

AMORANTE PLAN, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND FEDERICO BAUTISTA, RESPONDENTS.

G.R. No. 65656. February 28, 1985

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this case is whether Federico Bautista could nullify in a separate action, instead of in the intestate proceeding for his deceased father's estate, the sale of two conjugal lots, with the theater thereon, made by his mother Florencia Topacio as administratrix to Amorante Plan with the authorization and approval of the probate court. Federico, who claims a 1/8 interest in the property, alleged that he was not notified of the sale. His mother had a 5/8 interest in the property. The Appellate Court allowed Federico to redeem the said lots although he never prayed for such redemption.

In the intestate proceeding for the settlement of Regino Bautista's estate, his widow filed a motion dated December 9, 1964 for authority to sell to Plan the two lots and theater for not less than P140,000. The purpose was to pay the debts amounting to P117,220. The motion was set for hearing on December 18, 1964. It was indicated in the motion that the children were notified through one child named Milagros Bautista (18-20, Record on Appeal).

On December 22, 1964 Judge Jose B. Jimenez granted the authority to sell to Plan the entire estate of the deceased for not less than P140,000 so as to pay the obligations of the estate "and it appearing that all the heirs have conformed thereto" (20-21, Record on Appeal).

On that day, Florencia Topacio and Plan executed a deed of absolute sale with assumption of mortgage obligations for the two lots with an area of 664 square meters together with the theater (with a total assessed value of P52,720) and the apparatus used therein.

It was recited in the deed of sale that Regino's estate owed Plan P25,700 and a mortgage debt of P44,292.07 to the Philippine National Bank which Plan assumed. The amount actually received by the administratrix as vendor was P70,007.93. Milagros Bautista-Alcantara, the heir through whom the other six children were allegedly notified, was an instrumental witness in the sale.

A motion to approve the sale was filed on January 5, 1965. Judge Jimenez signed the original deed under the word "Approved" to indicate that the sale was okayed by the probate court. It should be noted that in 1963 the widow and four of her seven children as owners of 7/8 interest in the said property had, in consideration of P9,600, agreed to sell that same property to Plan for the same amount of P140,000 (12-17, Record on Appeal).

Sixteen days after the sale, or on January 7, 1965, Federico Bautista filed an "Opposition to Agreement to Sell, Absolute Sale, Project of Partition and Request for Inventory and Accounting of Estate and for Furnishing of Orders, Notices and Pleadings". The clerk of court set the said opposition for hearing on January 26, 1965. On that date Judge Jimenez gave Federico's counsel ten days within which to interpose any opposition to the project

of partition filed by the administratrix on October 16, 1964 which had not been acted upon by the court and of which the decedent's six children were notified through Milagros Bautista.

Federico's counsel did not file any objection to the project of partition. The reason is not hard to surmise. The estate sought to be partitioned had already been sold to Plan.

Then, Federico filed on March 2, 1965, or 56 days after the approval of the sale, a "petition for relief from order". Judge Jimenez had informed him on January 26, 1965 that his "opposition" was filed out of time. He alleged in his opposition that counsel for the administratrix misrepresented to the court that all the heirs had approved of the sale and that there was fraud in not giving notice to the heirs of the proposed sale.

He contended that because there was no compliance with section 7, Rule 89 of the Rules of Court the sale was void. He prayed that the order authorizing the sale be set aside "and the case tried upon its merits" (pp. 174-5, Record).

No action was taken by the probate court up to this time on the petition for relief. The widow or administratrix did not render an accounting of the sum of P70,007.93 which she received from Plan. Only Federico among her seven children questioned the sale. She died on September 18, 1969 or more than four years and eight months after the sale. More than a year after her death or on August 6, 1971, she was succeeded by Milagros Bautista-Alcantara as administratrix, the same heir who took part in consummating the sale to Plan. The other six children, including Federico, signified their conformity to her appointment as administratrix.

As there was no movement in the case for an unreasonable length of time, Judge Catolico in his order of March 22, 1973 ordered it archived until an interested party moves for the termination thereof (p. 185, Record).

In a motion and supplementary motion dated August 27 and September 3, 1973 Milagros asked that her bond be reduced to P500. Through her counsel, she alleged that the two lots and theater were sold by her mother with the approval of the court and the proceeds of the sale were used to pay the claims of the creditors. Federico and the other five children signified their conformity to Milagros' motions. A copy was sent to the seventh child Luz in Lipa City. Judge Catolico reduced the bond to P2,000. In a prior order, Judge Catolico called Milagros' attention to her failure to present an accounting.

Instead of asking the court to act on his petition for relief from the orders authorizing and approving the sale, Federico Bautista on July 13, 1965 filed a separate action against Plan, Civil Case No. N-806, to nullify the sale. He did not implead his mother, brothers and sisters.

Judge Catolico in his order of February 4, 1971 dismissed the action without prejudice. He ruled that the nullity of sale as to Federico's 1/16 share should be resolved in the intestate proceeding (41, Record on Appeal).

On June 13, 1974, after his mother's death, Federico sued Plan again for the nullification of the sale, Civil Case No. N-2145. Judge Vallejo's in his order of October 7, 1974 reiterated the ruling of Judge Catolico. He dismissed Federico's complaint and also the intervention of the administratrix, Milagros Bautista-Alcantara, without prejudice to pursuing any available remedy in the intestate proceeding and not in a separate action (42, Record on Appeal).

Less than a year later, on April 1, 1975, Federico for the third time filed a separate action against Plan, Civil Case No. 2282, to annul the sale. After trial, Judge Fule dismissed the case on the same ground, namely, that his remedy is in the intestate proceeding. He should not be allowed to seek relief outside the intestate court (145-147, Record on Appeal).

Federico appealed to the Court of Appeals which in its decision dated September 13, 1983, through Justice

Pascual reversed Judge Fule's decision. It declared void the agreement to sell and the sale, ordered Plan to reconvey to Federico the disputed property for P140,000 and to pay him P3,000 a month from December 22, 1964 up to the time the possession of the property is turned over to Federico, with legal interest from that date until fully paid, plus P50,000 as attorney's fees. The reconveyance was based on article 1088 of the Civil Code.

We hold that the Appellate Court erred in ordering Plan to reconvey the disputed property to Federico Bautista upon payment of P140,000 and to pay him P3,000 a month as income from December 22, 1964.

Said judgment is bereft of factual and legal basis. Federico did not pray for reconveyance in his complaint. He was not the owner of the property in 1964. He prayed for receivership, for nullification of the agreement to sell and the sale itself and for the refund by Plan of all the income which he received from the property from the time he possessed it in the concept of owner (10, Record on Appeal).

Article 1088 of the Civil Code does not justify legal redemption in this case because it refers to sale of hereditary rights, and not to specific properties, for the payment of the debts of the decedent's estate as to which there is no legal redemption.

"In the administration and liquidation of the estate of a deceased person, sales ordered by the probate court for payment of debts are final and not subject to legal redemption. Unlike in ordinary execution sales, there is no legal provision allowing redemption in the sale of property for payment of debts of a deceased person" (Abarro vs. De Guia, 72 Phil. 245). Such sale is not the one contemplated in article 1067, now article 1088 of the Civil Code (Vda. de Mendoza vs. Mendoza, 69 Phil. 155).

In Jimenez vs. Jimenez, 67 Phil. 263, the deceased Josefa Jimenez left an estate consisting of Lot No. 1090 with a house of mixed materials with a total assessed value of P490. Geronimo Jimenez had a claim against her estate in the sum of P359 for expenses of her last illness and funeral.

The Cavite Court of First Instance ordered the sale of the said lot and house to pay the claim of Geronimo. At the auction sale, Geronimo was the only bidder. The property was adjudicated to him for P432. He was placed by the sheriff in possession of said property. One Gregoria Jimenez, an heir of the deceased Josefa Jimenez, filed a motion praying that she be allowed to redeem the property from Geronimo. The Cavite court denied the motion.

It was held that Gregoria could not be allowed to redeem the property because properties of a decedent, which are sold at public auction for the payment of his debts, are not subject to redemption.

In the instant case, we agree with Judges Fule, Catolico and Vallejos that Federico's remedy is in the intestate proceeding where his petition for relief has been pending nearly twenty years. He should amend it by impleading the present administratrix and Plan himself and serving copies of the petition upon them. Plan, as the purchaser of the disputed property, is a forced intervenor in the intestate proceeding. He should answer the amended petition for the annulment of the sale. The probate court has jurisdiction over him.

Federico should also ask for an accounting of the P70,007.93 received by his mother. His brothers and sisters should also be served with copies of the amended petition. The case of Tagle and Ignacio, Jr. vs. Manalo, 105 Phil. 1123, cited by Federico Bautista in his brief, is not in point because the testamentary proceeding in that case was already closed and the purchaser did not want to be pulled into the probate proceeding. Here, the purchaser had no objection to litigating the validity of the sale in the intestate proceeding.

The probate court, having authorized and approved the sale, should resolve the issue as to its validity.

More important is that if all the interested parties are heard, an amicable settlement may be reached.

WHEREFORE, the decision of the Appellate Court is reversed and set aside. The trial court's judgment is

affirmed. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Escolin, and Cuevas, JJ., concur.
Abad Santos, J., see concurring opinion.

CONCURRING OPINION

ABAD SANTOS, J.:

I vote to set aside the decision of the Intermediate Appellate Court and sustain that of the trial court. However, I cannot go along with the suggestions in the main opinion that Federico Bautista should: (a) question the sale made by his mother of the properties to Amorante Plan in the intestate proceedings; and (b) ask for an accounting of the money received by his mother.

Notwithstanding his persistence it seems to me that Federico is better advised to let things as they are out of respect for his mother. It is painful to see children litigating over their inheritance especially when a surviving parent is involved. As to the accounting, the only person who could really make it is Federico's mother but she is gone. And Federico practically assented to an "accounting" when he gave his conformity to Milagros' motions which stated that the proceeds of the sale were used to pay the claim of creditors. That was how the money was spent and nothing more can be done.

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