

ROSA CAYETANO CUENCO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THIRD DIVISION, MANUEL CUENCO, LOURDES CUENCO, CONCEPCION CUENCO MANGUERRA, CARMEN CUENCO, CONSUELO CUENCO ...

G.R. No. L-24742. October 26, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Petition for certiorari to review the decision of respondent Court of Appeals in CA-G. R. No. 34104-R, promulgated 21 November 1964, and its subsequent Resolution promulgated 8 July 1964 denying petitioner's Motion for Reconsideration.

The pertinent facts which gave rise to the herein petition follow:

On 25 February 1964 Senator Mariano Jesus Cuenco died at the Manila Doctors' Hospital, Manila. He was survived by his widow, the herein petitioner, and their two (2) minor sons, Mariano Jesus, Jr. and Jesus Salvador, both surnamed Cuenco, all residing at 69 Pi y Margal St., Sta. Mesa Heights, Quezon City, and by his children of the first marriage, respondents herein, namely, Manuel Cuenco, Lourdes Cuenco, Concepcion Cuenco Manguera, Carmen Cuenco, Consuelo Cuenco Reyes and Teresita Cuenco Gonzalez, all of legal age and residing in Cebu.

On 5 March 1964, (the 9th day after the death of the late Senator)[1] respondent Lourdes Cuenco filed a Petition for Letters of Administration with the court of first instance of Cebu (Sp. Proc. No. 2433-R), alleging among other things, that the late senator died intestate in Manila on 25 February 1964; that he was a resident of Cebu at the time of his death; and that he left real and personal properties in Cebu and Quezon City. On the same date, the Cebu court issued an order setting the petition for hearing on 10 April 1964, directing that due notice be given to all the heirs and interested persons, and ordering the requisite publication thereof at LA PRENSA, a newspaper of general circulation in the City and Province of Cebu.

The aforesaid order, however, was later suspended and cancelled and a new and modified one released on 13 March 1964, in view of the fact that the petition was to be heard at Branch II instead of Branch I of the said Cebu court. On the same date, a third order was further issued stating that respondent Lourdes Cuenco's petition for the appointment of a special administrator dated 4 March 1964 was not yet ready for the consideration of the said court, giving as reasons the following:

"It will be premature for this Court to act thereon, it not having yet regularly acquired jurisdiction to try this proceeding, the requisite publication of the notice of hearing not yet having been complied with. Moreover, copies of the petition have not been served on all of the heirs specified in the basic petition for the issuance of letters of administration." [2]

In the meantime, or specifically on 12 March 1964, (a week after the filing of the Cebu petition) herein petitioner Rosa Cayetano Cuenco filed a petition with the court of first instance of Rizal (Quezon City) for the probate of the

deceased's last will and testament and for the issuance of letters testamentary in her favor, as the surviving widow and executrix in the said last will and testament. The said proceeding was docketed as Special Proceeding No. Q-7898.

Having learned of the intestate proceeding in the Cebu court, petitioner Rosa Cayetano Cuenco filed in said Cebu court an Opposition and Motion to Dismiss, dated 30 March 1964, as well as an Opposition to Petition for Appointment of Special Administrator, dated 8 April 1964. On 10 April 1964, the Cebu court issued an order holding in abeyance its resolution on petitioner's motion to dismiss "until after the Court of First Instance of Quezon City shall have acted on the petition for probate of that document purporting to be the last will and testament of the deceased Don Mariano Jesus Cuenco." [3] Such order of the Cebu court deferring to the probate proceedings in the Quezon City court was neither excepted to nor sought by respondents to be reconsidered or set aside by the Cebu court nor did they challenge the same by certiorari or prohibition proceedings in the appellate courts.

Instead, respondents filed in the Quezon City court an Opposition and Motion to Dismiss, dated 10 April 1964, opposing probate of the will and assailing the jurisdiction of the said Quezon City court to entertain petitioner's petition for probate and for appointment as executrix in Sp. Proc. No. Q-7898 in view of the alleged exclusive jurisdiction vested by her petition in the Cebu court in Sp. Proc. No. 2433 - R. Said respondent prayed that Sp. Proc. No. Q-7898 be dismissed for lack of jurisdiction and/or improper venue.

In its order of 11 April 1964, the Quezon City court denied the motion to dismiss, giving as a principal reason the "precedence of probate proceeding over an intestate proceeding." [4] The said court further found in said order that the residence of the late senator at the time of his death was at No. 69 Pi y Margal, Sta. Mesa Heights, Quezon City. The pertinent portion of said order follows:

"On the question of residence of the decedent, paragraph 5 of the opposition and motion to dismiss reads as follows: 'that since the decedent Don Mariano Jesus Cuenco was a resident of the City of Cebu at the time of his death, the aforesaid petition filed by Rosa Cayetano Cuenco on 12 March 1964 was not filed with the proper Court (wrong venue) in view of the provisions of Section 1 of Rule 73 of the New Rules of Court'. From the aforequoted allegation, the Court is made to understand that the oppositors do not mean to say that the decedent being a resident of Cebu City when he died, the intestate proceedings in Cebu City should prevail over the probate proceedings in Quezon City, because as stated above the probate of the will should take precedence, but that the probate proceedings should be filed in the Cebu City Court of First Instance. If the last proposition is the desire of the oppositors as understood by this Court, that could not also be entertained as proper because paragraph 1 of the petition for the probate of the will indicates that Don Mariano Jesus Cuenco at the time of his death was a resident of Quezon City at 69 Pi y Margal. Annex A (Last Will and Testament of Mariano Jesus Cuenco) of the petition for probate of the will shows that the decedent at the time when he executed his Last Will clearly stated that he is a resident of 69 Pi y Margal, Sta. Mesa Heights, Quezon City, and also of the City of Cebu. He made the former as his first choice and the latter as his second choice of residence.' If a party has two residences, the one will be deemed or presumed to be his domicile which he himself selects or considers to be his home or which appears to be the center of his affairs. The petitioner, in thus filing the instant petition before this Court, follows the first choice of residence of the decedent and once this court acquires jurisdiction of the probate proceeding it is to the exclusion of all others." [5]

Respondent Lourdes Cuenco's motion for reconsideration of the Quezon City court's said order of 11 April 1964 asserting its exclusive jurisdiction over the probate proceeding as deferred to by the Cebu court was denied on 27 April 1964 and a second motion for reconsideration dated 20 May 1964 was likewise denied.

On 11 May 1964, pursuant to its earlier order of 11 April 1964, the hearing for probate of the last will of the

decendent was called three times at half-hour intervals, but notwithstanding due notification none of the oppositors appeared and the Quezon City court proceeded at 9:00 a. m. with the hearing in their absence.

As per the order issued by it subsequently on 15 May 1964, the Quezon City court noted that respondents-oppositors had opposed probate under their opposition and motion to dismiss on the following grounds:

"(a)

That the will was not executed and attested as required by law;

"(b)

That the will was procured by undue and improper pressure and influence on the part of the beneficiary or some other persons for his benefit;

"(c)

That the testator's signature was procured by fraud and/or that the testator acted by mistake and did not intend that the instrument he signed should be his will at the time he affixed his signature thereto."[6]

The Quezon City court further noted that the requisite publication of the notice of the hearing had been duly complied with and that all the heirs had been duly notified of the hearing, and after receiving the testimony of the three instrumental witnesses to the decedent's last will, namely Atty. Florencio Albino, Dr. Guillermo A. Picache and Dr. Jose P. Ojeda, and of the notary public, Atty. Braulio A. Arriola, Jr., who ratified the said last will, and the documentary evidence (such as the decedent's residence certificates, income tax return, diplomatic passport, deed of donation) all indicating that the decedent was a resident of 69 Pi y Margal St., Quezon City, as also affirmed by him in his last will, the Quezon City court in its said order of 15 May 1964 admitted to probate the late senator's last will and testament as having been "freely and voluntarily executed by the testator" and "with all formalities of the law" and appointed petitioner-widow as executrix of his estate without bond "following the desire of the testator" in his will as probated.

Instead of appealing from the Quezon City court's said order admitting the will to probate and naming petitioner-widow as executrix thereof, respondents filed a special civil action of certiorari and prohibition with preliminary injunction with respondent Court of Appeals (docketed as case CA-G.R. No. 34104-R) to bar the Rizal court from proceeding with case No. Q-7898.

On 21 November 1964, the Court of Appeals rendered a decision in favor of respondents (petitioners therein) and against the herein petitioner, holding that:

"Section 1, Rule 73, which fixes the venue in proceedings for the settlement of the estate of a deceased person, covers both testate and intestate proceedings. Sp. Proc. 2433-R of the Cebu CFI having been filed ahead, it is that court whose jurisdiction was first invoked and which first attached. It is that court which can properly and exclusively pass upon the factual issues of (1) whether the decedent left or did not leave a valid will, and (2) whether or not the decedent was a resident of Cebu at the time of his death.

"Considering therefore that the first proceeding was instituted in the Cebu CFI (Special Proceeding 2433-R), it follows that the said court must exercise jurisdiction to the exclusion of the Rizal CFI, in which the petition for probate was filed by the respondent Rosa Cayetano Cuenco (Special Proceeding Q-7898). The said respondent should assert her rights within the framework of the proceeding in the Cebu CFI, instead of invoking the

jurisdiction of another court.

"The respondents try to make capital of the fact that on March 13, 1964, Judge Amador Gomez of the Cebu CFI, acting in Sp. Proc. 2433-R, stated that the petition for appointment of special administrator was 'not yet ready for the consideration of the Court today. It would be premature for this Court to act thereon, it not having yet regularly acquired jurisdiction to try this proceeding x x x.' It is sufficient to state in this connection that the said judge was certainly not referring to the court's jurisdiction over the res, not to jurisdiction itself which is acquired from the moment a petition is filed, but only to the exercise of jurisdiction in relation to the stage of the proceedings. At all events, jurisdiction is conferred and determined by law and does not depend on the pronouncements of a trial judge."

The dispositive part of respondent appellate court's judgment provided as follows:

"ACCORDINGLY, the writ of prohibition will issue, commanding and directing the respondent Court of First Instance of Rizal, Branch IX, Quezon City, and the respondent Judge Damaso B. Tengco to refrain perpetually from proceeding and taking any action in Special Proceeding Q-7898 pending before the said respondent court. All orders heretofore issued and actions heretofore taken by said respondent court and respondent Judge, therein and connected therewith, are hereby annulled. The writ of injunction heretofore issued is hereby made permanent. No pronouncement as to costs."

Petitioner's motion for reconsideration was denied in a resolution of respondent Court of Appeals, dated 8 July 1965; hence the herein petition for review on certiorari.

The principal and decisive issue at bar is, therefore, whether the appellate court erred in law in issuing the writ of prohibition against the Quezon City court ordering it to refrain perpetually from proceeding with the testate proceedings and annulling and setting aside all its orders and actions, particularly its admission to probate of the decedent's last will and testament and appointing petitioner-widow as executrix thereof without bond in compliance with the testator's express wish in his testament. This issue is tied up with the issue submitted to the appellate court, to wit, whether the Quezon City court acted without jurisdiction or with grave abuse of discretion in taking cognizance and assuming exclusive jurisdiction over the probate proceedings filed with it, in pursuance of the Cebu court's order of 10 April 1964 expressly consenting in deference to the precedence of probate over intestate proceedings that it (the Quezon City court) should first act "on the petition for probate of the document purporting to be the last will and testament of the deceased Don Mariano Jesus Cuenco" - which order of the Cebu court respondents never questioned nor challenged by prohibition or certiorari proceedings and thus enabled the Quezon City court to proceed without any impediment or obstruction, once it denied respondent Lourdes Cuenco's motion to dismiss the probate proceeding for alleged lack of jurisdiction or improper venue, to proceed with the hearing of the petition and to admit the will to probate upon having been satisfied as to its due execution and authenticity.

The Court finds under the above-cited facts that the appellate court erred in law in issuing the writ of prohibition against the Quezon City court from proceeding with the testate proceedings and annulling and setting aside all its orders and actions, particularly its admission to probate of the deceased's last will and testament and appointing petitioner-widow as executrix thereof without bond pursuant to the deceased testator's express wish, for the following considerations: -

- The Judiciary Act^[7] concededly confers original jurisdiction upon all Courts of First Instance over "all matters of probate, both of testate and intestate estates." On the other hand, Rule 73, section 1 of the Rules of Court lays down the rule of venue, as the very caption of the Rule indicates, and in order to prevent conflict among the different courts which otherwise may properly assume jurisdiction from doing so, the Rule specifies that "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 cited Rule provides:

"Section 1. Where estate of deceased persons settled. 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 the 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 decedent, 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." (Rule 73)[8]

It is equally conceded that the residence of the deceased or the location of his estate is not an element of jurisdiction over the subject matter but merely of venue. This was lucidly stated by the late Chief Justice Moran in *Sy Oa vs. Co Ho*[9] as follows:

"We are not unaware of existing decisions to the effect that in probate cases the place of residence of the deceased is regarded as a question of jurisdiction over the subject-matter. But we decline to follow this view because of its mischievous consequences. For instance, a probate case has been submitted in good faith to the Court of First Instance of a province where the deceased had not resided. All the parties, however, including all the creditors, have submitted themselves to the jurisdiction of the court and the case is therein completely finished except for a claim of a creditor who also voluntarily filed it with said court but on appeal from an adverse decision raises for the first time in this Court the question of jurisdiction of the trial court for lack of residence of the deceased in the province. If we consider such question of residence as one affecting the jurisdiction of the trial court over the subject-matter, the effect shall be that the whole proceedings including all decisions on the different incidents which have arisen in court will have to be annulled and the same case will have to be commenced anew before another court of the same rank in another province. That this is of mischievous effect in the prompt administration of justice is too obvious to require comment. (Cf. *Tanunchuan vs. Dy Buncio & Co.*, G.R. No. 48206, December 31, 1942) Furthermore, section 600 of Act No. 190,[10] providing that the estate of a deceased person shall be settled in the province where he had last resided, could not have been intended as defining the jurisdiction of the probate court over the subject-matter, because such legal provision is contained in a law of procedure dealing merely with procedural matters, and, as we have said time and again, procedure is one thing and jurisdiction over the subject matter is another. (*Attorney-General vs. Manila Railroad Company*, 20 Phil., 523.) The law of jurisdiction - Act No. 136,[11] Section 56, No. 5 - confers upon Courts of First Instance jurisdiction over all probate cases independently of the place of residence of the deceased. Since, however, there are many courts of First Instance in the Philippines, the Law of Procedure, Act No. 190, section 600, fixes the venue or the place where each case shall be brought. Thus, the place of residence of the deceased is not an element of jurisdiction over the subject-matter but merely of venue. And it is upon this ground that in the new Rules of Court the province where the estate of a deceased person shall be settled is properly called 'venue'."

It should be noted that the Rule on venue does not state that the court with whom the testate or intestate petition is first filed acquires exclusive jurisdiction.

The Rule precisely and deliberately provides that "the court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts."

A fair reading of the Rule - since it deals with venue and comity between courts of equal and co-ordinate jurisdiction - indicates that the court with whom the petition is first filed, must also first take cognizance of the settlement of the estate in order to exercise jurisdiction over it to the exclusion of all other courts.

Conversely, such court, may upon learning that a petition for probate of the decedent's last will has been presented in another court where the decedent obviously had his conjugal domicile and resided with his surviving widow

and their minor children, and that the allegation of the intestate petition before it stating that the decedent died intestate may be actually false, may decline to take cognizance of the petition and hold the petition before it in abeyance, and instead defer to the second court which has before it the petition for probate of the decedent's alleged last will.

- This is exactly what the Cebu court did. Upon petitioner-widow's filing with it a motion to dismiss Lourdes' intestate petition, it issued its order holding in abeyance its action on the dismissal motion and deferred to the Quezon City court, awaiting its action on the petition for probate before that court. Implicit in the Cebu court's order was that if the will was duly admitted to probate by the Quezon City court, then it would definitely decline to take cognizance of Lourdes' intestate petition which would thereby be shown to be false and improper, and leave the exercise of jurisdiction to the Quezon City court, to the exclusion of all other courts. Likewise by its act of deference, the Cebu court left it to the Quezon City court to resolve the question between the parties whether the decedent's residence at the time of his death was in Quezon City where he had his conjugal domicile rather than in Cebu City as claimed by respondents. The Cebu court thus indicated that it would decline to take cognizance of the intestate petition before it and instead defer to the Quezon City court, unless the latter would make a negative finding as to the probate petition and the residence of the decedent within its territory and venue.

3. Under these facts, the Cebu court could not be held to have acted without jurisdiction or with grave abuse of jurisdiction in declining to take cognizance of the intestate petition and deferring to the Quezon City court.

Necessarily, neither could the Quezon City court be deemed to have acted without jurisdiction in taking cognizance of and acting on the probate petition since under Rule 73, section 1, the Cebu court must first take cognizance over the estate of the decedent and must exercise jurisdiction to exclude all other courts, which the Cebu court declined to do. Furthermore, as is undisputed, said rule only lays down a rule of venue and the Quezon City court indisputably had at least equal and co-ordinate jurisdiction over the estate.

Since the Quezon City court took cognizance over the probate petition before it and assumed jurisdiction over the estate, with the consent and deference of the Cebu court, the Quezon City court should be left now, by the same rule of venue of said Rule 73, to exercise jurisdiction to the exclusion of all other courts.

Under the facts of the case and where respondents submitted to the Quezon City court their opposition to probate of the will, but failed to appear at the scheduled hearing despite due notice, the Quezon City court cannot be declared, as the appellate court did, to have acted without jurisdiction in admitting to probate the decedent's will and appointing petitioner-widow as executrix thereof in accordance with the testator's testamentary disposition.

- The relatively recent case of *Uriarte vs. Court of First Instance of Negros Occidental*[12] with facts analogous to the present case[13] is authority against respondent appellate court's questioned decision.

In said case, the Court upheld the doctrine of precedence of probate proceedings over intestate proceedings in this wise:

"It can not be denied that a special proceeding intended to effect the distribution of the estate of a deceased person, whether in accordance with the law on intestate succession or in accordance with his will, is a 'probate matter' or a proceeding for the settlement of his estate. It is equally true, however, that in accordance with settled jurisprudence in this jurisdiction, testate proceedings for the settlement of the estate of a deceased person take precedence over intestate proceedings for the same purpose. Thus it has been held repeatedly that, if in the course of intestate proceedings pending before a court of first instance it is found that the decedent had left a last will, proceedings for the probate of the latter should replace the intestate proceedings even if at that stage an administrator had already been appointed, the latter being required to render final account and turn over the estate in his possession to the executor subsequently appointed. This, however, is understood to be without prejudice that should the alleged last will be rejected or is disapproved, the proceeding shall continue

as an intestacy. As already adverted to, this is a clear indication that proceedings for the probate of a will enjoy priority over intestate proceedings." [14]

The Court likewise therein upheld the jurisdiction of the second court, (in this case, the Quezon City court) although opining that certain considerations therein "would seem to support the view that [therein respondent] should have submitted said will for probate to the Negros Court, [in this case, the Cebu court] either in a separate special proceeding or in an appropriate motion for said purpose filed in the already pending Special Proceeding No. 6344," [15] thus:

"But the fact is that instead of the aforesaid will being presented for probate to the Negros Court, Juan Uriarte Zamacona filed the petition for the purpose with the Manila Court. We can not accept petitioner's contention in this regard that the latter court had no jurisdiction to consider said petition, albeit we say that it was not the proper venue therefor.

"It is well settled in this jurisdiction that wrong venue is merely a waivable procedural defect, and, in the light of the circumstances obtaining in the instant case, we are of the opinion, and so hold, that petitioner has waived the right to raise such objection or is precluded from doing so by laches. It is enough to consider in this connection that petitioner knew of the existence of a will executed by Juan Uriarte y Goite since December 19, 1961 when Higinio Uriarte filed his opposition to the initial petition filed in Special Proceeding No. 6344; that petitioner likewise was served with notice of the existence (presence) of the alleged last will in the Philippines and of the filing of the petition for its probate with the Manila Court since August 28, 1962 when Juan Uriarte Zamacona filed a motion for the dismissal of Special Proceeding No. 6344. All these notwithstanding, it was only on April 15, 1963 that he filed with the Manila Court in Special Proceeding No. 51396 an Omnibus motion asking for leave to intervene and for the dismissal and annulment of all the proceedings had therein up to that date; thus enabling the Manila Court not only to appoint an administrator with the will annexed but also to admit said will to probate more than five months earlier, or more specifically, on October 31, 1962. To allow him now to assail the exercise of jurisdiction over the probate of the will by the Manila Court and the validity of all the proceedings had in Special Proceeding No. 51396 would put a premium on his negligence. Moreover, it must be remembered that this Court is not inclined to annul proceedings regularly had in a lower court even if the latter was not the proper venue therefor, if the net result would be to have the same proceedings repeated in some other court of similar jurisdiction; more so in a case like the present where the objection against said proceedings is raised too late." [16]

- Under Rule 73, section 1 itself, the Quezon City court's assumption of jurisdiction over the decedent's estate on the basis of the will duly presented for probate by petitioner-widow and finding that Quezon City was the first choice of residence of the decedent, who had his conjugal home and domicile therein - with the deference in comity duly given by the Cebu court - could not be contested except by appeal from said court in the original case. The last paragraph of said Rule expressly provides:

"x x x The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, 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." (Rule 73)

The exception therein given, viz, "when the want of jurisdiction appears on the record" could probably be properly invoked, had such deference in comity of the Cebu court to the Quezon City court not appeared in the record, or had the record otherwise shown that the Cebu court had taken cognizance of the petition before it and assumed jurisdiction.

- On the question that Quezon City was established to be the residence of the late senator, the appellate court while recognizing that "the issue is a legitimate one" held in reliance on *Borja vs. Tan* [17] that

"x x x The issue of residence comes within the competence of whichever court is considered to prevail in the

exercise of jurisdiction - in this case, the Court of First Instance of Cebu as held by this Court. Parenthetically, we note that the question of the residence of the deceased is a serious one, requiring both factual and legal resolution on the basis of ample evidence to be submitted in the ordinary course of procedure in the first instance, particularly in view of the fact that the deceased was better known as the Senator from Cebu and the will purporting to be his also gives Cebu, besides Quezon City, as his residence. We reiterate that this matter requires airing in the proper court, as so indicated in the leading and controlling case of *Borja vs. Hon. Bienvenido Tan, et al.*, G.R. L-7792, July 27, 1955."

In the case at bar, however, the Cebu court declined to take cognizance of the intestate petition first filed with it and deferred to the testate proceedings filed with the Quezon City court and in effect asked the Quezon City court to determine the residence of the decedent and whether he did leave a last will and testament upon which would depend the proper venue of the estate proceedings, Cebu or Quezon City. The Quezon City court having thus determined in effect for both courts - at the behest and with the deference and consent of the Cebu court - that Quezon City was the actual residence of the decedent who died testate and therefore the proper venue, the *Borja* ruling would seem to have no applicability. It would not serve the practical ends of justice to still require the Cebu court, if the *Borja* ruling is to be held applicable and as indicated in the decision under review, to determine for itself the actual residence of the decedent (when the Quezon City court had already so determined Quezon City as the actual residence at the Cebu court's behest and respondents have not seriously questioned this factual finding based on documentary evidence) and if the Cebu court should likewise determine Quezon City as the actual residence, or its contrary finding reversed on appeal, only then to allow petitioner-widow after years of waiting and inaction to institute the corresponding proceedings in Quezon City.

- With more reason should the Quezon City proceedings be upheld when it is taken into consideration that Rule 76, section 2 requires that the petition for allowance of a will must show: "(a) the jurisdictional facts." Such "jurisdictional facts" in probate proceedings, as held by the Court in *Fernando vs. Crisostomo*[18] "are the death of the decedent, his residence at the time of his death in the province where the probate court is sitting, or if he is an inhabitant of a foreign country, his having left his estate in such province."

This tallies with the established legal concept as restated by Moran that "(T)he probate of a will is a proceeding in rem. The notice by publication as a pre requisite to the allowance of a will, is a constructive notice to the whole world, and when probate is granted, the judgment of the court is binding upon everybody, even against the State. The probate of a will by a court having jurisdiction thereof is conclusive as to its due execution and validity." [19] The Quezon City court acted regularly within its jurisdiction (even if it were to be conceded that Quezon City was not the proper venue notwithstanding the Cebu court's giving way and deferring to it,) in admitting the decedent's last will to probate and naming petitioner-widow as executrix thereof. Hence, the Quezon city court's action should not be set aside by a writ of prohibition for supposed lack of jurisdiction as per the appellate court's appealed decision, and should instead be sustained in line with *Uriarte, supra*, where the Court, in dismissing the certiorari petition challenging the Manila court's action admitting the decedent's will to probate and distributing the estate in accordance therewith in the second proceeding, held that "it must be remembered that this Court is not inclined to annul proceedings regularly had in a lower court even if the latter was not the proper venue therefor, if the net result would be to have the same proceedings repeated in some other court of similar jurisdiction." As stressed by Chief Justice Moran in *Sy Oa, supra*, "the mischievous effect in the administration of justice" of considering the question of residence as affecting the jurisdiction of the trial court and annulling the whole proceedings only to start all over again the same proceedings before another court of the same rank in another province "is too obvious to require comment."

- If the question of jurisdiction were to be made to depend only on who of the decedent's relatives gets first to file a petition for settlement of the decedent's estate, then the established jurisprudence of the Court that Rule 73, section 1 provides only a rule of venue in order to preclude different courts which may properly assume

jurisdiction from doing so and creating conflicts between them to the detriment of the administration of justice, and that venue is waivable, would be set at naught. As between relatives who unfortunately do not see eye to eye, it would be converted into a race as to who can file the petition faster in the court of his/her choice, regardless of whether the decedent is still in *cuerpo presente* and in disregard of the decedent's actual last domicile, the fact that he left a last will and testament and the right of his surviving widow named as executrix thereof. Such dire consequences were certainly not intended by the Rule nor would they be in consonance with public policy and the orderly administration of justice.

- It would finally be unjust and inequitable that petitioner-widow, who under all the applicable rules of venue, and despite the fact that the Cebu court (where respondent Lourdes Cuenco had filed an intestate petition in the Cebu court earlier by a week's time on 5 March 1964) deferred to the Quezon City court where petitioner had within fifteen days (on March 12, 1964) after the decedent's death (on February 25, 1964) timely filed the decedent's last will and petitioned for letters testamentary and is admittedly entitled to preference in the administration of her husband's estate,[20] would be compelled under the appealed decision to have to go all the way to Cebu and submit anew the decedent's will there for probate either in a new proceeding or by asking that the intestate proceedings be converted into a testate proceeding - when under the Rules, the proper venue for the testate proceedings, as per the facts of record and as already affirmed by the Quezon City court is Quezon City, where the decedent and petitioner-widow had their conjugal domicile.

It would be an unfair imposition upon petitioner as the one named and entitled to be executrix of the decedent's last will and settle his estate in accordance therewith, and a disregard of her rights under the rule on venue and the law on jurisdiction to require her to spend much more time, money and effort to have to go from Quezon City to the Cebu court everytime she has an important matter of the estate to take up with the probate court.

It would doubly be an unfair imposition when it is considered that under Rule 73, section 2,[21] since petitioner's marriage has been dissolved with the death of her husband, their community property and conjugal estate have to be administered and liquidated in the estate proceedings of the deceased spouse. Under the appealed decision, notwithstanding that petitioner resides in Quezon City, and the proper venue of the testate proceeding was in Quezon City and the Quezon City court properly took cognizance and exercised exclusive jurisdiction with the deference in comity and consent of the Cebu court, such proper exercise of jurisdiction would be nullified and petitioner would have to continually leave her residence in Quezon City and go to Cebu to settle and liquidate even her own community property and conjugal estate with the decedent.

- The Court therefore holds under the facts of record that the Cebu court did not act without jurisdiction nor with grave abuse of discretion in declining to take cognizance of the intestate petition and instead deferring to the testate proceedings filed just a week later by petitioner as surviving widow and designated executrix of the decedent's last will, since the record before it (the petitioner's opposition and motion to dismiss) showed the falsity of the allegation in the intestate petition that the decedent had died without a will. It is noteworthy that respondents never challenged by certiorari or prohibition proceedings the Cebu court's order of 10 April 1964 deferring to the probate proceedings before the Quezon City court, thus leaving the latter free (pursuant to the Cebu court's order of deference) to exercise jurisdiction and admit the decedent's will to probate.

For the same reasons, neither could the Quezon City court be held to have acted without jurisdiction nor with grave abuse of discretion in admitting the decedent's will to probate and appointing petitioner as executrix in accordance with its testamentary disposition, in the light of the settled doctrine that the provisions of Rule 73, section 1 lay down only a rule of venue, not of jurisdiction.

Since respondents undisputedly failed to appeal from the Quezon City court's order of May 15, 1964 admitting the will to probate and appointing petitioner as executrix thereof, and said court concededly has jurisdiction to issue said order, the said order of probate has long since become final and can not be overturned in a special civil action

of prohibition.

- Finally, it should be noted that in the Supreme Court's exercise of its supervisory authority over all inferior courts,[22] it may properly determine, as it has done in the case at bar, that venue was properly assumed by and transferred to the Quezon City court and that it is the interest of justice and in avoidance of needless delay that the Quezon City court's exercise of jurisdiction over the testate estate of the decedent (with the due deference and consent of the Cebu court) and its admission to probate of his last will and testament and appointment of petitioner-widow as administratrix without bond in pursuance of the decedent's express will and all its orders and actions taken in the testate proceedings before it be approved and authorized rather than to annul all such proceedings regularly had and to repeat and duplicate the same proceedings before the Cebu court only to revert once more to the Quezon City court should the Cebu court find that indeed and in fact, as already determined by the Quezon City court on the strength of incontrovertible documentary evidence of record, Quezon City was the conjugal residence of the decedent.

ACCORDINGLY, judgment is hereby rendered reversing the appealed decision and resolution of the Court of Appeals and the petition for certiorari and prohibition with preliminary injunction originally filed by respondents with the Court of Appeals (CA-G. R. No. 34104-R) is ordered dismissed. No costs.

Makalintal, C.J., Zaldivar, Makasiar, Antonio, and Esguerra, JJ., concur.

Barredo, J., concurs in separate opinion.

Ruiz Castro and Fernando, JJ., took no part.

[1] 1964 was a leap year.

[2] Cited in Annex "C", page 42, Record.

[3] Cited in Annex "C", page 46, Record.

[4] Cited in Annex "C", page 47, Record.

[5] Id., Id., Id., emphasis supplied.

[6] Order of 11 May 1964, Annex B, p. 36, Record.

[7] Republic Act No. 2961, sec. 44 (e).

[8] Emphasis supplied.

[9] 74 Phil. 239, 241 (1943), notes in parenthesis and emphasis supplied. See 3 Moran's Rules of Court, 1970 Ed. 370-372.

[10] Source of Rule 73 (formerly Rule 75), section 1 of the Revised Rules of Court.

[11] Superseded by the Judiciary Act, R. A. 296 as amended.

[12] 33 SCRA 252 (May 29, 1970).

[13] The minor factual difference of that case is that there, the Negros court granted the testamentary heirs' motion to dismiss the intestate petition first filed before it by the therein petitioner who claimed to be an acknowledged natural child, and that said petitioner's attempt to intervene in the probate proceedings subsequently filed in Manila by the testamentary heirs, was declared too late. Here, the Cebu court acceded in part to petitioner-widow's motion to dismiss by declining to take cognizance of the first intestate petition and deferring to the Quezon City court which it asked to act first on the second petition for probate, and while opposition was filed

against probate, oppositors failed to appear at the hearing despite due notice.

[14] 33 SCRA at p. 259, emphasis supplied.

[15] *Idem*, at p. 260, notes supplied.

[16] *Idem*, at pp. 260-261, emphasis copied.

[17] 97 Phil. 330 (1955).

[18] 90 Phil. 585 (1951); see also 3 Moran's 1970 Ed., p. 400

[19] 3 Moran's Comments 1970 Ed., p. 395.

[20] Rule 78, section 6.

[21] "SEC. 2. Where estate settled upon dissolution of marriage. - When the marriage is dissolved by a death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either." (Rule 73; emphasis supplied)

[22] See *People vs. Gutierrez*, 36 SCRA 172 (Nov. 26, 1970) and Article X, sec. 5, par. 4 providing that the Supreme Court shall have the power to "order a change of venue or place of trial to avoid a miscarriage of justice."

CONCURRING:

BARREDO, J.:

I concur in the main opinion of Mr. Justice Teehankee.

I only want to stress that in my view, the failure of respondents to question within a reasonable time the laying of the venue in the Quezon City Court of First Instance and the assumption of jurisdiction by that court, after the Court of First Instance of Cebu deferred in its favor, in order to prevent the holding therein of any proceeding and trial, and their having filed therein a formal opposition to the probate of the will, makes them guilty of laches, for which reason they are not entitled to the equitable relief prayed for in the present petition.

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