

## THIRD DIVISION

[ G.R. NO. 132856, August 28, 2006 ]

**AUGUSTO GATMAYTAN, PETITIONER, VS. COURT OF APPEALS, DEPUTY SHERIFF MARVIN I. BELMONTE, REGIONAL TRIAL COURT, BRANCH 87, QUEZON CITY, REGISTER OF DEEDS (OF CALAMBA), REGISTER OF DEEDS (OF MANDALUYONG, M.M.), AND REGISTER OF DEEDS (OF QUEZON CITY), RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

This petition for review assails the Decision of the Court of Appeals in CA-G.R. SP No. 35766, dismissing Augusto Gatmaytan's (petitioner) suit for mandamus to execute, enforce and implement the orders dated 30 April 1990,<sup>[1]</sup> 21 January 1993<sup>[2]</sup> and 2 February 1993<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 81, Quezon City. These orders relate to the payment of petitioner's attorney's fees on account of his services as counsel in an estate proceeding.

Petitioner was hired as counsel for Preciosa B. Garcia (Preciosa) initially in connection with a petition for the issuance of letters of administration of the estate of her late husband, Amado G. Garcia. In a subsequent retainer agreement<sup>[4]</sup> dated 1 March 1975, petitioner undertook to represent Preciosa and her daughter, Agustina Garcia in Special Proceedings No. Q-19738, entitled "In the Matter of the Estate of Amado G. Garcia." Under the agreement, petitioner was entitled to payment of a contingent fee of 30% of the entire estate. Preciosa was eventually appointed as special administrator, an appointment which was sustained by the Supreme Court in *Garcia Fule v. Court of Appeals*,<sup>[5]</sup> decided in 1976.

On 17 November 1978, the RTC (then CFI) per its decision<sup>[6]</sup> of even date granted letters of administration to Preciosa, as the surviving spouse of the deceased. This decision was affirmed by the Court of Appeals on 29 December 1981<sup>[7]</sup> and later became final and executory.<sup>[8]</sup>

Petitioner continuously represented Preciosa and Agustina in other matters relating to the probate proceedings, such as, but not limited to, their declaration as sole heirs of Amado Garcia and the subsequent filing of the project of partition. Eventually, the project of partition<sup>[9]</sup> was filed on 10 December 1984. This document was prepared and signed by Preciosa and Agustina, with "the assistance" of petitioner. It was provided therein, to wit:

9. Taxes, liens, auditor's and **attorney's fees**, as well as all other expenses, **shall pertain to and be borne by the estate, Preciosa and Agustina in proportion to their interest in the entire estate**, assets and properties subject of this project of

partition, and shall be paid before their share or interest is distributed or given to Preciosa and Agustina.<sup>[10]</sup> [Emphasis supplied.]

On 18 April 1986, petitioner filed a motion,<sup>[11]</sup> praying that the trial court authorize the payment of his attorney's fees. This was resolved in an Omnibus Resolution<sup>[12]</sup> dated 29 August 1986 decreeing, thus:

As to the attorney's fees, considering the services rendered by Atty. Augusto G. Gatma[y]tan, and as this case has been pending for twelve years, the Court fixes the fee of Atty. Gatma[y]tan at thirty percent (30%) of whatever inheritance may be received by Preciosa Garcia and Agustina Garcia in this [sic] proceedings. However, as it does not appear that funds are available for payment of such fees, the payment thereof is deferred until funds are available.<sup>[13]</sup>

On 30 April 1990, the RTC issued an order declaring Preciosa and Agustina as the sole heirs of the deceased. In the same order, the probate court approved the project of partition submitted by the heirs, including the provision on payment of attorney's fees prior to the distribution of their shares to the estate.<sup>[14]</sup> Under the project of partition, the amount of the conjugal estate was pegged at P900,711.47.<sup>[15]</sup> All assets and properties in the conjugal estate are to be divided, such that one-half (1/2) thereof is awarded to Preciosa as her conjugal share, and the other half shall pertain to and be divided between Preciosa and Agustina in equal shares.<sup>[16]</sup>

On 21 January 1993, the probate court issued an order granting petitioner's motion for execution pending appeal<sup>[17]</sup> of the order of 30 April 1990, authorizing the payment to him of attorney's fees at 30% of the inheritance. The relevant portion of said order provides:

WHEREFORE, let a writ of execution be issued forthwith. It is understood that the attorney's fees at thirty (30%) percent of the inheritance fixed by this court in its order dated August 29, 1986 (thru Judge Paño) shall be paid.

IT IS SO ORDERED.<sup>[18]</sup>

Pursuant thereto, on 2 February 1993, the probate court issued a writ of execution<sup>[19]</sup> addressed to Deputy Sheriff, Marvin I. Belmonte (respondent). Thereafter, the services of petitioner were terminated.<sup>[20]</sup> On 4 March 1994, respondent filed a partial sheriff's return<sup>[21]</sup> certifying that copies of the writ were properly served on the Registers of Deeds of Mandaluyong, Calamba, Laguna and Quezon City.

On 8 March 1993, petitioner filed a motion praying for the payment of attorney's fees by way of execution of a deed of assignment.<sup>[22]</sup> In his Manifestation and Motion dated 7 October 1993, petitioner represented that the fair market value of the estate is about P1.2 Billion.<sup>[23]</sup> Preciosa and Agustina, on the other hand, opposed petitioner's motion and instead prayed that the attorney's fees of 30% be based on the value as computed and stated in the project of partition duly approved

by the probate court in the Order of 30 April 1990.<sup>[24]</sup>

On 10 June 1994, the probate court issued an Order<sup>[25]</sup> directing the heirs to pay petitioner the amount of Ten Million Pesos (P10,000,000.00) as attorney's fees, the dispositive portion of which provides:

WHEREFORE, the administratrix and heirs are hereby ordered to pay Atty. Augusto Gatmaytan, their former counsel in the [a]bove-entitled case and related cases, the amount of TEN MILLION PESOS (P10,000,000.00) for services rendered in the settlement of the estate of Amado Garcia, deducting therefrom the amounts paid as attorney's fees to said counsel for representing them in Court of Appeals Cases, C.A.-G.R. Nos. 03221-SP, 65599-R; and in Supreme Court Cases Nos. G.R. L-4502, 42670 and 63964; and advances received by him for his advocacy to the instant special proceedings.

IT IS SO ORDERED.<sup>[26]</sup>

The rationale of the said order was stated in this wise:

None of the two propositions coming from the counsel-movant on one side, and from the heirs, on the other, can form a reasonable basis for the court to determine the amount of attorney's fees claimed by the counsel-movant. The latter's estimate at one billion and two hundred million pesos (P1,200,000,000.00) would include values of properties other than those contemplated by the court when it granted 30% of the inheritance. On the other hand, the heirs['] valuation of one-half of the total value of the property, at P450,355.73 is based on the assessed value of the estate ten years ago in 1984, when the project of partition was prepared and submitted to court for the first time. Furthermore, the heirs propose to merely divide the total value of the estate into two, without taking into account that not all the properties mentioned in the project of partition are conjugal. With these observations, the Court finds counsel's claim to 30% of [P]1.2 billion of the [sic] property which is three hundred sixty million pesos (P360,000,000.00) as very unconscionable and that the heirs [sic] figure of P135,106.71, on the other hand, would make the attorney's fees unreasonably low for the settlement of the estate which took the lawyer twenty years to advocate.

<sup>[27]</sup>

Petitioner's motion for reconsideration of the order was denied in an Order dated 30 September 1994.<sup>[28]</sup>

On 7 November 1994, petitioner filed with the probate court a notice of appeal from the orders dated 10 June 1994 and 30 September 1994.<sup>[29]</sup> The probate court initially gave due course to the appeal on 13 December 1994, only to recall it in an Order<sup>[30]</sup> dated 6 January 1995 on the ground that petitioner failed to file a record on appeal within the reglementary period, the claim for attorney's fees being an incident of the probate proceedings. On 10 April 1995, the probate court eventually allowed petitioner to interpose his appeal upon submission of a record on appeal supplemented by pleadings, motions and all interlocutory orders related to the order appealed from.<sup>[31]</sup> On 10 July 1995, petitioner submitted his Manifestation and

Supplemental Record on Appeal.<sup>[32]</sup> On 18 July 1995, the probate court gave due course to his appeal and the entire records of the case were ordered elevated to the Court of Appeals.<sup>[33]</sup>

Meanwhile, on 11 November 1994, petitioner filed a petition for mandamus before the Court of Appeals, seeking the full execution of the writ dated 2 February 1993, particularly the payment of attorney's fees of thirty (30%) of the entire estate before distribution.<sup>[34]</sup>

The petition was dismissed by the Court of Appeals in a Decision dated 28 August 1997.<sup>[35]</sup> The Court of Appeals held that the writ of execution sought to be enforced by petitioner had already been amended by the 10 June 1994 order of the probate court fixing the attorney's fees at P10 million. The appellate court explained:

The writ of execution dated February 2, 1993 states only that "the attorney's fees at thirty percent (30%) of the inheritance fixed by this Court in its order dated August 29, 1986 (thru **Judge Paño**) shall be paid." It does not provide for the annotation of herein petitioner's attorney's fees on the titles. Moreover, said writ of execution dated February 2, 1993 was overtaken by the order dated June 10, 1994 fixing petitioner's attorney's fees at Ten Million (P10,000,000.00) Pesos, less the deductions therein specified. Be that as it may, the writ of execution in question cannot be enforced as insisted by the petitioner considering that the attorney's fees therein stated was amended by the order of the court a quo dated June 10, 1994. Respondents Registers of Deeds, therefore, do (sic) not have a ministerial duty to so annotate petitioner's claim amounting to 30% of the Garcia estate.<sup>[36]</sup>

Hence, the instant petition seeks the reversal of the dismissal of the petition for mandamus. It prays for the issuance of the said writ to compel respondents to enforce, effect and implement the probate court's orders dated 30 April 1990 and 21 January 1993, and the writ of execution dated 2 February 1993.<sup>[37]</sup> Otherwise put, petitioner seeks to compel payment of attorney's fees from the estate of Amado Garcia and from the inheritance of Preciosa and Agustina.

At the core of the petition is the question whether the Court of Appeals acted correctly in denying the petition for mandamus, a recourse which under the circumstances, is peculiar, to say the least. We resolve the question in the affirmative.

In the instant case, petitioner prays for the issuance of a writ of mandamus to compel respondents to register and annotate petitioner's name and interest on the certificates of title covering the properties and assets of the estate, or at least enter a memorandum of attorney's lien on such titles. According to petitioner, it is the ministerial duty of respondents to enforce, effect and implement the writ of execution dated 21 January 1993 ordering payment of attorney's fees.<sup>[38]</sup>

In contrast, respondents argue that the probate court's order dated 10 June 1994 amended the previous orders of the court on the same subject.<sup>[39]</sup> They contend that by virtue of the 10 June 1994 order, the writ of execution could no longer be enforced. Hence, it was not the ministerial duty of the respondents to accede to the