

ANGEL ALAFRIZ, ET AL., PETITIONERS, VS. HONORABLE PRIMITIVO GONZALES, ETC., ET AL., RESPONDENTS.*G.R. No. L-8340. May 18, 1956*

Ponente: PARAS, C.J.

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On February 2, 1948, intestate proceedings were commenced in the Court of First Instance of La Union covering the estate of the deceased Isabel V. Florendo (special proceedings No. 124). The petition was filed by Atty. Alfredo C. Florendo, as counsel for all the heirs, including Angel F. Alafriz and Pedro F. Alafriz, petitioners herein. On November 21, 1950, Atty. Dominador Alafriz addressed a letter to the clerk of court, inquiring about the status of the special proceedings and the name of the administrator and amount of his bond, and stating that said inquiry was made for his clients, the petitioners. In July, 1952, Atty. Dominador Alafriz addressed another letter to the clerk of court, requesting that no motion or pleading filed by any party be entertained or acted upon without proof of service upon Atty. Alafriz as counsel for petitioners, and that he be furnished with copies of all orders from the date of his appearance on November 21, 1950. On July 23, 1952, the clerk of court informed Atty. Alafriz that Atty. Alfredo C. Florendo, since the commencement of the proceedings, had appeared as counsel for all the heirs including the petitioners; that in the extra-judicial settlement entered into by the parties concerned, including the petitioners, all the heirs were again represented by Atty. Florendo; that when a party is represented by two attorneys, official notice is always sent to only one of the attorneys, and that notices in special proceedings No. 124 were therefore sent to Atty. Florendo in representation of all the heirs, including the petitioners. Upon discovering that on December 16, 1951, a motion to dismiss was filed by Atty. Florendo, based on the ground that all the heirs had executed an extra-judicial settlement, and that on January 15, 1952, the court rendered a decision approving said settlement, instead of dismissing the proceedings, Atty. Dominador Alafriz addressed a letter to the clerk of court, requesting that he be furnished with a copy of the extra-judicial settlement and of the order with reference thereto, which copies were actually received by Atty. Alafriz in September, 1952. On August 20, 1952, Atty. Constante Ayson, in representation of the petitioners and Sofia Chanliecco, filed a motion to set aside the extra-judicial settlement and the decision of January 15, 1952, on the ground that said settlement is null and void. This motion was denied on January 13, 1954, on file ground that petitioners' remedy should have been appeal or a separate action for annulment. A subsequent motion for reconsideration having been denied, the petitioners instituted in this Court the present petition for certiorari.

The main criticisms advanced by the petitioners are directed against the lack of timely notice to attorney for petitioners of the extra-judicial settlement and of the order of the respondent judge approving the same; to the nullity of said settlement for lack of authority on the part of Atty. Florendo to sign said settlement for all the heirs, and because of lesion by more than one-fourth of the value of petitioners' legal share in the inheritance from the deceased Isabel V. Florendo.

In answer to petitioners' observations, the respondents call attention to the facts that Atty. Alfredo C. Florendo represented all the heirs including the petitioners, and therefore had the right to be served with and receive all

court notices; that Atty. Florendo upon whom said notices were served, in turn notified all the heirs; that the best evidence that the petitioners were notified of the decision in question is the circumstances that they had already received their portions in the inheritance and petitioner Angel F. Alafriz had as a matter of fact, disposed of part of his share; and that the motion to set aside was filed out of time, more than six months from January 15, 1952 having expired.

The petitioners have cited the case of Samaniada vs. Mata, et al., 49 Off. Gaz., No. 1, January, 1953, wherein it was held that a judgment is merely an interlocutory order if something has yet to be done, and a petition for relief is on time when filed before a compromise agreement is consummated. This citation is not controlling, since in the present case, according to respondents answer, the extra-judicial settlement in question had been consummated, the petitioners having received their respective shares in the inheritance, and petitioner Angel F. Alafriz having already disposed of a part of his share and the sale having been witnessed, among others, by petitioner Pedro F. Alafriz. Moreover, in the case invoked by the petitioners, it was held: "In arriving at the above conclusion, we have taken into account the fact that the petitioner in the case at bar had two alternative remedies against the compromise approved by the court. He could file the petition for relief under Rule 38 of the Rules of Court, or file a new action to annul the Agreement within the period established by the statute of limitations. Even if his present remedy is barred, this would not prevent him from filing a new action to declare the contract void, in accordance with the provisions of the new Civil Code." (Supra, p. 86.)

Even assuming, therefore, that the grounds of fraud and lesion set forth by the petitioners for contending that the extra-judicial settlement is invalid, are tenable, the proper remedy would be an action to annul (Quion, et al. vs. Claridad, et al., 74 Phil., 100).

Having concluded that the decision of January 15, 1952, approving the extra-judicial settlement had become final because the partition had been consummated, the motion to set aside filed by the petitioners on August 20, 1952, or more than six months after said decision was entered, was out of time.

Wherefore, the petition is hereby denied, without prejudice to the filing of the proper action for annulment by the petitioners if desired. So ordered without costs.

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

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