



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 25, 2023** which reads as follows:*

“G.R. No. 249399 (Constancio Martin P. Velasco III, Jose Maria P. Velasco, Fatima V. Relos, and Samantha P. Velasco v. Merlyn Paculanang-Jaca). — This Petition for Review on *Certiorari*¹ (Petition) seeks to reverse and set aside the Decision² dated 08 February 2019 and Resolution³ dated 16 September 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 108952. The CA affirmed with modification the Decision⁴ dated 03 February 2017 of Branch 48, Regional Trial Court (RTC) of Puerto Princesa City, in Civil Case No. 5357.

Antecedents

Petitioners Constancio Martin P. Velasco III (Constancio III), Jose Maria P. Velasco (Jose), Fatima V. Relos (Fatima), and Samantha P. Velasco (Samantha) alleged that they are the children of Constancio T. Velasco, Jr., (Constancio) and Ester P. Velasco (Ester). Included in their parents’ conjugal properties are two parcels of land in Sta. Ana, Manila (subject properties) covered by Transfer Certificates of Title (TCT) Nos. 187519 and 187520.⁵

Ester died on 05 March 1998. Constancio subsequently married Merlyn Paculanang (respondent). They have a child named Constantine Edgardo (Constantine).⁶

¹ *Rollo*, pp. 13-35.

² *Id.* at 37-49; Penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Sesinando E. Villon and Edwin D. Sorongon.

³ *Id.* at 51-52; Penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Manuel M. Barrios and Edwin D. Sorongon.

⁴ *Id.* at 157-161. Penned by RTC Judge Leah E. De Los Reyes-Baguyo.

⁵ *Id.* at 37.

⁶ *Id.* at 38.

On 15 December 2006, Constancio executed a contract of lease⁷ with side agreement⁸ over the subject properties in favor of Cross Country Motors, Incorporated (CCMI) for a term of 10 years, from 15 April 2007 to 14 April 2017. Pursuant to the side agreement, the gross monthly rental fee was ₱155,250.00 for the first two years with a five percent (5%) escalation every two years thereafter.⁹

On 23 April 2010, Constancio died. Petitioners averred that Constancio left an unprobated last will and testament¹⁰ (holographic will) providing, among others, for the sale of the subject properties and the distribution of the proceeds thereof to his heirs, as follows:

Constancio III	20% share
Jose	20% share
Fatima	10% share
Samantha	10% share
Merlyn	20% share
Constantine	20% share ¹¹

Under the holographic will, respondent was assigned to receive and manage the rental income from certain properties of Constancio, including the subject properties, until she remarries, cohabits, or enters into an illicit affair. In such case, Constancio's brother Edgardo Velasco (Edgardo) or in his incapacity, Virgilio, his other brother, shall take over the same.¹²

On 20 October 2010, the heirs divided Constancio's conjugal share in the subject properties through an extra-judicial settlement of estate in the following manner:

Constancio III	20% share
Jose	20% share
Fatima	10% share
Samantha	10% share
Merlyn	20% share
Constantine	20% share ¹³

Petitioners thereafter, or on 08 November 2010, executed an extrajudicial settlement of estate dividing equally among themselves the conjugal share of Ester in the subject properties.¹⁴

⁷ Id. at 95-97.

⁸ Id. at 98.

⁹ Id. at 38.

¹⁰ Id. at 99-104.

¹¹ Id. at 100.

¹² Id. at 38.

¹³ Id. at 38, 85.

¹⁴ Id. at 38, 141-142.

On 18 February 2011, the Acting Register of Deeds for the City of Manila cancelled TCT Nos. 187519 and 187520 and accordingly issued TCT Nos. 002-2011001358¹⁵ and 002-2011001359,¹⁶ respectively, in the names of the heirs. TCT Nos. 002-2011001358 and 002-2011001359 reflect the distribution of shares of the heirs in the subject properties, thus:

Constancio III	22.50% share
Jose	22.50% share
Fatima	17.50% share
Samantha	17.50% share
Merlyn	10% share
Constantine	10% share

Meanwhile, respondent received the rental income from the subject properties in her bank account.¹⁷

On 21 September 2012, respondent married Rodrigo Jaca (Rodrigo). From that time until 14 October 2013, respondent kept the rental income.¹⁸ Consequently, on 06 January and 01 March 2016, petitioners sent respondent demand letters¹⁹ for the payment or restitution of their respective shares in the rental income, on the ground that, per the holographic will, her marriage to Rodrigo has resulted in her forfeiture of the assignment of the whole rent of CCMI.²⁰ When respondent ignored the demand, petitioners filed a complaint²¹ for collection of sum of money against her.

For her part, respondent contended, among others, that the subject properties were the exclusive properties of Constancio because he inherited it from his parents, thus, not the conjugal properties of Constancio and Ester. Having predeceased Constancio, Ester was excluded as his heir. In addition, Samantha was not entitled to succeed from the estate of Constancio because she was not his child but Fatima's.²²

Respondent claimed that the condition stated in the holographic will pertained only to the cessation of her assignment of receiving and managing the rental income from the subject properties. It did not mean that such income would be withheld from her or that the beneficiaries thereof would no longer be entitled to it. Respondent admitted that the rental income from the subject properties was deposited to her bank account until it was withheld from her sometime in 2013. Thereafter, it was Edgardo who received and administered the same. Respondent opined that the co-owners of the subject

¹⁵ Id. at 87-90.

¹⁶ Id. at 91-94.

¹⁷ Id. at 38-39.

¹⁸ Id. at 39.

¹⁹ Id. at 109-110 and 111.

²⁰ Id. at 114, 116, 118, 120.

²¹ Id. at 67-73.

²² Id. at 39-40.

properties were entitled to their respective shares only from the time petitioners made the demand on 01 March 2016.²³

Finally, respondent averred that petitioners failed to implead an indispensable party, Edgardo, in the complaint. Considering that Edgardo was the administrator of the subject properties, he should be made to account for the rental income derived therefrom since 2013 until the present and to distribute the same to the co-owners.²⁴

Ruling of the RTC

On 03 February 2017, the RTC rendered its Decision,²⁵ the dispositive portion of which reads:

WHEREFORE, premises considered, for failure of the plaintiffs to establish their case by preponderant evidence, grant of the relief prayed for is not warranted. Instead, the case is hereby dismissed.

SO ORDERED.²⁶

The RTC held that petitioners failed to prove that respondent received the rental income from the subject properties after Constancio's death. There were no receipts showing that these were received, transferred, or forwarded to respondent's bank account. There was no proper recording and documentation of the rental payments, which made it difficult to reconcile the documents attached to the complaint. The RTC further noted that respondent was also entitled to a portion of the rental income for some specific purpose mentioned in the holographic will. Thus, even granting that respondent received some amounts, petitioners should have shown that these represented the monthly rentals to be distributed to the other heirs, less respondent and Constantine's shares.²⁷

Petitioners subsequently moved for reconsideration, but the RTC denied the motion in its Order²⁸ dated 29 March 2017. Aggrieved, petitioners appealed to the CA.

²³ Id. at 40.

²⁴ Id. at 63.

²⁵ Id. at 157-161.

²⁶ Id. at 161.

²⁷ Id. at 160-161.

²⁸ Id. at 171-173.

Ruling of the CA

In its Decision²⁹ dated 08 February 2019, the CA affirmed with modification the assailed RTC decision, thus:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The 3 February 2017 Decision and the 29 March 2017 Order of the Regional Trial Court, Branch 48, Puerto Princesa City in Civil Case No. 5357 are hereby **AFFIRMED** with **MODIFICATION** in that the dispositive portion of the 3 February 2017 Decision should read as follows:

“**WHEREFORE**, the case is **DISMISSED** for lack of merit.

SO ORDERED.”

SO ORDERED.³⁰

The CA held that respondent’s remarriage only affected her assignment and management of the rental income but in no case obligated her to distribute it to petitioners because there was no provision in the holographic will to that effect.³¹

Dissatisfied with the findings of the CA, petitioners filed their motion for reconsideration.³² In its Resolution³³ dated 16 September 2019, the CA denied the motion. Hence, the filing of the instant petition before this Court.

Issue

The sole issue is whether the CA correctly ruled that respondent has no obligation to share or distribute the rental income from the subject properties.

Ruling of the Court

The petition is without merit.

Petitioners claim that they are entitled to the rental income from the subject properties covering the period 21 September 2012 until 14 October 2013, which respondent received even though she was no longer entitled

²⁹ Id. at 37-49.

³⁰ Id. at 49.

³¹ Id. at 48.

³² Id. at 54-54.

³³ Id. at 51-52.

thereto. Petitioners likewise aver that pursuant to Constancio's holographic will, she is no longer entitled to the rental income by reason of her remarriage.³⁴

The relevant portions of Constancio's holographic will are quoted below:

5. I assign my wife, Merlyn T. Paculanang Velasco to receive and manage the rent income of my Sta. Ana Lot (TCT No. 187519 and TCT No. 187520), Warehouse on Lot w/ TCT No. 18225 and 2BR House on 500 SQM Lot w/ TCT No. 12692. These rent incomes totalling to about 188,000 to date shall be spent to underwrite the following expenditures:

- A. Household Expenses: Light, water, utilities, salaries of househelps
- B. Food
- C. Clothing
- D. House repair
- E. Real Estate taxes
- F. BIR ITR
- G. Education Expenses of seven (7) children thru colleges, namely:
 - 1) Constantine Edgardo P. Velasco, 6 yo
 - 2) Samantha P. Velasco, 17 yo
 - 3) Camille V. Pillos, 14 yo
 - 4) Carlo V. Pillos, 13 yo
 - 5) Jarry Jake P. Austria, 13 yo
 - 6) Allen James P. Austria, 15 yo
 - 7) Dyne Gerald P. Austria, 17 yo
- H. Registration, maintenance & repair of vehicles
- I. Gasoline and Diesel requirements of vehicles
- J. Replacement of vehicles, and
- K. Other legitimate petty expenses.

These assignment and management of rent income shall cease if my wife, Merlyn re-marries, cohabits or have an illicit affair and my brother, Edgardo takes over and in his incapacity my other brother Virgilio.³⁵

The holographic will clearly shows that respondent was assigned to receive and to manage the rental income. The assignment ceases upon her remarriage, cohabitation, or engagement in an illicit affair, in which case, Constancio's brother Edgardo and, in his incapacity, their other brother Virgilio, would take over the same. Notably absent from the holographic will was a provision stating that the rental income should be distributed to petitioners in the event of respondent's remarriage, cohabitation, or engagement in an illicit affair.

³⁴ Id. at 19.

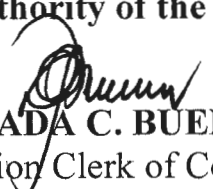
³⁵ Id. at 101-102.

It must be stressed that the rental income was earmarked by Constancio for the education expenses of his seven children, food, clothing, household maintenance, and taxes, among others. These expenses are to be taken from the rental income regardless of who manages it. If the rental income would be distributed to petitioners, there would be no food on the table, school and household expenses, as well as other items and no fund to defray for. Further, the distribution of the rental income to petitioners would be going against the express desire of Constancio to provide for his family even in death. Thus, as correctly observed by the CA, respondent's remarriage affected only her assignment and management of the rental income. Respondent was not obligated to distribute it to petitioners because there was no provision in the holographic will to that effect.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby **DENIED**. Accordingly, the Decision dated 08 February 2019 and Resolution dated 16 September 2019 of the Court of Appeals in CA-G.R. CV No. 108952 are hereby **AFFIRMED**.

SO ORDERED.” *Rosario, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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