

THIRD DIVISION

[G.R. No. 116155, December 17, 1998]

FRANCISCO, JR., DOMINADOR, LEONILA, LEOPOLDO, MERLA, BERNARDINO, CONCHITA, REX AND RAMONITO, ALL SURNAMED GULANG, PETITIONERS, COURT OF APPEALS AND FLORENCIA VDA. DE GULANG, RESPONDENTS.

DECISION

ROMERO, J.:

Assailed before this Court in a petition for review on certiorari with prayer for the issuance of a writ of preliminary injunction is the Decision^[1] of the Court of Appeals affirming the special order of the Regional Trial Court of Davao City, Branch 15 that ordered execution pending appeal of the decision in Civil Case No. 20569-91, an action for judicial partition of real estate filed by private respondent Florencia vda. de Gulang against the nine (9) petitioners who are her children.

Private respondent and Francisco Gulang were married in 1941. On August 31, 1949, Gregoria Gulang, Francisco's mother, sold one-half of her twenty-hectare land to her son Francisco for one thousand pesos (P1,000.00). Three months later or on November 29, 1949, Francisco caused the registration of the deed of sale involving the ten-hectare property with the Register of Deeds and accordingly obtained a new title, TCT No. T-2119, in his name.

In 1963, private respondent left the conjugal abode as a result of a violent quarrel with Francisco. Soon after, Francisco also left their home to live in isolation for the next twenty-five (25) years. On May 13, 1990, Francisco died intestate survived by his wife, private respondent, and nine (9) of their eleven (11) children. The surviving children are Francisco, Jr., Dominador, Leonila, Leopoldo, Merla, Bernardino, Conchita, Rex and Ramonito.

The estate of Francisco consisted of two (2) parcels of land with one located at Budbud, Bunawan, Davao City and measuring 101,318 square meters, and the other located at Licanan, Bunawan, also in Davao City, with an area of 21,553 square meters. The Budbud property was registered in the name of "Francisco Gulang married to Florencia Gulang" under TCT No. T-2119 while the Licanan property was registered in the name of Francisco Gulang under TCT No. T-33640.

On July 30, 1990, the heirs of Francisco executed a deed of extrajudicial settlement of estate and waiver of rights. In that document, private respondent waived her rights and interests in the property covered by TCT No. T-2119 in favor of her children. While petitioners waived their rights and interests in the property covered by TCT No. T-33640 in favor of private respondent.^[2] On November 11, 1991, petitioners caused the registration of the deed of extrajudicial settlement of estate and waiver of rights with the Register of Deeds of Davao. Subsequently, each of

petitioners and private respondent obtained new certificates of title with private respondent having TCT No. 169070 in her name and her nine (9) children, TCT Nos. T-169060 to 169069, with Rex having two titles in his name.

Sometime in 1991, a neighbor advised private respondent about the illegality of the document executed by her and her children. Efforts to settle the family's differences at the barangay level having failed,^[3] private respondent on February 5, 1991 filed before the Regional Trial Court of Davao City, an action for judicial partition praying that the two (2) parcels of land in her husband's name be partitioned among his heirs.^[4]

In answer, petitioners alleged that private respondent left the conjugal home, her husband and children aged three (3) to twenty-three (23) years to live with a lesbian; that private respondent filed a criminal case for light threats against Francisco who was subsequently acquitted of the crime charged; that it was only after the death of Francisco that private respondent tried to make amends with them "with the end purpose of asking a share from the property;" that the properties left by Francisco were his exclusive property as he had acquired these by lucrative title either by succession or inheritance after private respondent had abandoned him, and that, despite her having abandoned them, they showed their love and concern for their "wayward" mother by giving her a share in the property through the deed of extrajudicial settlement of estate. Hence, they prayed that the complaint be dismissed and that private respondent be directed to pay them moral damages of P50,000.00, exemplary damages of P10,000.00, reimbursement of initial expenses in the amount of P1,000.00 and attorney's fees of P30,000.00.^[5]

During the pre-trial, the parties agreed to limit the issue to "whether the extrajudicial settlement of estate is valid or not." Thus, trial on the merits ensued.

The lower court^[6] rendered a decision disposing of Civil Case No. 20569-91 as follows:

"WHEREFORE, judgment is hereby rendered as follows:

1) The Extra-Judicial Settlement of Estate and Waiver of Rights (Exh. 1) is declared void.

1a) Transfer Certificates of Titles a) 169060 b) 169061 c) 169062 d) 169063 e) 169064 f) 169065 g) 169066 h) 169067 i) 169068 j) 169069 and k) 169070 (sic) (Exhs. `11' to `21') are hereby declared void.

2) The defendants are ordered to return to the Davao City Register of Deeds of (sic) eleven titles above mentioned so that they can (be) cancelled.

3) That the Davao City Register of Deeds, (upon) the return of the titles, shall cancel the ten titles which form part of the Budbud lot (exhs. `11' to `20') and issue a Transfer Certificate of Title covering the 10.1318 hectare Budbud lot which was formerly covered by TCT No. 2119 in the name of Francisco Gulang married to Florencia P. Gulang.

4) That upon the surrender of TCT No. 169070 (Exh. 21), the Register of Deeds shall cancel the same and issue a Transfer Certificate of Title covering the 2.1553 hectare lot in the name of Francisco Gulang.

5) That the estate of the late Francisco Gulang, Sr. consists of the following:

5-a) one half or five hectares and six hundred fifty nine square meters of the Budbud lot covered by TCT No. 2119 while the other half or five hectares six hundred fifty nine square meters belong to the plaintiff.

5-b) One half or one hectare and seven hundred seventy six point fifty square meters of the Licanan lot covered by TCT No. 33640 while the other half belongs to the plaintiff.

6) That the estate of Francisco Gulang, Sr. that can be the subject of judicial or an extrajudicial settlement is the 5.659 hectares in TCT No. 2119 and the 1.776.50 hectare in TCT No. 33640.

7) That the other half of the lots covered by TCT No. 2119 and TCT No. 33640 is the share of the plaintiff and there is nothing on record that the plaintiff waived her right to her share in favor of the defendants.

SO ORDERED."

In thus holding, the lower court thereby ruled that the deed of extrajudicial settlement with waiver of rights was erroneously premised because one-half of the property covered by TCT No. 2119 and one-half of that covered by TCT No. 33640 both belonged to private respondent and therefore Francisco's estate was the other half of those properties. It found petitioners' allegation that those properties were the exclusive or capital properties of Francisco as not having been proven.

Petitioners filed a notice of appeal and on February 2, 1993, the lower court accordingly directed that records of the case be elevated to the Court of Appeals.^[7]

On February 6, 1993, private respondent received a copy of the decision and, on February 9, 1993, she filed a motion for execution of judgment pending appeal. She cited as "special good reasons" therefor the following: (a) she was already 71 years of age and with a precarious state of health; (b) there was danger that the judgment would become "ineffectual" as petitioners had been selling lots or portions of the disputed properties, and (c) she was "in dire need of life support" as she had no other sources of income but the properties in dispute.^[8]

In their comment, petitioners argued that the court a quo could no longer entertain the motion by virtue of the perfection of their appeal to the Court of Appeals thus divesting the lower court of its discretionary power to issue or grant execution pending appeal.^[9] Corollarily, petitioners added that while private respondent's age was a good reason for such execution, the status quo should be maintained. The two (2) hectares allotted to private respondent under the deed of extrajudicial settlement of estate was enough for her "sustenance and livelihood." Petitioners asserted further that the dispositive portion of the lower court's decision did not

direct partition of the properties; consequently, private respondent's portion thereof could not be given to her.^[10]

In reply, private respondent protested that the two-hectare property she was cultivating was barely enough to support her sustenance and medicine because it was planted to only forty (40) fruit-bearing coconut trees as the rest of the coconut trees were newly planted. She averred that it was to the best interest of everyone that the decision be executed since the properties had almost been "sold out" by petitioners.

On February 22, 1993, the lower court issued the following order which, quoted in full, states:

"SPECIAL ORDER

The Rules of Court and jurisprudence is clear as to when an appeal is perfected; it is on the last day to appeal. The movant received a copy of the decision on February 6, 1993. The motion for execution of judgment pending appeal was filed on February 9, 1993 hence the court can still rule on the said motion.

The court is satisfied that the movant is seventy years old and after bearing eleven children and working in the farm for more than 60 years in (sic) already worn out physically and might not be (able) to enjoy the fruits of her victory. It is also clear that she needs money for her food, clothing and shelter and that the properties involved in this case are the main source of her support. Again, there is a danger that some of the nine defendants might try to sell, mortgage and/or transfer some of lots covered by the different titles.

In view whereof, this Special Order granting the Motion for Execution pending appeal is hereby granted.

SO ORDERED."^[11]

Petitioners moved to reconsider the special order alleging failure on the part of the lower court to appreciate their contentions in their opposition to the motion for execution pending appeal inasmuch as their opposition was filed on the date the special order was issued.^[12]

In denying the motion for reconsideration, the lower court ruled thus:

"This refers to the motion for reconsideration of the defendants from February 22, 1993 Special Order.

The movants claim that an immediate execution is not needed because the two hectares given to the plaintiff is sufficient for her sustenance and livelihood and that nothing in the dispositive portion of the said decision can be executed to help the plaintiff considering that it merely ordered the return of the titles to the plaintiff.

These grounds are not meritorious. The plaintiff in her

comments/manifestation/objection to the opposition clearly showed that the income of the two hectare lot is not enough for her sustenance. Moreover, to say that nothing in the dispositive portion of said decision can be executed to help the plaintiff is erroneous, considering that the judgment does not merely ordered (sic) the return of the eleven (11) titles but decreed that one half of the estate of the late Francisco Gulang, Sr., belong to the plaintiff.

Furthermore, the Special Order was issued after taking into consideration the facts and circumstances surrounding this case and the court found that good reasons exists (sic) for the immediate execution of the judgment.

In view whereof, the motion for reconsideration is denied there being no cogent reason for the court to reconsider its Special Order dated February 22, 1993. Let Writ of Execution pending appeal issue.

SO ORDERED."^[13]

On May 13, 1993, petitioners filed with the Court of Appeals a petition for certiorari with prayer for the issuance of a writ of preliminary injunction, charging the lower court with grave abuse of discretion in "directing partition of the properties in question" and in giving to private respondent one-half of the entire estate.

On June 3, 1993, the Special Third Division of the Court of Appeals^[14] dismissed the undocketed petition^[15] for nonpayment of docket fees, non-inclusion in the caption of the petition the docket number of the case in the lower court as required by Circular No. 28-91 and failure to attach proof of service of the petition.^[16]

Petitioners moved to reconsider the dismissal of the petition alleging negligence on the part of counsel's personnel in their failure to transmit docket fee.^[17] Private respondent, on the other hand, opposed the motion for reconsideration on the ground that the petition for certiorari had been rendered moot and academic by the partial execution of the decision.^[18] The partial return of service dated June 23, 1993 of Sheriff Reynaldo Z. Inid showed that private respondent's counsel had turned over to him the following titles: (1) TCT No. T-169066 (Bernardino Gulang); (2) TCT No. T-169064 (Leopoldo Gulang); (3) TCT No. T-169068 (Leonila Gulang); (4) TCT No. T-169061, and (5) TCT No. T-169070 (Flores Pasay vda. de Gulang [private respondent]). The same sheriff's return stated that petitioners Rex, Francisco, Jr. and Conchita Gulang did not comply with the writ of execution pending appeal.^[19]

On July 28, 1993, the Court of Appeals reconsidered its Resolution of June 3, 1993, accepted payment of docket fee, and noted compliance with the deficiencies mentioned in said Resolution. Thus revived, the petition for certiorari was eventually disposed of in the herein questioned Decision of May 31, 1994.

In dismissing the petition, the Court of Appeals held that Section 2 of Rule 39^[20] of the Rules of Court does not state the reasons for granting execution pending appeal and therefore the court shall exercise its discretion thereon. Quoting the reasons