

**HACIENDA BENITO, INC., ROBERT O. PHILLIPS & SONS, INC.,
LAS ROCAS TENNIS & COUNTRY CLUB, INC., AND MAGDALENA
YSMAEL-PHILLIPS, PETITIONERS, VS. INTERMEDIATE APPELLATE
COURT AND V...**

G.R. No. 75297. August 12, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Intermediate Appellate Court, now Court of Appeals, in AC-G.R. No. SP-02790, which affirmed the three orders dated November 9, 1983 of Judge Pastor T. Reyes, Presiding Judge of Branch 166 of the Regional Trial Court of the National Capital Region (Pasig), in Civil Case No. 35014.

On May 18, 1977, petitioner Hacienda Benito, Inc., and private respondent Valley Resources, Inc. entered into a "Mutual Agreement" wherein the former sold to the latter parcels of land, roads including road rights, land covered by installment contracts, receivables, and improvements therein in Victoria Valley, Antipolo, Rizal for the price of P6,300,000.00 payable in installments.

On the same day, May 18, 1977, Robert Phillips, husband of petitioner Magdalena Ysmael Phillips acting thru his agent, petitioner Las Rocas Tennis and Country Club, and private respondent Valley Land Resources, Inc., entered into an "AGREEMENT FOR THE PURCHASE OF SHARES OF STOCKS" wherein the former sold to Valley Land Resources, Inc., 200 proprietary shares of stocks of the Las Rocas Tennis and Country Club, Inc., for the price of P6,000,000.00 also payable in installments.

Private respondent Valley Land Resources allegedly without the knowledge and consent of the petitioners, withdrew the land titles, subject of the abovementioned "Mutual Agreement" from the depository banks and had them cancelled. New titles were then issued in the name of the private respondent which thereafter sold lots to the public.

On August 31, 1979, the petitioners, prompted by the failure of the private respondent to execute the two mortgages pursuant to the agreements filed an amended petition entitled "In the matter of the petition to direct the Register of Deeds of Rizal to Annotate certain Liens and Encumbrances" before the Rizal Court of First Instance, Branch I (GRLO) LRC Nos. 15233, 12532, 22593 and 13131 (R-2144). The petitioners prayed for the annotation at the back of the titles involved of pertinent portions of the Mutual Agreement and the "Agreement for the purchase of shares of stocks" to serve as warning to prospective lot buyers that said titles are encumbered, pursuant to sections 72 and 112 of Act 496. The Register of Deeds of Marikina, Rizal, was impleaded in the said petition in his official capacity.

The aforementioned petition was granted by the court which directed the Register of Deeds to make the annotation at the back of the transfer certificates of titles upon payment of the corresponding fees.

On October 30, 1979, private respondent Valley Land Resources filed a complaint for "specific performance

with damages and judicial tender of payment" against the petitioners before the Court of First Instance of Rizal, Branch VI. The case docketed as Civil Case No. 35014 alleged that the private respondent has performed all its obligations under the two contracts, particularly the payments of its obligations thereunder without default, but that Magdalena Y. Phillips, as incumbent president of the three corporations, deliberately failed and refused to comply with her duties. It asked that upon consignation in court of P420,000.00 representing payment of the installments due on October 30, 1979, in accordance with the two contracts, and after hearing, judgment be rendered in favor of plaintiff and against defendants ?

"1. Jointly and solidarily ordering defendants to perform and discharge the following obligations and liabilities, to wit:

"1) To deliver to plaintiff the following Transfer Certificates of Titles covering the following lots, plan numbers and areas, to wit:

TCT NO.

LOT NO.

BLOCK/PLAN NO.

AREA IN SQ. M.

105900

4

14 (LRC) PSD-24043

2,097

105904

6

14 (LRC) PSD-24043

2,227

196095

1-D-1-B

Road Lot (LRC) PSD?39158

1,063

424016

14

(LRC) PCS-15484

2,413

*

1

4 (LRC) PCS-15040

815

*

2

4 (LRC) PCS-15040

875

Mother Title TCT No. 83424 in their possession, but refused to deliver Title for cancellation by Register of Deeds so that the new Titles could be issued.

"2) To remove, eliminate and clear the following Transfer Certificates of Titles from liens and encumbrances:

TCT NO.

(FORMER TCT NOS.)

NATURE OF ENCUMBRANCES ON TITLE

29968

(425621)

Attachment of Levy, Heights Const, Inc.

29969

(425624)

- do ?

29970

(425625)

- do ?

29971

(425627)

- do ?

29972

(425628)

- do ?

29975

(425638)

- do ?

29935

(105891)

Lis Pendens,Daza,Ledesma, & Saludo

"3) To deliver 176 shares of stocks of Las Rocas Tennis and Country Club, Inc. and the Pledge Agreement executed by plaintiff to guaranty the payment of the purchase price of said 176 shares duly annotated thereon; and to deliver 24 shares of stocks of Las Rocas Tennis and Country Club, Inc. free from any lien and encumbrances whatsoever; provided that membership dues shall be suspended during the pendency of this case for reasons stated above;

"4) To construct and finish the tennis courts and the sports facilities of the Las Rocas and Country Club, Inc., intended to be used by its members stockholders; provided that membership dues shall be likewise suspended during the pendency of this case and until defendants comply with this obligation;

"5) To execute and return the Mortgage Contract and Second Mortgage Contract as well as the Supplementary Agreement in relation to said mortgage contracts already signed by the authorized representatives of plaintiff which are still in the possession of the defendants; and

"6) To erase and eliminate all adverse claims annotated on all the properties of plaintiff purchased from defendant Hacienda Benito, Inc., under the Mutual Agreement dated May 18, 1977." (pp. 55-56, Rollo)

In addition, the private respondent asked for P1,000,000.00 as actual and/or compensatory damages, P1,000,000.00 as moral damages, P500,000.00 as exemplary damages, P500,000.00 as attorney's fees, and for costs.

A motion to dismiss the complaint filed by the petitioners herein was denied for lack of merit by the court, presided over by Judge Ricardo J. Francisco. The petitioners, therefore, filed their answer but with the reservation:

x x x x x x x x

"4. That, if defendants feel that specific performance is not warranted at any state of the proceedings, the defendants shall consider the ownership of the properties covered by Annexes "D" and "B" as automatically reverted to the owner thereof, which option they shall exercise at the opportune time."

x x x x x x x x

(pp. 57-57-a, Rollo)

In the meantime, the Register of Deeds of Marikina, Rizal tried but without success to annotate petitioners' liens at the back of the transfer certificates of titles of the parcels of lands, subject of the "Mutual Agreement" pursuant to the court's order. Thus, on May 12, 1980, the Deputy Register of Deeds of Marikina submitted to the Court of First Instance, Rizal, in LRC Case No. R-2144, the annotation of liens and encumbrances case earlier mentioned, a report wherein he prayed that pursuant to Section 71, Presidential Decree No. 1529, "an order be issued directing Resources Corporation and/or Valley Land Resources, Inc., to produce the certificates of titles listed in Annex "B" hereof and to surrender the same to him for cancellation and issuance of new titles in the name of Hacienda Benito"(p. 58, Rollo).

With this development, petitioner Mrs. Phillips executed an affidavit for the rescission of the Mutual Agreement and the Agreement for the Purchase of Shares of Stock and for the reversion of the ownership of the real properties and the paid shares of stock, pursuant to the reservation in the petitioners' answer and the conditions in said agreements. The petitioners also filed a motion to dismiss in Civil Case No. 35014 on the ground that the Report of the Registry of Deeds had rendered the case moot and academic.

On the other hand, the private respondent moved for the admission of its supplemental complaint in Civil Case No. 35014 for the inclusion of the Deputy Register of Deeds of Marikina as additional party defendant with the prayer that the affidavit of Mrs. Phillips be declared null and void.

The petitioners filed a motion to dismiss the supplemental complaint based on the pendency of LRC Case No. R-2144 which calls for the determination of the question – whether or not the automatic rescission of the "Mutual Agreement" and the reversion of ownership are valid and legal – which is also the issue raised in the supplemental complaint.

In separate orders the trial court: 1) denied the petitioners' motion to dismiss Civil Case No. 35014; 2) admitted the supplemental complaint; and 3) denied the motion to dismiss supplemental complaint.

The March 17, 1980 affidavit of rescission executed by Mrs. Phillips prompted the private respondent to file an urgent motion for a writ of preliminary injunction in Civil Case No. 35014. It prayed that the defendants, petitioners herein, be restrained, prohibited and enjoined from "performing any and all other acts to implement, enforce or effectuate, directly or indirectly, the alleged rescission and/or reversion embodied in the affidavit of defendant Magdalena Y. Phillips dated March 17, 1980 and from proceeding, continuing and prosecuting the Report (Petition) of Deputy Register of Deeds Oscar G. Nolasco under section 71, P.D. 1529, until after the trial on the merits of the verified complaint and the verified supplemental complaint filed by plaintiff in the case at bar is finished and/or until further order of this Honorable Court." (pp. 58-59, Rollo)

The motion was opposed by the petitioners. The petitioners also filed an urgent motion for the release of the P420,000.00 deposited by the private respondent on October 30, 1979.

In an order dated January 30, 1981, the Court, now through Judge Eficio Acosta granted the writ of preliminary injunction prayed for although, at the same time, it also authorized the release of the P420,000.00 deposit.

The petitioners assailed the legality of the aforementioned order before the Court of Appeals in CA-G.R. No. SP-12009 entitled "Hacienda Benito, Inc. and Magdalena Ysmael Phillips, petitioners v. Honorable Eficio B. Acosta, et al." The appellate court, however, denied the petition for lack of merit.

Civil Case No. 35014 was then calendared for pretrial on the merits.

In the meantime, the private respondent continued to deposit the payments of the installments due under the two contracts. On April 30, 1981, the private respondent was able to deposit the sum of P7,260,000.00 to complete all the payments due to the petitioners under the two contracts.

In the course of the trial on the merits, certain incidents occurred insofar as the total deposit of P7,260,000.00 was concerned.

On March 25, 1982, the petitioners filed a motion for release of deposit on the ground that said amounts should be released to them in the concept of penalties and/or liquidated damages. The motion was denied by the court. The lower court, however, later reconsidered its earlier order upon an urgent motion for reconsideration filed by the petitioners.

The lower court justified its order to release the deposit upon the filing of an indemnity bond of P7,260,000.00 posted by the Philippine American General Insurance Group in this wise:

x x x x x x x x

"x x x In their motion for reconsideration, however, defendants now theorize that the installment payments made by the plaintiff is an implied admission or constructive fulfillment of plaintiff's obligations in favor of defendants under the two agreements. Hence, under this concept of payment as now viewed by the defendants, this Court is inclined and thus hereby grants the release x x x." (p. 62, Rollo)

In consideration of the release of the P7,260,000.00 the trial court also ordered "that all entries of adverse claim,

lis pendens and/or rescission and reversion as well as all liens and encumbrances registered in the titles of the properties in the name of the plaintiff, subject of this litigation and caused by the defendants in relation to their controversies arising from the two agreements abovementioned be cancelled or deleted" (p. 63, Rollo). In addition, Mrs. Phillips and Las Rocas Tennis and Country Club, Inc., were ordered to issue and deliver to the plaintiff the 200 proprietary certificates or shares of stocks of Las Rocas Tennis and Country Club, Inc., under the Agreement for the Purchase of Shares of Stocks, dated May 18, 1977.

Upon motion for reconsideration of the aforementioned order filed by petitioners which was opposed by the private respondent, the lower court issued another order dated December 17, 1982, the dispositive portion of which reads:

"WHEREFORE, premises considered, without prejudice to the pending litigation and without waiving any cause of action, claims or defenses by either parties, the Court hereby orders that:

"1. Paragraphs 1 and 2 of the dispositive portion of the Order dated November 10, 1982 be upheld and considered immediately executory; and

"2. That the sum of P7,260,000.00 be released to the defendants thru the proper person duly and lawfully authorized to receive said amount upon filing with this Court of an indemnity bond in the amount of P1.5 million to be posted by a reputable bonding company subject to the approval of this Court or a cash bond in the same amount." (p. 64, Rollo)

In view of the Judicial Reorganization Act of 1980, Civil Case No. 35014 was re-raffled and re-assigned to the Regional Trial Court of the National Capital Judicial Region, Branch CLXVI at Pasig, Metro Manila, presided over by Judge Pastor P. Reyes.

Acting on an urgent motion for release of deposit without bond filed by the petitioners and the opposition thereto filed by the private respondent, the lower court issued an order dated April 29, 1983, the dispositive portion of which reads:

"FOR ALL THE FOREGOING, an Order is hereby issued in the tenor and disposition herein-below provided, to wit:

"1. Granting defendants' motion for the release of the deposit in the amount of P7,260,000.00 presently deposited with the Philippine National Bank, Pasig Branch, Pasig, Metro Manila and/or the Provincial Treasurer of Rizal Provinces, Pasig, Metro Manila to the Mutual Agreement and Agreement for the Purchase of Shares of Stocks entered into between the parties on May 18, 1977, without bond; consequently, the Branch Manager of the aforesaid Bank are hereby ordered to deliver, pay and release the aforesaid amount or any part thereof in their respective custody immediately to Mrs. Magdalena Ysmael Phillips only, receipt of which to be attested by her attorney of record, Atty. Magtangol Gunigundo;

"2. Ordering Celino Pereda, Branch Clerk of the defunct Court of First Instance, Branch X, Seventh Judicial District, Pasig, Metro Manila as well as Atty. Maximo Contreras, former Clerk of Court of the Rizal Courts of First Instance or whoever is in possession of the Passbooks and/or Deposit Receipts for this P7,260,000.00 to deliver and surrender said passbooks and receipts to the Branch Clerk of this Court, Atty. Felixberto E. Bayani, who is hereby directed to execute and implement paragraph 1 hereof;

"3. Denying defendants' motion to restore the liens, encumbrances, lis pendens cancelled by Oscar Nolasco, Register of Deeds, Marikina, Metro Manila On all the titles covered by paragraph 1 of the Order dated November 10, 1982; Hence, defendants' motion to cite said Register of Deeds and/or Celino Pereda is hereby denied;

"4. Declaring that this Order shall not in any manner affect the rights or defenses of both parties nor shall

constitute any waiver, quit-claim or renunciation of the same as brought out by their pleadings or in the continuation of the hearing on the merits;

"5. Revoking or modifying any and all previous Orders only on matters treated in this Order and same shall be considered as unenforceable and without any legal effects; and

"6. Setting the continuation of the hearing on the merits on August 9, 1983 at 2:30 o'clock in the afternoon, Pasig, Metro Manila. (p. 66-67, Rollo)

This order triggered off the filing of several motions and counter-motions by the parties before the trial court. The private respondent filed the follow-ing motions: (1) Urgent motion for reconsideration and to stay execution of an alleged order allegedly dated April 29, 1983; (2) Motion to strike out "urgent ex-parte motion to stay execution dated February 9, 1983" and "order dated February 11, 1983"; and (3) Urgent motion to request the Honorable Judge to immediately act on plaintiff's motion to stay execution and to re-raffle case.

On the other hand, the petitioners filed the following: (1) Opposition to amended motion for recon-sideration; (2) Comment on motion to re-raffle case; (3) Motion for release of interest and (4) Motion for an inventory and accounting. The private respondent filed separate oppositions to the petitioners' motion.

On November 9, 1983, Judge Reyes issued three orders to resolve all the issues raised by the parties in the above-mentioned motions and counter-motions. At the same time, he also inhibited himself from fur-ther hearing the case.

The first order resolved the private respondent's motions for reconsideration and to re-raffle the case.

The second order denied the petitioners' motion for release of interest while the third order also denied the petitioners' motion for an inventory and accounting.

In view of Judge Pastor Reyes' declaration in the first order dated November 9, 1983, that he is inhibiting himself from further hearing the case, the then Judge Rizalina S. Bonifacio who was the Executive Judge sent notices to the parties setting the re-raffle of Civil Case No. 35014 on February 23, 1984 at 2:00 p.m. The records do not show whether a re-raffle was in fact held as scheduled.

On the other hand, on November 18, 1983, the petitioners filed an urgent motion for reconsideration to which the private respondent filed an opposition. Judge Reyes did not act on the urgent motion because he had already inhibited himself from the case.

Under this backdrop, the petitioners filed a petition for certiorari, prohibition, and mandamus questioning the three orders, all dated November 9, 1983 before the then Intermediate Appellate Court.

In addition to its comment, the private respondent filed a compulsory counter-petition for certiorari.

On May 30, 1986, the Appellate Court rendered a decision dismissing the petition. The dispositive portion of the decision reads:

"WHEREFORE, the petition is hereby dismissed for lack of merit. The Executive Judge is hereby ordered to re-raffle Civil Case No. 35014, if such has not yet been done, after which its trial on the merits should proceed until its final determination.

"The restraining order We issued on February 29, 1984 is hereby lifted. No special pronouncement is made as to costs." (p. 72, Rollo)

A motion for reconsideration filed by the petitioner was denied for lack of merit. Hence, this petition. Our resolution dated November 3, 1986 required the private respondent to comment on the petition. The respondent

has chosen not to file any comment. We have, therefore, resolved to give due course to this petition and decide it on the merits.

The petitioners contend that:

A

The respondent court committed grave abuse of discretion and/or acted with or in excess of jurisdiction in dismissing the petition thereby in effect ruling that Judge Reyes correctly acted in inhibiting himself and at the same time resolving contentious issues.

B

Respondent court committed grave abuse of discretion and/or acted without or in excess of jurisdiction in dismissing the petition, thereby in effect sustaining the Order of Judge Reyes in ordering the petitioners to deliver 200 shares of stock of Las Rocas Tennis & Country Club, Inc., under the Stock Agreement, and all titles included in the Mutual Agreement.

C

The respondent court went beyond the issues raised by the parties and practically prejudged the merits of the case, when the case was still supposed to be tried on the merits.

The initiative to disqualify Judge Reyes from further proceeding with Civil Case No. 35014 came from the private respondent. He charged that the April 29, 1983 order was "patently antedated" and that the release of the P7,260,000.00 deposit without bond by the petitioners represented by Magdalena Y. Phillips was done under suspicious circumstances.

The private respondent's claim that the April 29, 1983 order was "patently antedated" stems from the fact that the said order contains a statement that the defendants (petitioners herein) filed their comments on May 4, 1983 when the same did not yet exist on April 29, 1983.

Judge Reyes admitted that the date April 29, 1983 of the questioned order was not correct. Nevertheless, he saw nothing wrong about his antedated order.

Judge Reyes lengthily discussed the reasons for such mistake in one of the orders dated November 9, 1983. He stated that he tried his best to have the parties agree to a compromise. To achieve this end, Judge Reyes explained that he was able to persuade the parties to submit proposals for settlement. It was understood, however, that hearings could last only up to April 30, 1983 since he was taking a leave of absence beginning May 1, 1983. He stated that on April 22, 1983, the private respondent filed its "Compromise Agreement." In addition, the private respondent submitted a proposal for settlement. Since no settlement was reached during the April 22, 1983 hearing, the parties agreed to meet on April 30, 1983. On April 29, 1983, Judge Reyes prepared the final draft of the order. On May 5, 1983, the petitioners submitted a comment on "Compromise Agreement."

Judge Reyes then emphasized the following explanation in his November 9, 1983 order:

x x x x x x x x

"When the attention of the Presiding Judge was called the aforesaid comment, he had to insert the same on the penultimate paragraph of page 6 of the Order which is as follows:

"Without losing the hope for the parties to enter into a compromise agreement, the Court prevailed upon them in submitting proposals for settlement, i.e., plaintiff's 'COMPROMISE AGREEMENT' dated April 21, 1983 and

defendants' 'PROPOSAL FOR SETTLEMENT' bearing the same date. In accordance with the agreement between the parties, the Court presented for their consideration in a 'COMPROMISE AGREEMENT' dated April 29, 1983 to which defendants submitted its 'COMMENT ON COMPROMISE AGREEMENT' dated May 4, 1983." (p. 39, Rollo)

In conclusion, Judge Reyes added that the mistake was "due to oversight brought about by the death of his brother and other matters related thereto. At most, this matter is a clear error which neither the Court stenographer nor the Branch Clerk of Court noticed." Moreover, according to Judge Reyes x x x "[T]he mistake in not changing the date April 29, 1983 to May 5, 1983 or thereabout did not vary, change or alter the order nor has the change in the date speak falsely (sic) on something different from the release of the deposit.

The private respondent's charge that the P7,260,000.00 deposit was released under suspicious circumstances was compounded by the fact that its re-lease to petitioner Magdalena Ysmael Phillips was done on May 18, 1983, or two days prior to the private respondent's receipt of a copy of the April 29, 1983 order on May 20, 1983.

Judge Reyes in his November 9, 1983 order admitted that in view of the circumstances under which P7,260,000.00 deposit without bond was released, the private respondent may have grounds to harbor suspicion. Judge Reyes, however, exonerated himself from any involvement in the release of the P7,260,000.00 by stating that:

"With respect to the haste in the withdrawal of the deposit whereby the copy of the Order for defendants was served much earlier than that of plaintiff who received a copy only at 4:30 o'clock p.m. on May 20, 1983 after the deposit had already been withdrawn by defendants through Magdalena Y. Phillips, the Court finds this matter regrettable and unpardonable. On its face, it appears to be a deliberate act on the part of the person or person responsible for delivery of copies of the Order and/or the withdrawal of the deposit to deprive plaintiff the right to resort to legal action to enjoin the withdrawal. Without knowing the exact date when said Order was signed which can not be earlier than May 5, 1983 (date of the filing of defendants' 'Comments on Compromise Agreement') nor later than May 17, 1983 (date of departure for abroad of the Presiding Judge, he personally delivers it to the Branch Clerk of Court for immediate release. Hence, the Presiding Judge was already out of the country when copies of the Order were delivered to the parties and their counsel as well as the time when the deposit was withdrawn. However, the Presiding Judge can assure plaintiff and all concerned that should there be any irregularity or anomaly any person or persons including any personnel of the Court who, in one way or the other, is/are connected therewith or received some consideration or promise thereof, the Presiding Judge upon request of plaintiff, shall take the corresponding action against them as may be warranted in the premises." (p. 42, Rollo)

Judge Reyes' explanations regarding these controversial matters were accepted by the appellate court. The petitioners, for obvious reasons, interposed no objections to Judge Reyes' explanation. And the private respondent seemed to be satisfied with these explanations as it did not anymore raise any questions and for obvious reasons, too. Judge Reyes, in the three (3) questioned November 9, 1983 orders, favored the private respondent.

These facts, notwithstanding, we find it necessary to review the explanations even if they are not raised as errors or issues because the resolution of issues raised in the questioned orders is necessary to arrive at a just decision of the case. (See *Hernandez v. Andal*, 78 Phil. 198-199; *Saura Import and Export Co., Inc., v. Philippine International Surety Co., Inc.*, 8 SCRA 143; *Fegurin v. National Labor Relations Commission*, 120 SCRA 910) Added to this is our responsibility to look into alleged acts of erring members of the bench and bar to preserve the integrity of the judiciary. (See *Arban v. Borja*, 143 SCRA 634).

Judge Reyes admitted that the April 29, 1983 order did not reflect the date of its actual issuance. According to him the order was issued sometime between May 5, 1983, the date of the filing of the petitioners' Comments on

Compromise Agreement and May 16, 1983. In short, he does not even know when his court issued the contro-versial order. Moreover, the Judge admitted that he was on leave of absence beginning May 1, 1983. Hence, he had no more authority to issue the controversial order which among other things directed the release of the P7,260,000.00 deposit without bond to the petitioners. Moreover, petitioner Magdalena Ysmael Phillips was able to withdraw the P7,260,000.00 deposit without any bond even before the private respondent could receive a copy of the order thus preventing the latter not only from questioning the April 29, 1983 order but from taking steps to enjoin the release of the money.

These circumstances, taken together, make the explanation on the antedated April 29, 1983 order and the sudden withdrawal of the P7,260,000.00 deposit unsatisfactory to say the least. This Court finds, that in the interest of justice, a further inquiry should be conducted into the release of the P7,260,000.00 depo-sit of the private respondent to the petitioner Mrs. Phillips two (2) days prior to the respondent's receipt of the April 29, 1983 order. Judge Reyes committed an act of judicial indiscretion when he issued the controversial April 29, 1983 order despite the fact that, in his own words, he was already on vacation leave of ab-sence on May 1, 1983.

Admittedly, the controversial April 29, 1983 order was issued long after May 1, 1983. Hence, for lack of authority and considering the circumstances surrounding its issuance, the April 29, 1983 order must be declared null and void. Consequently, the P7,260,000.00 deposit already withdrawn by petitioner Magdalena Ysmael Phillips pursuant to the April 29, 1983 order will have to be returned to the court.

The first assigned error raises the issue as to whether or not Judge Reyes abused his discretion in inhibiting himself from further proceeding with the case but not before resolving all the pending motions of the parties. These motions are: (a) motion for reconside-ration of the April 29, 1983 order filed by the private respondent; (b) motion to re-raffle the case filed by the private respondent; (c) motion to withdraw interest filed by the petitioners and (d) motion for accounting and inventory filed by the petitioners.

The petitioners submit that if Judge Reyes was going to inhibit himself after all, he should not have resolved any of the pending actions except the motion for his inhibition. The petitioners argue that if Judge Reyes had to decide on the contentious issues and motions he should have gone all the way, without in the end inhibiting himself after he had granted reliefs to the private respondent.

Section 1, Rule 137 on disqualification of judges provides:

"Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trus-tee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

The rationale behind this rule is to preserve pub-lic faith in the judiciary's fairness and objectivity to allay suspicions and distrust as to a possible bias and prejudice in favor of a party coming into play. (See Villapando v. Quitain, 75 SCRA 24; and Bautista v. Rebueno, 81 SCRA 535).

Judge Reyes, in inhibiting himself stated:

x x x x x x x x

"x xx In order to give peace of mind to the party concerned as well as to him in particular and as he approaches

the darkening shadows of his compulsory retirement, the Presiding Judge has no recourse but to voluntarily inhibit himself from further hearing this case." (p. 46, Rollo)

The judge's inhibition from the case is founded on a valid reason. Considering the circumstances under which the controversial April 29, 1983 order was issued and the sudden withdrawal of the P7,260,000.00 deposit by the petitioners, the private respondent had reasons to suspect the objectivity of the presiding judge. This, Judge Reyes readily admits. The question, however, is not the inhibition itself but its timeliness. Section 2, Rule 137 of the Revised Rules of Court provides:

"Objection that judge disqualified, how made and effect.— If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall there-upon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case." (Underlining supplied)

Pursuant to this rule, Judge Reyes had two options following his receipt of the motion to disqualify him from the case – to proceed with the case or withdraw therefrom. He can not do both at the same time.

A cursory reading of the questioned November 9, 1983 order shows that the judge practically disposed of the case on the merits and at the same time inhibited himself from further hearing the case. Thus, the dis-positive portion of the November 9, 1983 order reads:

"FOR ALL THE FOREGOING CONSIDERATION, the Court hereby adopts and reproduces the dispositive part of the Order dated April 29, 1983 and the same is accordingly modified in the tenor and disposition herein-below provided:

"1. Modifying paragraph 1 of the dispositive part of the Order dated April 29, 1983 ordering the delivery, payment and release of the deposit in the amount of P7,260,000.00 to defendant Hacienda Benito, Inc. thru Mrs. Magdalena Ysmael Phillips instead of 'to Mrs. Magdalena Ysmael Phillips only' as therein provided;

"2. Declaring that the Order dated April 29, 1983 to be legal, valid and binding between the parties although same was signed by the Pre-siding Judge after May 5, 1983;

"3. Ordering defendants Hacienda Benito, Inc. and the Las Rocas Tennis and Country Club, Inc., thru Mrs. Magdalena Ysmael Phillips to issue and deliver to plaintiff the proprietary certificates consisting of two hundred (200) shares of stocks of the Las Rocas Tennis and Country Club, Inc., sold under the Agreement for the Purchase of Shares of Stocks dated May 18, 1977;

"4. In the event that defendants have not delivered to plaintiff the Certificates of Titles covering the Lots, Plan and Block Nos. and areas which are as follows:

TCT NO.

LOT NO.

BLOCK/PLAN NO.

AREA IN SQ. M.

105900

4

14 (LRC) Psd -24043

2,907

105904

8

14 (LRC) Psd -24043

2,227

196095

1-D-1-B

Road Lot (LRC) Psd -39158

1,063

424016

14

(LRC) Pcs -15484

2,413

1

4(LRC) Pcs -15040

815

2

4(LRC) Pcs -15040

875

Mother Title TCT No. 83424 in their possession, but refused to deliver title for cancellation by Register of Deeds so that the new title could be issued.

ordering said defendants to deliver them to plaintiff, and

"5. The Presiding Judge, *motu proprio*, inhibits himself from further hearing this case and directing the Branch Clerk of Court to return the records to the Acting Executive Judge for re-raffle as requested by plaintiff." (pp. 46-47, Rollo)

The judge committed grave abuse of discretion in resolving the pending motions of the parties and after doing so inhibiting himself from further proceeding with the case. (Sec. 2, Rule 137, Revised Rules of Court)

The second and third assigned errors raise the issue as to whether or not the appellate court was right in categorically stating that the private respondent had performed all its obligations under the two contracts.

The appellate court affirmed the aforequoted November 9, 1983 order. The appellate court even went further by discussing the merits of the case and concluding therein that the private respondent had performed all its obligations under the two contracts.

This cannot be done. The issue raised in the case is whether or not the petitioners could rescind the "Mutual Agreement" and the "Stock Agreement" considering that the petitioners extrajudicially did so by executing the Affidavit of Rescission of Ownership. Hence, the appellate court's conclusion that the private respondent had performed all its obligations under the two said contracts would render the case moot and academic.

At this juncture, we note that a main issue raised in the case pertains to a May 18, 1977 "Mutual Agreement" executed by petitioner Hacienda Benito, Inc., and private respondent Valley Land Resources Inc., wherein the former sold to the latter parcels of lands, roads, including road rights, land covered by installment contracts receivables, and improvements therein in Victoria Valley, Antipolo, Rizal. Whether or not this agreement is legal and binding between the parties is one of the issues to be resolved in Civil Case No. 35014. In this connection, we take note of G.R. No. 50911, *Miguel Perez Rubio v. Court of Appeals, et al.*, decided by this Court on March 12, 1986.

G.R. No. 50911 involves shares of stock of the petitioner herein, Hacienda Benito which were sold by Miguel Perez Rubio to Robert O. Phillips and Sons, Inc., (ROPSI) for P5,500,000.00. ROPSI was not able to pay P4,250,000.00 of the purchase price resulting in two other cases involving Perez Rubio, ROPSI, Spouses Robert Phillips and Magdalena Y. Phillips, major stockholders of ROPSI and Hacienda Benito among others, which reached this Court earlier. (G.R. Nos. L-24581; L-30404) In all these cases, it was clearly shown that ROPSI tried to sell the shares of stock of Hacienda Benito without first paying its unpaid balance to Perez Rubio. Finally, in G.R. No. 50911, we ruled that Robert O. Phillips and Sons and the Phillips spouses are to be jointly and severally liable to the petitioner for the outstanding debt of Phillips and Sons in the amount of P4,250,000.00 with interest thereon as provided in the parties' agreement of the sale of the shares of stock of Hacienda Benito.

In order that the decision in G.R. No. 50911 will not become ineffectual, this Court rules that the issue as regards the validity of the "Mutual Agreement" between the two parties herein should be resolved in a way as not to prejudice the rights and interest of Miguel Perez Rubio in relation to the P4,250,000.00 he has yet to collect for selling his shares of stocks therein.

Finally, our declaration that the April 29, 1983 order and the three orders all dated November 9, 1983 are null and void for reasons earlier stated necessitates the return of the P7,260,000.00 deposit of the private respondent to this court representing the full purchase price of the sale of the assets of Hacienda Benito and the proprietary shares of Las Rocas Tennis Club pursuant to the parties' "Mutual Agreement" and "Stock Agreement". This is so, because it was in accordance with the void April 29, 1983 order that petitioner Magdalena Y. Phillips was able to withdraw said deposit.

WHEREFORE, the instant petition is hereby GRANTED. The questioned decision of the then Intermediate Appellate Court is MODIFIED as follows:

1. The November 9, 1983 Orders issued by Judge Pastor Reyes and affirmed by the appellate court are DECLARED NULL and VOID;
2. The April 29, 1983 Order of Judge Pastor Reyes is DECLARED NULL and VOID. As a consequence, petitioner Magdalena Y. Phillips is directed to return the P7,260,000.00 deposit of the private respondent to the court to which Civil Case No. 35014 will be re-raffled;
3. The Executive Judge at Pasig, Rizal is ordered to re-affle Civil Case No. 35014, after which daily hearings shall be held; the case shall be resolved; and a report made to this Court within thirty (30) days;
4. The successor lower court is directed to look into the circumstances surrounding the hasty release of the P7,260,000.00 deposit to petitioner Magdalena Y. Phillips, two days prior to the receipt by the private respondent

of the April 29, 1983 order within thirty (30) days;

5. The court to which Civil Case No. 35014 will be re-raffled is directed to consider Miguel Perez Rubio impleaded in the case; and

6. The Court Administrator is ordered to conduct an investigation for purposes of corrective action into any irregularity which may have occurred in this case and report to this Court within thirty (30) days.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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