



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

**MILA CABOVERDE TANTANO
and ROSELLER CABOVERDE,**
Petitioners,

G.R. No. 203585

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

**DOMINALDA ESPINA-
CABOVERDE, EVE
CABOVERDE-YU, FE
CABOVERDE-LABRADOR, and
JOSEPHINE E. CABOVERDE,**
Respondents.

Promulgated:

JUL 29 2013

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[Signature]

DECISION

VELASCO, JR., *J.*:

The Case

Assailed in this petition for review under Rule 45 are the Decision and Resolution of the Court of Appeals (CA) rendered on June 25, 2012 and September 21, 2012, respectively, in CA-G.R. SP. No. 03834, which effectively affirmed the Resolutions dated February 8, 2010 and July 19, 2010 of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte, Branch 11, in Civil Case No. S-760, approving respondent Dominalda Espina-Caboverde's application for receivership and appointing the receivers over the disputed properties.

The Facts

Petitioners Mila Caboverde Tantano (Mila) and Roseller Caboverde (Roseller) are children of respondent Dominalda Espina-Caboverde (Dominalda) and siblings of other respondents in this case, namely: Eve Caboverde-Yu (Eve), Fe Caboverde-Labrador (Fe), and Josephine E. Caboverde (Josephine).

Petitioners and their siblings, Ferdinand, Jeanny and Laluna, are the registered owners and in possession of certain parcels of land, identified as Lots 2, 3 and 4 located at Bantayan, Sindangan and Poblacion, Sindangan in

Zamboanga del Norte, having purchased them from their parents, Maximo and Dominalda Caboverde.¹

The present controversy started when on March 7, 2005, respondents Eve and Fe filed a complaint before the RTC of Sindangan, Zamboanga del Norte where they prayed for the annulment of the Deed of Sale purportedly transferring Lots 2, 3 and 4 from their parents Maximo and Dominalda in favor of petitioners Mila and Roseller and their other siblings, Jeanny, Laluna and Ferdinand. Docketed as Civil Case No. S-760, the case was raffled to Branch 11 of the court.

In their verified Answer, the defendants therein, including Maximo and Dominalda, posited the validity and due execution of the contested Deed of Sale.

During the pendency of Civil Case No. S-760, Maximo died. On May 30, 2007, Eve and Fe filed an Amended Complaint with Maximo substituted by his eight (8) children and his wife Dominalda. The Amended Complaint reproduced the allegations in the original complaint but added eight (8) more real properties of the Caboverde estate in the original list.

As encouraged by the RTC, the parties executed a Partial Settlement Agreement (PSA) where they fixed the sharing of the uncontroverted properties among themselves, in particular, the adverted additional eight (8) parcels of land including their respective products and improvements. Under the PSA, Dominalda's daughter, Josephine, shall be appointed as Administrator. The PSA provided that Dominalda shall be entitled to receive a share of one-half (1/2) of the net income derived from the uncontroverted properties. The PSA also provided that Josephine shall have special authority, among others, to provide for the medicine of her mother.

The parties submitted the PSA to the court on or about March 10, 2008 for approval.²

Before the RTC could act on the PSA, Dominalda, who, despite being impleaded in the case as defendant, filed a Motion to Intervene separately in the case. Mainly, she claimed that the verified Answer which she filed with her co-defendants contained several material averments which were not representative of the true events and facts of the case. This document, she added, was never explained to her or even read to her when it was presented to her for her signature.

On May 12, 2008, Dominalda filed a Motion for Leave to Admit Amended Answer, attaching her Amended Answer where she contradicted the contents of the aforesaid verified Answer by declaring that there never was a sale of the three (3) contested parcels of land in favor of Ferdinand,

¹ *Rollo*, p. 13.

² *Id.* at 93.

Mila, Laluna, Jeanny and Roseller and that she and her husband never received any consideration from them. She made it clear that they intended to divide all their properties equally among all their children without favor. In sum, Dominalda prayed that the reliefs asked for in the Amended Complaint be granted with the modification that her conjugal share and share as intestate heir of Maximo over the contested properties be recognized.³

The RTC would later issue a Resolution granting the Motion to Admit Amended Answer.⁴

On May 13, 2008, the court approved the PSA, leaving three (3) contested properties, Lots 2, 3, and 4, for further proceedings in the main case.

Fearing that the contested properties would be squandered, Dominalda filed with the RTC on July 15, 2008 a Verified Urgent Petition/Application to place the controverted Lots 2, 3 and 4 under receivership. Mainly, she claimed that while she had a legal interest in the controverted properties and their produce, she could not enjoy them, since the income derived was solely appropriated by petitioner Mila in connivance with her selected kin. She alleged that she immediately needs her legal share in the income of these properties for her daily sustenance and medical expenses. Also, she insisted that unless a receiver is appointed by the court, the income or produce from these properties is in grave danger of being totally dissipated, lost and entirely spent solely by Mila and some of her selected kin. Paragraphs 5, 6, 7, and 8 of the Verified Urgent Petition/Application for Receivership⁵ (Application for Receivership) capture Dominalda's angst and apprehensions:

5. That all the income of Lot Nos. 2, 3 and 4 are collected by Mila Tantano, thru her collector Melinda Bajalla, and solely appropriated by Mila Tantano and her selected kins, presumably with Roseller E. Caboverde, Ferdinand E. Caboverde, Jeanny Caboverde and Laluna Caboverde, for their personal use and benefit;

6. That defendant Dominalda Espina Caboverde, who is now sickly, in dire need of constant medication or medical attention, not to mention the check-ups, vitamins and other basic needs for daily sustenance, yet despite the fact that she is the conjugal owner of the said land, could not even enjoy the proceeds or income as these are all appropriated solely by Mila Tantano in connivance with some of her selected kins;

³ Id. at 35.

⁴ The RTC Resolution granting the Motion to Admit Answer which was challenged by the petitioners before the CA via a special civil action for certiorari under Rule 65 in a case docketed as CA-G.R. SP No. 02544. After receiving the unfavorable Decision of the CA dismissing their petition, petitioners went to this Court on a petition for review on certiorari docketed as G.R. No. 199561. However, the petition was likewise dismissed on February 15, 2012, and this resolution has become final and executory last October 23, 2012. Comment of Dominalda Espina-Caboverde, pp. 5-6.

⁵ Annex "7," Comment of Dominalda Espina-Caboverde.

7. That unless a receiver is appointed by the court, the income or produce from these lands, are in grave danger of being totally dissipated, lost and entirely spent solely by Mila Tantano in connivance with some of her selected kins, to the great damage and prejudice of defendant Dominalda Espina Caboverde, hence, there is no other most feasible, convenient, practicable and easy way to get, collect, preserve, administer and dispose of the legal share or interest of defendant Dominalda Espina Caboverde except the appointment of a receiver x x x;

x x x x

9. That insofar as the defendant Dominalda Espina Caboverde is concerned, time is of the utmost essence. She immediately needs her legal share and legal interest over the income and produce of these lands so that she can provide and pay for her vitamins, medicines, constant regular medical check-up and daily sustenance in life. To grant her share and interest after she may have passed away would render everything that she had worked for to naught and waste, akin to the saying “*aanhin pa ang damo kung patay na ang kabayo.*”

On August 27, 2009, the court heard the Application for Receivership and persuaded the parties to discuss among themselves and agree on how to address the immediate needs of their mother.⁶

On October 9, 2009, petitioners and their siblings filed a Manifestation formally expressing their concurrence to the proposal for receivership on the condition, *inter alia*, that Mila be appointed the receiver, and that, after getting the 2/10 share of Dominalda from the income of the three (3) parcels of land, the remainder shall be divided only by and among Mila, Roseller, Ferdinand, Laluna and Jeanny. The court, however, expressed its aversion to a party to the action acting as receiver and accordingly asked the parties to nominate neutral persons.⁷

On February 8, 2010, the trial court issued a Resolution granting Dominalda's application for receivership over Lot Nos. 2, 3 and 4. The Resolution reads:

As regards the second motion, the Court notes the urgency of placing Lot 2 situated at Bantayan, covered by TCT No. 46307; Lot 3 situated at Poblacion, covered by TCT No. T-8140 and Lot 4 also situated at Poblacion covered by TCT No. T-8140, all of Sindangan, Zamboanga del Norte under receivership as defendant Dominalda Espina Caboverde (the old and sickly mother of the rest of the parties) who claims to be the owner of the one-half portion of the properties under litigation as her conjugal share and a portion of the estate of her deceased husband Maximo, is in dire need for her medication and daily sustenance. As agreed by the parties, Dominalda Espina Caboverde shall be given 2/10 shares of the net monthly income and products of the said properties.⁸

⁶ *Rollo*, p. 98.

⁷ Comment of Dominalda Espina-Caboverde, p. 7.

⁸ *Rollo*, p. 43-a. Penned by Judge Designate Hipolito P. Bael, Jr.

In the same Resolution, the trial court again noted that Mila, the nominee of petitioners, could not discharge the duties of a receiver, she being a party in the case.⁹ Thus, Dominalda nominated her husband's relative, Annabelle Saldia, while Eve nominated a former *barangay* kagawad, Jesus Tan.¹⁰

Petitioners thereafter moved for reconsideration raising the arguments that the concerns raised by Dominalda in her Application for Receivership are not grounds for placing the properties in the hands of a receiver and that she failed to prove her claim that the income she has been receiving is insufficient to support her medication and medical needs. By Resolution¹¹ of July 19, 2010, the trial court denied the motion for reconsideration and at the same time appointed Annabelle Saldia as the receiver for Dominalda and Jesus Tan as the receiver for Eve. The trial court stated:

As to the issue of receivership, the Court stands by its ruling in granting the same, there being no cogent reason to overturn it. As intimated by the movant-defendant Dominalda Caboverde, Lots 2, 3 and 4 sought to be under receivership are not among those lots covered by the adverted Partial Amicable Settlement. To the mind of the Court, the fulfilment or non-fulfilment of the terms and conditions laid therein nonetheless have no bearing on these three lots. Further, as correctly pointed out by her, there is possibility that these Lots 2, 3, and 4, of which the applicant has interest, but are in possession of other defendants who are the ones enjoying the natural and civil fruits thereof which might be in the danger of being lost, removed or materially injured. Under this precarious condition, they must be under receivership, pursuant to Sec. 1 (a) of Rule 59. Also, the purpose of the receivership is to procure money from the proceeds of these properties to spend for medicines and other needs of the movant defendant Dominalda Caboverde who is old and sickly. This circumstance falls within the purview of Sec. 1(d), that is, *"Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation."*

Both Annabelle Saldia and Jesus Tan then took their respective oaths of office and filed a motion to fix and approve bond which was approved by the trial court over petitioners' opposition.

Undaunted, petitioners filed an Urgent Precautionary Motion to Stay Assumption of Receivers dated August 9, 2010 reiterating what they stated in their motion for reconsideration and expressing the view that the grant of receivership is not warranted under the circumstances and is not consistent with applicable rules and jurisprudence. The RTC, on the postulate that the motion partakes of the nature of a second motion for reconsideration, thus, a prohibited pleading, denied it via a Resolution dated October 7, 2011 where it likewise fixed the receiver's bond at PhP 100,000 each. The RTC stated:

⁹ Id. at 43.

¹⁰ Comment of Dominalda Espina-Caboverde, p. 7.

¹¹ Annex "9," Comment of Dominalda Espina-Caboverde.

[1] The appointed receivers, JESUS A. TAN and ANNABELLE DIAMANTE-SALDIA, are considered duly appointed by this Court, not only because their appointments were made upon their proper nomination from the parties in this case, but because their appointments have been duly upheld by the Court of Appeals in its *Resolution* dated 24 May 2011 denying the herein defendants' (petitioners therein) application for a writ of preliminary injunction against the 8 February 2010 *Resolution* of this Court placing the properties (Lots 2, 3 and 4) under receivership by the said JESUS A. TAN and ANNABELLE DIAMANTE-SALDIA, and *Resolution* dated 29 July 2011 denying the herein defendants' (petitioners therein) motion for reconsideration of the 24 May 2011 *Resolution*, both, for lack of merit. In its latter *Resolution*, the Court of Appeals states:

A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. But before a writ of preliminary injunction may be issued, there must be a clear showing that there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right and will cause irreparable injury.

Unfortunately, petitioners failed to show that the acts of the receivers in this case are inimical to their rights as owners of the property. They also failed to show that the non-issuance of the writ of injunction will cause them irreparable injury. The court-appointed receivers merely performed their duties as administrators of the disputed lots. It must be stressed that the trial court specifically appointed these receivers to preserve the properties and its proceeds to avoid any prejudice to the parties until the main case is resolved. Hence, there is no urgent need to issue the injunction.

ACCORDINGLY, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.

x x x x

WHEREFORE, premises considered, this Court RESOLVES, as it is hereby RESOLVED, that:

1. The defendants' "Urgent Precautionary Motion to Stay Assumption of Receivers" be DENIED for lack of merit. Accordingly, it being patently a second motion for reconsideration, a prohibited pleading, the same is hereby ordered EXPUNGED from the records;

2. The "Motion to Fix the Bond, Acceptance and Approval of the Oath of Office, and Bond of the Receiver" of defendant Dominalda Espina Caboverde, be GRANTED with the receivers' bond set and fixed at ONE HUNDRED THOUSAND PESOS (PhP100,000.00) each.¹²

¹² *Rollo*, pp. 157-158, 160.

It should be stated at this juncture that after filing their Urgent Precautionary Motion to Stay Assumption of Receivers but before the RTC could rule on it, petitioners filed a petition for certiorari with the CA dated September 29, 2010 seeking to declare null and void the February 8, 2010 Resolution of the RTC granting the Application for Receivership and its July 19, 2010 Resolution denying the motion for reconsideration filed by petitioners and appointing the receivers nominated by respondents. The petition was anchored on two grounds, namely: (1) non-compliance with the substantial requirements under Section 2, Rule 59 of the 1997 Rules of Civil Procedure because the trial court appointed a receiver without requiring the applicant to file a bond; and (2) lack of factual or legal basis to place the properties under receivership because the applicant presented support and medication as grounds in her application which are not valid grounds for receivership under the rules.

On June 25, 2012, the CA rendered the assailed Decision denying the petition on the strength of the following premises and ratiocination:

Petitioners harp on the fact that the court *a quo* failed to require Dominalda to post a bond prior to the issuance of the order appointing a receiver, in violation of Section 2, Rule 59 of the Rules of court which provides that:

SEC. 2. Bond on appointment of receiver.-- Before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented, in an amount to be fixed by the court, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

The Manifestation dated September 30, 2009 filed by petitioners wherein “they formally manifest[ed] their concurrence” to the settlement on the application for receivership estops them from questioning the sufficiency of the cause for the appointment of the receiver since they themselves agreed to have the properties placed under receivership albeit on the condition that the same be placed under the administration of Mila. Thus, the filing of the bond by Dominalda for this purpose becomes unnecessary.

It must be emphasized that the bond filed by the applicant for receivership answers only for all damages that the adverse party may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; it does not answer for damages suffered by reason of the failure of the receiver to discharge his duties faithfully or to obey the orders of the court, inasmuch as such damages are covered by the bond of the receiver.

As to the second ground, petitioners insist that there is no justification for placing the properties under receivership since there was neither allegation nor proof that the said properties, not the fruits thereof, were in danger of being lost or materially injured. They believe that the

public respondent went out of line when he granted the application for receivership for the purpose of procuring money for the medications and basic needs of Dominalda despite the income she's supposed to receive under the Partial Settlement Agreement.

The court *a quo* has the discretion to decide whether or not the appointment of a receiver is necessary. In this case, the public respondent took into consideration that the applicant is already an octogenarian who may not live up to the day when this conflict will be finally settled. Thus, We find that he did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when he granted the application for receivership based on Section 1(d) of Rule 59 of the Rules of Court.

A final note, a petition for certiorari may be availed of only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. In this case, petitioners may still avail of the remedy provided in Section 3, Rule 59 of the said Rule where they can seek for the discharge of the receiver.

FOR REASONS STATED, the petition for certiorari is DENIED.

SO ORDERED.¹³

Petitioners' Motion for Reconsideration was also denied by the CA on September 21, 2012.¹⁴

Hence, the instant petition, petitioners effectively praying that the approval of respondent Dominalda's application for receivership and necessarily the concomitant appointment of receivers be revoked.

The Issues

Petitioners raise the following issues in their petition:

(1) Whether or not the CA committed grave abuse of discretion in sustaining the appointment of a receiver despite clear showing that the reasons advanced by the applicant are not any of those enumerated by the rules; and

(2) Whether or not the CA committed grave abuse of discretion in upholding the Resolution of the RTC and ruling that the receivership bond is not required prior to appointment despite clear dictates of the rules.

The Court's Ruling

The petition is impressed with merit.

¹³ Id. at 38-40. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Romulo V. Borja and Maria Elisa Sempio Diy.

¹⁴ Resolution, *rollo*, pp. 41-42.

We have repeatedly held that receivership is a harsh remedy to be granted with utmost circumspection and only in extreme situations. The doctrinal pronouncement in *Velasco & Co. v. Gochico & Co* is instructive:

The power to appoint a receiver is a delicate one and should be exercised with extreme caution and only under circumstances requiring summary relief or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted. The court should consider the consequences to all of the parties and the power should not be exercised when it is likely to produce irreparable injustice or injury to private rights or the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the complainant.¹⁵

To recall, the RTC approved the application for receivership on the stated rationale that receivership was the most convenient and feasible means to preserve and administer the disputed properties. As a corollary, the RTC, agreeing with the applicant Dominalda, held that placing the disputed properties under receivership would ensure that she would receive her share in the income which she supposedly needed in order to pay for her vitamins, medicines, her regular check-ups and daily sustenance. Considering that, as the CA put it, the applicant was **already an octogenarian who may not live up to the day when the conflict will be finally settled**, the RTC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it granted the application for receivership since it was justified under Sec. 1(d), Rule 59 of the Rules of Court, which states:

Section 1. Appointment of a receiver. – Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

x x x x

(d) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation. (Emphasis supplied.)

Indeed, Sec. 1(d) above is couched in general terms and broad in scope, encompassing instances not covered by the other grounds enumerated under the said section.¹⁶ However, in granting applications for receivership

¹⁵ 28 Phil. 39, 41 (1914).

¹⁶ Section 1. Appointment of receiver. – Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

(a) When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it;

on the basis of this section, courts must remain mindful of the basic principle that receivership may be granted only when the circumstances so demand, either because the property sought to be placed in the hands of a receiver is in danger of being lost or because they run the risk of being impaired,¹⁷ and that being a drastic and harsh remedy, receivership must be granted only when there is a clear showing of necessity for it in order to save the plaintiff from grave and immediate loss or damage.¹⁸

Before appointing a receiver, courts should consider: (1) whether or not the injury resulting from such appointment would probably be greater than the injury ensuing if the status quo is left undisturbed; and (2) whether or not the appointment will imperil the interest of others whose rights deserve as much a consideration from the court as those of the person requesting for receivership.¹⁹

Moreover, this Court has consistently ruled that where the effect of the appointment of a receiver is to take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases.²⁰

After carefully considering the foregoing principles and the facts and circumstances of this case, We find that the grant of Dominalda's Application for Receivership has no leg to stand on for reasons discussed below.

First, Dominalda's alleged need for income to defray her medical expenses and support is not a valid justification for the appointment of a receiver. The approval of an application for receivership merely on this ground is not only unwarranted but also an arbitrary exercise of discretion because financial need and like reasons are not found in Sec. 1 of Rule 59 which prescribes specific grounds or reasons for granting receivership. The RTC's insistence that the approval of the receivership is justified under Sec. 1(d) of Rule 59, which seems to be a catch-all provision, is far from convincing. To be clear, even in cases falling under such provision, it is essential that there is a clear showing that there is imminent danger that the properties sought to be placed under receivership will be lost, wasted or injured.

(b) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

(c) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect.

¹⁷ *Diaz v. Hon. Nietes*, 110 Phil. 606, 610 (1960).

¹⁸ *Mendoza v. Arellano*, 36 Phil. 59 (1917).

¹⁹ *Ralla v. Alcasid*, No. L-17176, October 30, 1962, 6 SCRA 311, 314.

²⁰ *Mendoza v. Arellano*, *supra* note 18, at 64.

Second, there is no clear showing that the disputed properties are in danger of being lost or materially impaired and that placing them under receivership is most convenient and feasible means to preserve, administer or dispose of them.

Based on the allegations in her application, it appears that Dominalda sought receivership mainly because she considers this the best remedy to ensure that she would receive her share in the income of the disputed properties. Much emphasis has been placed on the fact that she needed this income for her medical expenses and daily sustenance. But it can be gleaned from her application that, aside from her bare assertion that petitioner Mila solely appropriated the fruits and rentals earned from the disputed properties in connivance with some of her siblings, Dominalda has not presented or alleged anything else to prove that the disputed properties were in danger of being wasted or materially injured and that the appointment of a receiver was the most convenient and feasible means to preserve their integrity.

Further, there is nothing in the RTC's February 8 and July 19, 2010 Resolutions that says why the disputed properties might be in danger of being lost, removed or materially injured while in the hands of the defendants *a quo*. Neither did the RTC explain the reasons which compelled it to have them placed under receivership. The RTC simply declared that placing the disputed properties under receivership was urgent and merely anchored its approval on the fact that Dominalda was an elderly in need of funds for her medication and sustenance. The RTC plainly concluded that **since the purpose of the receivership is to procure money from the proceeds of these properties to spend for medicines and other needs of the Dominalda, who is old and sickly, this circumstance falls within the purview of Sec. 1(d), that is, "Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation."**

Verily, the RTC's purported determination that the appointment of a receiver is the most convenient and feasible means of preserving, administering or disposing of the properties is nothing but a hollow conclusion drawn from inexistent factual considerations.

Third, placing the disputed properties under receivership is not necessary to save Dominalda from grave and immediate loss or irremediable damage. Contrary to her assertions, Dominalda is assured of receiving income under the PSA approved by the RTC providing that she was entitled to receive a share of one-half (1/2) of the net income derived from the uncontroverted properties. Pursuant to the PSA, Josephine, the daughter of Dominalda, was appointed by the court as administrator of the eight (8) uncontested lots with special authority to provide for the medicine of her mother. Thus, it was patently erroneous for the RTC to grant the Application for Receivership in order to ensure Dominalda of income to support herself because precisely, the PSA already provided for that. It

cannot be over-emphasized that the parties in Civil Case No. S-760 were willing to make arrangements to ensure that Dominalda was provided with sufficient income. In fact, the RTC, in its February 8, 2010 Resolution granting the Application for Receivership, noted the agreement of the parties that **“Dominalda Espina Caboverde shall be given 2/10 shares of the net monthly income and products of said properties.”**²¹

Finally, it must be noted that the defendants in Civil Case No. S-760 are the registered owners of the disputed properties that were in their possession. In cases such as this, it is settled jurisprudence that the appointment should be made only in extreme cases and on a clear showing of necessity in order to save the plaintiff from grave and irremediable loss or damage.²²

This Court has held that a receiver should not be appointed to deprive a party who is in possession of the property in litigation, just as a writ of preliminary injunction should not be issued to transfer property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership in himself, except in a very clear case of evident usurpation.²³

Furthermore, this Court has declared that the appointment of a receiver is not proper when the rights of the parties, one of whom is in possession of the property, depend on the determination of their respective claims to the title of such property²⁴ unless such property is in danger of being materially injured or lost, as by the prospective foreclosure of a mortgage on it or its portions are being occupied by third persons claiming adverse title.²⁵

It must be underscored that in this case, Dominalda's claim to the disputed properties and her share in the properties' income and produce is at best speculative precisely because the ownership of the disputed properties is yet to be determined in Civil Case No. S-760. Also, except for Dominalda's claim that she has an interest in the disputed properties, Dominalda has no relation to their produce or income.

By placing the disputed properties and their income under receivership, it is as if the applicant has obtained indirectly what she could not obtain directly, which is to deprive the other parties of the possession of the property until the controversy between them in the main case is finally settled.²⁶ This Court cannot countenance this arrangement.

To reiterate, the RTC's approval of the application for receivership and the deprivation of petitioners of possession over the disputed properties

²¹ *Rollo*, p. 43-a.

²² *Mendoza v. Arellano*, *supra* note 18.

²³ See *Municipality of Camiling v. de Aquino*, 103 Phil. 128 (1958).

²⁴ *Calo, et al. v. Roldan*, 76 Phil. 445 (1946).

²⁵ *Motoomull v. Arrieta*, No. L-15972, May 31, 1963, 8 SCRA 172, 176-178.

²⁶ *De los Reyes v. Hon. Bayona*, 107 Phil. 49 (1960).

would be justified only if compelling reasons exist. Unfortunately, no such reasons were alleged, much less proved in this case.

In any event, Dominalda's rights may be amply protected during the pendency of Civil Case No. S-760 by causing her adverse claim to be annotated on the certificates of title covering the disputed properties.²⁷

As regards the issue of whether or not the CA was correct in ruling that a bond was not required prior to the appointment of the receivers in this case, We rule in the negative.

Respondents Eve and Fe claim that there are sufficient grounds for the appointment of receivers in this case and that in fact, petitioners agreed with them on the existence of these grounds when they acquiesced to Dominalda's Application for Receivership. Thus, respondents insist that where there is sufficient cause to appoint a receiver, there is no need for an applicant's bond because under Sec. 2 of Rule 59, the very purpose of the bond is to answer for all damages that may be sustained by a party by reason of the appointment of a receiver in case the applicant shall have procured such appointment **without sufficient cause**. Thus, they further argue that what is needed is the receiver's bond which was already fixed and approved by the RTC.²⁸ Also, the CA found that there was no need for Dominalda to file a bond considering that petitioners filed a Manifestation where they formally consented to the receivership. Hence, it was as if petitioners agreed that there was sufficient cause to place the disputed properties under receivership; thus, the CA declared that petitioners were estopped from challenging the sufficiency of such cause.

The foregoing arguments are misplaced. Sec. 2 of Rule 59 is very clear in that before issuing the order appointing a receiver the court **shall** require the applicant to file a bond executed to the party against whom the application is presented. The use of the word "shall" denotes its mandatory nature; thus, the consent of the other party, or as in this case, the consent of petitioners, is of no moment. Hence, the filing of an applicant's bond is required at all times. On the other hand, the requirement of a receiver's bond rests upon the discretion of the court. Sec. 2 of Rule 59 clearly states that the court **may**, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

WHEREFORE, upon the foregoing considerations, this petition is **GRANTED**. The assailed CA June 25, 2012 Decision and September 21, 2012 Resolution in CA-G.R. SP No. 03834 are hereby **REVERSED** and **SET ASIDE**. The Resolutions dated February 8, 2010 and July 19, 2010 of the RTC, Branch 11 in Sindangan, Zamboanga del Norte, in Civil Case No. S-760, approving respondent Dominalda Espina-Caboverde's application for

²⁷ *Descallar v. Court of Appeals*, G.R. No. 106473, July 12, 1993, 224 SCRA 566, 570.

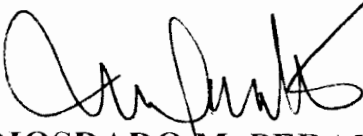
²⁸ *Rollo*, p. 107.


receivership and appointing the receivers over the disputed properties are likewise **SET ASIDE**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice



ROBERTO A. ABAD
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice