

SECOND DIVISION

[G.R. No. 188921, April 18, 2012]

**LEO C. ROMERO AND DAVID AMANDO C. ROMERO, PETITIONERS,
VS. HON. COURT OF APPEALS, AURORA C. ROMERO AND
VITTORIO C. ROMERO, RESPONDENTS.**

D E C I S I O N

SERENO, J.:

This is a Petition filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision^[1] of the Court of Appeals dated 14 April 2009 and the subsequent Resolution^[2] dated 21 July 2009.

The Court of Appeals (CA) dismissed the Petition for Certiorari filed by petitioners which alleged grave abuse of discretion in the Resolutions dated 14 December 2007 and 29 January 2008 issued by Judge Maria Susana T. Baua in her capacity as presiding judge of the Regional Trial Court (RTC) of Lingayen, Pangasinan. The said Resolutions dismissed petitioners' complaint against private respondents Aurora C. Romero and Vittorio C. Romero.

Petitioners allege that upon their father's death on 18 October 1974, their mother, respondent Aurora Romero, was appointed as legal guardian who held several real and personal properties in trust for her children.^[3] Since that year until the present, she continues to be the administrator of the properties, businesses, and investments comprising the estate of her late husband.

Sometime in 2006, petitioners Leo and Amando discovered that several Deeds of Sale were registered over parcels of land that are purportedly conjugal properties of their parents. These included the following real and personal properties:

1. A parcel of land identified as Lot 3-G of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 16142 and Transfer Certificate of Title (TCT) No. 290013 in the name of Vittorio C. Romero. A warehouse stands on the lot, covered by Declaration of Real Property No. 16142.
2. A parcel of land identified as Lot 3-D of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 405, and TCT No. 77223 in the name of Spouses Dante Y. Romero and Aurora Cruz-Romero.
3. A parcel of land identified as Lot 3-E of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one

thousand square meters under Declaration of

Real Property No. 407 and TCT No. 77224 in the names of Spouses Dante Y. Romero and Aurora Cruz-Romero.

4. A parcel of land identified as Lot 3-H of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 406, and TCT No. 77225 in the name of Spouses Dante Y. Romero and Aurora Cruz-Romero.
5. A parcel of land identified as Lot 3815-A of Subdivision Plan Psd-227224 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of four hundred ninety-four square meters under TCT No. 113514 in the name of Aurora Cruz *vda. de* Romero.
6. A parcel of land located in Barangay Burgos, Mangatarem, Pangasinan, containing an area of more or less three hundred seventy-nine square meters under Declaration of Real Property No. 16136. It is not yet registered under Act 496 or the Old Spanish Mortgage Law, but registrable under Act 3344 as amended. The improvement thereon, a building classified as a warehouse, is covered by Declaration of Real Property No. 16136 A.
7. A parcel of land located in Brgy. Burgos, Mangatarem, Pangasinan, containing an area of more or less two hundred four square meters under Declaration of Real Property No. 16139. It is not yet registered under Act 496 or Act 3344 as amended. The improvement thereon is covered by Declaration of Real Property No. 16140.
8. A parcel of land located in Brgy. Pogon-lomboy, Mangatarem, Pangasinan, containing an area of more or less eleven thousand six hundred forty-six square meters under Declaration of Real Property No. 724 and TCT No. 284241 in the name of Aurora P. Cruz *vda. de* Romero.
9. A parcel of land located in Brgy. Pogon-lomboy, Mangatarem, Pangasinan, containing an area of more or less one thousand two hundred fifty-six square meters under Declaration of Real Property No. 725 and TCT No. 284242 in the name of Aurora P. Cruz *vda. de* Romero.^[4]

Petitioners claim that sometime in August of 2005, their brother Vittorio – through fraud, misrepresentation and duress – succeeded in registering the above-mentioned properties in his name through of Deeds of Sale executed by their mother, Aurora.^[5] Vittorio allegedly employed force and threat upon her, and even administered drugs that rendered her weak and vulnerable. Thus, Aurora signed the Deeds of Sale without reading or knowing their contents.

On 18 December 2006, petitioners filed a Complaint for Annulment of Sale, Nullification of Title, and Conveyance of Title (Amended)^[6] against private respondents Aurora C. Romero and Vittorio C. Romero. Respondents filed their Answer, arguing that the properties in question were acquired long after the death of their father, Judge Dante Romero; hence, the properties cannot be considered

conjugal. They allege that the lots covered by TCT Nos. 290010, 290011, 113514, and Tax Declaration Nos. 16136 and 11639 were paraphernal properties of Aurora which she had mortgaged. Vittorio purportedly had to shell out substantial amounts in order to redeem them. The lots covered by TCT Nos. 77223, 77224, and 77225 were sold by Aurora herself as attorney-in-fact of her children on 23 November 2006, since her authority to do so had never been revoked or modified.

On 14 December 2007, the RTC rendered its Resolution dismissing petitioners' complaint, stating thus:

xxx(T)he case under Special Proceedings No. 5185 remains pending in that no distribution of the assets of the estate of the late Dante Y. Romero, nor a partition, has been effected among his compulsory heirs. **Thus, the contending claims of plaintiffs and defendants in this case could not be adjudicated nor passed upon by this Court without first getting a definitive pronouncement from the intestate court as to the share of each of the heirs of the late Dante Y. Romero in his estate.**

Even the claim of defendant Aurora C. Romero that some of the properties being claimed by plaintiffs in this case are her own, the same being paraphernal, is an issue which must be taken up and established in the intestate proceedings.^[7] (Emphasis supplied.)

The RTC denied their Motion for Reconsideration, citing Section 3, Rule 87 of the Rules of Court which bars an heir or a devisee from maintaining an action to recover the title or possession of lands until such lands have actually been assigned. The court ruled that "plaintiffs must first cause the termination of Special Proceedings No. 5185 to its logical conclusion before this case could be entertained by the Court."^[8]

Alleging grave abuse of discretion on the part of the trial court in rendering the said Resolutions, petitioners filed for certiorari under Rule 65 with the CA. On 14 April 2009, the CA rendered the assailed judgment dismissing the Petition, ruling that the properties involved in this case are part of the estate left to the heirs of Judge Romero, the partition of which is already subject of an intestate proceeding filed on 6 January 1976 in the then Court of First Instance (CFI).^[9] The CA based its judgment on the findings of the RTC that the inventory of the estate of Judge Romero submitted to the CFI included the same parties, properties, rights and interests as in the case before it.

Petitioners now come to us on a Rule 45 Petition, arguing that the probate court may rule on issues pertaining to title over property only in a provisional capacity. They assert that the CA erred in dismissing their appeal, just because the intestate proceeding has not yet terminated. Petitioners, as heirs, are purportedly allowed to exercise their option of filing a separate civil action in order to protect their interests.

Thus, the singular issue in the case at bar is whether or not petitioners in this case may file a separate civil action for annulment of sale and reconveyance of title,

despite the pendency of the settlement proceedings for the estate of the late Judge Dante Y. Romero.

Ruling of the Court

The probate court has jurisdiction to determine the issues in the present case

Petitioners assert that the jurisdiction of the RTC sitting as a probate or intestate court relates only to matters having to do with the settlement of the estate of deceased persons or the appointment of executors, but does not extend to the determination of questions of ownership that arise during the proceedings.^[10] They cite *Ongsingco v. Tan*,^[11] *Baybayan v. Aquino*^[12] and several cases which state that when questions arise as to ownership of property alleged to be part of the estate of a deceased person, but claimed by some other person to be his property, not by virtue of any right of inheritance from the deceased but by title adverse to that of the deceased and his estate, the intestate court has no jurisdiction to adjudicate these questions. Petitioners conclude that the issue of ownership of the properties enumerated in their Petition and included in the inventory submitted by respondent Aurora Romero to the intestate court, must be determined in a separate civil action to resolve title.^[13]

The rulings in *Ongsingco* and *Baybayan* are wholly inapplicable, as they both arose out of facts different from those in the case at bar. *Baybayan* involved a summary settlement for the estate of the decedent, in which a parcel of land representing the share of decedent's nephews and nieces was already covered by a TCT under the name of a third party. To defeat the writ of partition issued by the probate court, the third party, petitioners *Baybayan et al.*, had to file a separate civil action for quieting of their title and for damages. The issue before the Court then devolved upon the propriety of the probate court's order to amend the Complaint for quieting of title before the regular court. More importantly, *Baybayan* pertained to a civil action involving third parties who were not heirs, and not privy to the intestate proceedings in the probate court. The present action was instituted precisely by heirs of Judge Romero, against their brother, who is also an heir, and their mother, who is the administrator of the estate.

In *Coca v. Borromeo*,^[14] this Court **allowed** the probate court to provisionally pass upon the issue of title, precisely because the only interested parties are all heirs to the estate, subject of the proceeding, *viz*:

It should be clarified that whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited probate jurisdiction is in reality not a jurisdictional question. In essence, it is a procedural question involving a mode of practice "which may be waived."

As a general rule, the question as to title to property should not be passed upon in the testate or intestate proceeding. That question should be ventilated in a separate action. That general rule has qualifications or exceptions justified by expediency and convenience.

Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action.

Although generally, a probate court may not decide a question of title or ownership, yet if the interested parties are all heirs, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to decide the question of ownership.

We hold that the instant case may be treated as an exception to the general rule that questions of title should be ventilated in a separate action.

Here, the probate court had already received evidence on the ownership of the twelve-hectare portion during the hearing of the motion for its exclusion from (the) inventory. The only interested parties are the heirs who have all appeared in the intestate proceeding.^[15] (Citations omitted.)

While it is true that a probate court's determination of ownership over properties which may form part of the estate is not final or ultimate in nature, this rule is applicable only as between the representatives of the estate and strangers thereto. Indeed, as early as *Bacquial v. Amihan*,^[16] the court stated thus:

xxx The rulings of this court have always been to the effect that in the special proceeding for the settlement of the estate of a deceased person, persons not heirs, intervening therein to protect their interests are allowed to do so protect the same, but not for a decision on their action. In the case of *In re Estate of the deceased Paulina Vasquez Vda. de Garcia, Teresa Garcia vs. Luisa Garcia, et al.*, 67 Phil., 353, this court held:

A court which takes cognizance of testate or intestate proceedings has power and jurisdiction to determine whether or not the properties included therein or excluded therefrom belong *prima facie* to the deceased, although such a determination is not final or ultimate in nature, and without prejudice to the right of interested parties, in a proper action, to raise the question on the ownership or existence of the right or credit.

To this same effect are rulings in various states of the United States.

* * * That the probate court is without jurisdiction to try the