

## FIRST DIVISION

[ G.R. No. 167975, June 17, 2015 ]

**GILDA JARDELEZA, (DECEASED), SUBSTITUTED BY HER HEIRS, NAMELY: ERNESTO JARDELEZA, JR., TEODORO MARIA JARDELEZA, ROLANDO L. JARDELEZA, MA. GLENDA JARDELEZA-UY, AND MELECIO GIL JARDELEZA, PETITIONERS, VS. SPOUSES MELECIO AND ELIZABETH JARDELEZA, JMB TRADERS, INC., AND TEODORO JARDELEZA, RESPONDENTS.**

### D E C I S I O N

**BERSAMIN, J.:**

The petitioner directly appeals the order of January 31, 2005<sup>[1]</sup> dismissing her complaint for reconveyance and damages, and the order of April 7, 2005<sup>[2]</sup> denying her motion for reconsideration,<sup>[3]</sup> both issued by the Regional Trial Court (RTC) in Iloilo City in Civil Case No. 23499, contending that the dismissal was grossly erroneous under the law and pertinent jurisprudence.

The antecedents follow.

On March 7, 1997, the Spouses Gilda Jardeleza and Dr. Ernesto Jardeleza, Sr. (Ernesto) commenced Civil Case No. 23499 against respondents Spouses Melecio and Elizabeth Jardeleza, JMB Traders, Inc., and Teodoro Jardeleza (Teodoro) respecting several parcels of their conjugal lands. Civil Case No. 23499 was raffled to Branch 33 of the RTC. On January 13, 2004, during the pendency of Civil Case No. 23499, Ernesto died. Hence, administration proceedings (Special Proceedings No. 04-7705) were commenced in the RTC (assigned to Branch 38), and Teodoro was appointed as the administrator of the estate. The other heirs questioned the appointment in the Court of Appeals (CA).

Meanwhile, Teodoro, in his capacity as the administrator, filed a motion to dismiss in Civil Case No. 23499 on the ground that because Melecio, one of the defendants, was also an heir of Ernesto, the properties subject of the action for reconveyance should be considered as "advances in the inheritance," and, accordingly, the claim for reconveyance should be heard in Special Proceedings No. 04-7705 by Branch 38.

Branch 33 issued the first assailed order dated January 31, 2005 granting the motion to dismiss, viz.:

Considering that the Motion to Dismiss dated December 15, 2004 carries with it the signature of all parties and their respective counsels in the above-entitled case, the prayer for the dismissal of the complaint and the counterclaims in this case are hereby granted.

SO ORDERED.<sup>[4]</sup>

Gilda sought reconsideration, arguing that she had a personal cause of action of her own distinct from that of Ernesto; that she neither signed nor consented to the dismissal of Civil Case No. 23499; and that Teodoro should have first sought the approval of Branch 38 as the intestate court considering that the estate could potentially recover properties belonging to it.

On April 7, 2005, Branch 33 issued the second assailed order denying Gilda's motion for reconsideration.

Hence, Gilda has directly appealed the adverse rulings of the RTC. Did Branch 33 err in dismissing Civil Case No. 23499?

### **Ruling of the Court**

The appeal is meritorious.

Firstly, although Branch 33 based its dismissal of Civil Case No. 23499 on the fact that the motion to dismiss<sup>[5]</sup> filed by Teodoro, in his capacity as administrator, bore the signatures of all the parties and their respective counsel, the records show that the motion to dismiss carried only the conformity of Teodoro. In addition to the cited ground being obviously a misrepresentation, Teodoro's conformity to the dismissal would stand only for the intestate estate of Ernesto, and did not bind Gilda without whose express conformity the dismissal of Civil Case No. 23499 was ineffectual. Gilda's express conformity was not merely necessary but indispensable considering that the properties sought to be reconveyed pertained to the conjugal partnership of Gilda and Ernesto.

Secondly, Gilda correctly posits that the action for reconveyance, which survived the intervening death of Ernesto as co-plaintiff, should be maintained independently of Special Proceedings No. 04-7705. Indeed, whether an action survives or not depends on its nature.<sup>[6]</sup> In a cause of action that survives, the wrong complained of primarily and principally affects property and property rights, the injuries to the person being merely incidental; in a cause of action that does not survive, the injury complained of is to the person, the property and rights of property affected being incidental.<sup>[7]</sup> This rule is applicable regardless of whether it is the plaintiff or the defendant who dies, or whether the case is in the trial or in the appellate courts.<sup>[8]</sup> Verily, Civil Case No. 23499 survived the death of Ernesto.

Thirdly, the jurisdiction of the RTC as a probate court relates only to matters having to do with the settlement of the estate and probate of a will of a deceased person, and does not extend to the determination of a question of ownership that arises during the proceedings.<sup>[9]</sup> This is true whether or not the property is alleged to belong to the estate,<sup>[10]</sup> unless the claimants to the property are all heirs of the deceased and they agree to submit the question for determination by the probate or administration court and the interests of third parties are not prejudiced;<sup>[11]</sup> or unless the purpose is to determine whether or not certain properties should be included in the inventory, in which case the probate or administration court may decide *prima facie* the ownership of the property, but such determination is not final and is without prejudice to the right of interested parties to ventilate the question of ownership in a proper action.<sup>[12]</sup> Otherwise put, the determination is provisional,