

ERNESTO M. GUEVARA, PETITIONER, VS. ROSARIO GUEVARA AND PEDRO C. QUINTO, RESPONDENTS.

G.R. No. L-5405. January 31, 1956

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition for review by certiorari of a decision of the Court of Appeals. The pertinent facts are set forth in said decision, from which we quote:

"This case being the sequel to, and aftermath of, a previous litigation between the parties that reached the Supreme Court through the former Court of Appeal's, it becomes necessary to restate the essential antecedent facts to view the issues in proper perspective. For this purpose, it is important to recall that on "August 26, 1931, Victorino L. Guevara, a resident of Bayambang, Pangasinan, executed a will (Exhibit A), distributing assorted movables and a residential lot among his children, Rosario and Ernesto Guevara, and his stepchildren, Vivencio, Eduvigis, Dionista, Candida, and Pio Guevara. To his second wife Augustia Posadas, the testator bequeathed, in addition to various movables, a portion of 25 hectares to lie .taken out of a 259 odd hectare parcel outlined in Plan Psu-68618, plus another five (5) hectares in settlement, of her widow's usufruct. The balance of the 259 odd hectares ho distributed as follows:

100 hectares reserved for disposal during the testator's lifetime and for payment of his debts and family expenses;

108.0854 hectares to his legitimate son Ernesto Guevara, including therein 43.2342 hectares by way of mejora;

21.6171 hectares to 'mi hija natural reconocida Rosario Guavara.' Ernesto Guevara was appointed executor without bond.

On July 12, 1933, the same testator executed a deed of sale in favor of Ernesto Guevara, conveying to the latter the southern half of 'the 259-hectare lot heretofore mentioned, and expressly recognized Ernesto Guevara as owner of the northern half.

Prior to this sale, oh November 1, 1932, Victorino and his son Ernesto had jointly applied for registration of the big parcel (case No. 15174), but in view of the sale from the former to the latter, the decree was issued in the name of Ernesto Guevara exclusively and for the whole tract a certificate of title (No. 51691 of Pangawnan) being issued in his sole name on October 12, 1933.

Fifteen days previously, i.e., on September 27, 1933, Victorinc Guevara died, but his 'will was not filed for probate. About four years later, Rbsario Guevara, claiming; to be a recognized natural child of the deceased Victorino, and on the assumption that he had died intestate, brought' suit against' Ernesto Guevara to recover. 423,492 square meters of the tract covered by certificate of title No. 51691 as the portion that should correspond to her (Rosario). by way of legitime.

The case reached the former Court of Appeals in due course and was decided in Rosario Guevara's favor (Exhibit E); but upon certiorari, the Supreme Court rmodified the judgment in December, 1043, as follows (Exhibit F);

'Wherefore, that part of the decision of the Court of Appeals which declares in effect that notwithstanding exhibit 2 and the issuance of original certificate of title No, 51691 in the name of Ernesto M. Guevara; one-half of the land described in said 1 certificate of title belongs to the estate of Victorino L. Guevara and: the other half to Ernesto M. Guevara in consideration of the latter's assumption of the obligation to pay all the debts of the deceased, is hereby affirmed; but the Judgment of said court insofar as it awarded any relief to the respondent Rosario Guevara, in this action is hereby reversed and set aside, and the parties are hereby ordered to present the document Exhibit A to the proper court for probate in accordance with law, without prejudice to such action as the provincial fiscal Pangasinan may take against the responsible party or parties under section 4 of Rule 76. After the said document, is approved and allowed by the court as the last will and testament of the deceased Victorino L. Guevara, the heirs and legatees herein named may take such action, judicial or extra judicial, as necessary to partition the estate of the testator, taking in consideration the pronouncements made in part II of this opinion No -finding as to costs in any of the three instances.' (Appellant's Brief, pp. 13-14.)

Claiming to act pursuant to the foregoing decision Rosario Guevara commenced on October 5, 1945, special proceedings No. 2646 in the Court of First Instance of Pangasinan for the probate of the will of Victorino Guevara. In paragraph 10 of the petition, it was alleged:

'10. Que dicho testamento, o sus disposiciones testanientarias, ha sido de, jure revocado, o revocados, en eua la parcela de terreno de 259 hectareas descrita en dicho testamento, por haber el testador enajenado o dispuesto intervivos misma en la forma mencionada en las tres decisiones sup meneionadas; y que la solieitante pide la legalizacio testamento tan solo para los efectos del reconocimiento de hija natural hecha en dicho testamento a favor de la demandante y en obediencia al mandato de la Corte Suprema en su decision supra.' (Record on Appeal, p. 5.)

Notice of the petition having been duly published pursuant to Rule of Court 77, section 4, Ernesto Guevara appeared and opposed the probate. Pedro L. Quinto, counsel for Rosario in the former litigation, was allowed to intervene in view of his recorded attorney's lien.

On January 31, 1946, Ernesto. Guevara, through counsel, filed a motion to dismiss the petition on the grounds that (a) petition itself alleged that the will was revoked; (b) that 'whatever right to probate the parties may have has already prescribe (Record on Appeal, p. 14); and (c) that the purpose of the probate was, solely to have petitioner Rosario declared an acknowledged natural child of the deceased.

By order of December 9, 1946, Judge Sotero Rodas denied the motion, to dismiss; but upon motion of reconsideration Judge Mainalac of the same court, on June 23, 1937, reconsideration set aside the previous resolution and ordered the petition dismissed on the ground that Rosario Guevara's petition did not for the probate in toto of the will, contrary to the order of Supreme Court; that her right to petition for the probate of testament of Victorino L. Guevara had prescribed; and that her action for judicial declaration of acknowledgment had likewise prescribed.

An amended petition for the probate of the will in toto and another petition to reconsider the previous order were subsequently denied; the former on the ground, that there was a radical change of theory from that embodied in the original petition, and the second for the same reasons stated in the order of June, 23, 1947. Rosario L. Guevara and Pedro L. Quinto thereupon brought the case on appeal to this Court, assigning no less than twenty (20) alleged errors committed by the court below." (Guevara vs. Guevara, C.A.—G. R. No. 5416-R, promulgated December 26, 1951; see Appendix to brief for the petitioner-appellant, pp. 1-6.)

The dispositive part of the decision of the Court of Appeals reads as follows:

"The order of dismissal of the petition for probate is reversed and the court of origin ordered to reinstate the petition, and to hear and decide whether the will of Victorino Guevara, deceased, should be allowed to probate.

Costs against appellees in both instances." (Ibid.)

In his appeal therefrom, petitioner Ernesto M. Guevara raises the following questions, to wit: (a) Did respondents herein'duly perfect their appeal from the decision of. the , Court of First Instance of Fangasinan? (b) Did the Court qf Appeals have jurisdiction to entertain said appeal? (c) Is the petition for probate of the alleged will of the deceased Victorino L, Guevara barred by the statute of limitations?

(1) With reference to the first question, petitioner has submitted the following statement[1] of the steps taken since June 23, 1947, date of the resolution of Judge Manalac, dismissing the petition for probate of the last will and testament of Victoriano L. Guevara:

"June 23, 1947-

Date of Resolution appealed from.

July. 14, 1947-

Date of Joint Petition for Reconsideration filed by appellants.

July 25, 1947-

Date of Amended petition for probate of will.

July 25, 1947-

Motion for admission of Amended Petition.

August 2, 1947-

Appellants' motion to postpone hearing on petition for reconsideration and motion for admission of Amended Petition.

August 10, 1947-

Appellants' urgent motion for continuance of hearing joint petition for Reconsideration as well as Motion Admit Amended Petition.

August 25, 1947—

Motion for extension of time to file memorandum.

September 1, 1947—

Memorandum' for appellants submitted.

October 7, 1947—

Memorandum for appellee submitted

October 14, 1947—

Appellants' petition for ten (10) days to file reply memorandum.

November 1, 1947—

Appellants' petition to file reply memorandum on or before November 9, 1947.

November 8, 1947—

Appellants petition for extension to file reply memorandum.

November 18, 1947—

Verified reply of appellant Rosario Ciuevara.

November 24, 1947—

Reply memorandum of Pedro C; Quinto filed.

January 12, 1948—

Court denies both petitions of July 14 and 25, 1947.

January 24,, 1947—

Notice of appeal to Supreme Court and petition for thirty (30) days' extension by appellant Rosario Guevara.

January 29, 1948—

Order granting petition for extension.

February 1, 1948—

Another notice of appeal to Supreme Court and motion for thirty (30) days extension by appellant Eosario Guevara.

February 28, 1948—

Appellants' ex-parte petition for further extension'.

March 6, 1948—

Original joint Record on Appeal filed. (This was so defective and incomplete it consisted of mere disjointed sheets of paper intercalated with one another and was a mere token record on appeal.)

March 8, 1948—

Another joint petition for reconsideration of appellants.

March. 11, 1948—

Appellee's objection to record on appeal.

Marfili 17, 1948—

Verified reply of appellants to objection.

March 18,, 1948—

Appellee's objection to joint petition for reconsideration.

June 19, 1948—

Appellants' memorandum in support of the joint petition for reconsideration.

July 23, 194S—

Order of denial of, Joint Petition and disapproving original record oh appeal as incomplete and giving appellants within 10 days from notice.

July 26, 1948—

Amended Notice of Appeal f,o the Court of Appeals instead of to the Supreme Court.

July 28, and 29, 1948—

Appellants received copy of order of July 23, 1948.

August 1, 1948—

Petition for five (5) days extension to file amended Record onAppeal filed by appellant Pedro C. Quinto.

August 10, 1948—

Appellants' Joint Petition for last extension of two (2) days.

August 10, 1948—

Filing of amended joint record on appeal, (This is also again so defective and incomplete as to constitute another mere token record on appeal as required by the Rules.)

August 24, 1948—

Appellants petition for ten (10) days period to reply to objection, if any was to be filed.

August 27, 1948—

Appellee's objection to amended record on appeal.

September 8, 1948—

Appellants' reply to objection,

October 20, 1948—

Court order sustaining objection and gives appellants fifteen (15) days from notice to redraft record on appeal.

November 3, 1948—

Appellants' joint petition to reconsider order of disapproval of Amended Record on. Appeal.

November 3, 1948—

Appellants file re-amended joint record on appeal, (This again disregarded the orders of the court regarding the contents of the record on appeal.)

November 22, 1948—

Appellee objected to approval of re-amended joint record on appeal and prayed that order appealed from be declared final.

March 22, 1949—

Court sustains appellee's objection to record on appeal denying petition for reconsideration and appellants given fifteen (15) days from notice to satisfy requirements of court's previous order.

April 8, 1949—

Appellants file in Supreme Court petition for certiorari and mandamus attacking order of June 23, 1947.

April 11, 1949—

Appellant Quinto's petition for fifteen (15) days extension to file Re-amended Record on Appeal.

April 12, 1949—

Supreme Court denies petition off-hand.

April 16, 1949—

Appellant Rosario Guevara's motion for fifteen (15) days extension for the same purpose.

April 21, 1949—

Court granted extension prayed for to expire May 1, 1948.

April 21, 1949—

Second Re-Amended Record on Appeal filed.

June 11, 1949—

Appellee's opposition to Second Re-Amended Record on Appeal'.

June 29, 1949—

Appellants' joint notice of hearing on Second Re-Amended Record on Appeal for July 12, 1949.

July 10, 1949—

Appellants' joint reply to opposition.

July 12, 1949—

Action on record on appeal deferred on petition of Atty. Quinto.

September 3, 1949—

Appellant Quinto's notice of hearing on Second Re-Amended Record on Appeal for September 28, 1949.

September 28, 1949—

Order of court approving same.

December 8, 1949—

Clerk of lower court sends records to appellate court.

December 10, 1949—

Appellant Quinto's motion ex-parte to have records sent up to appellate court."

(Petitioner-appellant's Brief, pp, 41-47.)

Based upon the foregoing, oppositor and appellee Ernesto M. Guevara filed, with the Court of Appeals, a motion praying that the appeal be dismissed:

"(a) Because due to the appellant's many and repeated dilatory tactics, the prosecution of their appeal has been unduly and unreasonably delayed for a period which should strike anyone as totally without justification. The resolution appealed from was dictated by the lower court on June 23, 1947, so that a period of over two (2) years and nine (9) months until the date of this writing has elapsed, thus establishing a record-holding delay which should not be sanctioned by the Courts as prejudicial to the: administration of justice.

"(b) Because appellants, in violation of Rule 48, section 3, did not diligently prosecute their appeal by failing

to have the record sent Up to this Honorable Court within thirty (30) days from the time their Second Re-amended Record on Appeal was approved on September 28, 1949; and it was only so transmitted on December 8, 1949, that is after the lapse of two (2) months and ten (10) days.

" (c) Because, at any rate, the first Amended Joint Record on Appeal was filed beyond the extension granted by the Court and, consequently, the appellants' right to appeal has lapsed." (Exhibit A, pp. 1-2).

The Court of Appeals denied said motion to dismiss for the following reasons:

"A preliminary question was posed by the appellee who prayed for the dismissal of the appeal on the ground that petitioners-appellants had unreasonably delayed the perfection of the appeal, as the Second Re-amended Joint Record on Appeal was not certified to this Court until December, 1949. After considering the voluminous record, and the arguments of both parties, "we are of the opinion that both parties have contributed to the delay with lengthy memoranda, and repeated motions and objections. Moreover, the points in question are important enough to deserve adequate consideration upon the merits. Wherefore, the motion to dismiss the appeal should be, and is hereby, overruled and denied." (Appendix to Brief for the Petitioner-Appellant, pp. 6-7.)

It is urged by petitioner herein that respondents' appeal from the decision of the Court of First Instance of Pangasinan had not been duly perfected because: (a) the original of the record on appeal did not comply with the Rules of Court; (b) the record on appeal was filed after the lapse of the reglementary period; (c) there has been an unprecedented delay in the filing of a satisfactory record on appeal; and (d) the appeal should be deemed abandoned for violation of Rule 48, section 3, of the Rules of Court.

The first ground is predicated upon the fact that, instead of transcribing the motions, petitions, orders and resolutions incorporated in the original record on appeal, respondents herein merely attached to the original copy of said record on appeal, filed with the Court of First Instance of Pangasinan, their own copies of said motions, petitions, orders and resolutions. Accordingly, the copy of said record on appeal furnished to petitioner herein did not contain or enclose the aforementioned parts of the record. It appears, however, that the respondents were given several extensions of time within which to comply with the pertinent provisions of the Rules of Court and that respondents eventually did so. There being no question about the authority of the court of first instance to grant said extensions of time, it is clear that the" first ground, relied upon by petitioner herein, is untenable.

In support of the second ground, it is alleged: (a) that the original record on appeal was filed by Pedro C. Quinto only, and does not inure to the benefit of Rosario Guevara; and (b) that respondents had lost their right to appeal by the lapse of the reglementary period. As regards the first proposition, petitioner asserts that respondent Pedro C. Quinto had withdrawn his appearance as counsel for respondent Rosario Guevara; that Quinto had, thereafter, intervened in the' case in his own behalf, in order to enforce his attorney's lien, as former counsel for Rosario Guevara; that, consequently, the original record on appeal and the petitions for extension of time to file an amended record on appeal, filed by Pedro C. Quinto, were good only insofar as he is concerned, and cannot profit Rosario Guevara, she having ceased to be his client long before the filing of said original record on appeal and petitions for extension of time; that this interest in the case arises from his rights as former attorney for respondent Rosario Guevara, and, as such, is subordinate to, and dependent upon, the interest therein of said Rosario Guevara and the success of her claim therein; and that, her appeal not having been duly perfected, his appeal must be deemed to have no legal effect. There is no merit in this pretense, for it appears, at the foot of Said record on appeal, that Pedro C. Quinto had filed the same, "for himself as appellant and in behalf of Rosario Guevara, who authorized him to perfect the appeal for both appellants," and that similar statements were made in the body and at the foot of said petitions for extension of time. It is clear, therefore, that the aforementioned record on appeal and motions should be deemed submitted, also, by respondent Rosario Guevara. The position then held by Pedro C. Quinto, as special (prosecutor in the office of the Solicitor General, did not nullify his aforesaid acts on behalf of

Rosario Guevara. Besides, said acts would seem to have been performed by him, more as attorney-in-fact than as counsel for Rosario Guevara, and this merely in connection with the perfection of her appeal. We do not find therein anything objectionable, either legally or morally, in the light of the circumstances surrounding the case.

The second proposition is based upon the following reasons ;

(a) The aforementioned record on appeal and motions for extension of time filed by Quinto on behalf of Rosario Guevara did not inure to her benefit, for which reason the reglementary period to appeal had expired before the perfection of her appeal. For the reasons already adverted to, this argument is clearly untenable.

(b) The petition for reconsideration filed by respondents on July 14, 1947, did not suspend the running of the period to perfect the record on appeal, because said petition did not comply with the provisions of Rule 37, section 1, of the Rules of Court, reading as follows:

"Within thirty days after notice of the judgment in an action, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

(b) Newly discovered evidence, -which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result;

(c) Because excessive damages have been awarded, or the evidence was insufficient to justify the decision, or it is against the law."

Said petition for reconsideration appears, however, to be predicated, in effect, upon the ground that the evidence is insufficient to justify the decision of the court of first instance, and that said decision is contrary to law. It partakes, therefore, of the nature of a motion for new trial, stating specifically the reasons in support thereof, and, hence, it suspended the period to appeal until the determination of said motion.

Relative to the alleged unprecedented delay in the filing of a satisfactory record on appeal, we agree with the finding of the Court of Appeals to the effect that the delay was due to the acts of the respondents, as well as of the petitioner herein, for both had asked several postponements and extensions of time, filed memoranda and reply memoranda, and raised or provoked a number of other issues or incidents which necessarily delayed the perfection of the appeal. Obviously, petitioner should not be allowed to profit by said delay, to which he had actively contributed.^[1] Lastly, petitioner maintains that, although the record on appeal had been approved on September 28, 1949, it was not forwarded to the Court of Appeals until December 8, 1949. Section 3 of Rule 48 of the Rules of Court provides:

"If the record on appeal is not received by the Court of Appeals within thirty days after the approval thereof, the appellee may, upon notice to the appellant, move the court to grant an order directing the clerk of the lower court forthwith to transmit such record on appeal or to declare the same abandoned for failure to prosecute."

Considering that respondents herein were not notified of the approval of the record on appeal until December 8, 1949, on which date the record on appeal was forwarded to the Court of Appeals, and that the aforementioned provision of the Rules of Court does impose upon said court the mandatory duty to declare the appeal abandoned for failure to prosecute, we believe that no error was committed in giving due course to the appeal and that the same has been duly perfected.

(2) Did the Court of Appeals have jurisdiction to try the case, on appeal from the decision of the court of first

instance? Petitioner maintains the negative, upon the ground that the appeal involved only questions of law. This is not correct, for the very motion for reconsideration adverted to above, indicated that the appeal raised some issues of fact, such as, for instance, whether or not the will in question was in the possession of respondent Rosario Guevara and whether respondent Quinto had been authorized by her to perfect the appeal on her behalf. At any rate, the case is now before us and, upon examination of the record and consideration of all the issues therein raised, we are of the opinion that, had the appeal been forwarded directly to this Court, we would have disposed of it in the manner set forth in the decision of the Court of Appeals, the review of which is sought by herein appellant.

(3) The last question for determination in this case is whether or not the petition for probate of the will of Victorino L. Guevara is barred by the statute of limitations, considering that the testator died on September 27, 1953, and that the petition for probate of said will was filed twelve (12) years later, or, to be exact, on October 5, 1945. The Court of Appeals resolved the question in the negative, upon the following grounds:

"We are of the opinion that the Court below was in error when it declared that the petition for probate of the will of Victorino Guevara was barred by prescription. The provision of Article 756 of the old Civil Code (1042 of the New) and of Rule 76 of the Rules of Court, reiterating those of the old Code of Civil Procedure (Act 190), point out that the presentation of a decedent's will to the competent court has always been deemed by our law as more of a duty than a right, and the neglect of such obligation carries with it the corresponding penalty; and it is inconsistent with that policy that the court should refuse to admit wills to probate, without inquiry into their validity. The authority given to testators to dispose freely of a portion of their estate would be imperfectly safeguarded, unless adequate measures were provided by the state to assure that the wishes of the deceased would be carried out. Because the decedent may no longer act to have his testamentary dispositions duly executed, the state authority must take over the opposite vigilance and supervision, so that free testamentary disposition does not remain a delusion and a dream. This was expressly recognized by the Supreme Court in its previous decision, G. R. No. 48840 (Exhibit E) when it said:

* * * we hold that under section 1 of Rule 74, in relation to Rule 76, if the decedent left a will and no debts 'and the heirs and legatees desire to make an extra-judicial partition of the estate, they must first present that will to the court for probate and divide the estate in accordance with the will. They may not disregard the provisions of the will unless those provisions are contrary to law. Neither may they do away with the presentation of the will to the court for probate, because such suppression of the will is contrary to law and public policy. The law enjoins the probate of the will and public policy requires it, because unless the will is probated and notice thereof given to the whole world, the right of 'a person to dispose of his property by will may be rendered nugatory, as is attempted to be done in the instant case. Absent legatees and devisees, or such of them as may have no knowledge of the will, could be cheated of their inheritance thru the collusion of some of the heirs who might agree to the partition of the estate among themselves to the exclusion of others.' (Italics supplied)

"In holding the statute of limitations applicable to the probate of wills, the court below failed, to notice that its doctrine was destructive of the right of testamentary disposition and violative of the owner's right to control his property within the legal limits. The appealed order in fact leaves wills at the mercy and whim of custodians and heirs interested in their suppression. The lower court would in effect abdicate the tutelary power that passed to the Republic from the former sovereigns, that 'potestad suprema que en ml reside para velar por el puntual cumplimiento de las ultimas 'voluntaries', asserted as one of the royal prerogatives in the 'Real Cedula' of March 18, 1776.

"It is not without purpose that Rule of Court 77 prescribes that any 'person interested in the estate may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed'. Taken from the Code of Procedure of California, this provision has been interpreted as meaning that the statute of limitations has no application to probate of wills. In case of *In re Hume's Estate*, 179 Calif. 338, 176 Pac. 681,

th California Supreme Court ruled that:

'The chapter of the Code relating to the probate of wills does not provide for opposition to such probate on the ground of the bar of the statute of limitations, but, in effect, exclude it from the category of grounds allowed as a basis for such opposition. Section 1299 declares that any person interested in the estate 'may at any time after the death of the testator, petition the court having jurisdiction to have the will proved. This implies that there is no arbitrary time limit.'

As additional reasons, the same Court stated:

* * * Section 1317 declares: 'If the court is satisfied upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the will testator at the time of its execution was of sound and disposing mind and not acting under duress, menace, fraud, or undue influence, a certification of the proof and the facts found, signed by the judge and attested by the seal of the court, must be attached to the will.'

'This excludes the bar of the statute of limitation from consideration as one of the matters which may be shown in opposition to the probate. This is further emphasized by section 1341 which, in substance, declares that, if upon the verdict of the jury facts mentioned in section 1317 as aforesaid appear to be established, the court 'must' admit the will to probate. Section 1314 makes it imperative that the court shall admit the "will to probate if the execution is proven and the grounds of opposition authorized by section 1312 are not established. This clearly implies that no grounds of opposition other than those enumerated in section 1312 may be set up, and it leaves no place for the application of the statute of limitations.

'It is further to be observed that, notwithstanding the positive and comprehensive language of sections 343 and 369, if taken literally, there can be no doubt that they cannot apply to all special proceedings of a civil nature. Proceedings for a change of name, or in arbitration, or for voluntary dissolution of a corporation, or for guardianship, or for a married woman to become a sole trader, are all within the definition of the phrase, and each is enumerated, classed, and defined as such proceeding by the Code. If statute of limitations applied, it would begin to run against such proceedings as soon as the right to institute them accrued. Yet from very nature of these proceedings it is obvious that neither of them could be subject to such limitation.

'This construction of these Code provisions is confirmed by the long-continued and uniform practice and the universal understanding of the bench and bar of the state on the subject.'

* * * * *

'Action to quiet title frequently involves wills of persons who have died many years before the action was begun. The section contemplates that such a will, although not yet probated, may be construed in the action and may be afterwards probated, and it clearly shows that the Legislature did not understand that the right to probate such will would be barred if the testator had died more than four years before the petition for probate was filed.

'This uniform practice and understanding of the bench and bar, and of the legislative department of the state also, is a strong argument to the effect that the statute of limitations does not apply to such proceedings. The authorities on the effect of such long acquiescence are numerous.

'The Statute of Limitations upon which the court below has relied, sections 38 to 50 of the old Code of Civil Procedure, Act 190, undertakes to fix limits for the filing of 'civil actions', but none for 'special proceedings' of which probate is admittedly one. The distinction is not purely verbal, but based on differences that make the limitation to 'actions' inapplicable to 'special proceedings'. In this regard, the Supreme Court of New York has adequately remarked (*In re Canfield's Will*, 300 NYS 502) :

'A respondent in a private proceeding owes no legal duty or obligation to the proponent as such, wherefore it is impossible for him to violate such non-existent obligation. Furthermore such a proceeding is not instituted for

the vindication of any personal right to the proponent. The subject-matter is therefore wholly absent which could give rise to any 'cause of action' against any respondent therein.

'The primary purpose of the, proceeding is not, to establish the existence of the right of any living person, but to determine whether or not the decedent has performed the acts specified by the pertinent statutes which are the essential prerequisites to personal direction of the mode of devolution of his property on death. There is no legal but merely a moral duty resting upon a proponent to attempt to 'validate the wishes of the departed, and he may and frequently does receive no personal benefit from, the performance of the act.

'One of the most fundamental conceptions of probate law, is that it is the duty of the court to effectuate, in so far as may be compatible with the public interest, the devolutionary wishes of a deceased person (Matter of Watson's Will, 262 N.Y. 284, 294, 186 N.E. 787; Matter of Marriman's Estate, 124 Misc. 320, 325, 208 N.Y.S. 672; Foley, S. affirmed 217 App. Div. 733, 216 N.Y.S. 842; Matter of Lensman's Estate, 137 Misc. 77, 78, 243 N.Y.S. 126, Henderson, S., Matter of Drake's Estate, 160 Misc. 587, 593, 290 N.Y.S. 581). To that end, the court is, in effect, an additional party to every litigation affecting the disposal of the assets of the deceased. Matter of Van Valkenburgh's Estate, 164 Misc. 295, 296, 298 N.Y.S. 219. A determination, therefore, that the mere non-action of a person upon ivhmn no legal duty rested in this regard, could have the effect of subverting the wishes of one who was no longer able to protect his own unquestionable rights, would strike at the very foundation of all conceptions of justice as administered in probate courts.'

"These decisions are of high persuasive value (Cu vs. Republic, G. R. L-3018, July 18, 1951); they represent the trend of authority (57 Am. Jur. 535), and enable us to conclude that reason and precedent reject the applicability of the Statute of Limitations to probate proceedings, because these are not exclusively established in the interest of the surviving heirs, but primarily for the protection of the testator's expressed wishes, that are entitled to respect as an effect of his ownership and right of disposition. If the probate of validly executed wills is required by public policy, as declared by the Supreme Court in the previous case, G.R. 48840 (Exhibit E), the state could not have intended the statute of limitations to defeat that policy.

"It is true, as ruled by the trial court, that the rights of parties 'should not be left hanging in uncertainty for periods of time far in excess of the maximum period of ten years allowed by law'; but the obvious remedy is for the other interested persons to petition for the production of the will and for its probate, or to inflict upon the guilty party the penalties prescribed by Rule 76 or declare the unworthiness of the heir under the Civil Code for concealing or suppressing the testament; but not to dismiss the petition for probate, however belatedly submitted, and thereby refuse sanction to testamentary dispositions executed with all the formalities prescribed by law, incidentally prejudicing also those testamentary heirs who do not happen to be successors ab intestato. That in this particular case the appealed rule may not work injustice would not excuse its adoption as a general norm applicable to all cases..

"It is likewise reasonable to assume that if the Supreme Court had considered the ten-year limitation applicable to probate proceedings, it would not have ordered the parties on December 29, 1943 'to present the document Exhibit A to the proper court for probate in accordance with law', because the ten years from the death of the testator expired in September of that same year, two months before the decision. It is safe to assume that the high Court would not order a useless step. The reasoning that the phrase 'in accordance with law' was a qualification signifying 'if still legally possible', appears to be far-fetched and unjustified. The plain import of the words employed by the high Court is that the probate should follow the procedure provided for the purpose."

* * * * *

"The other reasons advanced by the court a quo in support of its order dismissing the petition are also untenable. The allegation contained in paragraph 10 of the original petition, that 'the will, or its testamentary dispositions, had been de jure revoked in so far as the parcel of 259 hectares described in said will is concerned, does not justify the finding that the probate would be pointless. What is alleged is a partial

revocation, only as to the parcel of land affected; but as previously shown, the will disposed of other property besides that one. And even granting that, the next allegation to the effect that plaintiff sought to probate 'only for the purposes of her acknowledgment as natural child in said will', constitutes an averment that the will had been fully revoked, the same would at the most constitute a conclusion or inference that the lower court was not bound to admit. Because the appellant claimed or believed that the revocation of the will as to the large parcel of land constituted a total revocation of the testament is no reason why the court should concur in the same belief or conclusion, especially when the will itself, appended to the petition, showed that there were other properties and other heirs or legatees, and the trial court had before it the decision of the Supreme Court ordering the filing of the will for its probate because, as stated in its decision, such a step was enjoined by law and public policy. Moreover, the defect, if any, incurred in failing to ask for the probate in toto of the will, was subsequently cured and corrected in the amended petition, where not only the objectionable statements were eliminated, but others added indicating the existence of a partible estate.

"Assuming that the original petition violated the order of the Supreme Court in so far as it did not ask for the allowance of the entire will, the court below erred in dismissing¹ the petition, for it thereby sanctioned further disobedience to the order of the superior court. Once again, it must be repeated that the order of dismissal failed to take into account that the case involved not only the interests of Eosario Guevara, and those of the appellee Ernesto Guevara and the other legatees, but specially the express desires of the testator; and that the protection and defense of the latter developed upon the court itself, since no one else made any move to enforce them.

"Even if the other heirs had failed to show interest i case (a fact not properly inferable from their non-intervention in the case, because the order of publication of the petition on only called for those interested to 'appear to contest the allowance' and not to support it) (Rec. on App., p. 7), and even if the other heirs had already received their shares, the order refusing the probate remains indefensible. If the other heirs were not interested, there remained the wishes of the testator to be supported and protected if validly expressed. If the heirs had distributed the estate, the distribution was illegal and improper unless the will be first prob The Supreme Court so ruled in its previous decision (G. R. 48840) heretofore quoted.

'Even if the decedent left no debts and nobody raises any question as tot the authenticity and due execution of the will, none of heirs may sue for the partition of the estate in accordance with that will without first securing its allowance or probate by the court: first, because the law expressly provides that 'no will shall pass either real or personal estate unless it is proved and allowed in the proper court; and, second, because the probate of a will, which is a proceeding in rem, cannot be dispensed with and substituted by any other proceeding, judicial or extrajudicial, with offending against public policy designed to effectuate the testator's right to dispose of his property by will in accordance with law and to protect the rights of the heirs and legatees under the will thru the means provided by law, among which are the publication and the personal notices to each and all of said heirs and legatees. Nor may the court approve and allow the will presented in evidence in such an action for partition, which is one in personam, any more than it could decree the registration under the Torrens system of the land involved in an ordinary action for revindicacion or partition.'

"From whatever angle the case is viewed, a hearing on the allowance of the will is unavoidable. The persistent, albeit obnoxious, attempts of Rosario Guevara to sidetrack the will are not remedied by dismissing the petition for probate of will, and allowing Ernesto to retain a greater interest than that intended by the testator." (Appendix to brief for the petitioner-appellant, pp. 7- 17-20.)

We are fully in accord with these findings which we adopt as ours.

In view of the foregoing, the decision appealed from is hereby affirmed, with the costs of this instance against the petitioner.

Padilla, Reyes, A., Jugo, Bautista Angelo, and Labrador, JJ. concur.

[1] This statement does not include some petitions filed by petitioner, which likewise delayed the perfection of the appeal.

[1] The record shows that the petitions for postponement and extension of time, and other motions filed by petitioner in the court of first instance had delayed the perfection of the appeal by over 100 days

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