

TWELFTH DIVISION

[CA-G.R. SP. No. 109663, April 07, 2014]

**RICARDO S. SILVERIO, JR., PETITIONER, V. PAIRING JUDGE
REYNALDO M. LAIGO FOR REGIONAL TRIAL COURT, BRANCH 57,
NCJR, MAKATI CITY, AND RICARDO C. SILVERIO, SR.,
RESPONDENTS.**

D E C I S I O N

ELBINIAS, J.:

Addressed here is a Petition for Certiorari^[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order^[2] dated October 14, 2008 of the Regional Trial Court of Makati City, Branch 57 ("respondent court" for brevity) in SP Proc. No. M-2629, which Order, in turn, reconsidered respondent court's earlier Order^[3] dated July 20, 2007 denying private respondent's "MOTION TO DISQUALIFY ATTY. EMERITO SALVA (from continuing to act as counsel for Ricardo S. Silverio, Jr. against Ricardo C. Silverio, Sr.) with MOTION TO EXPUNGE (all pleadings, motions and documents submitted by said counsel)"^[4] The Petition also questions respondent court's Order^[5] dated April 27, 2009, which denied petitioner's "Petition for Reconsideration (with Alternative Motion for Reconsideration of the Order dated July 20, 2007)."^[6]

The salient facts are as follows:

Petitioner Ricardo Silverio, Jr. ("petitioner Silverio, Jr." for brevity) and private respondent Ricardo Silverio, Sr. ("private respondent Silverio, Sr." for brevity) are among the heirs of the late Beatriz C. Silverio, whose estate was subject of SP Proc. No. M-2629 entitled "In Re: Intestate Estate of the Late Beatriz C. Silverio" ("partition case" for brevity).^[7] In such partition case, which was pending before respondent court, Atty. Emerito Salva ("Atty. Salva" for brevity) was the counsel of record of petitioner Silverio, Jr..

On August 1, 2005, private respondent Silverio, Sr. filed with respondent court a "MOTION TO DISQUALIFY ATTY. EMERITO SALVA (from continuing to act as counsel for Ricardo S. Silverio, Jr. against Ricardo C. Silverio, Sr.) with MOTION TO EXPUNGE (all pleadings, motions and documents submitted by said counsel)"^[8] ("Motion to Disqualify Atty. Salva" for brevity). Private respondent Silverio, Sr. stated that before Atty. Salva became the counsel of petitioner Silverio, Jr., Atty. Salva was his counsel of record in two cases^[9] that were filed against private respondent Silverio, Sr.. Because of these, private respondent Silverio, Sr. averred that Atty. Salva bore a "flagrant display of conflict of interest,"^[10] and should therefore be disqualified from representing petitioner Silverio, Jr. in the partition case below.

On September 19, 2005, petitioner Silverio, Jr. filed his "OPPOSITION TO 'MOTION TO DISQUALIFY ATTY. EMERITO M. SALVA' WITH COUNTER PETITION TO DISQUALIFY ATTY. VICENTE B. CHUIDIAN"^[11] ("Petition to Disqualify Atty. Chuidian" for brevity). According to petitioner Silverio, Jr., no conflict of interest existed so as to warrant the disqualification of Atty. Salva as his lawyer,^[12] and that private respondent Silverio, Sr. was already estopped from having Atty. Salva disqualified as petitioner Silverio Jr.'s lawyer.^[13] In the same Motion, petitioner Silverio Jr. prayed that private respondent Silverio, Sr.'s lawyer, Atty. Vicente Chuidian ("Atty. Chuidian" for brevity), be disqualified because he came to respondent court "with dirty hands in belatedly seeking the disqualification" of Atty. Salva without any basis.^[14]

On July 20, 2007, respondent court issued an Order^[15] denying private respondent Silverio, Sr.'s "Motion to Disqualify Atty. Salva"^[16] and petitioner Silverio, Jr.'s "Petition to Disqualify Atty. Chuidian."^[17]

On January 17, 2008, private respondent Silverio, Sr., filed a "MOTION FOR RECONSIDERATION"^[18] of respondent court's Order^[19] dated July 20, 2007. Petitioner Silverio, Jr. then filed an "OPPOSITION TO 'MOTION FOR RECONSIDERATION' WITH COUNTER MOTION TO EXPUNGE SAID 'MOTION FOR RECONSIDERATION' FROM RECORDS."^[20]

On October 14, 2008, respondent court issued its first assailed Order^[21], which granted private respondent Silverio, Sr.'s "MOTION FOR RECONSIDERATION"^[22], and consequently ordered the disqualification of Atty. Salva as counsel of petitioner Silverio, Jr. in the partition case. The dispositive portion of respondent court's Order decreed:

"WHEREFORE, premises considered, Silverio, Sr.'s Motion for Reconsideration is hereby GRANTED and the Motion to Expunge said Motion for Reconsideration is DENIED. The Order dated July 20, 2007 which denied Silverio, Sr.'s Motion to Disqualify Atty. Emerito Salva (from continuing to act as counsel for Ricardo Silverio, Jr., etc.) only is hereby reconsidered and Atty. Amerito Salva is hereby ordered disqualified to act as counsel for Ricardo Silverio, Jr. in the instant case.

SO ORDERED."^[23] (*Emphasis supplied in the original*)

After petitioner Silverio, Jr.'s "Petition for Reconsideration (With Alternative Motion for the Reconsideration of the Order dated July 20, 2007 and disqualify Atty. Vicente Chuidian and his legal staff to appear for and represent Ricardo C. Silverio, Sr. xxx)"^[24] was denied by respondent court in its other assailed Order^[25] dated April 27, 2009, petitioner Silverio, Jr. filed the Petition^[26] at bench, praying that:

"WHEREFORE, above premises considered, the petitioner thru counsel respectfully pray[s] that –

I. Upon the filing of this PETITION, this Honorable Court of Appeals shall issue forthwith a TEMPORARY RESTRAINING ORDER (TRO) and/or Writ of Preliminary Injunction enjoining the respondents from executing/implementing the ORDER dated October 14, 2008 (Annex B)

and the ORDER dated April 27, 2009 (Annex C), until further order of this Honorable Court;

II. And upon proper notice and hearing a DECISION be rendered by this Honorable Court:

A. Making permanent the TRO/Writ of Preliminary Injunction previously issued by this Honorable Court;

B. Setting aside the ORDER dated October 14, 2008 (Annex B) and ORDER dated April 27, 2009 (Annex C);

C. Ordering respondent RICARDO S. SILVERIO, SR. to pay COSTS.

Other reliefs just and equitable under the above premises are likewise prayed for."^[27]

The Petition raised the following grounds:

"- A -

RESPONDENT JUDGE LAIGO GRAVELY ERRED IN NOT DENYING THE MOTION TO DISQUALIFY ATTY. EMERITO M. SALVA AS COUNSEL OF SILVERIO, JR. FILED ON AUGUST 1, 2005 BY SILVERIO, SR. ON THE GROUND OF ESTOPPEL BY LACHES. IT APPEARING THAT ATTY. SALVA HAS BEEN APPEARING AS COUNSEL OF SILVERIO, JR. SINCE JANUARY 14, 1997, AND THAT [HIS] PETITION TO DISQUALIFY IS EVIDENTLY MOTIVATED BY REASON OF SILVERIO, SR.'S REMOVAL AS ADMINISTRATOR;

- B -

RESPONDENT JUDGE LAIGO SERIOUSLY ERRED IN ENTERTAINING A MOTION FOR RECONSIDERATION (MERE SCRAP OF PAPER) FILED BY RESPONDENT SILVERIO, SR. ON JANUARY 17, 2008 OF THE INTERLOCUTORY ORDER DATED JULY 20, 2007. AFTER SIXTY FIVE (65) DAYS FROM DATE OF RECEIPT OF SAID ORDER ON NOVEMBER 12, 2007 BY MOVANT SILVERIO, SR. THEREBY MAKING THE ORDER DATED JULY 20, 2007 ALREADY FINAL AND IRREVOCABLE, THERE HAVING BEEN NO CERTIORARI FILED TO ASSAIL ITS FINALITY. AS EXPRESSLY GOVERNED BY RULE 41, SEC. 1, OF THE REVISED RULES OF COURT;

- C -

RESPONDENT JUDGE LAIGO BLATANTLY ERRED IN GRANTING THE DISQUALIFICATION OF ATTY. EMERITO M. SALVA DESPITE THE LACK OF CONCRETE AND DETAILED SHOWING OR DEMONSTRATION THAT CONFLICT OF INTEREST EXISTED BASED ON THE FACT THAT ATTY. SALVA APPEAR[ED] AS COUNSEL IN CIVIL CASE NO. 90-271 SINCE 1990 WHICH WAS TERMINATED ON AUGUST 26, 2002 EVIDENCED BY AN ENTRY OF JUDGMENT IN CA-G.R. NO. 46167.

- D -

RESPONDENT JUDGE LAIGO ARBITRARILY AND CAPRICIOUSLY DENIED THE DISQUALIFICATION [OF] ATTY. VICENTE CHUIDIAN AS LAWYER OF

SILVERIO, SR. WHO STANDS ON THE SAME SITUATION AS ATTY. SALVA, IT BEING UNDISPUTED THAT HE ALSO IS COUNSEL OF SILVERIO, JR. UP TO THE PRESENT. (ANNEX R and R-1)"^[28]

To begin with, contrary to petitioner Silverio, Jr.'s allegations in his *assigned ground B*, respondent court's Order^[29] dated July 20, 2007, which denied private respondent Silverio, Sr.'s "Motion to Disqualify Atty. Salva"^[30], had not become final and executory.

Petitioner Silverio, Jr. had argued that:

"a) The interlocutory ORDER dated July 20, 2007 xxx is a 'final order' that completely disposes both issue of whether or not Atty. Salva is disqualified to appear as counsel of SILVERIO, JR. and/or whether or not Atty. Chuidian is disqualified to appear as lawyer of SILVERIO, SR. raise in SP Proc. No. M- 2629. Hence, it is a 'final order' in accordance with par. 1 of Sec. 1, Rule 41 xxx"^[31] (*Emphasis supplied*)

Prevailing over petitioner Silverio, Jr.'s allegations however, is that respondent court's Order^[32] dated July 20, 2007 was an interlocutory order. This is because such an Order dealt only with the preliminary matter of the case pending before respondent court. This matter was the disqualification of the parties' respective lawyers, such that notwithstanding the issuance of the Order, trial on the merits was still to be held, and judgment was still to be rendered by respondent court.

For being an interlocutory order, respondent court's Order^[33] of July 20, 2007 could not have become final and executory. This is pursuant to the following declaration of the Supreme Court in ***PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc, et al., G.R. No. 161110, March 30, 2006***:

"It is axiomatic that, **by their nature, interlocutory orders can never become final and executory in the same manner that final judgments do.** Explaining final and executory judgments, this Court said:

'xxx. [A judgment or order becomes] not only final -- because finally disposing of the case and leaving nothing more to be done by the adjudging court relative to its merits, but also executory -- because the period for appeal has expired without an appeal having been taken, or an appeal having been perfected, xxx. **Indeed, the correctness of such an interlocutory order may subsequently be impugned on appeal by any party adversely affected thereby, regardless of whether or not he had presented a motion for the reconsideration thereof, if he has otherwise made of record his position thereon.**" (*Emphasis supplied*)

Contrary to petitioner Silverio, Jr.'s arguments in his *assigned ground A*, private respondent Silverio, Sr. was not estopped from asking respondent court to disqualify Atty. Salva as lawyer of petitioner Silverio, Jr.

Petitioner Silverio, Jr. had argued that: