

## SECOND DIVISION

[ G.R. No. 116340, June 29, 2000 ]

**CECILIA GASTON, PETITIONER, VS. COURT OF APPEALS, HON.  
REYNALDO M. ALON, AS JUDGE, REGIONAL TRIAL COURT OF  
SILAY CITY, BRANCH 40, AND GERTRUDES MEDEL,  
RESPONDENTS.**

### D E C I S I O N

**BUENA, J.:**

This is a petition for review of the Decision<sup>[1]</sup> dated December 16, 1993 of the Court of Appeals in CA-G.R. SP No. 29987 which dismissed, for lack of merit, petitioner's petition for *certiorari* which sought to annul the Order dated January 17, 1992 of the Regional Trial Court of Silay City, Branch 40 in Civil Case No. 569 entitled "Gertrudes Medel, plaintiff, versus Sofia de Oca Vda. De Gaston, et al., defendants," allegedly for having been issued with grave abuse of discretion.

The undisputed antecedents are as follows:

In 1972, herein private respondent Gertrudes Medel filed a complaint before the Regional Trial Court of Silay City, Branch 40, docketed as Civil Case No. 569, against petitioner Cecilia Gaston's mother Sofia de Oca vda. De Gaston and other defendants for recovery of her share over the therein mentioned lots, claiming that, as her mother, Gliceria de Oca, is the daughter of Mariano de Oca by his first marriage to Sebastiana Vicentino, she (Gertrudes Medel) is entitled to the properties left by Mariano de Oca; that the said court rendered judgment dismissing said Civil Case No. 569; that upon appeal, the Court of Appeals, in CA-G.R. CV No. 11904, reversed the trial court's decision and entered another one, the dispositive portion thereof stating<sup>[2]</sup> -

"WHEREFORE, in view of the foregoing, the decision of the court *a quo* is hereby REVERSED and another one is hereby rendered declaring TCT Nos. RT-1412, RT-1874 and RT-1875, covering Lots Nos. 771-B, 759-A and 1205 all of Talisay Cadastre, null and void and ordering the Register of Deeds concerned to issue new Titles covering Lots 771-B, 759-A and 1205, inclusive of the share of plaintiff-appellant in said properties, after the defendants-appellees shall have partitioned the properties to include the share of the appellant, as they are hereby directed to do so, within sixty (60) days from the finality of this decision. Costs against the defendants-appellants (*sic*)."<sup>[3]</sup>;

that a petition for review on *certiorari* of the said decision of the Court of Appeals filed by Sofia de Oca Vda. De Gaston, et al. in this Court was dismissed and final judgment was entered on January 14, 1991; that on November 27, 1991, Gertrudes Medel filed with the Regional Trial Court of Silay City, in Civil Case No. 569, a

"Motion to Require Defendants to Submit Project of Partition and to Cite Them in Contempt" principally alleging that:

"2. Despite the lapse of sixty (60) days from the finality of the aforesaid judgment, defendants failed and refused and disobeyed to comply thereof without any justification;

"3. Several representations were made with defendants' counsel to hasten the submission of the required project of partition, however, nothing has been done by the defendants up to the present despite the letter-request of plaintiff's counsel dated November 12, 1991. x x x;

"4. It is therefore imperative that defendants shall be required by this Honorable Court to submit the project of partition in this case within five (5) days, otherwise they should be cited in contempt '*motu proprio*'.";<sup>[4]</sup>

that the respondent court in its order of December 3, 1991 directed counsel for the defendants "to comment on the Motion to Require Defendants to Submit Project of Partition and to Cite Them in Contempt filed by the plaintiff thru counsel, within five (5) days from receipt of the Order, otherwise this Court will partition the property"; and that on January 17, 1992, the Regional Trial Court of Silay City issued its Order, to wit:

"Acting on the *ex-parte* motion to partition property filed by the plaintiff and finding the same to be well-taken, considering the Order of this Court dated December 3, 1991, said motion is hereby granted and Geodetic Engineer Hernando B. Guillen is hereby commissioned to conduct a survey of the boundaries of Lot 771-B covered by Transfer Certificate of Title RT-1412 (34083) and to segregate therefrom a portion of .8121 hectare which shall be titled and registered in the name of plaintiff Gertrudes Medel; and, the Register of Deeds of Negros Occidental is hereby ordered to cancel Transfer Certificate of Title No. RT-1874 (34082) with an area of 6.9595 hectares and to issue in lieu thereof a new title in the name of Gertrudes Medel, pursuant to the decision of the Court of Appeals dated March 30, 1990.

"SO ORDERED.

"Silay City, January 17, 1992."<sup>[5]</sup>

By virtue of the said Order dated January 17, 1992, Transfer Certificate of Title No. T-160133 for Lot 759-A was issued in the name of Gertrudes Medel and Transfer Certificate of Title No. T-161312 for Lot 771-B-2-A was likewise issued in her name.<sup>[6]</sup>

On August 7, 1992, petitioner filed with the Court of Appeals a petition for *certiorari* docketed as CA-G.R. SP No. 29987, assailing the above quoted Regional Trial Court's Order dated January 17, 1992, and seeking its nullification on the ground that the trial court, in the issuance thereof, allegedly gravely abused its discretion because -

- 1.) the partitioning of Lot No. 771-B was without a project of partition signed by the parties and without observance of

- the procedure set forth in Sections 2 to 7 of Rule 69 of the Revised Rules of Court, and
- 2.) the ordering of the cancellation of Transfer Certificate of Title No. RT-1874 for Lot No. 759-A as well as the ordering of the Register of Deeds concerned to issue a new title in lieu thereof without a project of partition is allegedly contrary to the said decision of the Court of Appeals in CA-G.R. CV No. 11904.

On December 16, 1993, the Court of Appeals rendered the herein assailed Decision in CA-G.R. SP No. 29987, the dispositive portion of which reads:

"WHEREFORE, the amended petition is DISMISSED for lack of merit."

Petitioner's motion for reconsideration of the said Decision was denied by the Court of Appeals in its Resolution dated June 22, 1994.<sup>[7]</sup>

Hence, the instant petition for review filed by petitioner on the ground that -

"The respondent Court of Appeals has decided the case in a manner not in accord with law and with applicable decision of this Honorable Court."

and raising the following issues:

1. Whether or not the order dated January 17, 1992 is null and void as far as it affects the final judgment.
2. Whether or not the petition for nullification of the questioned order has already prescribed.

On the first issue, petitioner alleges that contrary to the final judgment, the questioned order had conveyed the subject lots to respondent Medel without first having the subject lots partitioned, resulting to exceeding the areas conveyed to respondent Medel and deprivation of the shares of petitioner over Lot 759-A; that the final judgment is clear that before conveying the subject lots to the parties, it must firstly be partitioned by the defendants in order to determine exact areas to be conveyed to the parties; that contrary thereto, respondent RTC Judge, in the questioned order, had conveyed the whole Lot 759-A to respondent Medel when it ordered the Register of Deeds of Negros Occidental to cancel TCT No. RT-1874 and to issue a new title in lieu thereof in the name of respondent Medel, thus resulting in the deprivation of the right of inheritance of petitioner's mother over the aforesaid lot, and altering what is in a final judgment; and that, when a decision has become final and executory, the court no longer has the power and jurisdiction to alter, amend or revoke; that the questioned order, therefore, had rendered the final judgment invalid, as it produces the effect that the final judgment is nothing but a snare and a delusion, protecting nobody; and that the questioned order is null and void, and should be nullified.

The Court finds petitioner's contentions to be untenable.

On this point, the respondent Court of Appeals, in its assailed Decision, correctly ratiocinated, and we quote: