

**IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF
CIPRIANO ABUT, DECEASED, GENEROSO ABUT, PETITIONER,
GAVINA ABUT, PETITIONER AND APPELLANT, VS. FELIPE ABUT,
PRESENTACION DE ...**

G.R. No. L-26743. May 31, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from an order dated July 2, 1966 of the Court of First Instance of Misamis Oriental (Br. IV) in its Sp. Proc. 911. The said order states:

"Gavina Abut, through counsel, seeks the admission of the amended petition in which she substitutes for the original petitioner, Generoso Abut, who died after his original petition was filed, published and the Court had taken jurisdiction thereof. In the original petition the deceased Generoso Abut appears to have been named executor of the will of the deceased Cipriano Abut; that he was in possession and custody of the latter's will; and that he sought to be named executor of the will of the deceased Cipriano Abut. In the amended petition Gavina Abut alleges that the will was delivered to her by Generoso Abut before his death and that it is now in her custody and possession, and she prays that she be appointed administratrix of the estate of the deceased Cipriano Abut.

Considering the foregoing amendments embodied in the amended petition, and the fact that publication of the petition is a jurisdictional matter intended to inform whomsoever may be interested in said petition and to afford him or her an opportunity to assert his or her rights, the Court believes that the original petition should be, as it is hereby dismissed, without prejudice to the filing of another petition pursuant to the requirements of the Rules of Court."

The decisive facts are largely matters of record. On August 4, 1965 Generoso Abut, one of the children of the deceased Cipriano Abut by his second marriage and the person named as executor in a will allegedly executed by the said deceased, filed a petition before the court a quo praying that after due notice and hearing the said will be approved and allowed and that letters testamentary issue in his favor. In an amended order dated September 1, 1965 the court a quo *motu proprio* set the petition for hearing and further directed compliance with Sections 3 and 4 of Rule 76 of the Rules of Court.[1] These procedural steps admittedly took place.

Opposition to the petition was filed by the children of Cipriano Abut by his first marriage, namely, Felipe Abut, Presentacion de Rodriguez and Absoluto Abut, now appellees here.

During the pendency of the case below but before the court a quo could even start the formal hearing of the petition, which had been delayed by several postponements, Generoso Abut, the original petitioner who initiated the probate proceeding, died on January 10, 1966. This eventuality prompted Gavina Abut, a sister of Generoso Abut and an heir and devisee under the will of the testator Cipriano Abut, to ask the court a quo to substitute her in lieu of Generoso Abut and to admit an amended petition wherein she prayed that the probate of the will be

allowed and that letters of administration with the will annexed be issued in her favor. For reasons stated in its order of July 2, 1966, hereinabove quoted, the court a quo dismissed the petition originally brought by the deceased Generoso Abut, "without prejudice to the filing of another petition pursuant to the requirements of the Rules of Court."

The issue is whether or not the probate court correctly dismissed the petition simply because the original petitioner – who was the executor named in the will sought to be probated – died before the petition could be heard and/or terminated. Stated otherwise, after the court had acquired jurisdiction over the case involving probate of the will, did the demise of the original petitioner during the pendency of the proceeding divest the court of such jurisdiction and preclude the continuation of the case on the theory that the amended petition filed by herein petitioner, who admittedly was a person having an interest in the estate, seeking to substitute her in place of the original petitioner, but with a similar prayer for the allowance of the same will, required a new publication in order to invest the court with jurisdiction.

We find the dismissal of the original petition for probate and the refusal of the probate court to admit the amended petition without a new publication thereof to be untenable. The jurisdiction of the court became vested upon the filing of the original petition and upon compliance with Sections 3 and 4 of Rule 76.[2]

A proceeding for the probate of a will is one in rem, such that with the corresponding publication of the petition the court's jurisdiction extends to all persons interested in said will or in the settlement of the estate of the deceased. The fact that the amended petition named additional heirs not included in the original petition[3] did not require that notice of the amended petition be published anew. All that Section 4 of Rule 76 provides is that those heirs be notified of the hearing for the probate of the will, either by mail or personally. In the case of *Perez vs. Perez*[4] this Court explained:

"Thus it appears that such 'no notice' argument has no legal foundation. At any rate the omission, if any, did not affect the jurisdiction of the court; it constituted a mere procedural error that may or may not be the basis of reversal (*Jocson vs. Nable*, 48 O.G. 90). Indeed, this Tribunal has ruled that the court acquires jurisdiction over all persons interested in the estate through the publication of the petition in the newspapers (*In re Estate of Johnson*, 39 Phil. 159; *Jocson vs. Nable*, supra) – which in this case admittedly took place.

Service of notice on individual heirs or legatees or devisees is a matter of procedural convenience, not jurisdictional requisite. So much so that even if the names of some legatees or heirs had been omitted from the petition for allowance of the will and therefore were not advised – the decree allowing the will does not ipso facto become void for want of jurisdiction * * *."

Jurisdiction of the court once acquired continues until the termination of the case,[5] and remains unaffected by subsequent events. The court below erred in holding that it was divested of jurisdiction just because the original petitioner died before the petition could be formally heard. Parties who could have come in and opposed the original petition, as herein appellees did, could still come in and oppose the amended petition, having already been notified of the pendency of the proceeding by the publication of the notice thereof.

The admission of the amended petition, of course, does not mean that Gavina Abut's prayer that she be appointed administratrix with the will annexed is necessarily meritorious. It simply recognizes that since the lower court has acquired jurisdiction over the res, such jurisdiction continues until the termination of the case. The first question that the lower court should hear and decide is the probate of the will; and the question of whether or not Gavina Abut should be appointed administratrix must be decided on the basis of the facts to be presented and after the will is proved and allowed, as provided in Section 6 of Rule 78.

WHEREFORE, the order dated July 2, 1966 is set aside and the case is remanded below, with direction for the

lower court to admit the amended petition and thereafter proceed accordingly. Costs against oppositors-appellees.

Reyes, J.B.L., Acting C.J., Zaldivar, Fernando, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

Concepcion, C.J., on leave.

Castro, J., took no part.

[1] Sections 3 and 4 of Rule 76 read:

"SEC. 3. Court to appoint time for proving will. Notice thereof to be published. – When a will is delivered to, or a petition for the allowance of a will is filed in, the court having jurisdiction, such court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof, and shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.

* * * * *

SEC. 4. Heirs, devisees, legatees, and executors to be notified by mail or personally. – The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their place of residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known. * * * Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing.

* * * * *

[2] See: Rodriguez, et al vs. Borja, et al., 17 SCRA 418.

[3] These additional heirs are the widow and minor children of Generoso Abut.

[4] 105 Phil. 1132.

[5] Icasiano vs. Icasiano, 11 SCRA 422, 430.

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