

INTESTATE ESTATE OF THE LATE RAYMUNDA SORIANO. PONCIANO S. REYES, PETITIONER AND APPELLEE, VS. SIMPLICIA REYES BERENGUER, OPPOSITOR AND APPELLANT.

G.R. No. L-12830. July 31, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

In the Pampanga court of first instance in November 1956, Ponciano S. Reyes, petitioned for administration of the estate^[1] left by his deceased mother, Raymunda Soriano, a resident of Arayat, Pampanga.

Opposing the petition, Simplicia Reyes Berenguer, moved for dismissal due to improper venue, since the deceased had become a resident of Quezon City at the time of her death.

The petitioner insisted that the deceased never abandoned her permanent residence in Arayat.

After hearing the parties, and considering evidence, the Court denied the motion to dismiss.

Whereupon, oppositor appealed to this Court.

The Rules do not allow this appeal. Sec. 1 of Rule 105, enumerates the instances wherein an appeal may be taken in special proceedings. This is not one of them.

Lest it be argued that this is a "final order or judgment", or a "final determination of the rights" of the person appealing, under subsection (e) and (f) of the above section, it may be explained that we have held in previous rulings that a decree denying a motion to dismiss on the ground of lack of jurisdiction—not venue only as in this case—is not appealable, because it is only, interlocutory, and not a final order in the litigation.^[2]

Wherefore, this appeal is hereby dismissed, with costs against appellant.

Paras, C. J., Padilla, Montemayor, Bautista, Angelo, Labrador, Concepcion,, Endencia, and Barrera, JJ., concur.

[1] Worth more than P70,000.00

[2] *Hodges vs. Villanueva*, 90 Phil., 255; *Yu oat vs. Hugo*, 93 Phil., 613.

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