

**CONRADO POTENCIANO, SUBSTITUTED BY DR. VICTOR R.
POTENCIANO, SPECIAL ADMINISTRATOR, PETITIONER, VS. HON.
COURT OF APPEALS AND ALBERTO BENIPAYO, RESPONDENTS.**

G. R. No. L-11769. July 25, 1958

Ponente: FELIX, J.

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FELIX, J.:

This is a petition for certiorari filed by Victor R. Potenciano, as Special Administrator of the Testate Estate of Conrado Potenciano, to review the resolution of the Court of Appeals of November 19, 1956, and December 10, 1956, in CA—G. R. No. 13314—R. The facts of the case are as follows:

Sometime prior to February, 1954, Alfredo D. Benipayo instituted a civil action with the Court of First Instance of Manila against Conrado R. Potenciano for recovery of a sum of money (Civil Case No. 7173). The claim was duly set for hearing and after the parties had adduced their respective evidence, the Court rendered judgment dated February 19, 1954, dismissing the complaint as well as the counterclaim of defendant. From said decision, plaintiff appealed to the Court of Appeals (CA—G. R. No. 13314—R).

On August 6, 1954, and while the appeal was pending in said court, defendant Conrado Potenciano died and on November 10, 1954, Victor R. Potenciano, duly appointed special administrator of the estate of the deceased, filed a motion to dismiss contending that the claim therein was not one that survives the decedent and as pursuant to Section 5, Rule 87 of the Rules of Court, said claim must be filed in the testate proceeding, it was prayed that "the CASE be dismissed, without prejudice to the plaintiff-appellant filing his claim with the Probate Court". This motion which was not opposed by appellant Benipayo, was granted by the Court of Appeals in its order of November 13, 1954, which reads as follows:

"Upon consideration of the motion filed by counsel for defendant-appellee in case CA-G. R. No. 13314r-R, Alberto Benipayo vs. Conrado Potenciano, etc., for the dismissal of the appeal; and it appearing that the subject matter involved in the above-entitled case is a money claim against the appellee who died already, and testate proceedings has been filed for the settlement of the estate of the deceased; the Court RESOLVED to grant the motion".

Accordingly, appellant Benipayo presented his claim in Special Proceedings No. 23875 of the Court of First Instance of Manila. The special administrator, however, filed an opposition to the introduction of evidence to support Benipayo's claim against the estate on the ground that for the probate court to render decision based on such evidence would amount to a review of Civil Case No. 7173 which was already passed upon and decided by a court of equal jurisdiction.

On July 19, 1956, the probate court issued a resolution holding that the claim of Alberto Benipayo could not be allowed in said proceedings for the reason that as the Court of Appeals dismissed the appeal in CA-G. R. No. 13314-R, it worked as if no appeal had been interposed and the judgment of the lower court in Civil Case No. 7173, therefore, could be enforced. Claimant Benipayo thus filed with the Court of Appeals a motion praying for

a clarification of its order of November 13, 1954, as a result of which, said appellate court issued a resolution dated November 19, 1956, to this wise:

"Upon consideration of the motion filed by counsel for plaintiff-appellant in Case CA—G. R. No. 13314—R, entitled Alberto Benipayo vs. Conrado Potenciano, substituted by Dr. Victor L. Potenciano, praying, on the grounds therein alleged, that this Court issue an order clarifying its resolution dated November 13, 1954, the Court Resolved to clarify said resolution in the sense that the Case is dismissed without prejudice to the plaintiff-appellant filing his claim with the probate court in the testate proceedings of the estate of the defendant-appellee. Let the resolution of this Court, dated November 13, 1954, stand thus CQrrected and clarified".

As the motion for reconsideration of said resolution filed by defendant appellee was denied, Victor R. Potenciano, as special administrator of the estate of Conrado Potenciano, filed the instant petition for certiorari alleging that the appellate court acted without or in excess of its jurisdiction in issuing the resolution of November 19, 1956, as affirmed by its resolution of December 10, 1956.

The records show that although defendant-appellee, in praying for the dismissal of the action then pending in the Court of Appeals, asks for the dismissal of the case, the resolution of said Tribunal granting the same referred to the motion as one for the dismissal of the appeal. The significance of these terms in the case at bar lies in the fact that the claim which herein respondent Benipayo seeks to present and establish in the probate court was already the subject matter of Civil Case No. 7173, which was dismissed by the Court of First Instance of Manila and subsequently appealed to the Court of Appeals. It is clear, therefore, that if what was dismissed by the Court of Appeals was the appeal, it would have the effect as if no such appeal has been interposed and the decision of the lower court in Civil Case No. 7173 had become enforceable; in which event, as correctly observed by the probate court, the presentation of the claim in the intestate proceedings would be improper.

However, if the dismissal referred to the case, as it was prayed by the very Special Administrator Victor R. Potenciano (the petitioner herein), because Benipayo's claim was not one that survived the decedent Potenciano and as pursuant to Section S, Rule 87 of the Rules of Court, said claim must be filed in the testate proceeding—Special Proceedings No. 23875 of the Court of First Instance of Manila—(as Benipayo did following the procedure outlined by said administrator), such dismissal would then have the effect of nullifying the entire proceedings in Civil Case No. 7173 and the decision thereon would not be a bar to the filing of the claim with the probate court. For this reason when the attention of the Court of Appeals was called to this fact, it issued a resolution clarifying the matter in order that the phrase in question may properly read as a motion to dismiss the case.

Now, considering that the aforesaid resolution correcting its order of November 13, 1954, was issued on November 19, 1956, the question presented by the instant action is whether or not the Court of Appeals has jurisdiction to effect such amendment long after said resolution has reached its finality.

It is an elementary rule of procedure that after a decision, order or ruling has already become final, the court loses jurisdiction over the same and can no longer be subjected to any modification or alteration, except to correct misprints or clerical mistakes. In the case at bar, the Court of Appeals granted the motion filed by defendant-appellee for the dismissal of the case, because "the subject matter involved in the above-entitled case is a money claim against the appellee who died already, and testate proceeding has been filed for the settlement of the estate of the deceased". Said Tribunal, therefore, could not have dismissed the appeal which was not asked for, because although a court may grant any relief allowed by law, said prerogative is delimited by the cardinal principle that it cannot grant anything more than what is prayed for by the movant. Certainly, the relief to be dispensed cannot rise above its source. Under the circumstances of the instance case, the resolution in question

should properly refer to the motion as one for the dismissal of the case, as prayed for, and not of the appeal alone. The inclusion of the word appeal is to Our mind a clerical mistake on the part of the appellate court which could be corrected even after it had become final. Indeed, there is no question that even during the lifetime of the deceased, Benipayo already ventilated Tiis claim in court and although for some undisclosed reason it was dismissed, this fact does not militate against the merit of his aforesaid claim. To bar him on technical grounds from establishing whatever right he may have in the intestate proceedings after the case was thrown out of court upon the administrator's own motion ostensibly to afford said claimant ample opportunity to present his claim in the probate court, would amount to a sacrifice of substantial rights of a litigant in the altar of sophisticated technicalities with impairment of the sacred principles of justice. This We would like to avoid as much as possible, for rigid specifications set by the human mind may at times be relaxed so as to give way to the sense of fair play as recognized by equity when the peculiar circumstances of a case so warrant. As this Court has aptly said:

"A litigation is not a. game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other" (Alonso vs. Villamor, 16 Phil. 315).

Wherefore, the resolutions of, the Court of Appeals of November 19, 1956, and December 10, 1956, in CA-G. R. No. 13314-R, are affirmed and consequently, the writ of certiorari applied for is hereby denied. With costs against petitioner. It is so ordered.

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

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