

## SECOND DIVISION

[ G.R. No. 121908, January 26, 1998 ]

**ESTER SANTIAGO, PRISCILLA SANTIAGO, SUSAN SANTIAGO,  
JOSE SANTIAGO, JR., ERLINDA SANTIAGO, MA. VICTORIA  
SANTIAGO, APOLINARIO SANTIAGO AND CARMENCITA  
SANTIAGO, PETITIONERS, VS. HON. COURT OF APPEALS, HON.  
CAMILO O. MONTESA, JR., PRESIDING JUDGE, BRANCH 19,  
REGIONAL TRIAL COURT, MALOLOS, BULACAN, AND AUREA G.  
SANTIAGO, RESPONDENTS.**

### D E C I S I O N

**MARTINEZ, J.:**

This is a petition for review by way of certiorari filed by petitioner Ester Santiago, et al., assailing the decision of the Court of Appeals dated July 25, 1995 in CA GR SP No. 37130, dismissing their petition on the ground of laches and that the issue raised therein has been rendered moot and academic.<sup>[1]</sup> The motion for reconsideration was likewise denied in an order dated September 8, 1995.<sup>[2]</sup>

The facts which spawned this petition are as follows:

On September 13, 1993, in special proceeding No. Q-93-15854 of the Regional Trial Court of Quezon City, Branch 76, the holographic will of Juan G. Santiago was admitted to probate. Aurea G. Santiago, his surviving spouse, was appointed as administratrix of the testate estate of the said Juan G. Santiago who died childless on September 21, 1992.<sup>[3]</sup>

On May 17, 1994, the said administratrix filed an action for quieting of title and for partition of a parcel of land against Ester, Priscilla, Susan, Jose, Jr., Erlinda, Carmencita, Ma. Victoria and Apolinario, all surnamed Santiago, the provincial assessor of Bulacan, Felimon, Erasmo, Gerardo and Ana Marie, all surnamed Mendoza before the Regional Trial Court of Malolos, Bulacan, Branch 17 docketed as Civil Case No. 462-M-94.<sup>[4]</sup>

The Mendozas filed their answer and likewise prayed for partition of the property in question.<sup>[5]</sup>

On the other hand, the Santiagos, filed a Motion to Dismiss on June 27, 1994 asserting that the complaint states no cause of action against the defendants since the late Juan G. Santiago executed a waiver relinquishing his share in the property in question in favor of his brother Jose, the predecessor of petitioners.<sup>[6]</sup>

The administratrix filed an opposition to aforesaid motion contending in the main that the ground raised therein is a matter of defense that can only be appreciated

after trial on the merits.<sup>[7]</sup>

The lower court sustained the motion to dismiss by issuing an order dated August 2, 1994 dismissing the complaint for lack of sufficient cause of action, the dispositive portion of which reads, to wit;

**"WHEREFORE, the above-entitled case is hereby DISMISSED for lack of sufficient cause of action against the defendants.**

**SO ORDERED."** <sup>[8]</sup>

A motion for reconsideration was seasonably filed by Administratrix Aurea G. Santiago.<sup>[9]</sup> On September 20, 1994, the lower court reconsidered and set aside the order of dismissal which had the effect of denying the said motion to dismiss.<sup>[10]</sup>

The defendants-Santiagos then filed their answer with compulsory counterclaim.<sup>[11]</sup> On January 19, 1995, they filed another motion to Suspend/Defer Hearing<sup>[12]</sup> before said lower court claiming that they have a pending motion in the Probate Court (SP No. Q-93-15854, RTC, Q.C.) to set aside the order dated September 13, 1993 admitting to probate the holographic will of the testator Juan Santiago and appointing his wife as administratrix of the testator's estate.<sup>[13]</sup>

On February 10, 1993, the trial court denied the Motion to Suspend/Defer Hearing, the dispositive portion of said order reads;<sup>[14]</sup>

**"WHEREFORE, the Motion to Suspend/Defer Proceedings filed by defendant Aurea Santiago is hereby denied. Set the hearing of this case to February 20, 1995 at 8:30 a.m.. Atty. Eustaquio Evangelista is hereby ordered to appear on said assignment and his failure to comply thereto would constitute an action for contempt of court."**

On February 28, 1995, petitioners filed a motion for reconsideration<sup>[15]</sup> which was likewise denied on March 27, 1995.<sup>[16]</sup>

The defendants-Santiagos then filed a petition for annulment, certiorari, prohibition and mandamus with prayer for preliminary mandatory and prohibitory injunctions with temporary restraining order before the respondent court bringing to the fore the impropriety of the orders denying their motion to dismiss and motion to suspend/defer proceedings, claiming that the said orders were tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction.<sup>[17]</sup>

While the petition was pending, the herein private respondent informed the respondent court by way of supplement to its comment that the probate court had already denied petitioners motion to set aside the order of September 13, 1993.<sup>[18]</sup>

On July 25, 1995, the respondent court issued the assailed order, hence, this petition.

A careful perusal of the petition filed by herein petitioners show its lack of substance due to the ambiguous allegations therein. Moreover, petitioners' arguments dwell