

EN BANC

[A.M. No. RTJ-06-2016 (FORMERLY OCA I.P.I. NO. 04-2120-RTJ), March 23, 2009]

CORAZON R. TANJUATCO, COMPLAINANT, VS. JUDGE IRENEO L. GAKO, JR., REGIONAL TRIAL COURT, BRANCH 5, CEBU CITY, RESPONDENT.

RESOLUTION

VELASCO JR., J.:

This administrative case stemmed from the sworn-complaint^[1] dated September 24, 2004 of Corazon R. Tanjuatco filed with this Court, charging Regional Trial Court (RTC) Judge Ireneo L. Gako, Jr., now retired, with Knowingly Rendering Unjust Judgment, Gross Partiality and/or Gross Ignorance in connection with a contract rescission case filed with respondent's court.

By Resolution dated August 9, 2006, the Court resolved to refer the administrative complaint, which was earlier redocketed as a regular administrative matter, to Court of Appeals (CA) Associate Justice Josefina Guevarra-Salonga for investigation, recommendation, and report.^[2]

From the complaint, respondent's comment thereon, with their respective annexes, and other documents on record, the Court gathers the following material facts:

Complainant's father, Vicente S. del Rosario (Vicente S.), and her brother, Pantaleon, co-owned eight (8) parcels of land located in Alumnus, Basak-San Nicolas, Cebu City, with an aggregate area of 21,000 square meters. Via a "Contract to Buy and Sell" dated August 23, 1985,^[3] Vicente S. and Pantaleon, for PhP 2,156,040, sold the property to the City of Cebu, for the latter's abattoir project. As agreed upon, the purchase price was to be deposited and to remain in escrow with the Philippine National Bank (PNB) until lot titles shall have been delivered to the city. Following the 1986 EDSA event, however, the newly-designated OIC-Mayor of Cebu City, John H. Osmeña, unilaterally stopped the construction of the abattoir.

On May 7, 1987, Vicente S. died, leaving behind the following heirs: his wife, Ceferina Urguiaga, and their eight (8) children, among whom are complainant, Pantaleon, and Carlos del Rosario.

Later developments saw Vicente S.'s heirs filing a petition for the partition of his estate. Docketed as Civil Case No. CEB-17236 of the RTC of Cebu City, the petition, after several transfers, eventually landed in Branch 5 of the court, then presided by respondent judge. According to the respondent, he held "preliminary conferences among the heirs of Vicente S. x x x for the purpose of settling the case amicably."^[4] The complainant, on the other hand, narrated that the respondent held several

meetings in his chambers during the preliminary conferences.^[5] Upon the heirs' motion, the respondent subsequently inhibited himself from handling the case.

At about the same time and based on the above narrated facts, Vicente B. del Rosario (Vicente B.), represented by his father, Pantaleon, filed a case against the City of Cebu for the rescission of the "Contract to Buy and Sell" covering the eight (8) lots adverted to. Docketed as Civil Case No. CEB-27334 and entitled *Vicente B. del Rosario, represented by his Attorney-in-Fact, Pantaleon U. del Rosario v. City of Cebu*, the complaint, with attachments, was raffled to the respondent's Branch 5. The complaint originally carried the *Verification/Certification of Non- Forum Shopping* signed by Pantaleon. The verification was subsequently replaced by another executed by Vicente B., the plaintiff, based on plaintiff's motion for leave to amend complaint. This motion recited that

during the hearing [on] x x x July 3, 2002, this Honorable Court told this representation to amend the complaint because the verification/certification of non-forum shopping x x x should have been executed by plaintiff Vicente B. del Rosario who is the real party in interest x x x and to allege that the amount deposited in escrow inclusive of interest accrued should be paid to plaintiff by way of rentals.^[6]

On February 26, 2003, Isidro and Michael Alain Reyes de Leon, heirs of Teresita de Leon, who in turn was Virgilio S.'s niece, moved to intervene in Civil Case No. CEB-27334, but the court denied the motion.^[7]

By decision dated May 28, 2004, respondent rescinded the contract in question and awarded the whole purchase price as rentals to Vicente B. The following events then transpired: (1) Carlos del Rosario interposed his own motion for intervention; (2) on August 13, 2004, the city of Cebu filed a notice of appeal with the RTC;^[8] and (3) on September 8, 2004, Vicente B. moved for execution pending appeal, which the court granted conditioned upon his posting of a bond.^[9]

It is against the foregoing state of things that the complainant filed her complaint alleging, in gist, the following:

1. During the rescission case hearing on July 3, 2002, the respondent instructed Pantaleon's counsel to amend the complaint and to attach instead the verification of his son Vicente B., and to allege that the amount deposited on the escrow, exclusive of the interest accrued, should be paid to Vicente B. by way of rentals. Vicente B. was, therefore, made to appear as the plaintiff. By these actuations, the respondent was no longer acting as an impartial trier of facts. He was in fact lawyering for Pantaleon.
2. The respondent admitted the Amended Complaint despite the fact that Vicente B. failed to pay the appropriate filing fee for the additional relief sought in the complaint.
3. On May 28, 2004, the respondent rendered judgment ordering contract rescission and awarding the purchase price therefor in escrow to Vicente B. as rentals, despite his knowledge that one-half of the subject property belongs to the estate of the deceased

Vicente S. and was already within the jurisdiction and custody of the court handling the partition case.

4. The respondent issued an Order allowing execution pending appeal while the motion for intervention filed by Carlos del Rosario remained unresolved.

In his Comment,^[10] respondent, *inter alia*, alleged that: his May 28, 2004 decision, far from being unjust, was based on the law and evidence and was in fact beneficial to complainant, Cebu City being ordered to return the eight (8) lots subject of the case; Carlos del Rosario's motion to intervene was filed only after the decision was rendered; he was not aware that four of the eight lots involved in Civil Case No. CEB-27334 were included in Civil Case No. CEN-17236 for partition; there was no need to implead the complainant as she and the other heirs could very well be represented by Pantaleon who owned four of the lots in question and is a co-owner of the other four; no damage was done to the complainant because the case is on appeal with the CA; the complainant did not move for intervention in the rescission case as an indispensable party; and the matter of plaintiff Virgilio B.'s non-payment of the filing fees was not brought to the court's attention. Apropos the allegation about his having instructed the plaintiff's counsel on what to do in the case, respondent countered that it is the court's duty, in the course of a hearing, to suggest to litigants and their counsels to follow the proper procedures so that cases be speedily resolved.

On September 20, 2006, respondent judge reached the compulsory retirement age of 70. The Court, however, ordered that the release of his retirement benefits be held in abeyance until the resolution of this administrative case and to hold these benefits available to answer for any monetary penalty that may be imposed.

Following due hearings, the Investigating Justice submitted on December 6, 2006 an investigation report. In it, she recommended that respondent judge be adjudged guilty of knowingly rendering an unjust judgment and grave misconduct in the performance of his duties and be meted the penalty of dismissal. She predicated her recommendation on the guilt of respondents on three (3) main premises, to wit: (1) respondent proceeded with the rescission case without impleading indispensable parties; (2) he "lawyered" for the plaintiff, thus betraying his partiality towards a party in a case; and (3) he denied and/or refused to act on the motion to intervene of an indispensable party. Here are some excerpts of the investigation report:

Admittedly, respondent presided over the Partition Case, having held preliminary conferences x x x. The fact that he conducted conferences among the heirs of the deceased Vicente coupled by the fact that the Partition Case was filed by one of the heirs in defiance to the position of the other heirs respecting the settlement of the vast estate, would sufficiently serve notice to him that there is a severe conflict of interests among said heirs. Respondent judge may very well insist that he did not have the opportunity to read the voluminous case records as well as the Rescission Case [which] would have alerted him of the need to implead all the heirs of the deceased Vicente.

Besides, respondent x x x cannot simply feign ignorance of the Partition Case. Before he had rendered his now assailed Decision, [he] was even

reminded by plaintiff Vicente of the pendency of the Partition Case when the latter filed his opposition to the motion of intervenors De Leon.

So viewed, respondent judge need not wait for the complainant or the other heirs to intervene in the Rescission Case, since it is his duty as a judge to ensure that all indispensable parties are impleaded before resolving a case. Law and jurisprudence clearly and explicitly dictate compulsory joinder of indispensable parties. The absence of an indispensable party in a case renders ineffectual all the proceedings subsequent to the filing of the complaint including the judgment.

Parenthetically, when an action involves reconveyance of property x x x owners of property over which reconveyance is asserted are indispensable parties x x x.

x x x x

Still and all respondent judge opted x x x to exclude the complainant and the other heirs of the deceased Vicente based on the bare supposition that since Pantaleon owns the remaining half of the subject lots and that Pantaleon is also an heir of the deceased, there is no longer any need to implead the other heirs. x x x

Clearly, this manifests the bias and partiality of the respondent judge in favor of Pantaleon. At this point, it bears to stress that respondent judge is at a complete loss as to what capacity Pantaleon stands in the Rescission Case. In his Comment dated March 8, 2005, respondent judge refers to Pantaleon, and not plaintiff Vicente, as the plaintiff in the Rescission Case and the supposed owner of half of the subject lots.

x x x Whether the Rescission Case was resolved speedily is of no moment x x x. What remains is the fact that respondent judge favored Pantaleon and disposed of the Rescission Case to the detriment of the other heirs of the deceased Vicente. x x x

Worse, respondent judge had inexcusably failed to act on a motion to intervene filed by one of the heirs of the deceased Vicente. While said motion to intervene was filed after the assailed Decision had been rendered, respondent judge should have prudently acted on it especially so since the motion itself had raised the issue of non-joinder of indispensable parties. x x x

Needless to state, whenever it appears to the court in the course of a proceeding that an indispensable party has not been joined, it is the duty of the court to stop the trial and order the inclusion of such party. Such an order is unavoidable, for it is precisely "when an indispensable party is not before the court (that) the action should be dismissed."

What further reflects respondent judge's utter betrayal of his duties and responsibilities as a judge is his admission that he had in fact taught Pantaleon what to do in the case. x x x