

**VIRGINIA GARCIA FULE AND HONORABLE SEVERO A. MALVAR,
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF LAGUNA,
BRANCH VI, PETITIONERS, VS. THE HONORABLE COURT OF
APPEALS,[] PRECIOSA ...**

G.R. No. L-40502. November 24, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

These two interrelated cases bring to Us the question of what the word "resides" in Section 1, Rule 73 of the Revised Rules of Court, referring to the situs of the settlement of the estate of deceased persons, means. Additionally, the rule in the appointment of a special administrator is sought to be reviewed.

On May 2, 1973, Virginia G. Fule filed with the Court of First Instance of Laguna, at Calamba, presided over by Judge Severo A. Malvar, a petition for letters of administration, docketed as Sp. Proc. No. 27-C, alleging, inter alia, "that on April 26, 1973, Amado G. Garcia, a property owner of Calamba, Laguna, died intestate in the City of Manila, leaving real estate and personal properties in Calamba, Laguna, and in other places, within the jurisdiction of the Honorable Court." At the same time, she moved ex parte for her appointment as special administratrix over the estate. On even date, May 2, 1973, Judge Malvar granted the motion.

A motion for reconsideration was filed by Preciosa B. Garcia on May 8, 1973, contending that the order appointing Virginia G. Fule as special administratrix was issued without jurisdiction, since no notice of the petition for letters of administration has been served upon all persons interested in the estate; there has been no delay or cause for delay in the proceedings for the appointment of a regular administrator as the surviving spouse of Amado G. Garcia, she should be preferred in the appointment of a special administratrix; and, Virginia G. Fule is a debtor of the estate of Amado G. Garcia. Preciosa B. Garcia, therefore, prayed that she be appointed special administratrix of the estate, in lieu of Virginia G. Fule, and as regular administratrix after due hearing.

While this reconsideration motion was pending resolution before the Court, Preciosa B. Garcia filed on May 29, 1973 a motion to remove Virginia G. Fule as special administratrix alleging, besides the jurisdictional ground raised in the motion for reconsideration of May 8, 1973, that her appointment was obtained through erroneous, mis-leading and/or incomplete misrepresentations; that Virginia G. Fule has adverse interest against the estate; and that she has shown herself unsuitable as administratrix and as officer of the court.

In the meantime, the notice of hearing of the petition for letters of administration filed by Virginia G. Fule with the Court of First Instance of Calamba, Laguna, was published at May 17, 24 and 31, 1973, in the *Bayanihan*, a weekly publication of general circulation in Southern Luzon.

On June 6, 1973, Preciosa B. Garcia received a "Supplemental Petition for the Appointment of Regular Administrator" filed by Virginia G. Fule. This supplemental petition modified the original petition in four aspects: (1) the allegation that during the lifetime of the deceased Amado G. Garcia, he was elected as Constitutional

Delegate for the First District of Laguna and his last place of residence was at Calamba, Laguna; (2) the deletion of the names of Preciosa B. Garcia and Agustina Garcia as legal heirs of Amado G. Garcia; (3) the allegation that Carolina Carpio, who was simply listed as heir in the original petition, is the surviving spouse of Amado G. Garcia and that she has expressly renounced her preferential right to the administration of the estate in favor of Virginia G. Fule; and (4) that Virginia G. Fule be appointed as the regular administratrix. The admission of this supplemental petition was opposed by Preciosa B. Garcia for the reason, among others, that it attempts to confer jurisdiction on the Court of First Instance of Laguna, of which the court was not possessed at the beginning because the original petition was deficient.

On July 19, 1973, Preciosa B. Garcia filed an opposition to the original and supplemental petitions for letters of administration, raising the issues of jurisdiction, venue, lack of interest of Virginia G. Fule in the estate of Amado G. Garcia, and disqualification of Virginia G. Fule as special administratrix.

An omnibus motion was filed by Virginia G. Fule on August 20, 1973, praying for authority to take possession of properties of the decedent allegedly in the hands of third persons as well as to secure cash advances from the Calamba Sugar Planters Cooperative Marketing Association, Inc. Preciosa B. Garcia opposed the motion, calling attention to the limitation made by Judge Malvar on the power of the special administratrix, viz., "to making an inventory of the personal and real properties making up the estate of the deceased."

However, by July 2, 1973, Judge Malvar had already issued an order, received by Preciosa B. Garcia only on July 31, 1973, denying the motion of Preciosa B. Garcia to reconsider the order of May 2, 1973, appointing Virginia G. Fule as special administratrix, and admitting the supplementation petition of May 18, 1973.

On August 31, 1973, Preciosa B. Garcia moved to dismiss the petition, because (1) jurisdiction over the petition or over the parties in interest has not been acquired by the court; (2) venue was improperly laid; and (3) Virginia G. Fule is not a party in interest as she is not entitled to inherit from the deceased Amado G. Garcia.

On September 28, 1973, Preciosa B. Garcia filed a supplemental motion to substitute Virginia G. Fule as special administratrix, reasoning that the said Virginia G. Fule admitted before the court that she is a full-blooded sister of Pablo G. Alcaide, an illegitimate son of Andrea Alcaide, with whom the deceased Amado G. Garcia has no relation.

Three motions were filed by Preciosa B. Garcia on November 14, 1973, one, to enjoin the special administratrix from taking possession of properties in the hands of third persons which have not been determined as belonging to Amado G. Garcia; another, to remove the special administratrix for acting outside her authority and against the interest of the estate; and still another, filed in behalf of the minor Agustina B. Garcia, to dismiss the petition for want of cause of action, jurisdiction, and improper venue.

On November 28, 1973, Judge Malvar resolved the pending omnibus motion of Virginia G. Fule and the motion to dismiss filed by Preciosa B. Garcia. Resolving the motion to dismiss, Judge Malvar ruled that the powers of the special administratrix are those provided for in Section 2, Rule 80 of the Rules of Courts,[1] subject only to the previous qualification made by the court that the administration of the properties subject of the marketing agreement with the Canlubang Sugar Planters Cooperative Marketing Association should remain with the latter; and that the special administratrix had already been authorized in a previous order of August 20, 1973 to take custody and possession of all papers and certificates of title and personal effects of the decedent with the Canlubang Sugar Planters Cooperative Marketing Association, Inc. Ramon Mercado, of the Canlubang Sugar Planters Cooperative Marketing Association, Inc., was ordered to deliver to Preciosa B. Garcia all certificates of title in her name without any qualifying words like "married to Amado Garcia," or the like, and other documents which unquestionably belong to her and where the name of "Amado Garcia" does not appear. Regarding the

motion to dismiss, Judge Malvar ruled that the issue of jurisdiction had already been re-solved in the order of July 2, 1973, denying Preciosa B. Garcia's motion to reconsider the appointment of Virginia G. Fule and admitting the supplemental petition, the failure of Virginia G. Fule to allege in her original petition for letters of administration in the place of residence of the decedent at the time of his death was cured. Judge Malvar further held that Preciosa B. Garcia had submitted to the jurisdiction of the court and had waived her objections thereto by praying to be appointed as special and regular administratrix of the estate.

An omnibus motion was filed by Preciosa B. Garcia on December 27, 1973 to clarify or reconsider the fore-going order of Judge Malvar, in view of previous court order limiting the authority of the special administratrix to the making of an inventory. Preciosa B. Garcia also asked for the resolution of her motion to dismiss the petitions for lack of cause of action, and also that filed in behalf of Agustina B. Garcia. Resolution of her motions to substitute and remove the special administratrix was likewise prayed for.

On December 19, 1973, Judge Malvar issued two separate orders, the first, denying Preciosa B. Garcia's motions to substitute and remove the special administratrix, and the second, holding that the power allowed the special administratrix enables her to conduct and submit an inventory of the assets of the estate.

On January 7, 1974, Preciosa B. Garcia moved for reconsideration of the foregoing orders of November 28, 1973 and December 19, 1973, insofar as they sustained or failed to rule on the issues raised by her: (a) legal standing (cause of action) of Virginia G. Fule; (b) venue; (c) jurisdiction; (d) appointment, qualification and removal of special administratrix; and (e) delivery to the special administratrix of checks and papers and effects in the office of the Calamba Sugar Planters Cooperative Marketing Association, Inc.

On March 27, 1973, Judge Malvar issued the first questioned order denying Preciosa B. Garcia's motion for reconsideration of January 7, 1974. On July 19, 1974, Judge Malvar issued the other three questioned orders: one, directing Ramon Mercado, of the Calamba Sugar Planters Cooperative Marketing Association, Inc., to furnish Virginia G. Fule, as special administratrix, copy of the statement of accounts and final liquidation of sugar pool, as well as to deliver to her the corresponding amount due the estate; another, directing Preciosa B. Garcia to deliver to Virginia G. Fule two motor vehicles presumably belonging to the estate; and another, directing Ramon Mercado to deliver to the court all certificates of title in his possession in the name of Preciosa B. Garcia, whether qualified with the word "single" or "married to Amado Garcia."

During the hearing of the various incidents of this case (Sp. Proc. No. 27-C) before Judge Malvar,[2] Virginia G. Fule presented the death certificate of Amado G. Garcia showing that his residence at the time of his death was Quezon City. On her part, Preciosa B. Garcia presented the residence certificate of the decedent for 1973 showing that three months before his death his residence was in Quezon City. Virginia G. Fule also testified that Amado G. Garcia was residing in Calamba, Laguna at the time of his death, and that he was a delegate to the 1971 Constitutional Convention for the first district of Laguna.

On July 26, 1974, Preciosa B. Garcia and Agustina B. Garcia commenced a special action for certiorari and/or prohibition and preliminary injunction before the Court of Appeals, docketed as CA-G.R. No. 03221-SP, primarily to annul the proceedings before Judge Malvar in Sp. Proc. No. 27-C of the Court of First Instance of Laguna, or, in the alternative, to vacate the questioned four orders of that court, viz., one dated March 27, 1974, denying their motion for reconsideration of the order denying their motion to dismiss the original and supplemental petitions on the issue, among others, of jurisdiction, and the three others, all dated July 19, 1974, directing the delivery of certain properties to the special administratrix, Virginia G. Fule, and to the court.

On January 30, 1975, the Court of Appeals rendered judgment annulling the proceedings before Judge Severo Malvar in Sp. Proc. No. 27-C of the Court of First Instance of Calamba, Laguna, for lack of jurisdiction.

Denied of their motion for reconsideration on March 31, 1975, Virginia G. Fule forthwith elevated the matter to Us on appeal by certiorari. The case was docketed as G.R. No. L-40502.

However, even before Virginia G. Fule could receive the decision of the Court of Appeals, Preciosa B. Garcia had already filed on February 1, 1975 a petition for letters of administration before the Court of First Instance of Rizal, Quezon City Branch, docketed as Sp. Proc. No. Q-19738, over the same intestate estate of Amado G. Garcia. On February 10, 1975, Preciosa B. Garcia urgently moved for her appointment as special administratrix of the estate. Judge Vicente G. Ericta granted the motion and appointed Preciosa B. Garcia as special administratrix upon a bond of P30,000.00. Preciosa B. Garcia qualified and assumed the office.

For the first time, on February 14, 1975, Preciosa Garcia informed Judge Ericta of the pendency of Sp. Proc. No. 27-C before Judge Malvar of the Court of First Instance of Laguna, and the annulment of the proceedings therein by the Court of Appeals on January 30, 1975. She manifested, however, her willingness to withdraw Sp. Proc. Q-19738 should the decision of the Court of Appeals annulling the proceedings before the Court of First Instance of Laguna in Sp. Proc. No. 27-C have not yet become final, it being the subject of a motion for reconsideration.

On March 10, 1973, Judge Ericta ordered the suspension of the proceedings before his court until Preciosa B. Garcia inform the court of the final outcome of the case pending before the Court of Appeals. This notwithstanding, Preciosa B. Garcia filed on December 11, 1975, an "Urgent Petition for Authority to Pay Estate Obligations."

On December 13, 1975, Virginia G. Fule filed a "Special Appearance to Question Venue and Jurisdiction" reiterating the grounds stated in the previous special appearance of March 3, 1975, and calling attention that the decision of the Court of Appeals and its resolution denying the motion for reconsideration had been appealed to this Court; that the parties had already filed their respective briefs; and that the case is still pending before the Court.

On December 17, 1975, Judge Ernani Cruz Paño, who succeeded Judge Ericta, issued an order granting Preciosa B. Garcia's "Urgent Petition for Authority to Pay Estate Obligations" in that the payments were for the benefit of the estate and that there hangs a cloud of doubt on the validity of the proceedings in Sp. Proc. No. 27-C of the Court of First Instance of Laguna.

A compliance of this Order was filed by Preciosa B. Garcia on January 12, 1976.

On February 4, 1976, VIRGINIA G. FULE instituted G.R. No. L-42670, a petition for certiorari with temporary restraining order, to annul the proceedings in Sp. Proc. No. Q-19738 and to restrain Judge Ernani Cruz Paño from further acting in the case. A restraining order was issued on February 9, 1976.

We dismiss the appeal in G.R. No. L-40502 and the petition for certiorari in G.R. No. L-42670 for the reasons and considerations hereinafter stated.

1. Section 1, Rule 73 of the Revised Rules of Court provides: "If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the de-cedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record." With particular regard to letters of administration, Section 2, Rule 79 of the Revised Rules of Court demands that the petition

therefor should affirmatively show the existence of jurisdiction to make the appointment sought, and should allege all the necessary facts, such as death, the name and last residence of the decedent, the existence, and situs if need be, of assets, intestacy, where this is relied upon, and the right of the person who seeks administration, as next of kin, creditor, or otherwise, to be appointed. The fact of death of the intestate and his last residence within the country are foundation facts upon which all subsequent proceedings in the administration of the estate rest, and that if the intestate was not an inhabitant of the state at the time of his death, and left no assets in the state, no jurisdiction is conferred on the court to grant letters of administration.[3]

The aforequoted Section 1, Rule 73 (formerly Rule 75, Section 1), specifically the clause "so far as it depends on the place of residence of the decedent, or of the location of the estate, " is in reality a matter of venue, as the caption of the Rule indicates: "Settlement of Estate of Deceased Persons. Venue and Processes." [4] It could not have been intended to define the jurisdiction over the subject matter, because such legal provision is contained in a law of procedure dealing merely with procedural matters. Procedure is one thing; jurisdiction over the subject matter is another. The power or authority of the court over the subject matter "existed and was fixed before procedure in a given cause began." That power or authority is not altered or changed by procedure, which simply directs the manner in which the power or authority shall be fully and justly exercised. There are cases though that if the power is not exercised conformably with the provisions of the procedural law, purely, the court attempting to exercise it loses the power to exercise it legally. However, this does not amount to a loss of jurisdiction over the subject matter. Rather, it means that the court may thereby lose jurisdiction over the person or that the judgment may thereby be rendered defective for lack of something essential to sustain it. The appearance of this provision in the procedural law at once raises a strong presumption that it has nothing to do with the jurisdiction of the court over the subject matter. In plain words, it is just a matter of method, of convenience to the parties.[5]

The Judiciary Act of 1948, as amended, confers upon Courts of First Instance jurisdiction over all probate cases independently of the place of residence of the deceased. Because of the existence of numerous Courts of First Instance in the country, the Rules of Court, however, purportedly fixes the venue or the place where each case shall be brought. A fortiori, the place of residence of the deceased in settlement of estates, probate of will, and issuance of letters of administration does not constitute an element of jurisdiction over the subject matter. It is merely constitutive of venue. And it is upon this reason that the Revised Rules of Court properly considers the province where the estate of a deceased person shall be settled as "venue." [6]

2. But, the far-ranging question is this: What does the term "resides" mean? Does it refer to the actual residence or domicile of the decedent at the time of his death? We lay down the doctrinal rule that the term "resides" connotes *ex vi termini* "actual residence" as distinguished from "legal residence or domicile." This term "resides," like the terms "residing" and "residence, " is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed.[7] In the application of venue statutes and rules - Section 1, Rule 73 of the Revised Rules of Court is of such nature - residence rather than domicile is the significant factor. Even where the statute uses the word "domicile" still it is construed as meaning residence and not domicile in the technical sense. Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant." [8] In other words, "resides" should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is, personal residence, not legal residence or domicile.[9] Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile.[10] No particular length of time of residence is required though; however, the residence must be more than temporary.[11]

3. Divergent claims are maintained by Virginia G. Fule and Preciosa B. Garcia on the residence of the deceased Amado G. Garcia at the time of his death. In her original petition for letters of administration before the Court of First Instance of Calamba, Laguna, Virginia G. Fule measily stated "(t)hat on April 26, 1973, Amado G. Garcia, a property owner of Calamba, Laguna, died intestate in the City of Manila, leaving real estate and personal properties in Calamba, Laguna, and in other places within the jurisdiction of this Honorable Court." Preciosa B. Garcia assailed the petition for failure to satisfy the jurisdictional requirement and improper laying of venue. For her, the quoted statement avers no domicile or residence of the deceased Amado G. Garcia. To say that as "property owner of Calamba, Laguna," he also resides in Calamba, Laguna, is, according to her, non sequitur. On the contrary, Preciosa B. Garcia claims that, as appearing in his death certificate presented by Virginia G. Fule herself before the Calamba court and in other papers, the last residence of Amado G. Garcia was at 11 Carmel Avenue, Carmel Subdivision, Quezon City. Parenthetically, in her amended petition, Virginia G. Fule categorically alleged that Amado G. Garcia's "last place of residence was at Calamba, Laguna."

On this issue, We rule that the last place of re-sidence of the deceased Amado G. Garcia was at 11 Carmel Avenue, Carmel Subdivision, Quezon City, and not at Calamba, Laguna. A death certificate is admissible to prove the residence of the decedent at the time of his death.[12] As it is, the death certificate of Amado G. Garcia, which was presented in evidence by Virginia G. Fule herself and also by Preciosa B. Garcia, shows that his last place of residence was at 11 Carmel Avenue, Carmel Subdivision, Quezon City. Aside from this, the deceased's residence certificate for 1973 obtained three months before his death; the Marketing Agreement and Power of Attorney dated November 12, 1971 turning over the administration of his two parcels of sugar land to the Calamba Sugar Planters Cooperative Marketing Association, Inc.; the Deed of Donation dated January 8, 1973, transferring part of his interest in certain parcels of land in Calamba, Laguna to Agustina B. Garcia; and certificates of titles covering parcels of land in Calamba, Laguna, show in bold documents that Amado G. Garcia's last place of residence was at Quezon City. Withal, the conclusion becomes imperative that the venue for Virginia G. Fule's petition for letters of administration was improperly laid in the Court of First Instance of Calamba, Laguna. Nevertheless, the long-settled rule is that objection to improper venue is subject to waiver. Section 4, Rule 4 of the Revised Rules of Court states: "When improper venue is not objected to in a motion to dismiss, it is deemed waived." In the case before Us the Court of Appeals had reason to hold that in asking to substitute Virginia G. Fule as special administratrix, Preciosa B. Garcia did not necessarily waive her objection to the jurisdiction or venue assumed by the Court of First Instance of Calamba, Laguna, but availed of a mere practical resort to alternative remedy to assert her rights as surviving spouse, while insisting on the enforcement of the Rule fixing the proper venue of the proceedings at the last residence of the decedent.

4. Preciosa B. Garcia's challenge to Virginia G. Fule's appointment as special administratrix is another issue of perplexity. Preciosa B. Garcia claims preference to the appointment as surviving spouse. Section 1 of Rule 80 provides that "(w)hen there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed.[13] Formerly, the appointment of a special administrator was only proper when the allowance or disallowance of a will is under appeal. The new Rules, however, broadened the basis for appointment and such appointment is now allowed when there is delay in granting letters testamentary or administration by any cause, e.g., parties cannot agree among themselves.[14] Nevertheless, the discretion to appoint a special administrator or not lies in the probate court.[15] That, however, is no authority for the judge to become partial, or to make his personal likes and dislikes prevail over, or his passions to rule, his judgment. Exercise of that discretion must be based on reason, equity, justice and legal principle. There is no reason why the same fundamental and legal principles governing the choice of a regular administrator should not be taken into

account in the appointment of a special administrator.[16] Nothing is wrong for the judge to consider the order of preference in the appointment of a regular administrator in appointing a special administrator. After all, the consideration that overrides all others in this respect is the beneficial interest of the appointee in the estate of the decedent.[17] Under the law, the widow would have the right of succession over a portion of the exclusive property of the decedent, besides her share in the conjugal partnership. For such reason, she would have as such, if not more, interest in administering the entire estate correctly than any other next of kin. The good or bad administration of a property may affect rather the fruits than the naked ownership of a property.[18]

Virginia G. Fule, however, disputes the status of Preciosa B. Garcia as the widow of the late Amado G. Garcia. With equal force, Preciosa B. Garcia maintains that Virginia G. Fule has no relation whatsoever with Amado G. Garcia, or that, she is a mere illegitimate sister of the latter, incapable of any successional rights.[19] On this point, We rule that Preciosa B. Garcia is prima facie entitled to the appointment of special administratrix. It needs be emphasized that in the issuance of such appointment, which is but temporary and subsists only until a regular administrator is appointed,[20] the appointing court does not determine who are entitled to share in the estate of the decedent but who is entitled to the administration. The issue of heirship is one to be determined in the decree of distribution, and the findings of the court on the relationship of the parties in the administration as to be the basis of distribution.[21] The preference of Preciosa B. Garcia is with sufficient reason. In a Donation Inter Vivos executed by the deceased Amado G. Garcia on January 8, 1973 in favor of Agustina B. Garcia, he indicated therein that he is married to Preciosa B. Garcia.[22] In his certificate of candidacy for the office of Delegate to the Constitutional Convention for the First District of Laguna filed on September 1, 1970, he wrote therein the name of Preciosa B. Banaticla as his spouse.[23] Faced with these documents and the presumption that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage, Preciosa B. Garcia can be reasonably believed to be the surviving spouse of the late Amado G. Garcia. *Semper praesumitur pro matrimonio*. [24]

5. Under these circumstances and the doctrine laid down in *Cuenco vs. Court of Appeals*, [25] this Court under its supervisory authority over all inferior courts may properly decree that venue in the instant case was properly assumed by and transferred to Quezon City and that it is in the interest of justice and avoidance of needless delay that the Quezon City court's exercise of jurisdiction over the settlement of the estate of the deceased Amado G. Garcia and the appointment of special administratrix over the latter's estate be approved and authorized and the Court of First Instance of Laguna be disauthorized from continuing with the case and instead be required to transfer all the records thereof to the Court of First Instance of Quezon City for the continuation of the proceedings.

6. Accordingly, the Order of Judge Ernani Cruz Paño of December 17, 1975, granting the "Urgent Petition for Authority to Pay Estate Obligations" filed by Preciosa B. Garcia in Sp. Proc. No. Q-19738, subject matter of G.R. No. L-42670, and ordering the Canlubang Sugar Estate to deliver to her as special administratrix the sum of P48,874.70 for payment of the sum of estate obligations is hereby upheld.

IN VIEW OF THE FOREGOING, the petition of petitioner Virginia Garcia Fule in G.R. No. L-40502 and in G.R. No. L-42670 are hereby denied, with costs against petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Aquino, and Concepcion, Jr., JJ., concur.

Muñoz Palma, J., no part.

[*] Court of Appeals, Special First Division, composed of JJ. Reyes, L.B., Gaviola, Jr. and De Castro.

[1] Sec. 2. Powers and duties of special administrator. - Such special administrator shall take possession and charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased unless so ordered by the court."

[2] July 2, 1973, July 26, 1973, August 9, 1973, July 17, 1974, July 25, 1974, at 270-391, Rollo of No. L-40502.

[3] *Diez v. Serra*, 51 Phil. 286 (1927).

[4] See *Malig v. Bush*, L-22761, May 31, 1969, 28 SCRA 453-454.

[5] *Manila Railroad Co. v. Attorney-General*, 20 Phil. 530-32 (1911).

[6] *In re Kaw Singco. Sy Oa v. Co Ho*, 74 Phil. 241-242 (1943); *Rodriguez v. Borja*, L-21993, June 21, 1966, 17 SCRA 442.

[7] *McGrath v. Stevenson*, 77 P 2d 608; *In re Jones*, 19A 2d 280.

[8] See 92 C.J.S. 813-14; See also *Cuenco v. Court of Appeals*, L-24742, October 26, 1973, 53 SCRA 377.

[9] See 77 C.J.S. 286.

[10] *Kemp v. Kemp*, 16 NYS 2d 34.

[11] See 92 C.J.S. 816.

[12] See *Rules of Court, Francisco*, Vol. V-B, 1970 Ed., at 32; *Manzanero v. Bongon*, 67 Phil. 602 (1939).

[13] A special administrator is a representative of decedent, appointed by the probate court to care for and preserve his estate until an executor or general administrator is appointed. (*Jones v. Minnesota Transfer R. Co.*, 121 NW 606, cited in *Jacinto*, Special Proceedings, 1965 ed., at 106.

[14] See *Proceedings of the Institute on the Revised Rules of Court*, UP Law Center, 1963, at 99.

[15] *J.M. Tuason & Co., Inc. v. De Guzman*, 99 Phil. 281 (1956); *Hon. Alcasid v. Samson*, 102 Phil. 736 (1957).

[16] *Ozaeta v. Pecson*, 93 Phil. 419-20 (1953).

[17] *Roxas v. Pecson*, 92 Phil. 410 (1948).

[18] *Idem*, at 411.

[19] Article 992 of the Civil Code provides: "An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child."

[20] *Fernandez v. Maravilla*, L-18799, March 31, 1964, 10 SCRA 597.

[21] *Ngo The Hua v. Chung Kiat Hua*, L-17091, September 30, 1963, 9 SCRA 113.

[22] Vide, Rollo of No. L-40502, at 219, Annex "SS" to Petition for Certiorari and/or Prohibition and Preliminary In-junction by Preciosa B. Garcia in CA-G.R. No. 03221-SP.

[23] Vide, Rollo of No. L-40502, at 268; Annex 5 to Answer filed by Virginia G. Fule to petition of Preciosa B.

Garcia in C.A.-G.R. No. 03221-SP.

[24] See Perido vs. Perido, L-28248, March 12, 1975, Makalintal, C.J., ponente, First Division, 63 SCRA 97.

[25] 53 SCRA 381.

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