

THIRD DIVISION

[G.R. No. 73592, March 15, 1996]

JOSE CUENCO BORROMELO, PETRA BORROMELO AND VITALIANA BORROMELO, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT, HON. FRANCISCO P. BURGOS, RICARDO V. REYES, DOMINGO ANTIGUA AND NUMERIANO G. ESTENZO, RESPONDENTS.

DECISION

PANGANIBAN, J.:

What constitutes "forum-shopping" under the Interim Rules of Court? This is the question presented in this petition for review on certiorari of the Decision^[1] in AC-G.R. SP No. 03409 of the then Intermediate Appellate Court^[2] dismissing petitioners' appeal from an order of the then Court of First Instance of Cebu regarding an incident in Special Proceedings No. 916-R for the settlement of the estate of the deceased Vito Borromeo.

By resolution dated November 13, 1995, the First Division of this Court transferred this case, along with several others, to the Third. After due deliberation and consultation on the petition and other submissions of the parties, the Court assigned the writing of this Decision to the undersigned *ponente*.

The Facts

On August 15, 1969, the Court of First Instance of Cebu, then presided by Judge Alfredo G. Laya, issued an order approving the project of partition and the distribution of the estate of Vito Borromeo to his heirs.

While Judge Alfredo G. Laya was implementing the order of August 15, 1969, herein private respondent Numeriano G. Estenzo, in his capacity as counsel for the oppositors, filed before this Court a petition (L-32876) praying, among other things, that the probate court be restrained from implementing the order of August 15, 1969 and from distributing the estate among the heirs.

On March 15, 1971, this Court resolved the petition in a Resolution which reads in pertinent part:

"1. The Court thus refused to restrain respondent Judge from making a distribution of the estate, for the following reasons: (a) The heirs themselves do not object to a distribution; indeed, they have already submitted a project of partition; (b) Sp. Proc. No. 916-R has been pending for eighteen (18) years, during which nine (9) heirs have been waiting to receive their respective shares; (c) Of the eleven (11) lawyers who have rendered professional services in the case, only petitioner has

registered any objection, the ten (10) others must be now anxious to have their fees adjudicated; (d) The case has passed through the hands of five (5) other Judges prior to respondent Judge Laya, and the records thereof have piled up to almost forty (40) volumes, hence if the case is assigned to another Judge, he will have to study the same for the first time. x x x."

Accordingly, Jesus Gaboya, then administrator of the estate, continued with the implementation of the order of August 15, 1969. Consequently, in 1970 and 1971, transfer certificates of title were issued in the names of the heirs by the Register of Deeds of the City and the Province of Cebu.

On January 12, 1979, the probate court, then presided by respondent Judge Francisco P. Burgos, issued two orders: (1) evaluating the estate at P15,000,000.00 and segregating 40% thereof or P6,000,000.00 for the payment of the claims for attorney's fees; and (2) directing the Register of Deeds to annotate the claims for attorney's fees in an amount corresponding to 40% of the market value of the estate.

On September 13, 1978, Atty. Domingo L. Antigua filed a motion praying for the surrender of the certificates of title in the names of the heirs or distributees in order that prospective buyers of the whole estate could inspect them. The probate court, through Judge Burgos, granted the motion. One of the administrators of the estate, Ricardo V. Reyes, filed a motion for the reconsideration of said order, claiming that he could not surrender the titles without the consent of the heirs in whose names the titles sought to be surrendered had been issued by the Register of Deeds of the City and Province of Cebu.

However, four years later or on August 31, 1982, Reyes made a turnaround and himself filed a motion for the surrender of the certificates of title involved in the proceedings for the reversion back to the estate of the distributed lands. This motion was followed by another one jointly filed by Reyes, Atty. Antigua (as counsel for the heirs of Fortunato Borromeo) and Atty. Estenzo as lawyer-claimant and counsel for one of the administrators.

Before these two motions could be resolved by the probate court, herein petitioners, who are among the nine (9) heirs of Vito Borromeo, filed a motion for the disqualification of Judge Burgos on the grounds of bias and partiality. Petitioners claimed that the sister of Atty. Antigua was married to a brother of Judge Burgos. Respondent Judge denied the motion for inhibition. Hence, petitioners appealed the denial to the then Intermediate Appellate Court which, in its Decision dated March 1, 1983, reversed the probate court and disqualified Judge Burgos from taking cognizance of Special Proceedings No. 916-R. Said decision was appealed to this Court in G.R. No. 63818, with Judge Burgos joining the petitioners.

Notwithstanding his disqualification by the appellate court, Judge Burgos continued to take cognizance of Special Proceedings No. 916-R. Petitioners thus manifested their refusal to recognize any further acts of Judge Burgos and subsequently filed before this Court a petition (G.R. No. 65995) to stop Judge Burgos from further hearing the case.

On February 23, 1984, Judge Burgos issued an order cancelling the certificates of

title involved and reverting the parcels of land to the estate.

Petitioner's sought the reconsideration of this order to no avail. Hence, they filed a petition before the Intermediate Appellate Court (AC-G.R. SP No. 03409) raising the following issues for resolution: (a) the validity of the order of February 23, 1984 which was issued after Judge Burgos had been disqualified from hearing the case; (b) the jurisdiction of the probate court to order the cancellation of certificates of title which had been issued ten years earlier and the reversion of the property back to the estate; and (c) the validity of a collateral attack on titles to property in an intestate proceedings.

On September 23, 1985, the appellate court dismissed the petition on the ground that its filing violated Section 17 of the Interim Rules of Court which prescribes forum-shopping.

The Issue

It should be noted that there were three (3) cases which the respondent Court considered in declaring the petitioners guilty of forum-shopping, viz.:

- 1) G.R. No. 63818 - where the petitioners asked the Supreme Court to affirm the IAC's decision disqualifying respondent Judge from taking cognizance of the probate proceedings (916-R);
- 2) G.R. No. 65995 - where petitioners sought to restrain and to invalidate all acts of respondent Judge after he was disqualified by the IAC;
- 3) AC-G.R. SP No. 03409 - the origin of the instant petition in this Court, in which petitioners prayed that the respondent Court enjoin respondent Judge from further taking cognizance of the probate proceedings (916-R).

The issue therefore may be re-stated thus: By their filing of the third case, did petitioners engage in forum-shopping as defined by Section 17 of the Interim Rules?

The Court's Ruling

We concur with the respondent Court's affirmative ruling on said question, which is quoted verbatim, as follows:

"Since G.R. No. L-65995 (*Petra Borromeo, et al. vs. Hon. Francisco P. Burgos, etc., et al.*), seeks to invalidate any and all proceedings and acts taken by the respondent Court subsequent to March 1, 1983, it clearly covers and includes the surrender to, and the cancellation by, the respondent Court, of the above enumerated certificates of title, which is an act by the respondent judge subsequent to March 1, 1983. The order (was) issued February 23, 1984.

"Specifically, the questioned order of February 23, 1984, listed among the incidents pending at the time the said Supreme Court petition was filed, in December, 1983, the following: