

## THIRD DIVISION

[ G.R. No. 183546, September 18, 2009 ]

**WILSON A. GO, PETITIONER, VS. HARRY A. GO, RESPONDENT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the April 21, 2008 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 100100 which annulled the May 4<sup>[2]</sup> and July 4, 2007<sup>[3]</sup> Orders of the Regional Trial Court (RTC) of Valenzuela City, Branch 172 in Civil Case No. 179-V-06. In its July 4, 2008 Resolution,<sup>[4]</sup> the Court of Appeals denied petitioner's motion for reconsideration.

On September 11, 2006, petitioner Wilson A. Go instituted an action<sup>[5]</sup> for partition with accounting against private respondent Harry A. Go in the RTC of Valenzuela City. The case was raffled to Branch 172 and docketed as Civil Case No. 179-V-06.

Petitioner alleged that he and private respondent are among the five children of Spouses Sio Tong Go and Simeona Lim Ang; that he and private respondent are the registered co-owners of a parcel of land, with an area of 7,151 square meters located at Valenzuela City, Metro Manila, covered by Transfer Certificate of Title (TCT) No. V-44555 issued on June 24, 1996 by the Registry of Deeds of Valenzuela, Metro Manila; that, upon mutual agreement between petitioner and private respondent, petitioner has possession of the Owner's Duplicate Copy of TCT No. V-44555; that on said land there are seven warehouses being rented out by private respondent to various businesses without proper authority from petitioner; that from March 2006 to September 2006, private respondent collected rentals thereon amounting to P1,697,850.00 without giving petitioner his one-half (1/2) share; that petitioner has repeatedly demanded payment of his rightful share in the rentals from private respondent to no avail; and that due to loss of trust and confidence in private respondent, petitioner has no recourse but to demand the partition of the subject land. Petitioner prayed that the RTC render judgment (a) ordering the partition of the subject land together with the building and improvements thereon in equal share between petitioner and private respondent; (b) directing private respondent to render an accounting of the rentals collected from the seven warehouses; (c) ordering the joint collection by petitioner and private respondent of the monthly rentals pending the resolution of the case; and (d) ordering private respondent to pay attorney's fees and the costs of suit.

In his answer,<sup>[6]</sup> private respondent claimed that during the lifetime of their father, Sio Tong Go, the latter observed Chinese customs and traditions; that, for this reason, when Sio Tong Go acquired the subject land together with one Wendell Simsim on November 23, 1995, the title to the same was placed in the names of petitioner, private respondent and Simsim instead of his (Sio Tong Go's) name and

that of his wife; that the interest of Simsim in the subject land was subsequently transferred in the names of petitioner and private respondent through the deed of extra-judicial settlement dated June 24, 1996; that the investment of their father flourished after businessmen started renting the warehouses built thereon; that during his lifetime, Sio Tong Go had control and stewardship of the business while petitioner and private respondent helped manage the business; that it was Sio Tong Go who entrusted the title to the subject land to petitioner for safekeeping and custody while the operations and management of the business were given to private respondent in accordance with the prevailing customs observed and practiced by their parents of Chinese origin; that the buildings and other improvements were sourced from the business and money of their parents and not from petitioner or private respondent; that partition is not proper because indivision was imposed as a condition by their father prior to his death; that the subject land cannot be partitioned without making the whole property unserviceable for the purpose intended by their parents; that partition will prejudice the rights of the other surviving siblings of Sio Tong Go and his surviving wife who depend on the rental income for their subsistence and to answer for the expenses in maintaining and preserving the subject land; that the amount of rental collection is only P228,000.00 per month or a total P1,596,000.00 for a period of six months and not P1,697,850.00 as alleged by petitioner; that the income must be offset with the payment for the debts of petitioner which were paid out from the rental income as well as the expenses for utilities and other costs of administration and preservation of the subject land; and that the issue of ownership must first be resolved before partition may be granted. Private respondent prayed that the complaint be dismissed; he counterclaimed for moral and exemplary damages, and attorney's fees.

On April 23, 2007, petitioner filed a motion<sup>[7]</sup> to require private respondent to deposit with the trial court petitioner's one-half (1/2) share in the rental collections from the date of the filing of the complaint on September 11, 2006 up to April 30, 2007, and every month thereafter as well as the rental collections from February 2006 to August 2006. On May 4, 2007, the trial court issued an order granting the motion not only with respect to the one-half (1/2) share prayed for but the entire monthly rental collections:

WHEREFORE, finding the instant motion to be well-taken, the defendant is hereby directed to deposit in Court within thirty (30) days from receipt hereof all the amounts collected by him from the lessees of the warehouses covered by the certificate of title in the names of the [petitioner] and [private respondent], and no withdrawal therefrom shall be allowed without the previous written authority of this Court.

SO ORDERED.<sup>[8]</sup>

Private respondent moved for reconsideration which was denied by the trial court in its July 4, 2007 Order. Aggrieved, he filed a petition for *certiorari* with the Court Appeals attributing grave abuse of discretion on the trial court. On April 21, 2008, the Court of Appeals issued the assailed Decision which nullified and set aside the May 4 and July 4, 2007 Orders of the trial court:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Orders dated May 4 and July 4, 2007 issued by respondent court are hereby ANNULLED and SET ASIDE.

No pronouncement as to costs.

SO ORDERED.<sup>[9]</sup>

The Court of Appeals noted, citing the ruling in *Maglucot-aw v. Maglucot*,<sup>[10]</sup> that an action for partition involves two phases. During the first phase, the trial court determines whether a co-ownership in fact exists while in the second phase the propriety of partition is resolved. Thus, until and unless the issue of co-ownership is definitely resolved, it would be premature to effect a partition of the subject property. Applying this principle by analogy, the appellate court concluded that the deposit of the monthly rentals with the trial court was premature considering that the issue of co-ownership has yet to be resolved:

The Court holds that with the issue of co-ownership, or to be precise, the *nature and extent* of private respondent's title on the subject real estate, *i.e.*, whether as owner of one-half (1/2) share, or a co-owner along with the other heirs of the late Sio Tong Go, not having been resolved first, it was premature for the respondent court to act favorable on private respondent's motion to deposit in court *all rentals* collected from the date of death of the said decedent, which according to petitioner is the true owner of the property under co-ownership. Such relief may be granted during the second stage of the action for partition, after due trial and the court has been satisfied that indeed private respondent-movant is the owner of the full one-half (1/2) share, and not just of an equal share with the other siblings and their mother, the surviving wife of Sio Tong Go. For, if it turns out that the subject property is owned not just by petitioner and private respondent but all the heirs of the late Sio Tong Go, then the latter had to be included as *parties in interest* in the partition case, pursuant to Sec. 1, Rule 69. As co-owners entitled to a share in the property subject of partition, assuming the evidence at the trial proves the contention of petitioner, the other sibling and mother of petitioner and private respondent are indispensable parties to the suit. Indeed, the presence of all indispensable parties is a condition *sine qua non* for the exercise of judicial power. Without the presence of all the other heirs as plaintiffs, the trial court could not validly render judgment and grant relief in favor of the private respondent.

Moreover, assuming the veracity of the allegations raised in the answer by petitioner, it would appear that the real property sought to be partitioned is merely held in trust by petitioner and private respondent for the benefit of their deceased father, and the latter's surviving heirs who succeeded him in his estate after his death. Thus, all the co-heirs and persons having an interest in the property are indispensable parties; as such, an action for partition will not lie without the joinder of the said parties. The circumstance that the names of the other alleged co-owners

and co-heirs do not appear in the certificate of title over the subject property is of no moment. It was held that the mere issuance of a certificate of title does not foreclose the possibility that the real property may be under co-ownership with persons not named therein.

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Petitioner's answer and the annexes attached thereto raise serious question on the right or interest of private respondent to seek segregation of the subject property to the extent of one-half (1/2) share thereof, and consequently, to receive rents or income of the property corresponding to such claimed one-half (1/2) share. That the rentals sought to be deposited in court is limited only to those collected following the death of their father only tends to support the position of petitioner that the subject real property is owned in common by the heirs of Sio Tong Go, and not just by petitioner and private respondent. It may also be noted that the complaint contains no categorical statement that private respondent, *before the filing of the complaint*, has in fact received such one-half (1/2) share out of the rentals collected from the lessees of the warehouses. Hence, respondent court's order for petitioner to deposit all rental income from the real estate subject of partition, which amounts to an accounting of rents and income pertaining to the co-owner share of private respondent *prior to the determination of the question of co-ownership*, constitutes grave abuse of discretion.<sup>[11]</sup>

Thereafter, the Court of Appeals denied petitioner's motion for reconsideration in Resolution dated July 4, 2008. Petitioner filed the instant petition for *certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion on the part of the appellate court in nullifying the aforementioned orders of the trial court.

The Court notes that petitioner pursued the wrong remedy when he filed a petition for *certiorari* under Rule 65 from the adverse ruling of the Court of Appeals. The province of a petition for *certiorari* is strict and narrow for it is limited to questions of lack of or excess in jurisdiction, or grave abuse of discretion. The proper remedy should have been a petition for review under Rule 45. However, the Court, pursuant to the liberal spirit which pervades the Rules and given the substantial issue raised, shall treat the present petition as a petition for review on *certiorari* under Rule 45 since it was filed within the 15-day reglementary period prescribed under said rule.<sup>[12]</sup>

The sole issue is whether the Court Appeals erred when it nullified the order requiring private respondent to deposit the monthly rentals over the subject land with the trial court during the pendency of the action for partition and accounting.

Petitioner contends that the subject order is merely provisional and preservatory in character. It is intended to prevent the undue dissipation of the rental income until such time that the trial court shall determine who is lawfully entitled thereto. Rule 69 of the Rules of Court on partition does not preclude the trial court from issuing orders to protect and preserve the rights and interests of the parties while the main action for partition is being litigated. In this case, there is no dispute that the subject property is registered in the names of petitioner and private respondent, this

being admitted by private respondent himself. Petitioner thus asserts that the trial court correctly ordered the deposit of the monthly rentals to safeguard the interests of the parties to this case.

Private respondent counters that assuming that the subject order is merely provisional in nature, such order needs a concrete ground to justify it. The fact that the title to the subject land is in the names of petitioner and private respondent does not automatically mean that there exists a co-ownership. The surrounding circumstances of this case support the contention that the subject land was bought by Sio Tong Go and the title thereto was placed in the names of his two sons, petitioner and private respondent, in observance of the Chinese customs and tradition. Private respondent emphasizes that petitioner began to claim his (petitioner's) alleged one-half (1/2) share in the rentals only after the death of their father on February 27, 2006 despite the fact that the subject land was bought way back on June 24, 1996. Petitioner's acquiescence for 10 years thus shows that he knew that the subject land was really owned by their father and was merely placed in their names. Further, the grant of the motion to deposit will unduly prejudice the whole family because they depend on the rental income for their living expenses as well as the costs of administration and preservation of the subject land. Also, petitioner failed to prove that there was an undue dissipation of the rental income by private respondent which would warrant the issuance of the subject order. Finally, the order to deposit the whole monthly rental income is erroneous because petitioner only prayed for the deposit of his alleged one-half (1/2) share therein and not the entirety thereof.

The petition is partly meritorious.

The appellate court held that the order granting petitioner's motion to deposit monthly rentals is premature because the question of co-ownership should first be resolved before said motion may be granted. However, as correctly argued by petitioner, the assailed order is merely preservatory or provisional in nature. It does not amount to an adjudication on the merits of the action for partition and accounting for the rentals are merely kept by the trial court until it is finally determined who is lawfully entitled thereto. Although the Rules of Court do not expressly provide for this kind of provisional relief, the Court has, in the past, sanctioned such practice pursuant to the court's general power to issue such orders conformable to law and justice<sup>[13]</sup> and to adopt means necessary to carry its jurisdiction into effect.<sup>[14]</sup>

In *The Province of Bataan v. Hon. Villafuerte, Jr.*,<sup>[15]</sup> the Court sustained the escrow order issued by the trial court over the lease rentals of the subject properties therein pending the resolution of the main action for annulment of sale and reconveyance. In upholding the authority of the trial court to issue such order, the Court ratiocinated thus:

In a manner of speaking, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of