

JUAN HERNANDEZ, RODOLFO HERNANDEZ, REYNALDO HERNANDEZ, ARTURO HERNANDEZ, VICTORIA HERNANDEZ, LIWAYWAY HERNANDEZ, SPOUSES ATTY. PEDRO N. BELMI & NATIVIDAD A. FERRERA, PETITIONERS...

G.R. Nos. 61420-21. February 22, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Acting on this petition for review on certiorari of the decision of respondent Court of Appeals [now Intermediate Appellate Court] in CA-G.R. Nos. 13683-84-SP, dated May 26, 1982, and the respondents' Answer thereto; it appearing that the only issue raised in this petition is whether or not a decision rendered by the Court of First Instance of Rizal in an action for partition and accounting is final in character and, therefore, immediately appealable; it further appearing that both respondents Court of First Instance of Rizal and the Court of Appeals, relying on the case of *Zaldarriaga v. Enriquez*[1] gravely abused their discretion in dismissing the appeals interposed by petitioners in Civil Cases 7591 and 8187 of the Court of First Instance of Rizal; considering that the doctrine laid down in *Zaldarriaga* to the effect that "a decision or order of partition is not final because it leaves something more to be done in the trial court for the complete disposition of the case, namely, the appointment of commissioners, the proceedings to be held before them, the submission of their reports which must be set for hearing, and the approval of the project of partition," has been expressly abandoned in the case of *Miranda, et al. v. Court of Appeals, et al.*[2] where this Court held that:

"The Court, however, deems it proper for the guidance of the bench and bar to now declare as is clearly indicated from the compelling reasons and considerations hereinabove stated:

"that the court considers the better rule to be that stated in *H.E. Heacock Co. vs. American Trading Co.*, to wit, that where the primary purpose of a case is to ascertain and determine who between plaintiff and defendant is the true owner and entitled to the exclusive use of the disputed property, 'the judgment . . . rendered by the lower court [is] a judgment on the merits as to those questions, and [that] the order of the court for an accounting was based upon, and is incidental to the judgment on the merits. That is to say, that the judgment . . . (is) a final judgment . . .; that in this kind of a case an accounting is a mere incident to the judgment; that an appeal lies from the rendition of the judgment as rendered . . .' (as is widely held by a great number of judges and members of the bar, as shown by the cases so decided and filed and still pending with the Court) for the fundamental reasons therein stated that 'this is more in harmony with the administration of justice and the spirit and intent of the (Rules). If on appeal the judgment of the lower court is affirmed, it would not in the least work an injustice to any of the legal rights of (appellee). On the other hand, if for any reason this court should reverse the judgment of the lower court, the accounting would be a waste of time and money, and might work a material injury to the (appellant); and

"that accordingly, the contrary ruling in *Fuentebella vs. Carrascoso* which expressly reversed the *Heacock* case and a line of similar decisions and ruled that such a decision for recovery of property with accounting 'is not final but merely interlocutory and therefore not appealable' and subsequent cases adhering to the same must be

now in turn abandoned and set aside.

"Fuentebella adopted instead the opposite line of conflicting decisions mostly in partition proceedings and exemplified by *Ron vs. Mojica*, 8 Phil. 928 (under the old Code of Civil Procedure) that an order for partition of real property is not final and appealable until after the actual partition of the property as reported by the court-appointed commissioners and approved by the court in its judgment accepting the report. It must be especially noted that such rule governing partitions is now so expressly provided and spelled out in Rule 69 of the Rules of Court, with special reference to sections 1, 2, 3, 6, 7 and 11, to wit, that there must first be a preliminary order for partition of the real estate (Section 2) and where the parties-co-owners cannot agree, the court-appointed commissioners make a plan of actual partition which must first be passed upon and accepted by the trial court and embodied in a judgment to be rendered by it (Sections 6 and 11). In partition cases, it must be further borne in mind that Rule 69, Section 1 refers to 'a person having the right to compel the partition of real estate', so that the general rule of partition that an appeal will not lie until the partition or distribution proceedings are terminated will not apply where appellant claims exclusive ownership of the whole property and denies the adverse party's right to any partition, as was the ruling in *Villanueva vs. Capistrano and Africa vs. Africa*, supra, Fuentebella's express reversal of these cases must likewise be deemed now also abandoned in view of the court's expressed preference for the rationale of the *Heacock* case.

"The Court's considered opinion is that imperative considerations of public policy and of sound practice in the courts and adherence to the constitutional mandate of simplified, just, speedy and inexpensive determination of every action call for considering such judgments for recovery of property with accounting as final judgments which are duly appealable [and would therefore become final and executory if not appealed within the reglementary period] with the accounting as a mere incident of the judgment to be rendered during the course of the appeal as provided in Rule 39, Section 4 or to be implemented at the execution stage upon final affirmance on appeal of the judgment . . . and that the only reason given in *Fuentebella* for the contrary ruling, viz, 'the general harm that would follow from throwing the door open to multiplicity of appeals in a single case' is of lesser import and consequence."

and finding the foregoing ruling, which has been reiterated in *Valdez v. Bagaso*[3] and *Cease v. CA*[4], clearly applicable to the case at bar; the Court resolved to grant the petition, to set aside the decision of the respondent Court of Appeals dated May 26, 1982 and to order respondent trial court to reinstate and give due course to the appeals interposed by petitioners in Civil Cases Nos. 7591 and 8187, and to forthwith elevate the records of said cases to the Intermediate Appellate Court, without pronouncement as to costs.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and De Castro, JJ., concur.
Aquino, J., on leave.

[1] 1 SCRA 1188.

[2] June 18, 1976, 71 SCRA 259.

[3] 88 SCRA 295.

[4] 93 SCRA 483.

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