

REV. FATHER LUCIO V. GARCIA, PETITIONER, VS. HONORABLE CONRADO M. VASQUEZ, RESPONDENT.

G.R. No. L-26808. May 23, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

This is a motion for the reconsideration of our decision of March 28, 1969, filed by petitioner. In the opinion rendered in that case, we stated: "Petitioner should have been aware that there is no escape from the payment of the corresponding docket fee, otherwise, the Court is not called upon to act on a complaint or petition. Nor does it suffice to vary the rule simply because there is only one decedent whose estate is thus to be disposed of by will that must first be probated. It is not farfetched or implausible that a decedent could have left various wills. Under such circumstances, there is nothing inherently objectionable in thus exacting the payment of a docket fee, every time a will is sought to be probated. Petitioner here could have sought the probate of the will presented by him in the same proceeding. He did not; he filed instead a separate action."

While not disputing the correctness of the above principle announced, petitioner, in this, motion for reconsideration, would assert that he did not file a separate action "but instead elected to file the probate of the decedent's 1956 Will in the same Sp. Proc. 62618, then pending before the respondent Court. Petitioner's statement of fact is correct. Under the circumstances then, while the doctrine to the effect that a court of justice is not called upon to act on a complaint or a petition in the absence of a payment of the corresponding docket fee every time a will is sought to be probated must be considered as subsisting, it finds no application to the present case, as petitioner did not file a separate action but instead sought to have the other will probated in the same special proceeding then pending before respondent Court. He is therefore entitled to have our decision reconsidered.

WHEREFORE, the decision of March 28, 1969 is set aside and the petition for certiorari granted, with petitioner being thus entitled to the refund of the second docket fee of P940.00 paid under Receipt No. J-1459986 issued on December 2, 1965, and the order of respondent Court of November 6, 1965 ordering such payment of the second docket fee annulled. Without pronouncement as to costs.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, and Capistrano, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Concepcion, C.J., and Ruiz Castro, J., on official leave.

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