

**DOLORES DE MESA ABAD AND MARIETTA ESCULTERO,
REPRESENTED BY CAROLINA ABAD GONZALES, PETITIONERS, VS.
HON. CORONA IBAY SOMERA, RTC, PRESIDING JUDGE, HONORIA
EMPAYNADO AND ATTY. A...**

G.R. No. 82216. July 02, 1990

Ponente: PARAS, J.

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PARAS, J.:

The instant petition is one for Contempt against -

- (a) Hon. Corona Ibay Somera, Presiding Judge of the Regional Trial Court, Branch XXVI, Manila, in connection with her Decision in Civil Case No. R-82-5879, entitled "Intestate Estate of Ricardo do Mesa Abad, represented by its Administratrix Honoria Empaynado v. Marietta Escultero";
- (b) Honoria Empaynado, plaintiff in said Civil Case No. R-82-5879; and
- (c) Atty. Amador Sagalongos, counsel for Honoria Empaynado in said civil case.

For a clearer understanding of the basic issue involved, hereunder is a brief statement of the pertinent background of the controversy.

The decedent Ricardo Abad y de Mesa died a bachelor on October 1, 1971 in Manila, without leaving any will. He died single in the sense that he had never married any woman during his lifetime, but he had a common-law wife, Honoria Empaynado with whom he lived under the same roof at 2432 Opalo, San Andres, Manila for twenty seven (27) years since 1943 up to the time of his death and with whom he begot two (2) acknowledged natural children, Cecilia E. Abad and Marian E. Abad. The deceased had also another acknowledged natural child, Rosemarie Abad y Seracho, begotten with another woman, Dolores Seracho.

The deceased was survived by his said three (3) acknowledged natural children, Cecilia, Marian and Rosemarie, all surnamed Abad and his said common-law wife, Honoria Empaynado.

The said deceased was also survived by collateral relatives, namely, petitioner Dolores de Mesa Abad, a full-blood sister; Cesar de Mesa Tioseco, a half-blood brother (motherside) and Carolina de Mesa Abad, an alleged half-sister.

On April 18, 1972, Dolores de Mesa Abad and Cesar Tioseco thru counsel Atty. Escolastico R. Viola, filed a Petition for Settlement and Administration (Special Proceedings No. 86792) before the Court of First Instance of Manila, Branch XXIX.

The petition listed in par. 3 thereof the properties belonging to the deceased Ricardo de Mesa Abad, among which are the following:

CHARACTER

TCT. NO.

LOCATION

AREA

AMOUNT ASSESSED VALUE

Residential

13530

Esmeralda

18950 sq. m.

P 5,390.00

Residential

53671

1300 Esguerra

300 sq. m.

6,800.00

Residential

6402

Opalo-Esmeralda

56850 sq.m.

16,170.00

Said parcels of land were acquired by the deceased Ricardo de Mesa from third persons as evidenced by three (3) ancient deeds of sale, as follows –

“(a) On June 2, 1938, Telesforo Reyes, married to Mercedes Monzon, executed a 'VENTA A FAVOR DE RICARDO ABAD' of two (2) parcels of land in consideration of P1,000.00, acknowledged before a Manila Notary Public and registered in his notarial book as Doc. No. 113, Page No. 15, Book No. V, Series of 1938, which sale was the basis of TCT No. 53671 issued 50 years ago;

“(b) On October 14, 1942, the Ayala y Compania executed a 'DEED OF ABSOLUTE SALE' of three (3) parcels of land in consideration of P3,982.80 in favor of Ricardo Abad, acknowledged before Salvador J. Lopayos, Notary Public in Manila, per Doc. No. 160, Page No. 38, Book No. II, Series of 1942, which sale was the basis of TCT No. 64021 issued 46 years ago;

“(c) On May 14, 1948, the Ayala Securities Corporation executed a deed of absolute sale of a parcel of land in consideration of P1,516.00 in favor of Ricardo Abad, acknowledged before Sofronio S. Pasolo, Manila, Notary Public, per Doc. No. 67, Page No. 15, Book No. III, Series of 1948, which sale was the basis of TCT No. 13530, issued forty (40) years ago.” (p. 113, Rollo)

When the original petition was filed, petitioners therein were not yet in possession of the three (3) certificates of titles which deceased Ricardo Abad kept in Safe Deposit Box No. 251 rented by him under the name of "Ricardo

Abad and/or Dolores Abad, with Cecilia E. Abad as beneficiary in the Monte de Piedad and Savings Bank, Manila.

However, on April 20, 1972, Dolores Abad, accompanied by Cesar Tioseco, Carolina Abad and Atty. Viola prevailed upon the Monte de Piedad to inventory the contents of said safe deposit box. Said three (3) certificates of title were among the contents inventoried, thereby enabling them to get the technical description of the three (3) parcels of land.

On May 2, 1972, Dolores de Mesa Abad, Cesar de Mesa Tioseco and Carolina de Mesa Abad executed a document purporting to be an extrajudicial settlement of the estate of their deceased mother, Lucila de Mesa, in which they adjudicated unto themselves said real properties belonging to their deceased brother Ricardo de Mesa Abad, as follows:

TCT No. 53671 was adjudicated in favor of Dolores de Mesa Abad;

TCT No. 13530 in favor of Cesar de Mesa Tioseco; and

TCT No. 64021, together with the residential house in favor of Carolina de Mesa Abad.

Conformably to said scheme, petitioners amended their original petition on May 9, 1972 by inserting in par. 3 thereof another paragraph which reads -

“ x x x

"3. That deceased left the following real and personal properties, to wit:

CHARACTER

TCT.

NO.

LOCATION

AREA

AMOUNT

ASSESSED

VALUE

Residential

13530

Esmeralda

18950 sq. m.

P5,390.00

Residential

53671

1300 Esguerra

300 sq. m.

6,800.00

Residential

64021

Opalo-Esmeralda

56850 sq. m.

16,170.00

"That foregoing parcels of land, while evidenced by the corresponding certificates of title in the name of the deceased, but actually are properties of our late mother, Lucila de Mesa and are only being administered by our late brother. (pp. 114-115, Rollo)

The petition was set for hearing on June 9, 1972 at 8:30 a.m. The names of the three acknowledged natural children of the deceased as well as his common-law wife were not mentioned in the petition.

On June 14, 1972, based on the ex-parte evidence of petitioners, the Intestate Court issued an Order appointing Cesar de Mesa Tioseco as administrator. Tioseco took his oath on June 15, 1972 and on June 16, 1972, the letters of administration were issued to him.

Honorina Empaynado and her children discovered the pendency of said proceeding only on July 5, 1972 when the Peoples' Bank & Trust Company informed them of a court order it received collating with the estate of Ricardo Abad trust funds and savings deposits payable to Ricardo Abad and/or Cecilia Abad or Marian Abad.

Thus, on July 24, 1972, Honorina Empaynado, Cecilia Abad, Marian Abad, and Rosemarie Abad, claiming to be the rightful heirs, filed a Motion for Reconsideration, praying, among others, for the revocation of Cesar de Mesa's appointment.

The trial court denied reconsideration but allowed private respondents to appear and establish their rights as heirs of Ricardo Abad.

On November 2, 1973, after receiving evidence, the trial court issued an Order declaring Honorina Empaynado, Cecilia, Marian and Rosemarie all surnamed Abad as heirs to the exclusion of petitioners and entitled to succeed to the entire estate at the same time appointing Honorina Empaynado as the administratrix.

Petitioners moved for reconsideration but the same was denied. Their appeal was likewise denied for having been filed out of time.

Meanwhile, on October 4, 1973, Honorina Empaynado and the three (3) children filed a motion to annul the Deed of Extrajudicial Settlement and the titles issued pursuant thereto.

The lower court granted the motion. Petitioners appealed but the lower court dismissed the appeal on the grounds that the appeal was filed out of time and considering further that petitioners failed to incorporate therein

pleadings, motions and interlocutory orders as are related and necessary for the proper understanding of the issues involved.

Due to the dismissal of their two (2) appeals, petitioners elevated their cause to the then Court of Appeals on Certiorari and Mandamus in Ca-GR No. SD-04352, wherein they prayed for the approval of their appeals.

The Court of Appeals found Certiorari and Mandamus without merit on the ground that both records on appeal were filed out of time.

Petitioners then came to this Court on a petition for certiorari in GR No. L-42225.

On July 9, 1985, this Court issued a Resolution[1] with the following dispositive portion ?

"Accordingly, the judgment under review is hereby set aside and the Regional Trial Court of Manila, which has succeeded the former Court of First Instance, Branch XXIX, is hereby directed to give due course to petitioners' appeals from (1) the Order of November 2, 1973 declaring private respondents heirs of the deceased Ricardo Abad; and (2) the Order, dated November 19, 1974, annulling certain documents appertaining to the intestate estate of said deceased. No costs.

"SO ORDERED." (p. 16, Rollo)

On November 26, 1980, a complaint for Recovery of Possession and damages was filed by the Intestate Estate of Ricardo de Mesa Abad represented by Honoria Empaynado, administratrix against a certain Marietta Escultero. The case was docketed as Civil Case No. R-82-5879 of the Regional Trial Court of Manila, Branch XXVI presided over by respondent Judge Corona Ibay Somera.

The complaint substantially states that plaintiff estate is the owner of the parcel of land, specifically Lot No. 6 covered by TCT No. 53671 of the Registry of Deeds for the City of Manila situated at 2313 Jacobo, Singalong, Manila; that sometime in January 1977, through strategy and stealth and without the knowledge and consent of plaintiff, defendant entered into said land and then and there squatted thereon by constructing a structure of light materials which she used as repair shop, thereby, depriving plaintiff of possession of said land; that plaintiff had made repeated demands upon defendant to vacate the premises and remove the structures built thereon, but defendant has failed and refused to do so.

On September 4, 1986, respondent Judge Somera promulgated her decision in said Civil Case No. R-82-5879, the pertinent portion of which reads -

"Evidences of both parties show that up to the filing of the instant case, the hereditary rights of the plaintiffs are still under consideration. Although there were Orders of Judge Mariano V. Agcaoili of Branch XXIV of the CFI of Manila declaring Cecilia E. Abad, Marian E. Abad and Rosemarie S. Abad the only surviving legal heirs of the deceased Ricardo Abad and annulling the extrajudicial partition executed by the sisters and brother of deceased Ricardo Abad, said orders are the subject of a petition for certiorari of the Supreme Court. Resolution of the Supreme Court was promulgated on July 9, 1982 (1985) setting aside the judgment declaring the appeals filed out of time and giving due course to the appeals of Dolores Abad Gonzales, and Cesar Tioseco from the two orders. As of this writing the lawful heirs of the late Ricardo de Mesa Abad are not yet established.

"In view thereof, this Court cannot pass upon who should be respected to regain the lawful possession of the lot allegedly occupied by defendant Marietta Escultero.

"The Court's decision is therefore confined to who was the possessor of the property at the time defendant occupied the land.

x x x x

"After an examination of the evidences adduced by both parties, the Court is convinced that possession de facto was exercised by the late Ricardo de Mesa Abad over the land at No. 2313 Jacobo St., Singalong, Manila, in the concept of a legal owner. This being so, after his death, the exercise or possession de facto was continued by his estate through his common-law wife Empaynado and his children. Dolores de Mesa Abad failed to prove her possession of the land except her act of allowing the defendant Marietta Escultero to occupy the same.

x x x x

"In view of the foregoing, the possession de facto continued to belong to the estate of Ricardo de Mesa Abad until after judgment has been rendered by the probate court in the Special Proceedings No. 86792, Dolores de Mesa Abad and Cesar de Mesa Tioseco, Petitioners, Honoria Empaynado, et al., Oppositors. As of said date, the Supreme Court gave due course to the appeal of the petitioners from the orders of the lower court, Branch XXIV, RTC, Manila, dated November 2, 1973 and November 19, 1974.

x x x x"

(pp. 127-128, Rollo)

with the following dispositive portion:

"WHEREFORE, PREMISES CONSIDERED, Judgement is hereby rendered, Ordering Defendant Marietta Escultero and all persons claiming under her:

- "1) To vacate the premises at 2313 Jacobo Street, Singalong, Manila;
- "2) To deliver the possession of the name land to the plaintiff;
- "3) To pay plaintiff a monthly rental of P400.00 from January, 1977 until she has vacated the premises;
- "4) To pay plaintiff P10,000.00 as attorney's fees; and
- "5) To pay the costs of litigation.

"There is no award for damages."

"SO ORDERED." (pp. 52-53, Rollo)

From the aforesaid decision, defendant Escultero filed a motion for reconsideration but the same was denied, hence, she appealed the decision to the Court of Appeals under CA-GR No. CV-17542.

Pending said appeal, on March 10, 1988, petitioners Dolores de Mesa Abad and Marietta Escultero represented by Carolina Abad Gonzales filed the instant petition for Contempt.

The petitioners alleged –

"17. That the judgment aforequoted in the Decision dated September 4, 1986, rendered by the Public Respondent Judge duly attested and coordinated by Private Respondents, Atty. Amador E. Sagalongos, counsel for the respondent, Honoria Empaynado, constitutes contumacious acts, contemptuous, willful disregard or disobedience of the judgment of the Resolution promulgated by the Honorable Supreme Court on July 9, 1985, and pursuant to the provisions of Sub-paragraph B, Section 3, Rule 71, Revised Rules of Court in conjunction with the rulings of the Supreme Court in the case of People v. Rivera, L-3646, May 26, 1952, citing Saal v. South Brooklyn Ry. Co., 106 N.Y.S. 996, 1000, 122 App. Div. 364; 9 Words and Phrases 57; Narcida v. Bowen, 22 Phil. 3365.

“18. That the Private Respondents are equally liable with the Public Respondent Judge to the Contempt charged without prejudice to disciplinary action being an officer of the Courts to preserve the purity of the legal professions; Atty. Amador E. Sagalongos as an officer of the Court may be visited with disbarment or other lesser appropriate disciplinary sanctions by the Honorable Supreme Court in the exercise of the prerogatives inherent in it as the duly constituted guardian of the legal fraternity.

“19. Evidently, it becomes imperative for the preservation of the status quo rights of the Petitioners and the interest and protection of substantial rights thereby affected occasioned by the contumacious acts and utter disregard of the Judgment in the Resolution promulgated on July 9, 1985 by the Honorable Supreme Court; it then follows that the Public Respondent Judge's decision suffers from legal infirmities in rendering her Decision dated September 4, 1986, thus, considering her acts ultra vires thereby rendering the said Decision and its Judgment null and void.” (pp. 108-109, Rollo)

In her Comment dated May 16, 1988, (pp. 36-37, Rollo) respondent Judge Somera professes awareness of the Resolution of this Court in GR No. L-42225. In fact, she even mentioned this in her decision.

There is no question that disobedience or resistance to a lawful writ, process, order, judgment or command of a court or injunction granted by a court or judge, more particularly in this case, the Supreme Court, constitutes Indirect Contempt punishable under Rules 71 of the Rules of Court.

It has been held that contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation. It is defined as a disobedience to the court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. (*Halili v. Court of Industrial Relations*, 136 SCRA 135, April 30, 1985)

However, it is well-settled that “the power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.” (*Villavicencio v. Lukban*, 39 Phil. 778; *Gamboa v. Teodoro et al*, 91 Phil. 274; *Sulit v. Tiangco*, 115 SCRA 207; *Lipata v. Tutaan*, 124 SCRA 880) “Only in cases of clear and contumacious refusal to obey should the power be exercised. A bona fide misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings.” “Such power ‘being drastic and extra-ordinary in its nature x x x should not be resorted to x x x unless necessary in the interest of justice.’” (*Gamboa v. Teodoro et al*, supra)

Likewise, well-settled, is the rule that an act to be considered contemptuous must be clearly contrary or prohibited by the order of the Court. “A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or undertainty as to what specific act or thing is forbidden or required. (*Anglo-Fil Trading Corporation v. Lazaro*, 124 SCRA 494, 525 citing *Lee Yick Hon v. Achson etc., R. Co.*, 146 Fed 176, 183; 13 CJ 15; *Cua v. Lecaros*, 161 SCRA 480, 489)

The decision of this Court in GR No. L-42225 merely gave due course to the petitioners' appeals from (1) the Order of November 2, 1983 declaring private respondents heirs of the deceased Ricardo Abad, and (2) the Order dated November 19, 1974, annulling certain documents appertaining to the intestate estate of said deceased. (p. 16, Rollo)

On the other hand, the decision of respondent Judge Somera in Civil Case No. R-82-5879 merely restored

possession of the subject parcel of land to the plaintiff estate from defendant Marietta Escultura who is not a party and who has no successional interest in the estate of the deceased Ricardo Abad. Definitely this decision on possession did not defy the resolution of this Court in GR No. L-42225 in a manner that would make respondent Judge Somera and the other respondents liable for contempt.

WHEREFORE, for lack of merit this petition is DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Justice Ameurfina A. Melencio-Herrera, and concurred in by Justices Claudio Teehankee, Efren Plana, Lorenzo Relova, B. S. de la Fuente and Nestor Alampay.

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