

THE CONSOLIDATED BANK AND TRUST CORPORATION (SOLIDBANK), PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND MARIA LUISA MADRIGAL VAZQUEZ, RESPONDENTS.

G.R. No. 75017. June 03, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks to set aside the decision of respondent Court of Appeals dated September 24, 1985 (Annex “A,” Petition) and its resolution dated June 23, 1986 (Annex “C,” Petition) denying petitioner’s motion for reconsideration of the decision of the Court of Appeals, insofar as it gave due course to the order of respondent Judge[1] dated March 23, 1984 (Annex “E,” Petition) keeping the probate proceedings in Pasay City, Court of First Instance, instead of directing its transfer to the court of origin, i.e., the Court of First Instance, Quezon City, and requiring petitioner Administrator SOLIDBANK to render an accounting.

The issue raised in this petition is whether or not there was waiver of venue by inaction on the part of petitioner.

The facts of the case are as follows:

Don Vicente Madrigal, a resident of 47 Balete Drive, Quezon City, died on June 6, 1972. For the settlement of his estate, Special Proceedings No. Q-916962 was filed with the Court of First Instance, now Regional Trial Court, of Quezon City.

Judge Enrique Agana whose place of assignment was in Pasay City was then temporarily detailed in Quezon City and was assigned to the sala where Special Proceedings No. 916962 was pending. After his temporary detail, Judge Agana returned to his place of assignment at Pasay City, bringing with him the records in Special Proceedings No. Q-916962.

Judge Agana was later replaced by Judge Sofronio G. Sayo, upon the reorganization of the Judiciary in 1980.

On April 21, 1982, private respondent Mrs. Vazquez filed with the Probate Court a “Motion for Payment of Lien,” attaching a “First Supplemental Agreement” executed by and among the heirs of the late Vicente Madrigal, dated August 17, 1981, with the following terms and conditions:

“FIRST SUPPLEMENTAL AGREEMENT

“We, the undersigned, have mutually agreed, as and by way of First Supplement to the ‘Memorandum of Agreement’ dated August 17, 1981, to the following terms and conditions:

“1. That all expenses incurred by Maria Luisa Madrigal Vazquez in the prosecution/defense of all the cases filed by one against the other, in the United States and in the Philippines, in the agreed amount of FIVE MILLION PESOS (P5,000,000.00), Philippine Currency, shall be reimbursed by the Estate of Vicente Madrigal, or from the proceeds of the settlement of the claim of Madrigal & Co., Inc. against said Estate;

“2. That the heirs shall honor and respect the claim of Madrigal & Co., Inc. filed against the Estate of Vicente Madrigal and immediate steps shall be taken to settle, close and partition said estate;

“3. That we will abide by the majority decision of the heirs of Don Vicente Madrigal in the settlement of the latter’s Estate; and,

“4. That we undertake to execute such documents or papers as may be required and necessary in order to implement our mutual agreement.

“Manila, Philippines, August 17, 1981.

(SGD) ANTONIO P. MADRIGAL (SGD) MA. LUISA MADRIGAL-VAZQUEZ

CONFORME:

(SGD) CONSUELO MADRIGAL (SGD) DR. DANIEL VAZQUEZ

(SGD) MACARIA MADRIGAL DE LEON (SGD) PACITA MADRIGAL-GONZALES

BY: MACARIO RUFINO (SGD) JOSE P. MADRIGAL

Atty.-in-Fact

(SGD) JOSEFINA MADRIGAL BAYOT

BY: SUSANA BAYOT ORTIGAS

Atty.-in-Fact”

(pp. 24-25, Rollo)

Petitioner failed to appear at the scheduled hearing on April 23, 1982. On October 20, 1983, the probate court granted the motion and directed the petitioner to pay Mrs. Vazquez the sum of P5,833,333.33 from the assets of the estate of Vicente Madrigal in its possession as follows:

“O R D E R

“PENDING resolution by this Court is a Motion for payment of lien dated April 19, 1982 filed by one of the heirs, Maria Luisa Madrigal Vazquez, in the sum of P5,833,333.33.

“During the hearing of said motion on April 23, 1982 at which Dr. Daniel Vazquez testified in support thereof, the parties were all represented by counsel. No one cross-examined Dr. Vazquez; neither did any party present any opposition to the motion.

“WHEREFORE, the Motion for payment of lien is hereby granted and the Administrator is hereby ordered to pay Maria Luisa Madrigal Vazquez the sum of P5,833,333.33 from the assets of the estate of Vicente Madrigal in its possession.” (p. 26, Rollo)

Petitioner moved to reconsider the said order, based on the following grounds:

“x x x (1) the said Order is null and void for having been issued beyond the limited, special jurisdiction of the Court, it being only a Probate Court; (2) that the same was issued in violation of the due process of law; (3) that the Order has compelled the petitioner-administrator to violate the provisions of the Internal Revenue Code on the payment of the estate taxes and the rule on preference of credits under the Civil Code x x x.” (p. 26, Rollo)

Mrs. Vazquez countered by pointing out that “the P5,833,333.33 is not a liability of the deceased nor a claim that

may be classified under Rule 86 of the Rules of Court to be paid from the assets of the state.” (p. 26, Rollo)

On December 8, 1983, the probate court issued an order amending its order dated October 20, 1983, as follows:

“O R D E R

“A motion for reconsideration of the Order of this Court dated October 20, 1983 was filed by the Administrator, thru counsel based on three grounds, namely:

- a. that the order was issued beyond the limited and special jurisdiction of the Court;
- b. that the Order was issued in violation of the due process of law; and
- c. that the Order is violative of the provisions of the Internal Revenue Code on payment of estate taxes.

“With respect to the first ground, while admittedly the amount to be paid Maria Luisa Madrigal Vazquez is not, strictly speaking, a claim against the estate, nevertheless, all the heirs have agreed on August 17, 1981 that the amount ‘shall be reimbursed by the Estate of Vicente Madrigal, or from the proceeds of the settlement of the claim of Madrigal & Co., Inc. against said Estate.’ The Court has ordered the Administrator to pay the amount out of the assets of the estate in its possession in compliance with the aforesaid agreement among the heirs.

“As regards the second ground, the records reveal that the Administrator was furnished a copy of the motion for payment of lien on April 20, 1982, which motion was set for hearing on April 23, 1982. While the counsel of record for the Administrator may have been out of town on the date of hearing, it should have sent another representative or should have requested for its postponement. For failure to do so, the Administrator may not now complaint (sic) that it was deprived of its day in Court.

“There is merit, however, in the third ground alleged in the motion for reconsideration that the challenged Order has not made provisions for the payment of estate taxes. The court believes that part of the approved amount should be withheld by the Administrator sufficient to answer for the payment of taxes due thereon.

“WHEREFORE, the Order of this Court dated October 20, 1983 is hereby amended and/or modified in the sense that, of the approved claim of P5,833,333.33 of Ma. Luisa Madrigal Vasquez, the amount of P833,333.33 shall be withheld by the Administrator to answer for any obligations or liabilities due from said claim while the amount of P5,000,000.00 shall be paid forthwith by the Administrator to Maria Luisa Madrigal Vazquez. The approved claim of P5,833,333.33 shall be chargeable to the approved claim of Madrigal & Co., Inc. (pp. 40-41, id.).” (pp. 27-28, Rollo)

On April 11, 1983, the probate court required the parties to show cause why the case should not be transferred to the Quezon City Regional Trial Court pursuant to the Administrative Order issued by the Supreme Court, limiting the territorial jurisdiction of the Regional Trial Court of Pasay City.

Two of the seven heirs, i.e., the heirs of Pacita Madrigal Vazquez and Mrs. Vazquez, manifested their desire that the case be retained by the respondent probate court. Petitioner did not give its conformity, in effect, objecting to the retention by the Pasay City probate court of the case for further proceedings.

On December 27, 1983, petitioner filed an omnibus motion praying for the return of the case to the court of origin, or the Quezon City Regional Trial Court, and to strike out the motion for accounting since an accounting had already been rendered by the probate court presided over by the now retired Judge Enrique A. Agana, Sr. The motion was denied in an order dated March 23, 1984 (Annex “E,” Petition).

The Court of Appeals subsequently rendered the disputed decision, upholding due process in the instant case, and waiver of venue since the lapse from the time the case was heard at Pasay City to the present amounted to a

waiver on the part of petitioner to raise the question of venue. As regards Mrs. Vazquez' claim of P5,833,333.33, the Court of Appeals denied the same since payment thereof would, in effect amount to a partial distribution of the estate of the deceased, Don Vicente Madrigal, during the pendency of the intestate proceedings, which may not be allowed prior to the delivery to any beneficiary of his/her distributive share of the estate and before the payment of estate taxes, pursuant to Sec. 107 of the National Internal Revenue Code. Private respondents' motion for accounting was likewise denied and directed to be taken up in the settlement proceedings before the respondent court.

Before Us, petitioner raises only the issue on improper venue, insisting as a result, on the nullity of the probate proceedings including that taken by the Court of Appeals.

Petitioner maintains that the probate proceedings should properly have been retained by the Quezon City Regional Trial Court, pursuant to Rule 73, Section 1 of the Revised Rules of Court, as follows:

“SECTION 1. Where estate of deceased persons settled. -If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other, courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.”

Petitioner argues that their failure to object to the proceedings conducted at Pasay City Regional Trial Court, should not be taken as a waiver on their part as to venue because they believed that the proceedings were only temporary and that the case would subsequently be returned to Quezon City for further proceedings.

A perusal of the records of the case, however, reveal that petitioner never objected when then Judge Enrique Agana brought the case to Pasay City, his place of assignment, upon the expiration of his detail in Quezon City.

The following manifestation of private respondent remains un rebutted by petitioner:

“The records will readily show that since the case below was transferred to Pasay City, petitioner itself had filed no less than four (4) motions and pleadings with the court a quo, thereby recognizing its jurisdiction, to wit:

- “1. Motion for Declaration of Heirs - February 20, 1982;
2. Amended Inventory - February 20, 1982
3. Urgent Motion for Authority to Pay Estate's Income Tax Obligations - March 12, 1982; and
4. Motion for Authority to Reimburse Real Estate Tax Payments - May 24, 1982.

(Vide, Comment, Annexes '3,' '4,' '5' and '6').

“It was actually only after the Honorable Court a quo issued the December 8, 1983 Order that petitioner vigorously challenged the jurisdiction of the Probate Court.

“As correctly stated by petitioner, on April 11, 1983, the Probate Court a quo ordered all parties to show proof why the case should not be transferred to Quezon City. All the parties, including the private respondent, except the petitioner herein, manifested their willingness to have the case retained by the court a quo. Petitioner did not respond. The court a quo issued an Order on June 14, 1983 stating that it shall continue hearing the case. Petitioner did not then move for a reconsideration of said Order. Its contention that 'it did not conform

thereto' is not borne by the records. It is an utter falsity. As a matter of fact, it continued attending all subsequent proceedings and its counsel, as earlier stated, was even later to verbally manifest its agreement to have the case retained by the Pasay branch." (pp. 245-246, Rollo)

Likewise, the heirs indicated their willingness to have the probate court at Pasay City continue with the proceedings. And petitioner's contention that only two heirs agreed to the retention by the probate court is misplaced. Private respondent has pointed out:

"It is incorrect for petitioner to declare that the other heirs of the late Don Vicente Madrigal never manifested their willingness to have the probate court continue with the proceedings below. The fact remains that the other heirs of Don Vicente Madrigal were (as they continue to be) represented by the law firm of Bausa, Ampil and Suarez, and this is evident from the Motion for Extension of Time of said firm dated May 24, 1983, a copy of which is attached as Annex '4' hereof, wherein said other heirs specifically asked for an extension of fifteen days (from May 25, 1983 - and therefore up to June 10, 1983) within which to file their common desire to have the probate court continue with the proceedings. This is the same law firm that filed the Manifestation (Annex '9' of Comment of private respondent) dated June 10, 1983, precisely expressing the consent of all the other heirs, as well as Pacita Madrigal-Gonzales, that the probate court continue with the proceedings. (pp. 249-250, Rollo)

Petitioner appears unable to distinguish between jurisdiction and venue. Chief Justice Marcelo Fernan lays down the distinction between the two, as follows:

"Questions or issues relating to venue of actions are basically governed by Rule 4 of the Revised Rules of Court. It is said that the laying of venue is procedural rather than substantive. It relates to the jurisdiction of the court over the person rather than the subject matter. Provisions relating to venue establish a relation between the plaintiff and the defendant and not between the court and the subject matter. Venue relates to trial not to jurisdiction, touches more of the convenience of the parties rather than the substance of the case." (Jesus Dacoycoy v. Hon. IAC, et al., G.R. No. 74854, April 2, 1991, citing Manila Railroad, Co. v. Attorney General, 20 Phil. 523)

The action in the present case pertains to the probate of the intestate estate of the late Don Vicente Madrigal, in which case a regional trial court properly has jurisdiction over the case, both under the Judiciary Act of 1948, Sec. 44 (e) and under BP 129, Sec. 19(4).

Objection to improper venue should be made in a motion to dismiss. Until this is done, venue cannot truly be said to have been improperly laid.

We, of course note that petitioner had, in fact, filed an Omnibus Motion to Dismiss, questioning the venue of the probate proceedings at Pasay City. This motion was however, filed quite late in the day, petitioner having already submitted his person to the jurisdiction of the court.

Moreover, it would appear that petitioner was motivated by some other reasons for belatedly questioning the venue. Thus, private respondent's observations:

"Contrary to petitioner's pretense, it never sounded off its vigorous objection that venue was improperly laid nor against the jurisdiction of the probate court until said court issued the order of December 8, 1983. It was only after its receipt of said order, wherein the probate court directed petitioner to pay herein private respondent the total amount of P5,833,333.33 that petitioner commenced its mindless and baseless attack against the jurisdiction of the probate court below claiming now, that venue, which it has for a long time waived, should be with the Quezon City Regional Trial Court." (p. 250, Rollo)

Regrettably, therefore, while We agree with the petitioner that venue in this case should have been laid in Quezon City, petitioner's inaction has worked against it:

“It is well-settled in this jurisdiction that wrong venue is merely a waiveable procedural defect, and such waiver may occur by laches. x x x.” (Uriarte v. CFI of Negros Occ., G.R. Nos. L-21938-39, October 29, 1970, 33 SCRA 252 at p. 261)

Foregoing considered, We agree with the Court of Appeals that indeed, petitioner has waived its right to contest the question of venue.

We quote from the decision of the Court of Appeals:

“x x x.

“Noted is that as per Order of April 11, 1983 (p. 130, id.), this case was brought to the Regional Trial Court of Pasay City by the former presiding Judge after his temporary detail with the Quezon City branch, the former Court of First Instance, now the Regional Trial Court. When that detail was terminated, it follows that the provisions of the Judiciary Reorganization Act of 1980 or the Batas Pambansa Blg. 129 and the Resolution en banc of the Supreme Court dated February 10, 1983 on pending cases as of February 14, 1983, limiting the territorial jurisdiction of Pasay City, Regional Trial Court to Pasay City cases only is operative already and should have been followed. Or, in other words, Special Proceedings No. Q-16962 (sic) should have been sent to the Regional Trial Court of Quezon City which was pointed out by the respondent court earlier but which position was not pursued. And, neither did the petitioner raise this question, to emphasize. The foregoing resolution, however is merely directory. The herein Ponente had come across similar instances where cases were brought along by an incumbent RTC Judge who is re-assigned to another place but within the same district or province, despite the opposition from one litigant. In the case at bar, it can be again said that the lapse of time from the time the case was heard at Pasay City to the present, has amounted to another waiver on the part of the petitioner to contest the question of venue which he has been questioning after the issuance of the questioned Orders of October 20, 1983 and December 8, 1983, apparently adversed (sic) to its liking due to some legal grounds like the non-payment of taxes which will be discussed below. (Underscoring supplied)

“At this juncture, We are not prepared to rule that all the proceedings in the past are null and void because of venue and send back the proceedings to the Quezon City Regional Trial Court, try the case anew from the very beginning to where this incident came about which proceedings might take more than five (5) years again. We are not prone to do this, conscious of the fact that one of the primordial objections of Batas Pambansa Blg. 129 is the speedy administration of justice but within the framework of the rule of law. We are not inclined to give our affirmance to the petitioner’s desire for the said transfer because the procedure will only militate against the interest of all parties considering that everybody is desirous to terminate the proceedings as early as possible and the continuance of the proceedings before the respondent court has not caused any damage against the parties and there is no damage as well against public interest.” (pp. 35-36, Rollo)

ACCORDINGLY, the petition is DENIED and the decision of the Court of Appeals, dated September 24, 1985 is AFFIRMED in all respects. No costs.

SO ORDERED.

Narvasa, (Chairman) and Gancayco, JJ., concur.

Cruz, J., no part.

Griño-Aquino, J., on leave.

[1] RTC, Br. CXI, Pasay City, acting as a Probate Court, presided over by Judge Sofronio G. Sayo.

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