

INTESTATE ESTATE OF THE LATE VITO BORROMELO, PATROCINIO BORROMELO-HERRERA, PETITIONER, VS. FORTUNATO BORROMELO AND HON. FRANCISCO P. BURGOS, JUDGE OF THE COURT OF FIRST INSTANCE OF...

G.R. No. L-41171. July 23, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

These cases before us all stem from SP. PROC. No. 916-R of the then Court of First Instance of Cebu.

G.R. No. 41171

Vito Borrromeo, a widower and permanent resident of Cebu City, died on March 13, 1952, in Parañaque, Rizal at the age of 88 years, without forced heirs but leaving extensive properties in the province of Cebu.

On April 19, 1952, Jose Junquera filed with the Court of First Instance of Cebu a petition for the probate of a one page document as the last will and testament left by the said deceased, devising all his properties to Tomas, Fortunato and Amelia, all surnamed Borrromeo, in equal and undivided shares, and designating Junquera as executor thereof. The case was docketed as Special Proceedings No. 916-R. The document, drafted in Spanish, was allegedly signed and thumbmarked by the deceased in the presence of Cornelio Gandionco, Eusebio Cabiluna, and Felixberto Leonardo who acted as witnesses.

Oppositions to the probate of the will were filed. On May 28, 1960, after due trial, the probate court held that the document presented as the will of the deceased was a forgery.

On appeal to this Court, the decision of the probate court disallowing the probate of the will was affirmed in *Testate Estate of Vito Borrromeo, Jose H. Junquera, et al. v. Crispin Borrromeo, et al.* (19 SCRA 656).

The testate proceedings was converted into an intestate proceedings. Several parties came before the court filing claims or petitions alleging themselves as heirs of the intestate estate of Vito Borrromeo.

The following petitions or claims were filed:

1. On August 29, 1967, the heirs of Jose Ma. Borrromeo and Cosme Borrromeo filed a petition for declaration of heirs and determination of heirship. There was no opposition filed against said petition.
2. On November 26, 1967, Vitaliana Borrromeo also filed a petition for declaration as heir. The heirs of Jose Ma. Borrromeo and Cosme Borrromeo filed an opposition to this petition.
3. On December 13, 1967, Jose Barcenilla, Jr., Anecita Ocampo de Castro, Ramon Ocampo, Lourdes Ocampo, Elena Ocampo, Isagani Morre, Rosario Morre, Aurora Morre, Lila Morre, Lamberto Morre, and Patricia Morre, filed a petition for declaration of heirs and determination of shares. The petition was opposed by the heirs of Jose and Cosme Borrromeo.

4. On December 2, 1968, Maria Borromeo Atega, Luz Borromeo, Hermenegilda Borromeo Nonnenkamp, Rosario Borromeo, and Fe Borromeo Queroz filed a claim. Jose Cuenco Borromeo, Crispin Borromeo, Vitaliana Borromeo and the heirs of Carlos Borromeo represented by Jose Talaro filed oppositions to this claim.

When the aforementioned petitions and claims were heard jointly, the following facts were established:

1. Maximo Borromeo and Hermenegilda Galan, husband and wife (the latter having predeceased the former), were survived by their eight (8) children, namely,

Jose Ma. Borromeo
Cosme Borromeo
Pantaleon Borromeo
Vito Borromeo
Paulo Borromeo
Anecita Borromeo
Quirino Borromeo and
Julian Borromeo

2. Vito Borromeo died a widower on March 13, 1952, without any issue, and all his brothers and sisters predeceased him.

3. Vito's brother Pantaleon Borromeo died leaving the following children:

- Ismaela Borromeo, who died on Oct. 16, 1939
- Teofilo Borromeo, who died on Aug. 1, 1955, or 3 years after the death of Vito Borromeo. He was married to Remedios Cuenca Borromeo, who died on March 28, 1968. He had an only son - Atty. Jose Cuenca Borromeo one of the petitioners herein.
- Crispin Borromeo, who is still alive.

4. Aniceta Borromeo, sister of Vito Borromeo, died ahead of him and left an only daughter, Aurora B. Ocampo, who died on Jan. 30, 1950 leaving the following children:

- Aniceta Ocampo Castro
- Ramon Ocampo
- Lourdes Ocampo
- Elena Ocampo, all living, and
- Antonieta Ocampo Barcenilla (deceased), survived by claimant Jose Barcenilla, Jr.

5. Cosme Borromeo, another brother of Vito Borromeo, died before the war and left the following children:

- Marcial Borromeo
- Carlos Borromeo, who died on Jan. 18, 1965, survived by his wife, Remedios Alfonso, and his only daughter, Amelinda Borromeo Talam.
- Asuncion Borromeo
- Florentina Borromeo, who died in 1948.
- Amilio Borromeo, who died in 1944.

- Carmen Borromeo, who died in 1925. The last three died leaving no issue.

6. Jose Ma. Borromeo, another brother of Vito Borromeo, died before the war and left the following children:

- Exequiel Borromeo, who died on December 29, 1949

- Canuto Borromeo, who died on Dec. 31, 1959, leaving the following children:

aa. Federico Borromeo

bb. Marisol Borromeo (Maria B. Putong, Rec. p. 85)

cc. Canuto Borromeo, Jr.

dd. Jose Borromeo

ee. Consuelo Borromeo

ff. Pilar Borromeo

gg. Salud Borromeo

hh. Patrocinio Borromeo Herrera

- Maximo Borromeo, who died in July, 1948

- Matilde Borromeo, who died on Aug. 6, 1946

- Andres Borromeo, who died on Jan. 3, 1923, but survived by his children:

aa. Maria Borromeo Atega

bb. Luz Borromeo

cc. Hermenegilda Borromeo Nonnenkamp

dd. Rosario Borromeo

ee. Fe Borromeo Queroz

On April 10, 1969, the trial court, invoking Art. 972 of the Civil Code, issued an order declaring the following, to the exclusion of all others, as the intestate heirs of the deceased Vito Borromeo:

- Jose Cuenca Borromeo

- Judge Crispin Borromeo

- Vitaliana Borromeo

- Patrocinio Borromeo Herrera

- Salud Borromeo

- Asuncion Borromeo

- Marcial Borromeo

- Amelinda Borromeo de Talam, and

- The heirs of Canuto Borromeo

The court also ordered that the assets of the intestate estate of Vito Borromeo shall be divided into 4/9 and 5/9 groups and distributed in equal and equitable shares among the 9 above-named declared intestate heirs.

On April 21 and 30, 1969, the declared heirs, with the exception of Patrocinio B. Herrera, signed an agreement of partition of the properties of the deceased Vito Borromeo which was approved by the trial court, in its order of August 15, 1969. In this same order, the trial court ordered the administrator, Atty. Jesus Gaboya, Jr., to partition

the properties of the deceased in the way and manner they are divided and partitioned in the said Agreement of Partition and further ordered that 40% of the market value of the 4/9 and 5/9 of the estate shall be segregated. All attorney's fees shall be taken and paid from this segregated portion.

On August 25, 1972, respondent Fortunato Borromeo, who had earlier claimed as heir under the forged will, filed a motion before the trial court praying that he be declared as one of the heirs of the deceased Vito Borromeo, alleging that he is an illegitimate son of the deceased and that in the declaration of heirs made by the trial court, he was omitted, in disregard of the law making him a forced heir entitled to receive a legitime like all other forced heirs. As an acknowledged illegitimate child, he stated that he was entitled to a legitime equal in every case to four-fifths of the legitime of an acknowledged natural child.

Finding that the motion of Fortunato Borromeo was already barred by the order of the court dated April 12, 1969 declaring the persons named therein as the legal heirs of the deceased Vito Borromeo, the court dismissed the motion on June 25, 1973. Fortunato Borromeo filed a motion for reconsideration. In the memorandum he submitted to support his motion for reconsideration, Fortunato changed the basis for his claim to a portion of the estate. He asserted and incorporated a Waiver of Hereditary Rights dated July 31, 1967, supposedly signed by Pilar N. Borromeo, Maria B. Putong, Jose Borromeo, Canuto V. Borromeo, Jr., Salud Borromeo, Patrocinio Borromeo-Herrera, Marcial Borromeo, Asuncion Borromeo, Federico V. Borromeo, Consuelo B. Morales, Remedios Alfonso and Amelinda B. Talam. In the waiver, five of the nine heirs relinquished to Fortunato their shares in the disputed estate. The motion was opposed on the ground that the trial court, acting as a probate court, had no jurisdiction to take cognizance of the claim; that respondent Fortunato Borromeo is estopped from asserting the waiver agreement; that the waiver agreement is void as it was executed before the declaration of heirs; that the same is void having been executed before the distribution of the estate and before the acceptance of the inheritance; and that it is void ab initio and inexistent for lack of subject matter.

On December 24, 1974, after due hearing, the trial court concluding that the five declared heirs who signed the waiver agreement assigning their hereditary rights to Fortunato Borromeo had lost the same rights, declared the latter as entitled to 5/9 of the estate of Vito Borromeo.

A motion for reconsideration of this order was denied on July 7, 1975.

In the present petition, the petitioner seeks to annul and set aside the trial court's order dated December 24, 1974, declaring respondent Fortunato Borromeo entitled to 5/9 of the estate of Vito Borromeo and the July 7, 1975 order, denying the motion for reconsideration.

The petitioner argues that the trial court had no jurisdiction to take cognizance of the claim of respondent Fortunato Borromeo because it is not a money claim against the decedent but a claim for properties, real and personal, which constitute all of the shares of the heirs in the decedent's estate, heirs who allegedly waived their rights in his favor. The claim of the private respondent under the waiver agreement, according to the petitioner, may be likened to that of a creditor of the heirs which is improper. He alleges that the claim of the private respondent under the waiver agreement was filed beyond the time allowed for filing of claims as it was filed only sometime in 1973, after there had been a declaration of heirs (April 10, 1969), an agreement of partition (April 30, 1969), the approval of the agreement of partition and an order directing the administrator to partition the estate (August 15, 1969), when, in a mere memorandum, the existence of the waiver agreement was brought out.

It is further argued by the petitioner that the document entitled "Waiver of Hereditary Rights" executed on July 31, 1967, aside from having been cancelled and revoked on June 29, 1968, by Tomas L. Borromeo, Fortunato Borromeo and Amelia Borromeo, is without force and effect because there can be no effective waiver of hereditary rights before there has been a valid acceptance of the inheritance the heirs intend to transfer. Pursuant

to Article 1043 of the Civil Code, to make acceptance or repudiation of inheritance valid, the person must be certain of the death of the one from whom he is to inherit and of his right to the inheritance. Since the petitioner and her co-heirs were not certain of their right to the inheritance until they were declared heirs, their rights were, therefore, uncertain. This view, according to the petitioner, is also supported by Article 1057 of the same Code which directs heirs, devisees, and legatees to signify their acceptance or repudiation within thirty days after the court has issued an order for the distribution of the estate.

Respondent Fortunato Borromeo on the other hand, contends that under Article 1043 of the Civil Code there is no need for a person to be first declared as heir before he can accept or repudiate an inheritance. What is required is that he must first be certain of the death of the person from whom he is to inherit and that he must be certain of his right to the inheritance. He points out that at the time of the signing of the waiver document on July 31, 1967, the signatories to the waiver document were certain that Vito Borromeo was already dead as well as of their rights to the inheritance as shown in the waiver document itself.

With respect to the issue of jurisdiction of the trial court to pass upon the validity of the waiver of hereditary rights, respondent Borromeo asserts that since the waiver or renunciation of hereditary rights took place after the court assumed jurisdiction over the properties of the estate it partakes of the nature of a partition of the properties of the estate needing approval of the court because it was executed in the course of the proceedings. He further maintains that the probate court loses jurisdiction of the estate only after the payment of all the debts of the estate and the remaining estate is distributed to those entitled to the same.

The prevailing jurisprudence on waiver of hereditary rights is that "the properties included in an existing inheritance cannot be considered as belonging to third persons with respect to the heirs, who by fiction of law continue the personality of the former. Nor do such properties have the character of future property, because the heirs acquire a right to succession from the moment of the death of the deceased, by principle established in Article 657 and applied by Article 661 of the Civil Code. According to which the heirs succeed the deceased by the mere fact of death. More or less, time may elapse from the moment of the death of the deceased until the heirs enter into possession of the hereditary property, but the acceptance in any event retroacts to the moment of the death, in accordance with Article 989 of the Civil Code. The right is vested, although conditioned upon the adjudication of the corresponding hereditary portion." (*Osorio v. Osorio and Ynchausti Steamship Co.*, 41 Phil., 531). The heirs, therefore, could waive their hereditary rights in 1967 even if the order to partition the estate was issued only in 1969.

In this case, however, the purported "Waiver of Hereditary Rights" cannot be considered to be effective. For a waiver to exist, three elements are essential: (1) the existence of a right; (2) the knowledge of the existence thereof; and (3) an intention to relinquish such right. (*People v. Salvador*, (CA) 53 O.G. No. 22, p. 8116, 8120). The intention to waive a right or advantage must be shown clearly and convincingly, and when the only proof of intention rests in what a party does, his act should be so manifestly consistent with, and indicative of an intent to, voluntarily relinquish the particular right or advantage that no other reasonable explanation of his conduct is possible (67 C.J., 311). (*Fernandez v. Sebido, et al.*, 70 Phil., 151, 159).

The circumstances of this case show that the signatories to the waiver document did not have the clear and convincing intention to relinquish their rights. Thus: (1) On October 27, 1967, Fortunato, Tomas, and Amelia Borromeo filed a pleading entitled "Compliance" wherein they submitted a proposal for the amicable settlement of the case. In that Compliance, they proposed to concede to all the eight (8) intestate heirs of Vito Borromeo all properties, personal and real, including all cash and sums of money in the hands of the Special Administrator, as of October 31, 1967, not contested or claimed by them in any action then pending in the Court of First Instance of Cebu. In turn, the heirs would waive and concede to them all the 14 contested lots. In this document, the

respondent recognizes and concedes that the petitioner, like the other signatories to the waiver document, is an heir of the deceased Vito Borromeo, entitled to share in the estate. This shows that the "Waiver of Hereditary Rights" was never meant to be what the respondent now purports it to be. Had the intent been otherwise, there would not be any reason for Fortunato, Tomas, and Amelia Borromeo to mention the heirs in the offer to settle the case amicably, and offer to concede to them parts of the estate of the deceased; (2) On April 21 and 30, 1969, the majority of the declared heirs executed an Agreement on how the estate they inherited shall be distributed. This Agreement of Partition was approved by the trial court on August 15, 1969; (3) On June 29, 1968, the petitioner, among others, signed a document entitled "Deed of Assignment" purporting to transfer and assign in favor of the respondent and Tomas and Amelia Borromeo all her (Patrocinio B. Herrera's) rights, interests, and participation as an intestate heir in the estate of the deceased Vito Borromeo. The stated consideration for said assignment was P100,000.00; (4) On the same date, June 29, 1968, the respondent Tomas, and Amelia Borromeo (assignees in the aforementioned deed of assignment) in turn executed a "Deed of Reconveyance" in favor of the heirs-assignors named in the same deed of assignment. The stated consideration was P50,000.00; (5) A Cancellation of Deed of Assignment and Deed of Reconveyance was signed by Tomas Borromeo and Amelia Borromeo on October 15, 1968, while Fortunato Borromeo signed this document on March 24, 1969.

With respect to the issue of jurisdiction, we hold that the trial court had jurisdiction to pass upon the validity of the waiver agreement. It must be noted that in Special Proceedings No. 916-R the lower court disallowed the probate of the will and declared it as fake. Upon appeal, this Court affirmed the decision of the lower court on March 30, 1967, in G.R. No. L-18498. Subsequently, several parties came before the lower court filing claims or petitions alleging themselves as heirs of the intestate estate of Vito Borromeo. We see no impediment to the trial court in exercising jurisdiction and trying the said claims or petitions. Moreover, the jurisdiction of the trial court extends to matters incidental and collateral to the exercise of its recognized powers in handling the settlement of the estate.

In view of the foregoing, the questioned order of the trial court dated December 24, 1974, is hereby SET ASIDE.

G.R. No. 55000

This case was originally an appeal to the Court of Appeals from an order of the Court of First Instance of Cebu, Branch II, dated December 24, 1974, declaring the waiver document earlier discussed in G.R. No. 41171 valid. The appellate court certified this case to this Court as the questions raised are all of law.

The appellants not only assail the validity of the waiver agreement but they also question the jurisdiction of the lower court to hear and decide the action filed by claimant Fortunato Borromeo.

The appellants argue that when the waiver of hereditary right was executed on July 31, 1967, Pilar Borromeo and her children did not yet possess or own any hereditary right in the intestate estate of the deceased Vito Borromeo because said hereditary right was only acquired and owned by them on April 10, 1969, when the estate was ordered distributed.

They further argue that in contemplation of law, there is no such contract of waiver of hereditary right in the present case because there was no object, which is hereditary right, that could be the subject matter of said waiver, and, therefore, said waiver of hereditary right was not only null and void ab initio but was nonexistent.

With respect to the issue of jurisdiction, the appellants contend that without any formal pleading filed by the lawyers of Fortunato Borromeo for the approval of the waiver agreement and without notice to the parties concerned, two things which are necessary so that the lower court would be vested with authority and jurisdiction to hear and decide the validity of said waiver agreement, nevertheless, the lower court set the hearing on

September 25, 1973 and without asking for the requisite pleading. This resulted in the issuance of the appealed order of December 24, 1974, which approved the validity of the waiver agreement. The appellants contend that this constitutes an error in the exercise of jurisdiction.

The appellee on the other hand, maintains that by waiving their hereditary rights in favor of Fortunato Borromeo, the signatories to the waiver document tacitly and irrevocably accepted the inheritance and by virtue of the same act, they lost their rights because the rights from that moment on became vested in Fortunato Borromeo.

It is also argued by the appellee that under Article 1043 of the Civil Code there is no need for a person to be declared as heir first before he can accept or repudiate an inheritance. What is required is that he is certain of the death of the person from whom he is to inherit, and of his right to the inheritance. At the time of the signing of the waiver document on July 31, 1967, the signatories to the waiver document were certain that Vito Borromeo was already dead and they were also certain of their right to the inheritance as shown by the waiver document itself.

On the allegation of the appellants that the lower court did not acquire jurisdiction over the claim because of the alleged lack of a pleading invoking its jurisdiction to decide the claim, the appellee asserts that on August 23, 1973, the lower court issued an order specifically calling on all oppositors to the waiver document to submit their comments within ten days from notice and setting the same for hearing on September 25, 1973. The appellee also avers that the claim as to a 5/9 share in the inheritance involves no question of title to property and, therefore, the probate court can decide the question.

The issues in this case are similar to the issues raised in G.R. No. 41171. The appellants in this case, who are all declared heirs of the late Vito Borromeo are contesting the validity of the trial court's order dated December 24, 1974, declaring Fortunato Borromeo entitled to 5/9 of the estate of Vito Borromeo under the waiver agreement.

As stated in G.R. No. 41171, the supposed waiver of hereditary rights can not be validated. The essential elements of a waiver, especially the clear and convincing intention to relinquish hereditary rights, are not found in this case.

The October 27, 1967 proposal for an amicable settlement conceding to all the eight (8) intestate heirs various properties in consideration for the heirs giving to the respondent and to Tomas, and Amelia Borromeo the fourteen (14) contested lots was filed in spite of the fact that on July 31, 1967, some of the heirs had allegedly already waived or sold their hereditary rights to the respondent.

The agreement on how the estate is to be distributed, the June 29, 1968 deed of assignment, the deed of reconveyance, and the subsequent cancellation of the deed of assignment and deed of reconveyance all argue against the purported waiver of hereditary rights.

Concerning the issue of jurisdiction, we have already stated in G.R. No. 41171 that the trial court acquired jurisdiction to pass upon the validity of the waiver agreement because the trial court's jurisdiction extends to matters incidental and collateral to the exercise of its recognized powers in handling the settlement of the estate.

The questioned order is, therefore, SET ASIDE.

G.R. No. 62895

A motion dated April 28, 1972, was filed by Atty. Raul M. Sesbreno, representative of some of the heirs-distributees, praying for the immediate closure of Special Proceeding No. 916-R. A similar motion dated May 29, 1979 was filed by Atty. Jose Amadora. Both motions were grounded on the fact that there was nothing more to be done after the payment of all the obligations of the estate since the order of partition and distribution had long become final.

Alleging that respondent Judge Francisco P. Burgos failed or refused to resolve the aforesaid motions, petitioner

Jose Cuenco Borromeo filed a petition for mandamus before the Court of Appeals to compel the respondent judge to terminate and close Special Proceedings No. 916-R.

Finding that the inaction of the respondent judge was due to pending motions to compel the petitioner, as co-administrator, to submit an inventory of the real properties of the estate and an accounting of the cash in his hands, pending claims for attorney's fees, and that mandamus will not lie to compel the performance of a discretionary function, the appellate court denied the petition on May 14, 1982. The petitioner's motion for reconsideration was likewise denied for lack of merit. Hence, this petition.

The petitioner's stand is that the inaction of the respondent judge on the motion filed on April 28, 1972 for the closure of the administration proceeding cannot be justified by the filing of the motion for inventory and accounting because the latter motion was filed only on March 2, 1979. He claimed that under the then Constitution, it is the duty of the respondent judge to decide or resolve a case or matter within three months from the date of its submission.

The respondents contend that the motion to close the administration had already been resolved when the respondent judge cancelled all settings of all incidents previously set in his court in an order dated June 4, 1979, pursuant to the resolution and restraining order issued by the Court of Appeals enjoining him to maintain status quo on the case.

As stated in G.R. No. 41171, on April 21 and 30, 1969, the declared heirs, with the exception of Patrocinio B. Herrera, signed an agreement of partition of the properties of the deceased Vito Borromeo which was approved by the trial court, in its order dated August 15, 1969. In this same order, the trial court ordered the administrator, Atty. Jesus Gaboya, Jr., to partition the properties of the deceased in the way and manner they are divided and partitioned in the said Agreement of Partition and further ordered that 40% of the market value of the 4/9 and 5/9 of the estate shall be segregated and reserved for attorney's fees.

According to the manifestation of Judge Francisco Burgos dated July 5, 1982, (p. 197, Rollo, G.R. No. 41171) his court has not finally distributed to the nine (9) declared heirs the properties due to the following circumstances:

1. The court's determination of the market value of the estate in order to segregate the 40% reserved for attorney's fees;
2. The order of December 24, 1974, declaring Fortunato Borromeo as beneficiary of the 5/9 of the estate because of the waiver agreement signed by the heirs representing the 5/9 group which is still pending resolution by this Court (G.R. No. 41171);
3. The refusal of administrator Jose Cuenca Borromeo to render his accounting; and
4. The claim of Tarcela Villegas for $\frac{1}{2}$ of the estate causing annotations of notices of lis pendens on the different titles of the properties of the estate.

Since there are still real properties of the estate that were not yet distributed to some of the declared heirs, particularly the 5/9 group of heirs due to the pending resolution of the waiver agreement, this Court in its resolution of June 15, 1983, required the judge of the Court of First Instance of Cebu, Branch II, to expedite the determination of Special Proceedings No. 916-R and ordered the co-administrator Jose Cuenco Borromeo to submit an inventory of real properties of the estate and to render an accounting of cash and bank deposits realized from rents of several properties.

The matter of attorney's fees shall be discussed in G.R. No. 65995.

Considering the pronouncements stated in:

- G.R. No. 41171 & G.R. No. 55000, setting aside the Order of the trial court dated December 24, 1974;
- G.R. No. 63818, denying the petition for review seeking to modify the decision of the Intermediate Appellate Court insofar as it disqualifies and inhibits Judge Francisco P. Burgos from further hearing the Intestate Estate of Vito Borromeo and ordering the remand of the case to the Executive Judge of the Regional Trial Court of Cebu for re-raffling; and
- G.R. No. 65995, granting the petition to restrain the respondents from further acting on any and all incidents in Special Proceedings No. 916-R because of the affirmation of the decision of the Intermediate Appellate Court in G. R. No. 63818."

the trial court may now terminate and close Special Proceedings No. 916-R, subject to the submission of an inventory of the real properties of the estate and an accounting of the cash and bank deposits by the petitioner, as co-administrator of the estate, if he has not yet done so, as required by this Court in its Resolution dated June 15, 1983. This must be effected with all deliberate speed.

G.R. No. 63818

On June 9, 1979, respondents Jose Cuenca Borromeo and Petra O. Borromeo filed a motion for inhibition in the Court of First Instance of Cebu, Branch II, presided over by Judge Francisco P. Burgos to inhibit the judge from further acting in Special Proceedings No. 916-R. The movants alleged, among others, the following:

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"6. - To keep the agitation to sell moving, Atty. Antigua filed a motion for the production of the certificates of title and to deposit the same with the Branch Clerk of Court, presumably for the ready inspection of interested buyers. Said motion was granted by the Hon. Court in its order of October 2, 1978 which, however, became the subject of various motions for reconsideration from heirs- distributees who contended that as owners they cannot be deprived of their titles for the flimsy reasons advanced by Atty. Antigua. In view of the motions for reconsideration, Atty. Antigua ultimately withdraw his motions for production of titles.

"7. - The incident concerning the production of titles triggered another incident involving Atty. Raul H. Sesbreno who was then the counsel of herein movants Petra O. Borromeo and Amelinda B. Talam. In connection with said incident, Atty. Sesbreno filed a pleading which the Hon. Presiding Judge considered direct contempt because, among others, Atty. Sesbreno insinuated that the Hon. Presiding Judge stands to receive 'fat commission' from the sale of the entire property. Indeed, Atty. Sesbreno was seriously in danger of being declared in contempt of court with the dim prospect of suspension from the practice of his profession. But obviously to extricate himself from the prospect of contempt and suspension, Atty. Sesbreno chose rapprochement and ultimately joined forces with Atty. Antigua, et al., who, together, continued to harass administrator Jose Cuenca Borromeo.

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"9. - The herein movants are informed, and so they allege, that a brother of the Hon. Presiding Judge is married to a sister of Atty. Domingo L. Antigua.

"10. - There is now a clear tug of war between Atty. Antigua, et al. who are agitating for the sale of the entire estate or to buy out the individual heirs, on the one hand, and the herein movants, on the other, who are not willing to sell their distributive shares under the terms and conditions presently proposed. In this tug of war, a pattern of harassment has become apparent against the herein movants, especially Jose Cuenca Borromeo. Among the harassments employed by Atty. Antigua, et al., are the pending motions for the removal of administrator Jose Cuenca Borromeo, the subpoena duces tecum issued to the bank which seeks to invade into the privacy of the personal account of Jose Cuenca Borromeo, and the other matters mentioned in paragraph 8

hereof. More harassment motions are expected until the herein movants shall finally yield to the proposed sale. In such a situation, the herein movants beg for an entirely independent and impartial judge to pass upon the merits of said incidents.

"11. - Should the Hon. Presiding Judge continue to sit and take cognizance of this proceeding, including the incidents above-mentioned, he is liable to be misunderstood as being biased in favor of Atty. Antigua, et al., and prejudiced against the herein movants. Incidents which may create this impression need not be enumerated herein. (pp. 39-41, Rollo).

The motion for inhibition was denied by Judge Francisco P. Burgos. Their motion for reconsideration having been denied, the private respondents filed a petition for certiorari and/or prohibition with preliminary injunction before the Intermediate Appellate Court.

In the appellate court, the private respondents alleged, among others, the following:

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"16. With all due respect, petitioners regret the necessity of having to state herein that respondent Hon. Francisco P. Burgos has shown undue interest in pursuing the sale initiated by Atty. Domingo L. Antigua, et al. Significantly, a brother of respondent Hon. Francisco P. Burgos is married to a sister of Atty. Domingo L. Antigua.

"17. - Evidently, the proposed sale of the entire properties of the estate cannot be legally done without the conformity of the heirs-distributees because the certificates of title are already registered in their names. Hence, in pursuit of the agitation to sell, respondent Hon. Francisco P. Burgos urged the heirs-distributees to sell the entire property based on the rationale that proceeds thereof deposited in the bank will earn interest more than the present income of the so called estate. Most of the heirs-distributees, however, have been timid to say their piece. Only the 4/9 group of heirs led by petitioner Jose Cuenca Borromeo have had the courage to stand up and refuse the proposal to sell clearly favored by respondent Hon. Francisco P. Burgos.

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"20. - Petitioners will refrain from discussing herein the merits of the shotgun motion of Atty. Domingo L. Antigua as well as other incidents now pending in the court below which smack of harassment against the herein petitioners. For, regardless of the merits of said incidents, petitioners respectfully contend that it is highly improper for respondent Hon. Francisco P. Burgos to continue to preside over Sp. Proc. No. 916-R by reason of the following circumstances:

"(a) He has shown undue interest in the sale of the properties as initiated by Atty. Domingo L. Antigua whose sister is married to a brother of respondent.

"(b) The proposed sale cannot be legally done without the conformity of the heirs-distributees, and petitioners have openly refused the sale, to the great disappointment of respondent.

"(c) The shotgun motion of Atty. Antigua and similar incidents are clearly intended to harass and embarrass administrator Jose Cuenca Borromeo in order to pressure him into acceding to the proposed sale.

"(d) Respondent has shown bias and prejudice against petitioners by failing to resolve the claim for attorney's fees filed by Jose Cuenca Borromeo and the late Crispin Borromeo. Similar claims by the other lawyers were resolved by respondent after petitioners refused the proposed sale." (pp. 41-43, Rollo).

On March 1, 1983, the appellate court rendered its decision granting the petition for certiorari and/or prohibition and disqualifying Judge Francisco P. Burgos from taking further cognizance of Special Proceedings No. 916-R. The court also ordered the transmission of the records of the case to the Executive Judge of the Regional Trial

Court of Region VII for re-raffling.

A motion for reconsideration of the decision was denied by the appellate court on April 11, 1983. Hence, the present petition for review seeking to modify the decision of the Intermediate Appellate Court insofar as it disqualifies and inhibits Judge Francisco P. Burgos from further hearing the case of Intestate Estate of Vito Borromeo and orders the remand of the case to the Executive Judge of the Regional Trial Court of Cebu for re-raffling.

The principal issue in this case has become moot and academic because Judge Francisco P. Burgos decided to retire from the Regional Trial Court of Cebu sometime before the latest reorganization of the judiciary. However, we decide the petition on its merits for the guidance of the judge to whom this case will be reassigned and others concerned.

The petitioners deny that respondent Jose Cuenco Borromeo has been harassed. They contend that Judge Burgos has never shown unusual interest in the proposed sale of the entire estate for P6,700,000.00 in favor of the buyers of Atty. Antigua. They claim that this disinterest is shown by the judge's order of March 2, 1979 assessing the property of the estate at P15,000,000.00. They add that he only ordered the administrator to sell so much of the properties of the estate to pay the attorney's fees of the lawyers-claimants. To them, the inhibition of Judge Burgos would have been unreasonable because his orders against the failure of Jose Cuenco Borromeo, as administrator, to give an accounting and inventory of the estate were all affirmed by the appellate court. They claim that the respondent court should also have taken judicial notice of the resolution of this Court directing the said judge to "expedite the settlement and adjudication of the case" in G.R. No. 54232. And finally, they state that the disqualification of Judge Burgos would delay further the closing of the administration proceeding as he is the only judge who is conversant with the 47 volumes of the records of the case.

Respondent Jose Cuenco Borromeo, to show that he had been harassed, countered that Judge Burgos appointed Ricardo V. Reyes as co-administrator of the estate on October 11, 1972, yet Borromeo was singled out to make an accounting of what he was supposed to have received as rentals for the land upon which the Juliana Trade Center is erected, from January, 1977 to February, 1982, inclusive, without mentioning the withholding tax for the Bureau of Internal Revenue. In order to bolster the agitation to sell as proposed by Domingo L. Antigua, Judge Burgos invited Antonio Barredo, Jr., to a series of conferences from February 26 to 28, 1979. During the conferences, Atty. Antonio Barredo, Jr., offered to buy the shares of the heirs- distributees presumably to cover up the projected sale initiated by Atty. Antigua.

On March 2, 1979, or two days after the conferences, a motion was filed by petitioner Domingo L. Antigua praying that Jose Cuenco Borromeo be required to file an inventory when he has already filed one to account for cash, a report on which the administrators had already rendered; and to appear and be examined under oath in a proceeding conducted by Judge Burgos. It was also prayed that subpoena duces tecum be issued for the appearance of the Manager of the Consolidated Bank and Trust Co., bringing all the bank records in the name of Jose Cuenco Borromeo jointly with his wife as well as the appearance of heirs-distributees Amelinda Borromeo Talam and another heir-distributee Vitaliana Borromeo. Simultaneously with the filing of the motion of Domingo Antigua, Atty. Raul H. Sesbreno filed a request for the issuance of subpoena duces tecum to the Manager of Consolidated Bank and Trust Co., Inc.; Register of Deeds of Cebu City; Register of Deeds for the Province of Cebu and another subpoena duces tecum to Atty. Jose Cuenco Borromeo.

On the same date, the Branch Clerk of Court issued a subpoena duces tecum to the Manager of the bank, the Register of Deeds for the City of Cebu, the Register of Deeds for the Province of Cebu, and to Jose Cuenco Borromeo.

On the following day, March 3, 1979, Atty. Gaudioso V. Villagonzalo in behalf of the heirs of Marcial Borromeo who had a common cause with Atty. Barredo, Jr., joined petitioner Domingo L. Antigua by filing a motion for relief of the administrator.

On March 5, 1979, Atty. Villagonzalo filed a request for the issuance of a subpoena duces tecum to private respondent Jose Cuenca Borromeo to bring and produce all the owners' copies of the titles in the court presided over by Judge Burgos. Consequently, the Branch Clerk of Court issued a subpoena duces tecum commanding Atty. Jose Cuenca Borromeo to bring and produce the titles in court.

All the above-incidents were set for hearing on June 7, 1979 but on May 14, 1979, before the date of the hearing, Judge Burgos issued an order denying the private respondents' motion for reconsideration and the motion to quash the subpoena.

It was further argued by the private respondents that if Judge Francisco P. Burgos is not inhibited or disqualified from trying Sp. Proc. No. 916-R, there would be a miscarriage of justice because for the past twelve years, he had not done anything towards the closure of the estate proceedings except to sell the properties of the heirs-distributees as initiated by petitioner Domingo L. Antigua at 6.7 million pesos while the Intestate Court had already evaluated it at 15 million pesos.

The allegations of the private respondents in their motion for inhibition, more specifically, the insistence of the trial judge to sell the entire estate at P6,700,000.00, where 4/9 group of heirs objected, cannot easily be ignored. Suspicion of partiality on the part of a trial judge must be avoided at all costs. In the case of *Bautista v. Rebuena* (81 SCRA 535), this Court stated:

"x x x The Judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself above reproach and suspicion. At the very first sign of lack of faith and trust to his actions, whether well grounded or not, the Judge has no other alternative but inhibit himself from the case. A judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce doubt to his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the Courts of Justice is not impaired. The better course for the Judge under such circumstances is to disqualify himself. That way, he avoids being misunderstood, his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to."

In this case, the fervent distrust of the private respondents is based on sound reasons. As earlier stated, however, the petition for review seeking to modify the decision of the Intermediate Appellate Court insofar as it disqualifies and inhibits Judge Francisco P. Burgos from further hearing the Intestate Estate of Vito Borromeo case and ordering the remand of the case to the Executive Judge of the Regional Trial Court for re-raffling should be DENIED for the decision is not only valid but the issue itself has become moot and academic.

G.R. No. 65995

The petitioners seek to restrain the respondents from further acting on any and all incidents in Special Proceedings No. 916- R during the pendency of this petition and G.R. No. 63818. They also pray that all acts of the respondents related to the said special proceedings after March 1, 1983 when the respondent Judge was disqualified by the appellate court be declared null and void and without force and effect whatsoever.

The petitioners state that the respondent Judge has set for hearing all incidents in Special Proceedings No. 916-R, including the reversion from the heirs-distributees to the estate, of the distributed properties already titled in their names as early as 1970, notwithstanding the pending inhibition case elevated before this Court which is docketed as G.R. No. 63818.

The petitioners further argue that the present status of Special Proceeding No. 916-R requires only the appraisal of the attorney's fees of the lawyers-claimants who were individually hired by their respective heirs-clients, so their attorney's fees should be legally charged against their respective clients and not against the estate.

On the other hand, the respondents maintain that the petition is a dilatory one and barred by *res judicata* because this Court on July 8, 1981, in G.R. No. 54232 directed the respondent Judge to expedite the settlement and liquidation of the decedent's estate. They claim that this resolution, which was already final and executory, was in effect reversed and nullified by the Intermediate Appellate Court in its case — AC-G.R. No. SP-11145 — when it granted the petition for certiorari and/or prohibition and disqualified Judge Francisco P. Burgos from taking further cognizance of Special Proceedings No. 916-R as well as ordering the transmission of the records of the case to the Executive Judge of the Regional Trial Court of Region VII for re-raffling on March 1, 1983, which was appealed to this Court by means of a Petition for Review (G.R. No. 63818).

We agree with the petitioners' contention that attorney's fees are not the obligation of the estate but of the individual heirs who individually hired their respective lawyers. The portion, therefore, of the Order of August 15, 1969, segregating the exorbitantly excessive amount of 40% of the market value of the estate from which attorney's fees shall be taken and paid should be deleted.

Due to our affirmance of the decision of the Intermediate Appellate Court in G.R. No. 63818, we grant the petition.

WHEREFORE, —

(1) In G.R. No. 41171, the order of the respondent judge dated December 24, 1974, declaring the respondent entitled to 5/9 of the estate of the late Vito Borromeo and the order dated July 7, 1975, denying the petitioner's motion for reconsideration of the aforementioned order are hereby SET ASIDE for being NULL and VOID;

(2) In G.R. No. 55000, the order of the trial court declaring the waiver document valid is hereby SET ASIDE;

(3) In G.R. No. 63818, the petition is hereby DENIED. The issue in the decision of the Intermediate Appellate Court disqualifying and ordering the inhibition of Judge Francisco P. Burgos from further hearing Special Proceedings No. 916-R is declared moot and academic. The judge who has taken over the sala of retired Judge Francisco P. Burgos shall immediately conduct hearings with a view to terminating the proceedings. In the event that the successor-judge is likewise disqualified, the order of the Intermediate Appellate Court directing the Executive Judge of the Regional Trial Court of Cebu to re-affle the case shall be implemented;

(4) In G.R. No. 65995, the petition is hereby GRANTED. The issue seeking to restrain Judge Francisco P. Burgos from further acting in G.R. No. 63818 is MOOT and ACADEMIC;

(5) In G.R. No. 62895, the trial court is hereby ordered to speedily terminate the close Special Proceedings No. 916-R, subject to the submission of an inventory of the real properties of the estate and an accounting of the cash and bank deposits by the petitioner-administrator of the estate as required by this Court in its Resolution dated June 15, 1983; and

(6) The portion of the Order of August 15, 1969, segregating 40% of the market value of the estate from which attorney's fees shall be taken and paid should be, as it is hereby DELETED. The lawyers should collect from the heirs-distributees who individually hired them, attorney's fees according to the nature of the services rendered but in amounts which should not exceed more than 20% of the market value of the property the latter acquired from the estate as beneficiaries.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan (Chairman), J., took no part. I appeared as counsel for one of the parties.

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