

CENONA CAPA AND SEGUNDO BACANAYA, PETITIONERS, VS. JUDGE PATRICK C. CENIZA, OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL AND ESTATE OF DECEASED GREGORIA SAQUIN, REPRESEN...

G.R. No. L-16648. November 30, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Original petition for certiorari to annul an order of the Court of First Instance of Misamis Occidental.

In September, 1940, Cenona Capa commenced Special Proceeding No. 79 of said court with a petition for the probate of the will of Sancho Capa who had died on August 18, 1940. After appropriate proceedings, the petition was granted and by an order date October 25, 1950, Gregoria Saquin, widow of the deceased, was appointed administratrix of his estate. Subsequently, however, she was removed as such administratrix and substituted by Leoncio Acosta, Deputy Clerk of said court, as special administrator of said estate.

Meanwhile, or on or about November 21, 1951, Gregoria Saquin had filed an application for support pendente lite, which was denied, "for the present", in an order of the court, then presided over by Hon. Luis N. de Leon, Judge, dated December 20, 1951. Over three (3) years later, or on March 16, 1955, respondent Hon. Patricio Ceniza, Judge, who then presided said court, issued an order directing the special administrator to turn over to Gregoria Saquin "three-fourths ($\frac{3}{4}$) of the cash proceeds of every harvest of the estate, one-half ($\frac{1}{2}$) of which representing her share in the conjugal estate and the other half representing her usufruct over the estate". No motion for reconsideration of this order or appeal therefrom was filed or taken by any of the parties in the proceedings. However, on July 27, 1959, Cenona Capa filed a motion praying that said order of March 16, 1955 be annulled upon the ground that it had been issued without authority and in excess of jurisdiction and was, accordingly, illegal and void. Upon denial of the motion, Cenona Capa and her attorney-in-fact, Segundo Bacanaya, instituted this special civil action for certiorari against Judge Ceniza and the Estate of Gregoria Saquin, who had died meanwhile, to annul said order of March 16, 1955, upon the ground that it had, in effect, set aside the order of December 20, 1951, which was allegedly final and executory.

There is no merit in this pretense. Said order of December 20, 1951 did not undertake to settle the status of the property therein referred to. Although it said:

"According to the will, the conjugal property of the spouses Sancho Capa and Gregoria Saquin had already been partitioned between them in a public instrument executed by them on May 30, 1940. The court does not have before it that deed of partition to determine whether or not the property now under administration is the common mass composing the conjugal property or is the one-half of that mass that, in accordance with the deed of partition, was adjudicated to Sancho Capa. The inventory and appraisal and the statements of accounts submitted by the administratrix show that the property under administration belong exclusively to the deceased and is not the common mass composing the conjugal property.

"The support that may be awarded to the movant shall be in the nature of an advance payment chargeable against her share in the liquidation of the conjugal property. The property under administration not being conjugal property, the movant can not be awarded support to be taken from said property."

the statement therein to the effect that the property under administration was not conjugal, was not meant to be a final adjudication thereon, for, as stated in said order, the court did not have before it the deed of partition therein referred to and, accordingly, was in no position "to determine whether or not the property now under administration is the common mass composing the conjugal property or is the one-half of that mass," and hence, it denied the motion for support only "for the present". In other words, said denial was merely provisional and interlocutory. As such, it was not appealable and could not have become, as it did not become final and executory.

Respondent Judge did not, therefore, exceed his jurisdiction or commit a grave abuse of discretion in issuing the order complained of, in view of which the petition herein is hereby dismissed and the writ therein prayed for denied, with costs against petitioners Cenona Capa and Segundo Bacanaya. It is so ordered.

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

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