

G.R. L-10004

[ G.R. L-10004. October 18, 1956 ]

**CIRILO PAREDES PETITIONER, VS. THE HON. JUDGE BAYONA, ETC., ET AL.,  
RESPONDENT.**

**D E C I S I O N**

**BAUTISTA ANGELO, J.:**

This is a petition for prohibition and mandamus with preliminary injunction seeking to restrain respondents Judge and Sheriff of the City of Manila from enforcing and executing the formers order dated July 12, 1954 which orders petitioner to pay to the commissioner appointed by the court his fee of P300 and at the same time to have said resplendent Judge approve the extra-judicial agreement entered into between petitioner and commissioner dated August 7, 1954 and to annul or set aside the aforesaid order dated July 12, 1954.

This petition stems from an incident that arose in. Civil Case lo, 15376, entitled Elizalde & Co., Inc. v, Cirilo laredes, et al. pending in the Court of First Instance of Manila, relative to the appointment by the court of a commissioner to receive the evidence upon a joint petition submitted by the parties. It appears that the commissioner was appointed on March 5, 1953 and on November 20, 1953 he submitted his report on both questions of fact and law, On February 9, 1954, the court rendered decision adopting the report of the commissioner. From this decision, defendant appealed and at present, the is still pending consideration by the Court of Appeals (CA G. R. N. 14174-R)

On May 27, 19543 the commissioner filed a petition praying that his fee be fixed in accordance with Section 13, Rule 34 of the Rules of Courts After a careful perusal of the record of the case, the court entered an order on July 12, 1954 directing defendant Cirilo Taredes to pay the commissioner the sum of P300 and stating that "the sum to be taxed as costs as provided for in Sec. 13, Rule 34 of the Rules of Court and for this purpose, the defendant Cirilo Paredes is given five days from receipt hereof within which to pay the said amount." On August 7, 1954, defendant Parades filed a written manifestation wherein he

made it clear that, as suggested by the court, he and the commissioner had concluded an extra-judicial settlement of the latter's fee which would redound to the interest of both parties concerned, praying the court that its order of July 12, 1954 relative to the payment of said fee be set aside until after final judgment on the case is rendered. This manifestation bears the written conformity of the commissioner. No Action has been taken by the court on this manifestation.

On October 27, 1955, the commissioner filed a petition praying that the court order defendant Paredes to deposit with the court the sum of P260, representing the balance of the amount of his fee. said defendant having already made a partial payment of P40, to which petition defendant Paredes objected alleging among other grounds that the order of the court was contrary to the Rules of Court which provide, that the commissioner's fee should be assessed against the defeated party upon the final termination of the case. This opposition notwithstanding., the court granted the petition of the commissioner. Hence the present petition for prohibition and mandamus,

Section 13, Rule 345 provides:

“SEC. 13, Compensation of commissioner. - The court shall allow the commissioner such reasonable compensation as the circumstances of the case warrant, to be taxed as costs against the defeated party, or apportioned, as justice requires,”

It is clear from the above that the compensation or fee that a commissioner may be allowed for his services should be taxed “as costs against the defeated party, or apportioned, as justice requires,” This rule is clear. it presupposes that the fee should be paid by the defeated party after the final termination of the case. Its payment cannot be ordered before the outcome of the case, as when the defeated party appeals from the decision to a superior court. This rule has not been followed by the respondent court. While it ordered defendant Paredes to pay the fee because it was he who lost the case and stated in its order that it should be taxed as costs as provided for in Section 13., Rule 34, however, it acted in excess of its power when it ordered its payment within five days, or its deposit, knowing full well that the case was pending appeal in the Court of Appeals. It is apparent that the court was somewhat hasty in acting on the matter and such rash action should be remedied.

Moreover, the record shows that a written manifestation was submitted to the court by the

defendant Paredes wherein he stated that an extra-judicial agreement had been reached between him and the commissioner relative to the payment of the latter's fee as a result of which it was agreed that the order of the court would be held in abeyance until after the final termination of the case. This manifestation bears the conformity of the commissioner, although he now avers that it does not embody the real intention of the parties. The court ignored this written manifestation and instead ordered the deposit of the money representing the fee of the commissioner. We find that this action is unjustified, it appearing that the settlement concluded between the parties was made upon the very suggestion of the court. We, therefore, hold that the respondent Judge has acted in excess of his jurisdiction when he issued the above mentioned order of July 12, 1954.

Petition is granted, without pronouncement as to costs. The above order of July 12, 1954 is hereby set aside. The injunction issued against respondents is made permanent.

*Paras, C.J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.*

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