

**GREGORIO K. KALAW, PETITIONER, VS. I&NTILDE;IGO S. DAZA,
JUDGE OF FIRST INSTANCE OF BATANGAS, VICTOR KATIGBAK AND
GUILLIERMO KATIGBAK, RESPONDENTS.***G.R. No. L-363. August 05, 1946*

Ponente: PERFECTO, J.

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Two separate special proceedings were started in the Court of First Instance of Batangas for the settlement of the testate estate of Lorenza Katigbak: No. 59, initiated by Paz Kalaw for the probate of a will dated March 19, 1943; and No. 60, began by respondent Victor Katigbak for the probate of another will executed on August 6, 1944.

Petitioner Gregorio K. Kalaw filed on July 20, 1945, in ease No. 60, an opposition both to the probate of the second will and to the appointment of Victor Katigbak as special administrator, praying that he and Andres Luz be appointed as special administrators. He prayed also that Cases Nos. 59 and 60 be joined. After the hearing on July 27, 1945, the lower court appointed Victor Katigbak as special administrator.

On August 50, 1945, all the parties submitted to the court a written stipulation in special proceedings Nos. 59 and 60, signed by all the parties, including petitioner, agreeing, among other things, to partition the properties left by the deceased Lorenza Katigbak in accordance with the terns and conditions set forth in the first will dated March 19, 1943. On the same day, the court issued an order approving the stipulation and directing the parties to comply with the terms and conditions thereof.

On September 11, 1945, petitioner filed a motion for reconsideration of the order of August 50, 1945. After due hearing held on September 21, 1945, the court denied the motion in an order dated September 22, 1945. The order of iugust 30, became final.

Victor Katigbak presented a project of partition in pursuance of the stipulation dated August 30, 1945. The project of partition was approved with modification in an order dated December 20, 1945. Petitioner was notified of the order on January 5, 1946. The order also became final. On March 28, 1946, the court ordered Victor Katigbak to render final accounts of administration and to distribute the estate in accordance with the order of December 20, 1945.

Petitioner complains because on August 5, 1945, the lower court denied his petition dated July 20, 1945, praying that special administrator Victor Katigbak be cited and required to produce in court, for the inspection of all the heirs, the jewelries and money left by the deceased. Petitioner alleges that on August 5, 1945, he moved for reconsideration of the order of denial dated August 3, 1945, and his motion was denied on August 17, 1945, without prejudice to its being considered end acted upon at the hearing of the case on the merits. The lower court did not err in not acting on said motion, because petitioner's failure to insist that it be acted on at the time the court approved the project of partition in accordance with the stipulation signed and agreed upon by him consitutes an implied waiver of his right, if he has any, to insist on said motion.

In respondents' answer, and under the oath of Victor Eatigbak, it is alleged that at the time of the filing of his motion of July 20, 1945, petitioner knew fully well that since November 1, 1944, petitioner's own sister, Paz Kalaw, had distributed all the jewels of the deceased and respondent Guillermo Katigbak all the cash in Philippine money to all the legatees in pursuance of the will dated March 19, 1943, and that the order of December 20, 1945, approving the project of partition in accordance with the stipulation of August 30, 1945, constituted a confirmation and ratification of the prior distribution made by Paz Kalaw and Guillermo Katigbak of the jewels and cash left by the deceased Lorenza Katigbak, the distribution having been made long before respondent Victor Katigbak's appointment as special administrator. Petitioner did not deny this allegation by reason of which his motion dated July 20, 1945, appears to be groundless. If it had any ground to stand upon, petitioner's inaction since his motion for reconsideration was denied on August 17, 1945, and his having signed the stipulation dated August 30, 1945, for the final, and complete settlement of the estate of the deceased Lorenza Katigbak, preclude him from seeking relief against proceedings which appear not to have affected him adversely in any way.

Petition dismissed with costs against petitioner.

Moran, C.J., Paras, Feria, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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