

FLORENCIO REYES, JR., IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF FLORENCIO REYES, SR., PETITIONERS, VS. HON. LEONARDO M. RIVERA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRA...

G.R. No. 72006. November 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

This petition for certiorari, mandamus and prohibition with preliminary injunction basically seeks the annulment and setting aside of the order of respondent Judge Rivera, dated February 6, 1985, allowing private respondent Bulotano to withdraw the amount of P19,000.00 deposited by Romeo Espinosa in Civil Case No. 167-R. Collaterally, petitioner assails the prior order of respondent Judge Doria, dated January 9, 1985, for the consolidation of Civil Case No. 167-R with Civil Case No. 2817. Finally, petitioner seeks the return of the amount released to Bulotano and the inhibition of Judge Rivera from hearing the consolidated cases and an unrelated case, Civil Case No. 288-R.

On September 25, 1985, the Court issued an order restraining Judge Rivera from further proceeding with Civil Case Nos. 2817, 167-R and 288-R or from acting on any incidental issues or motions relative to the disposition of the rental deposits in Case Nos. 2817 and 167, except to issue such orders as would comply with the decision of the Intermediate Appellate Court in AC-G.R. SP No. 03899[*] [Rollo, pp. 115-116.] Private respondents were required to comment, but in spite of the extensions granted and the Court's warning that if they fail to do so the case shall be decided without their comments, no comment was filed by any one of the private respondents.

This case was to have been consolidated with G.R. No. 64606 [Se v. Angel,] G.R. No. 67807 [Reyes v. Rivera] and G.R. No. 71992 [Bulotano v. IAC, et al.] However, the petitions in G.R. No. 64606 and G.R. No. 71992 had already been denied in resolutions dated October 22, 1984 and December 4, 1985, respectively, while G.R. No. 67807 had been referred to the Intermediate Appellate Court in the resolution dated July 9, 1987, thus leaving nothing to be consolidated.

In a nutshell, the cases pending before the trial court are:

(a)

Civil Case No. 2817, for recovery of possession of the Venancia Building in Session Road, Baguio City, filed by petitioner herein against private respondents and the tenants of the building, on the ground that ownership of the building had been transferred to Florencio Reyes, Sr. by virtue of a contract executed by Reyes and respondent San Pedro;

(b)

Civil Case No. 167-R, for interpleader, filed by Romeo Espinosa and Aurora Cervantes, two of the tenants of the building, against petitioner and respondent San Pedro, with a prayer that they be allowed to deposit the rentals in court; and

(c)

Civil Case No. 288-7, an appeal from the decision of the Municipal Trial Court ordering the City of Baguio to vacate a parcel of land situated at Magsaysay Avenue and Lakandula St., Baguio City, and to restore petitioner to its possession.

After considering the petition and the annexes thereto, the Court is of the considered view and so holds that:

- The consolidation of Civil Case No. 167-R with Civil Case No. 2817 was not attended by grave abuse of discretion amounting to lack or excess of jurisdiction. The issue to be resolved in Civil Case No. 167-R is who among petitioner and private respondents is entitled to receive the rentals from the tenants of the building. This is necessarily subsumed by the larger issue of who between petitioner and private respondents is the lawful owner of the building, the meat of the controversy in Civil Case No. 2817. Thus, the consolidation of the two cases was not only untainted by any grave abuse of discretion, but was in compliance with the express policy discouraging multiplicity of suits.
- Respondent Judge Rivera gravely abused his discretion when, on February 6, 1985, he issued the following order in Civil Case No. 167- R:

Considering that the decision in the ejectment case, dated May 22, 1984 (Civil Case No. 7739), of the Municipal Trial Court, Branch III, ordering Romeo Espinosa to pay the plaintiff Genaro Bulotano the sum of P53,000.00, more or less, representing unpaid rentals has already become final, and that a writ of execution was already issued ordering the Sheriff of Baguio to garnish all the properties of Espinosa, but was only able to garnish P1,500.00, from the auction sale; that Romeo Espinosa made a deposit of P19,000.00 before the Branch Clerk of Court, Benigno D. Cariaga, Jr., of RTC, Branch VI, this Court finds the motion to withdraw the amount deposited by Romeo Espinosa to be well taken and is hereby granted.

WHEREFORE, the Court orders that plaintiff Genaro Bulotano or his duly appointed representative be allowed to withdraw the amount of P19,000.00, and directing the Branch Clerk of Court, Benigno D. Cariaga, Jr., to release the same in favor of Genaro Bulotano. [Rollo, p. 49.]

The amount deposited by Espinosa was in connection with the interpleader case filed against petitioner and private respondents. It was to answer specifically for the rentals due during the pendency of the case, not for any other debt of Espinosa. The amount deposited was to be paid to whichever party may eventually be adjudged entitled to collect the rentals from the building's tenants. More importantly, the amount deposited by Espinosa with the trial court is property in custodia legis, and as such cannot be reached by execution [Piliin v. Jocson, 41 Phil. 26 (1920); Asia Banking Corp. v. Elser, 54 Phil. 994 (1930); Alo v. Nolasco, G.R. No. L-8899, April 28, 1956.] In the instant case, the respondent judge allowed the amount deposited in Civil Case No. 167-R to be proceeded against through a writ of execution issued by the Municipal Trial Court in another case, contrary to the settled rule.

Thus, the annulment and setting aside of his order of February 6, 1985 is inevitable and an order for the return of the amount released to Bulotano is in order.

- The inhibition of the respondent Judge Rivera from hearing Civil Case Nos. 2817, 167-R and 288-R is called for, not because of the finding that he had gravely abused his discretion as described above, but in order to

close the door on any possible charges of bias attending the disposition of the cases by the said judge, taking into account the fact that petitioner had filed an administrative case (Case No. 313-RTJ) against Judge Rivera for serious misconduct and inefficiency in relation to his assailed order.

ACCORDINGLY, the Court Resolved to: (1) ANNUL and SET ASIDE the February 6, 1985 order of respondent Judge Rivera in Civil Case No. 167-R; (2) ORDER respondent Genaro Bulotano to RETURN to the trial court the amount released to him pursuant to the said order of February 6, 1985; (3) ORDER respondent Judge Rivera to INHIBIT himself from hearing Civil Case Nos. 2817, 167-R and 288-R; and (4) ORDER the Executive Judge of the Regional Trial Court of Baguio City to RE-RAFFLE Civil Case Nos. 2817 and 167-R and Civil Case No. 288-R to other branches.

The temporary restraining order issued by the Court on September 25, 1985 against respondent Judge Rivera is MADE PERMANENT.

Fernan, C.J., (Chairperson), Gutierrez, Jr., and Bidin, JJ., concur.
Feliciano, J., took no part in the deliberations here.

[*] In AC-G.R. SP No. 03899, the Intermediate Appellate Court ordered respondent Judge Rivera:

(a)

To resolve within five (5) days from receipt of this order petitioner's Formal Offer of Evidence of May 7, 1981, and private respondent's Demurrer to Evidence dated October 31, 1981;

(b)

To issue an order requiring private respondents Francisco San Pedro, Genaro Bulotano and Juana Ocampo to render within a period fixed by said respondent court, an accounting of all rentals they have received from tenants of the Venancia Building, from the filing of the complaint in this case, to date; and

(c)

To issue an order requiring all tenants of the Venancia Building to henceforth deposit their rentals with respondent court to await final disposition of Civil Case No. 2817, Regional Trial Court of Baguio City. No costs. [Rollo, p. 96.]

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