

THIRD DIVISION

[G.R. No. 114217, October 13, 2009]

**HEIRS OF JOSE SY BANG, HEIRS OF JULIAN SY AND OSCAR SY,
[1] PETITIONERS, VS. ROLANDO SY, ROSALINO SY, LUCIO SY,
ENRIQUE SY, ROSAURO SY, BARTOLOME SY, FLORECITA SY,
LOURDES SY, JULIETA SY, AND ROSITA FERRERA-SY,
RESPONDENTS.**

[G.R. NO. 150797]

**ILUMINADA TAN, SPOUSES JULIAN SY AND ROSA TAN, ZENAIDA
TAN, AND MA. EMMA SY, PETITIONERS, VS. BARTOLOME SY,
ROSALINO SY, FLORECITA SY, ROLANDO SY, LOURDES SY,
ROSAURO SY, JULIETA SY, AND ROSITA FERRERA-SY,
RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

Before this Court are two Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court. The first Petition, G.R. No. 114217, assails the Decision^[2] dated May 6, 1993 and the Resolution^[3] dated February 28, 1994 of the Court of Appeals (CA) in CA-G.R. SP No. 17686. On the other hand, the second Petition, G.R. No. 150797, questions the Decision dated February 28, 2001 and the Resolution dated November 5, 2001 of the CA in CA-G.R. SP No. 46244.

The factual antecedents are as follows:

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On May 28, 1980, respondent Rolando Sy filed a Complaint for Partition against spouses Jose Sy Bang and Iuminada Tan, spouses Julian Sy and Rosa Tan, Zenaida Sy, Ma. Emma Sy, Oscar Sy, Rosalino Sy, Lucio Sy, Enrique Sy, Rosauro Sy, Bartolome Sy, Florecita Sy, Lourdes Sy, Julieta Sy, Rosita Ferrera-Sy, and Renato Sy before the then Court of First Instance of Quezon, Branch 2, docketed as Civil Case No. 8578.^[4]

Respondents Rolando Sy, Rosalino Sy, Lucio Sy, Enrique Sy, Rosauro Sy, Bartolome Sy, Julieta Sy, Lourdes Sy, and Florecita Sy are the children of Sy Bang by his second marriage to respondent Rosita Ferrera-Sy, while petitioners Jose Sy Bang, Julian Sy and Oscar Sy are the children of Sy Bang from his first marriage to Ba Nga, and petitioners Zenaida Tan and Ma. Emma Sy are the children of petitioner spouses Jose Sy Bang and Iuminada Tan.^[5]

Sy Bang died intestate in 1971, leaving behind real and personal properties, including several businesses.^[6]

During an out-of-court conference between petitioners and respondents, it was agreed that the management, supervision or administration of the common properties and/or the entire estate of the deceased Sy Bang shall be placed temporarily in the hands of petitioner Jose Sy Bang, as trustee, with authority to delegate some of his functions to any of petitioners or private respondents. Thus, the function or duty of bookkeeper was delegated by Jose Sy Bang to his co-petitioner Julian Sy, and the duty or function of management and operation of the business of cinema of the common ownership was delegated by petitioner Jose Sy Bang to respondent Rosauro Sy.^[7]

Herein petitioners and respondents also agreed that the income of the three cinema houses, namely, Long Life, SBS and Sy-Co Theaters, shall exclusively pertain to respondents for their support and sustenance, pending the termination of Civil Case No. 8578, for Judicial Partition, and the income from the vast parts of the entire estate and other businesses of their common father, to pertain exclusively to petitioners. Hence, since the year 1980, private respondents, through respondent Rosauro Sy, had taken charge of the operation and management of the three cinema houses, with the income derived therefrom evenly divided among themselves for their support and maintenance.^[8]

On March 30, 1981, the Judge rendered a First Partial Decision based on the Compromise Agreement dated November 10, 1980, submitted in Civil Case No. 8578 by plaintiff Rolando Sy and defendants Jose Sy Bang and Julian Sy. On April 2, 1981, the Judge rendered a Second Partial Decision based on the pretrial order of the court, dated March 25, 1981, entered into by and between respondent Renato Sy and petitioner spouses. Said First Partial Decision and Second Partial Decision had long become final, without an appeal having been interposed by any of the parties.^[9]

On June 8, 1982, the Judge rendered a Third Partial Decision,^[10] the dispositive portion of which reads as follows:

WHEREFORE, the Court hereby renders this Third Partial Decision:

(a) Declaring that all the properties, businesses or assets, their income, produce and improvements, as well as all the rights, interests or participations (sic) in the names of defendants Jose Sy Bang and his wife Iluminada Tan and their children, defendants Zenaida and Ma. Emma; both surnamed Sy, and defendants Julian Sy and his wife Rosa Tan, as belonging to the estate of Sy Bang, including the properties in the names of said defendants which are enumerated in the Complaints in this case and all those properties, rights and interests which said defendants may have concealed or fraudulently transferred in the names of other persons, their agents or representatives;

(b) Declaring the following as the heirs of Sy Bang, namely: his surviving widow, Maria Rosita Ferrera-Sy and her children, Enrique, Bartolome,

Rosalino, Rolando, Rosauero, Maria Lourdes, Florecita and Julieta, all surnamed Sy, and his children by his first wife, namely: Jose Sy Bang, Julian Sy, Lucio Sy, Oscar Sy and Renato Sy;

(c) Ordering the partition of the Estate of Sy Bang among his heirs entitled thereto after the extent thereof shall have been determined at the conclusion of the proper accounting which the parties in this case, their agents and representatives, shall render and after segregating and delivering to Maria Rosita Ferrera-Sy her one-half (1/2) share in the conjugal partnership between her and her deceased husband Sy Bang;

(d) Deferring resolution on the question concerning the inclusion for partition of properties in the names of Rosalino, Bartolome, Rolando and Enrique, all surnamed Sy.

SO ORDERED.

On June 16, 1982, petitioners filed a Motion to Suspend Proceedings and for Inhibition, alleging, among others, that the Judge had patently shown partiality in favor of their co-defendants in the case. This motion was denied on August 16, 1982.^[11]

On July 4, 1982, petitioners filed a Petition for Prohibition and for Inhibition (Disqualification) and Mandamus with Restraining Order with the Supreme Court docketed as G.R. No. 60957. The Petition for Prohibition and for Inhibition was denied, and the Petition for Mandamus with Restraining Order was Noted.^[12]

On August 17, 1982, the Judge issued two Orders: (1) in the first Order,^[13] Mrs. Lucita L. Sarmiento was appointed as Receiver, and petitioners' Motion for New Trial and/or Reconsideration, dated July 9, 1982 and their Supplemental Motion, dated July 12, 1982, were denied for lack of merit; and (2) in the second Order,^[14] the Judge ordered the immediate cancellation of the *lis pendens* annotated at the back of the certificates of title in the names of Bartolome Sy, Rosalino Sy and Rolando Sy.

On August 18, 1982, the trial court approved the bond posted by the receiver, Mrs. Lucita L. Sarmiento, Bartolome Sy, Rolando Sy and Rosalino Sy.^[15]

While the Petition for Mandamus with Restraining Order was pending before the First Division of the Supreme Court, petitioners filed a Petition for *Certiorari* and Prohibition before the Supreme Court, docketed as G.R. No. 61519. A Temporary Restraining Order was issued on August 31, 1982, to enjoin the Judge from taking any action in Civil Case No. 8578 and, likewise, restraining the effectivity of and compliance with the Resolution dated August 16, 1982, the two Orders dated August 17, 1982, and the Order dated August 18, 1982.

On September 2, 1982, petitioners withdrew their Petition for Mandamus with Restraining Order, docketed as G.R. No. 60957.

On September 11, 1982, an Urgent Manifestation and Motion was filed by Mrs. Lucita L. Sarmiento, the appointed receiver, which was opposed by petitioners on

September 24, 1982. [16]

After several incidents in the case, the Court, on May 8, 1989, referred the petition to the CA for proper determination and disposition.

The CA rendered the assailed Decision [17] on May 6, 1993, denying due course to and dismissing the petition for lack of merit. It held that Judge Puno acted correctly in issuing the assailed Third Partial Decision. The CA said that the act of Judge Puno in rendering a partial decision was in accord with then Rule 36, Section 4, of the Rules of Court, which stated that in an action against several defendants, the court may, when a judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others. It found that the judge's decision to defer resolution on the properties in the name of Rosalino, Bartolome, Rolando, and Enrique would not affect the resolution on the properties in the names of Jose Sy Bang, Iluminada, Julian, Rosa, Zenaida, and Ma. Emma, since the properties were separable and distinct from one another such that the claim that the same formed part of the Sy Bang estate could be the subject of separate suits.

The CA also upheld the judge's appointment of a receiver, saying that the judge did so after both parties had presented their evidence and upon verified petition filed by respondents, and in order to preserve the properties under litigation. Further, the CA found proper the order to cancel the notice of *lis pendens* annotated in the certificates of title in the names of Rosalino, Rolando and Bartolome.

The Motion for Reconsideration was denied on February 28, 1994. [18]

On April 22, 1994, petitioners filed this Petition for Review on *Certiorari* under Rule 43 of the Rules of Court.

The Court denied the Petition for non-compliance with Circulars 1-88 and 19-91 for failure of petitioners to attach the registry receipt. Petitioners moved for reconsideration, and the Petition was reinstated on July 13, 1994.

In this Petition for Review, petitioners seek the reversal of the CA Decision and Resolution in CA-G.R. SP No. 17686 and, consequently, the nullification of the Third Partial Decision and orders of the trial court in Civil Case No. 8578. They also pray for the Court to direct the trial court to proceed with the reception of further evidence in Civil Case No. 8578. [19] In particular, petitioners allege that the CA decided questions of substance not in accord with law when it upheld the trial court's Third Partial Decision which, they alleged, was rendered in violation of their rights to due process.

Petitioners narrate that the trial court initially gave them two trial days - May 26 and 27, 1982 - to present their evidence. However, at the hearing on May 26, the judge forced them to terminate the presentation of their evidence. On June 2, 1982, following petitioners' submission of additional documentary evidence, the trial court scheduled the case for hearing on June 8 and 9, 1982, at 2 o'clock in the afternoon "in view of the importance of the issue concerning whether all the properties in the names of Enrique Sy, Bartolome Sy, Rosalino Sy, and Rolando Sy and/or their respective wives (as well as those in the names of other party-litigants in this case) shall be declared or included as part of the Estate of Sy Bang, and in view of the

numerous documentary evidences (sic) presented by Attys. Raya and Camaligan." At the June 8 hearing, petitioners presented additional evidence. Unknown to them, however, the trial court had already rendered its Third Partial Decision at 11 o'clock that morning. Thus, petitioners argue that said Third Partial Decision is void.^[20]

They also question the trial court's First Order dated August 17, 1982 and Order dated August 18, 1982 granting the prayer for receivership and appointing a receiver, respectively, both allegedly issued without a hearing and without showing the necessity to appoint a receiver. Lastly, they question the Second Order dated August 17, 1982 canceling the notice of *lis pendens ex parte* and without any showing that the notice was for the purpose of molesting the adverse parties, or that it was not necessary to protect the rights of the party who caused it to be recorded.^[21]

On May 9, 1996, Rosita Ferrera-Sy filed a Motion for Payment of Widow's Allowance. She alleged that her deceased husband, Sy Bang, left an extensive estate. The properties of the estate were found by the trial court to be their conjugal properties. From the time of Sy Bang's death in 1971 until the filing of the motion, Rosita was not given any widow's allowance as provided in Section 3, Rule 83 of the Rules of Court by the parties in possession and control of her husband's estate, or her share in the conjugal partnership.^[22]

In their Comment on the Motion for Payment of Widow's Allowance, petitioners argued that Section 3, Rule 83 of the Rules of Court specifically provides that the same is granted only "during the settlement of the estate" of the decedent, and this allowance, under Article 188 of the Civil Code (now Article 133 of the Family Code), shall be taken from the "common mass of property" during the liquidation of the inventoried properties.^[23] Considering that the case before the trial court is a special civil action for partition under Rule 69 of the Rules of Court, Rosita is not entitled to widow's allowance.

On September 23, 1996, the Court granted the Motion for Payment of Widow's Allowance and ordered petitioners jointly and severally to pay Rosita P25,000.00 as the widow's allowance to be taken from the estate of Sy Bang, effective September 1, 1996 and every month thereafter until the estate is finally settled or until further orders from the Court.^[24]

In a Manifestation dated October 1, 1996, petitioners informed the Court that Rosita and co-petitioner Enrique Sy had executed a waiver of past, present and future claims against petitioners and, thus, should be dropped as parties to the case.^[25] Attached thereto was a *Sinumpaang Salaysay* wherein Rosita and Enrique stated that they were given P1 million and a 229-square meter parcel of land, for which reason they were withdrawing as plaintiffs in Civil Case No. 8578.^[26]

Respondents, except Enrique Sy, filed a Counter-Manifestation and Opposition to Drop Rosita Sy as a Party.^[27] They said that it would be ridiculous for Rosita to give up her share in Sy Bang's estate, amounting to hundreds of millions of pesos, which had already been ordered partitioned by the trial court, to the prejudice of her seven full-blooded children. They alleged that Rosita was not in possession of her full faculties when she affixed her thumbmark on the *Sinumpaang Salaysay* considering