

**IN THE MATTER OF THE ESTATE OF CANDELARIA BENGUAN,
DECEASED. SUSANA ABAY DE ARROYO, PETITIONER AND
APPELLANT VS. FRANCISCO ABAY, ET AL., OPPONENTS AND
APPELLEES.**

G. R. No. L-15814. February 28, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

On 5 January 1956 Susana Abay de Arroyo filed in the Court of First Instance of Negros Occidental a petition for the probate of the will of her deceased first-degree cousin Candelaria Benguan (special proceedings No. 3883). On 28 May, the Court ordered that the petition be published once a week for three consecutive weeks in *Civismo*, a newspaper of general circulation in Negros Occidental, setting the date of hearing thereof for the 23rd day of June 1956. On the date and time set for the hearing of the petition attorney Rolando Medalla, representing some of the heirs hereinafter referred to as opponents, moved for the postponement of the hearing to give him time and opportunity to file a written objection to the petition. Whereupon, the hearing was postponed to 30 June 1956. On 28 June, the opponents filed a motion to dismiss, on the ground that a petition for the probate of the same last will and testament had been dismissed by the same Court in a previous special proceedings No. 3628 and constitutes a bar to the present proceedings (No. 3883). On 7 July, the petitioner answered the motion to dismiss. By an order entered on 14 July, the Court dismissed the petition. After considering the motion for reconsideration filed by the petitioner on 31 July 1956 and the answer thereto filed by the opponents on 3 August 1956, the Court denied the motion for reconsideration. The petitioner appealed to the Court of Appeals which certified the appeal to this Court, for only questions of law are raised.

The previous proceedings invoked by the opponents to bar the present is special proceedings No. 3628 filed in the Court of First Instance of Negros Occidental on 27 September 1955 by one Felix Abay, a brother of Susana Abay de Arroyo, the herein petitioner and appellant. The last will and testament involved therein is the same invoked herein. However, upon failure of Felix Abay and his counsel Pio B. Japitana to appear at the hearing on 5 November 1955, despite due notice, the Court there dismissed the petition, without stating that it was a dismissal with prejudice. Two motions for reconsideration were filed, the first on 15 November 1955 and the second on 28 November 1955, but both were denied, the last for lack of merit.

The issue now hinges on whether or not the petition for the probate of a will filed in this special proceedings is barred by a previous special proceedings No. 3628, the petition of which was dismissed for failure of the petitioner and his counsel to appear on the date set for the hearing thereof.

The appellant contends that the dismissal of the petition in the previous case (spec. proc. No. 3628) does not bar the present (spec. proc. No. 3883), both for the probate of the same last will and testament of the late Candelaria Benguan, because the dismissal for failure of the petitioner and his counsel to appear at the hearing set by the Court was not an adjudication on the merits of the case and is not *res judicata*, because the parties in the previous

and present proceedings are not the same.

The appellant's contention that the dismissal of the petition for probate in the previous special proceedings due to failure of the then petitioner and his counsel to appear on the date and time set for the hearing thereof is not an adjudication on the merits must be upheld. In arriving at this conclusion the Court has not overlooked the provisions of sections 3 and 4, Rule 30, and section 2, Rule 73, of the Rules of Court. The probate of a will may be the concern of one person or several persons as usually is the case. The fault of one such person may be imputed to him alone who must suffer the consequences of his act. Such fault cannot be imputed to other persons. Hence the failure of Felix Abay and his counsel to appear on the date and time set for the hearing of the petition for the probate of a will claimed to have been executed by the late Candelaria Benguan during her lifetime which brought about the dismissal of the petition filed in that special proceedings (No. 3628) cannot prejudice the right of Susana Abay de Arroyo, the petitioner in a subsequent petition filed for the probate of the same will and last testament. So the provisions of the Rules cited and invoked by the opponents-appellees cannot be made to apply to proceedings for the probate of wills, because as already stated other parties interested in the probate of a will for transmission of property rights to them should not be prejudiced by the act or fault of another and because it is the policy of the State to have such last wills and testaments submitted to Court for their probate or legalization, as shown or indicated or evidenced by or in the punishment provided for persons who are in possession of last wills and testaments of deceased persons and fail or neglect to deliver or present them to Court for probate or to deliver them to the executor named in the will within twenty days after they know of the death of the testators or within the same period of time after they know that they were named executors of the will (sections 2 to 5, Rule 76). The underlying reason for the rule that a dismissal of an action or complaint in a civil case may be a bar to a subsequent action unless the dismissal is without prejudice is lack of interest or inaction of the one who brought the action in court by his complaint and for such lack of interest or inaction he should be made to suffer.

The order of dismissal appealed from is set aside and the petition for probate of a will filed in special proceedings No. 3883 remanded to the Court of First Instance of Negros Occidental for further proceedings as provided for in the Rules of Court, without special pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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