

ENGRACIA BACATE AMBERTI, PETITIONER, VS. HONORABLE COURT OF APPEALS, HONORABLE EFICIO B. ACOSTA, PRESIDING JUDGE OF BRANCH CLV, REGIONAL TRIAL COURT, PASIG, METRO MANILA, AND MA...

G.R. No. 79981. April 02, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

For review is the decision dated September 16, 1987 of the Court of Appeals which dismissed Engracia Bacate Amberti's petition for annulment of the orders of the Regional Trial Court, Branch 155 (Pasig) dated January 10, 1986 and November 4, 1986, respectively in CA-G.R. SP No. 10991.

The case at bar is another lamentable instance of a mother and her only daughter clashing with each other in a bitter controversy over inheritance.

Pietro (Piero) Amberti, an Italian citizen, married petitioner Engracia V. Bacate on September 16, 1965. They have one child, herein private respondent Maria Teresa Amberti, now married to Wilfredo M. Talag. In June, 1970, Pietro, then a resident of Antipolo, Rizal, died in Torino, Italy, leaving behind considerable properties in the Philippines and a holographic will designating Maria Teresa as his universal heir in accordance with the laws of Italy. The will was subsequently admitted to probate in the Philippines on August 2, 1971 and the widow Engracia was named the executrix, only to be removed after eight (8) years by the same probate court for maladministration of the Amberti estate, failure to submit an inventory or render an accounting for more than eight (8) years and to account for the money received by the estate totalling more than P7,000,000.00. She was ordered replaced by her daughter, Maria Teresa, upon the latter's motion.[1]

Petitioner then filed a petition for certiorari, prohibition and mandamus in the Appellate Court to protest her removal and replacement.[2] In its decision dated April 10, 1980, the Appellate Court noted the various anomalies and irregularities committed by petitioner in her administration of her husband's estate particularly her failure to render an accounting thereof for eight (8) years. Finding thus the probate court to have acted properly, it dismissed the petition for lack of merit.

After payment of the estate and inheritance taxes due, private respondent Maria Teresa, as the new administratrix, filed a motion with the probate court to terminate the administration proceedings and to declare her as the universal heir of the deceased Pietro Amberti and the absolute owner of all the real and personal properties of his estate. In compliance with the court's order of November 29, 1985, she submitted an inventory listing of all the real and personal properties of the subject estate which disclosed, among others, that petitioner had already sold one-half (1/2) of the 975-square meter West Avenue (Quezon City) property and had disposed of the various mining equipment used in the once thriving marble business of the deceased in the reported total amount of P687,500.00.[3]

On January 10, 1986, the lower court rendered judgment in Special Proceedings No. 5958 awarding ownership of the residue of the entire Amberti estate consisting of real and personal properties to the decedent's universal heir, private respondent Maria Teresa.[4]

On April 14, 1986, petitioner moved for a reconsideration of the January 10, 1986 decision, questioning for the first time the provisions of the holographic will and asserting her alleged right of usufruct over one-half (1/2) of the estate. The trial court denied said motion on November 4, 1986 for having been filed long after the judgment of January 10, 1986 had acquired finality.[5]

Petitioner again sought recourse in the Court of Appeals,[6] this time to seek the annulment of the orders of January 10, 1986 and November 4, 1986 on the ground that the notice of the January 10, 1986 order sent by registered mail was not "actually" received by her counsel of record resulting in "deprivation of due process." [7] But before private respondent could comment on the petition, petitioner filed a motion to withdraw CA-G.R. SP No. 10786 stating that she was no longer interested in pursuing her action. Consequently, the Appellate Court dismissed CA-G.R. SP No. 10786 in its resolution of January 9, 1987 which read:

"The petition is dismissed, petitioner having expressed that she is no longer pursuing it to judgment." [8]

However, it would appear that petitioner had a change of heart for on January 12, 1987 she instituted another action before the Court of Appeals[9] to annul and reverse the orders dated January 10, 1986 and November 4, 1986 of the Regional Trial Court, the very same orders subject of CA-G.R. SP No. 10786. Petitioner claimed that the act of private respondent in furnishing petitioner with a copy of the motion to terminate the administration proceedings through her former counsel (Atty. Rogelio Velarde) and not through her new counsel of record (Atty. Antonio P. Coronel) constituted extrinsic fraud calculated to deprive her of her day in court. She likewise sought the invalidation of the inventory submitted by her daughter on the ground that said inventory included properties allegedly belonging to her exclusively or to the conjugal partnership with the deceased Pietro Amberti.

On March 24, 1987, the Appellate Court issued another resolution declaring as final the dismissal of the petition in CA-G.R. SP No. 10786:

"Considering that the resolution dismissing the appeal dated January 9, 1987 has become final as of January 31, 1987, the Court Resolved: Let the corresponding entry of judgment issue and the case remanded to the court of origin for execution of judgment." [10]

Finally, on September 16, 1987, the Court of Appeals rendered in CA-G.R. SP No. 10991 the decision under review which reads in the main:

"Significantly, and as the Comment filed by private respondent cited, the petition filed omitted to mention the fact that on December 8, 1986, the same petitioner filed certiorari proceedings with prayer for preliminary injunction in this Court, docketed as CA-G.R. No. SP 10786 against same respondents herein, to annul the judgment of January 10, 1986 and the order of denial of November 4, 1986 on grounds of alleged lack of due process, or abuse of discretion. x x x.

"xxx xxx xxx xxx xxx.

"Although in the dismissal of CA-G.R. SP No. 10786, there was no opportunity for this Court to go over the merits of the grounds alleged, since the petitioner filed a motion to withdraw before private respondents can file their comment to the petition, the dismissal of the same is binding on the petitioner. Certainly, she is now estopped from disputing the order of dismissal by bringing another action and pretending that it is different from the other which was earlier dismissed upon her instance. Indeed, such dismissal is with prejudice. To hold otherwise is to allow petitioner to trifle with this Court and waste its precious time which could be utilized to decide cases brought by other litigants who are more earnest and serious with their cases.

“Certainly, the question of whether or not the decision of January 10, 1986 has been served on petitioner's counsel of record can no longer be raised since by her withdrawal of CA-G.R. SP No. 10786, petitioner is deemed to have waived any right to raise the issue.

"xxx xxx xxx xxx xxx.

"WHEREFORE, the instant petition should be, as it is hereby DISMISSED. x x x ."[11]

The ultimate issue raised in this petition for review is whether or not the dismissal of CA-G.R. SP No. 10786 by respondent Appellate Court amounts to a dismissal with prejudice such that petitioner is now precluded from bringing a second action (CA-GR SP No. 10991) based on the same subject matter.

A careful scrutiny of the records shows that CA-G.R. SP No. 10786 is a special civil action for certiorari with prayer for preliminary injunction under Rule 65 of the Revised Rules of Court which petitioner filed on December 8, 1986 to annul the judgment of the trial court of January 10, 1986 and the order of denial of petitioner's motion for reconsideration of November 4, 1986 on the grounds of lack of due process and grave abuse of discretion.[12] As above related, before respondents could submit their comment, petitioner filed a motion to withdraw the petition stating that she was no longer interested in pursuing the case. The motion was granted by the Appellate Court in its resolution of January 9, 1987. On March 24, 1987, said resolution having become final, entry of judgment was issued and the case was remanded to the court of origin for execution of judgment.

Section 1, Rule 62 of the Rules of Court under the heading SPECIAL CIVIL ACTIONS provides as follows:

"SECTION 1. Preceding rules applicable in special civil actions.— The provisions of the preceding rules shall apply in special actions for interpleader, de-claratory relief and similar remedies, certiorari, prohibition, mandamus, quo warranto, eminent domain, foreclosure of mortgage, partition, forcible entry and detainer, and contempt, which are not inconsistent with or may serve to supplement the provisions of the rules relating to such special civil actions."

From the foregoing, it is clearly stated that in special civil actions the preceding rules are applicable in a supplementary manner. More specifically, under Sections 2 and 4, Rule 50 of Rules of Court, relating to DISMISSAL OF APPEAL in the Court of Appeals, the following are provided:

"SECTION 2. Effect of dismissal. — Fifteen (15) days after the dismissal of an appeal, the clerk shall return to the court below the record on appeal with a certificate under the seal of the court showing that the appeal has been dismissed. Upon the receipt of such certificate in the lower court the case shall stand there as though no appeal had ever been taken, and the judgment of the said court may be enforced with the additional costs allowed by the appellate court upon dismissing the appeal."

"SECTION 4. Withdrawal of appeal. — An appeal may be withdrawn as of right at any time before the filing of appellee's brief. After the brief is filed the withdrawal maybe allowed by the court in its discretion. The withdrawal of an appeal shall have the same effect as that of a dismissal in accordance with Section 2 of this rule."

Applying the foregoing rules in a supplementary manner, upon the withdrawal of a petition in a special civil action before the answer or comment thereto has been filed, the case shall stand as though no appeal has been taken, so that the judgment or order of the lower court being questioned becomes immediately final and executory. Thus, a resolution granting the withdrawal of such a petition is with prejudice and petitioner is precluded from bringing a second action based on the same subject matter.

The subsequent petition in CA-G.R. SP No. 10991 is an original action for annulment of judgment filed by petitioner in the Court of Appeals in accordance with Section 9 of the Judiciary Reorganization Act of 1980 (B.P.

Blg. 129) which vests upon the Intermediate Appellate Court (now Court of Appeals) the original exclusive jurisdiction over actions for annulment of judgments of the Regional Trial Courts. No doubt that second petition is barred by res judicata, as the dismissal of the earlier petition for certiorari in C.A. G.R. SP No. 10786 was with prejudice and on the merits. It has not escaped this Court's attention that these two petitions are based on the same ground of the alleged deprivation of due process and sought the same reliefs, i.e., the annulment or setting aside of the January 10, 1986 judgment and November 4, 1986 order of the trial court. A party cannot evade the effects of res judicata by varying the form of his action or adopting a different method of presenting his case as petitioner attempted to do in instituting an original action for annulment of judgment to obtain the same relief sought in the petition for certiorari earlier withdrawn from the Court of Appeals.[13]

This should now put an end to the travails of a daughter whose mother, after having dissipated so much of the estate of her late husband, still proposes to share in what little is left of the inheritance of their daughter.

WHEREFORE, the petition is dismissed, with costs against petitioner. This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Sp. Proc. No. 5958.

[2] CA-G.R. SP No. 09660.

[3] CA-G.R. SP No. 10991, Rollo, pp. 9 and 12.

[4] Supra at p. 13.

[5] Supra at p. 102.

[6] CA-G.R. SP No. 10786.

[7] Rollo, p. 17.

[8] Rollo, p. 28.

[9] CA-G.R. SP No. 10991.

[10] Rollo, p. 28.

[11] Rollo, pp. 29-30.

[12] Rollo, p. 9.

[13] Valera vs. Bañez, 116 SCRA 648; Ramos vs. Pangasinan Transportation Co., Inc., 79 SCRA 170; Ibabao vs. IAC, 150 SCRA 76.

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