. No. 62376. October 27, 1983*

Ponente: GUTIERREZ, JR., J.

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**GUTIERREZ, JR., J.:**

Plaintiffs-appellants Maria Velasquez Vda. de George and her children, Mary, Nellie, Noble and Maybelle, all surnamed George, appealed from the decision of the Court of First Instance of Bulacan, which dismissed their complaint for lack of jurisdiction. According to the trial court, the case falls within the original and exclusive jurisdiction of the Securities and Exchange Commission. The appeal was certified to us by the Court of Appeals as one involving a pure question of law.

The plaintiffs-appellants are the widow and legitimate children of the late Benjamin B. George whose estate is under intestate proceedings. The case is docketed as Special Proceedings No. 18820 before the then Court of First Instance of Rizal at Quezon City, Branch XVIII.

In their complaint, the plaintiffs-appellants alleged that the five defendants-mortgagors are officers of the Island Associates Inc. Andres Muñoz, aside from being the treasurer-director of said corporation, was also appointed and qualified as administrator of the estate of Benjamin George in the above special proceedings. In life, the latter owned 64.8 percent or 636 shares out of the outstanding 980 shares of stock in the corporation. Without the proper approval from the probate court and without notice to the heirs and their counsel, the defendants-mortgagors executed a Deed of First Real Estate Mortgage in favor of the defendant-mortgagee Erlinda Villanueva, covering three parcels of land owned by Island Associates. In said Deed, the defendants-mortgagors also expressly waived their right to redeem the said parcels. Subsequently, a power of attorney was executed by the defendants-mortgagors in favor of Villanueva whereby the latter was given the full power and authority to cede, transfer, and convey the parcels of land within the reglementary period provided by law for redemption.

A certificate of sale was executed in favor of Villanueva by the Provincial Sheriff of Bulacan after she submitted the highest bids at the public auction. This led to the execution of a Deed of Sale and Affidavit of Consolidation of Ownership by virtue of which Transfer Certificates of Titles Nos. T-16717 and T-39162, covering the three parcels of land, were cancelled and in lieu thereof, Transfer Certificates of Titles Nos. T-239675 and T-239674 were issued in favor of Villanueva. The plaintiffs-appellants, therefore, filed the complaint for the annulment of the - 1.) Deed of First Real Estate Mortgage; 2.) Power of Attorney; 3.) Certificate of Sale; 4.) Amended Certificate of Sale; 5.) Affidavit of Consolidation of Ownership; and 6.) Transfer Certificates of Title Nos. T-239674 and T-239675.

A motion to dismiss was filed by William George, Robert George, and administrator Andres Muñoz on the

ground that the trial court had no jurisdiction over the case. The movants contended that the subject matter of the complaint referred to the corporate acts of the Board of Directors of Island Associates, and, therefore, falls within the exclusive jurisdiction of the Securities and Exchange Commission. The trial court agreed with the movants and dismissed the complaint.

The plaintiffs-appellants contend that the resolution of the validity of a mortgage contract is within the original and exclusive jurisdiction of civil courts, and certainly not within the jurisdiction of the Securities and Exchange Commission and that once jurisdiction of the civil court whether in a civil or a criminal case, has properly attached, the same cannot be ousted, divested or removed. The appellants state that the questioned composition of the board of directors, is merely incidental to the determination of the main issue and is insufficient cause for the trial court to divest itself of its original and exclusive jurisdiction that has already been acquired.

The defendants-appellees, on the other hand, maintain that since the complaint questions the validity of a corporate contract which the appellants contend to have been entered into as a fraudulent and surreptitious scheme and devise to defraud them, this issue places the entire case outside the jurisdiction of the civil courts. According to them, Presidential Decree No. 902-A gives the SEC exclusive jurisdiction over such a controversy. The relevant provision reads:

"Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

"a) Devices or schemes employed by any acts of the board of directors, business associations, its officers or partners amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partner, members of associations or organizations registered with the Commission. x x x"

Villanueva further contends that the plaintiffs-appellants have no capacity to file the complaint because the general rule laid down in Rule 87, Section 3 of the Rules of Court states that only the administrator or executor of the estate may bring actions of such nature as the one in the case at bar. The only exception is when the executor or administrator is unwilling or fails or refuses to act, which exception according to the mortgagee-appellee does not apply in the present case.

We agree with the plaintiffs-appellants. What the complaint sought to annul were documents of title which vested ownership over the three parcels of land in question to defendant-mortgagee Villanueva, who is neither an officer, a stockholder nor a director of the corporation, but a third party. Clearly, the lower court had jurisdiction over the controversy. The fact that the plaintiffs-appellants subsequently questioned the legality of the constitution of the board of directors of the corporation did not divest the court of its jurisdiction to take cognizance of the case. What determines jurisdiction of the court are the allegations in the complaint. If from the same, the court has already acquired jurisdiction over the subject-matter, jurisdiction is retained up to the end of the litigation. (See *Lat v. Phil. Long Distance Co.*, 67 SCRA 425)

Whether or not the mortgage contract, with an unusual provision whereby the mortgagors waived their right to redeem the mortgaged property, could be executed without proper approval of the probate court and without notice to the widow and legitimate children of the deceased is a matter clearly within the authority of a trial court to decide. If in the course of trial, the court believes that the validity of the composition of the board of directors is absolutely necessary for resolution of the issues before it, the remedy is, at most, to require that one issue to be threshed out before the Securities and Exchange Commission and to hold in abeyance, the trial on the merits of the principal issues in the meantime. Certainly, the solution is not for the lower court to surrender its judicial prerogatives and relinquish essentially judicial questions to an administrative agency for resolution.

We also find without merit the defendant-mortgagee's contention that the proper party to file the complaint is the administrator of the estate of Benjamin George. The administrator, Andres Muñoz, is the same person charged by the plaintiffs-appellants to have voted in the board of directors without securing the proper authority from the probate court to which he is accountable as administrator. In *Ramirez v. Baltazar* (24 SCRA 918), we ruled that "since the ground for the present action to annul the aforesaid foreclosure proceedings is the fraud resulting from such insidious machinations and collusion in which the administrator has allegedly participated, it would be far fetched to expect the said administrator himself to file the action in behalf of the estate. And who else but the heirs, who have an interest to assert and to protect, would bring the action? Inevitably, this case should fall under the exception, rather than the general rule that pending proceedings for the settlement of the estate, the heirs have no right to commence an action arising out of the rights belonging to the deceased." The case at bar falls under such an exception.

WHEREFORE, the order of the Court of First Instance of Bulacan, dated June 16, 1980, dismissing the complaint and the order dated December 1, 1980 denying the motion for reconsideration are SET ASIDE. The said court is hereby ordered to set the case for trial on the merits as above indicated.

**SO ORDERED.**

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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