

JULIETA TAMBUNTING DE TENGCO, PETITIONER, VS. HONORABLE RAMON R. SAN JOSE, AS JUDGE OF FIRST INSTANCE OF MANILA, SALVADOR BARRIOS, JOSE S. SARTE AND EDUARDO D. GUTIERREZ, RESPON...

G.R. No. L-8162. August 30, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Clara Tambunting died on April 2, 1950, leaving properties, real and personal, of, great value. Her will was probated on August 21, 1950. Survived by her husband Vicente L. Legarda, she left as sole and direct heir her grandson Vicente Legarda Price, an only child of, her only child and daughter Clarita Tambunting married to Walter Scott Price. Clarita died during the Liberation in 1945; her surviving spouse Walter Scott Price later remarried and returned to the United States. His sister Pacifica Price de Barrios married to a brother of Atty. Salvador Barrios was later appointed guardian of the minor Vicente Legarda Price who by now must be around ten or eleven years old. Clara's will disposed of her estate in the following manner:

- 4/6 to her grandson Vicente Legarda Price;
- 1/6 to her husband Vicente L. Legarda (who later married a daughter of Atty. Jose S. Sarte); and
- 1/6 to her nephews and nieces named Benjamin, Augusto, Romeo and Julieta, all surnamed Tambunting, children of her brother Manuel Tambunting.

Three co-administrators were appointed—Vicente L. Legarda, represented by his father-in-law Atty. Sarte; Pacifica Price de Barrios, represented by her brother-in-law Atty. Barrios; and Augusto Tambunting, represented by Atty. Eduardo D. Gutierrez. Each co-administrator filed a bond in the sum of P10,000. At the time the estate was valued at P200,000.

By order of the probate court of October 14, 1950 for payment of the fees of said three attorneys Barrios, Sarte and Gutierrez, Judge Pecson authorized them to collect from the estate P50,000, P25,000, and P25,000, respectively. This order was based on an omnibus petition filed by all the heirs, co-administrators and their attorneys asking for said payment and informing the court that the estate was actually worth P3,000,000.

Walter Scott Price, father of the minor Vicente Legarda Price was also given a legacy in the sum of P25,000 on condition that he relinquished the administration of the estate. He evidently accepted the condition and he was paid the amount of the legacy. It should be stated in this connection that each of the co-administrators was awarded" by the court a fee of P30,000 and the total award of P90,000 seems to have also been paid to said co-administrators.

On June 15, 1951, Attys. Sarte and Gutierrez filed a joint petition asking the probate court that their authorized attorney's fees of P25,000 each be equalized to that of Atty. Barrios which was P50,000. Pacifica Price,

co-administrator and her counsel Atty. Barrios opposed the petition but later withdrew their opposition provided that the additional fees of P25,000 each sought by Attys. Sarte and Gutierrez be paid from the share of their clients, namely, Benjamin, Augusto, Romeo and Julieta, represented by Atty. Gutierrez and Vicente L. Legarda represented Atty. Sarte. Because of the conformity of the parties this petition for increase was granted by the probate court, and to be paid from the estate, but with the understanding that the fee of P50,000 given to Atty. Barrios and the fees of Attys. Sarte and Gutierrez of P25,000 each plus the additional P25,000 to each should be the limit to the amounts of attorney's fees chargeable to the estate, and that any additional attorney's fees sought and awarded should come from the estate of their respective clients and with the consent of the latter.

The probate court was informed that the estate had around P1,000,000 in cash deposited in Philippine and United States Banks from which the attorney's fees already mentioned could be paid, and cash advances to the heirs and legatees could be made. From the record we gather that these funds were withdrawn from the banks and were presumably distributed and paid out roughly as follows:

Partial distribution:

To Vicente Legarda Price, minor

P250,000.00

To Vicente Legarda, surviving spouse

225,000.00

To children of Manuel Tambunting, named Benjamin, Augusto, Romeo and Julieta.....

185,000.00

To legatees enumerated in the will in different amounts

49,000.00

Legacy to Walter Scott Price, father of minor Vicente Legarda Price provided he relinquished administration of the estate ...

25,000.00

Paid to variuos creditors.....

7,168.95

Administration fees, 3 per cent of value of estate or 1 per cent to each co-administrator, per order of October 6, 1950. (Certainty of payment does not appear in the record.).....

90,000.00

Attorney's fees, P50,000.00 to each attorney of each co-administrator, as of the order of February 3, 1951

150,000.00

Total

P981,168.95

On January 16, 1951, Atty. Gutierrez filed a proof of claim for P30,000 "for study, preparation and drawing of the last will and testament" of Clara Tambunting which will is said to consist of only three pages. The amount claimed was based on the alleged value of the estate, namely, P3,000,000 that is to say, 1% thereof.

On February 6, 1952, an omnibus petition filed by all the heirs, principal legatees and co-administrators and their attorneys was filed asking the court to fix and approve the cash value of the usufruct of the surviving spouse Vicente L. Legarda in the amount of P50,000; to pay an additional attorney's fees to the three lawyers Sarte, Barrios and Gutierrez in the amount of P100,000 each; to pay an account of said additional attorney's fees the sum of P20,000,000 to each attorney and that in order to pay said amounts of P50,000, cash value of the usufruct, P60,000 advance to the attorneys and P50,000 as partial payment of the taxes to the Government, the three co-administrators be authorized to procure a loan from the trust funds deposited in the name of Vicente Legarda Price in the amount of P160,000.

In an order dated February 39, 1952, Judge San Jose denied the prayer for authority to secure a loan; denied the prayer for the payment of additional attorney's fees in the amount of P100,000 each, but approved the agreement of the parties fixing the cash value of the usufruct of Vicente L. Legarda in the sum of P50,000. This amount was paid to Vicente Legarda and is included in the P225,000 paid to him according to the partial distribution already stated. In the same order Judge San Jose directed the administrators to wind up the probate proceedings within 30 days.

In an omnibus petition dated March 20, 1952 filed by the heirs, co-administrators and their attorneys, the reconsideration of the order of Judge San Jose of February 29, 1952, was asked, alleging as an important ground for said reconsideration the assertion and claim that the estate may be conservatively valued at P7,000,000.

By order of April 9, 1952 Judge Ibañez, apparently acting as vacation Judge in the sala of Judge San Jose, granted in part the motion for reconsideration and allowed each of the three attorneys an additional fee of P70,000 instead of P100,000 as previously sought, and that instead of the P20,000 desired to be advanced to each attorney on account of the P70,000 increase in fees, only P17,500 be paid each attorney. This order of April 9, 1952, granting the petition for the payment of P70,000 additional fee to each attorney is one of the orders involved in the present case before this Court.

In a petition dated November 25, 1952, Atty. Gutierrez reminded the probate court of his previous petition of January 15, 1951 claiming the sum of P30,000 for drawing up the will of Clara Tambunting and of the omnibus petition filed by the heirs, administrators and their attorneys agreeing to said claim. In an order dated November 26, 1952, Judge San Jose granted said claim for P30,000. This is the other order involved in the present petition for mandamus.

On December 2, 1952 Julieta Tambunting dismissed Atty. Gutierrez as her lawyer and employed the law firm of Ozaeta, Roxas, Lichauco & Picazo who filed their appearance on the same date.

Presumably, because of the claims and representations made by the three attorneys Sarte, Barrios and Gutierrez that the estate had a conservative value of P7,000,000, the Government on April 27, 1953, filed a claim for taxes, estate and inheritance, including surcharges, in the amount of P1,581,671.80, based apparently on the value of the estate as stated in the petition for increase of attorney's fees dated January 31, 1952. Subsequently, however, his claim of the Government for taxes was reconsidered presumably upon representation of the co-administrators and attorneys that the estate was worth much less than P70,000,000 and the Government accordingly reduced its claim for taxes from P1,581,671.80 to P493,734.26, and from this latter amount one may estimate the actual value of the

estate at between two and two and a half million pesos.

On August 14, 1953, Julieta Tambunting thru her new attorneys petitioned the probate court to set aside its order of April 9, 1952, granting to each of three respondent attorneys P70,000 as additional attorney's fees and its order of November 26, 1952, granting to Atty. Gutierrez a separate fee of P30,000 for preparing the will of Clara Tambunting, all on the ground that the said fees were procured through fraudulent misrepresentation that the value of the estate was P7,000,000 when in fact said attorneys knew it to be only two million pesos, this, with the collusion of the administrators and their respective attorneys, to the prejudice of the estate especially of the minor Vicente Legarda Price under the guardianship of one of the co-administrators. In its order of December 28, 1953 Judge San Jose denied said petition apparently on the ground that it was filed out of time, well beyond the period fixed by Rule 38 of the Rules of Court relative to petitions for relief; he also denied a motion for reconsideration of this order of denial.

On April 20, 1954, petitioner Julieta Tambunting filed a notice of appeal and an appeal bond and the record on appeal, but respondent Judge San Jose in his order of August 27, 1954, denied the appeal. Because of that order denying the appeal, Julieta Tambunting filed the present petition for mandamus against Judge San Jose and attorneys Barrios, Sarte and Gutierrez, to compel the former to approve and certify to this Court the record on appeal presented by petitioner on April 20, 1954.

The reason given by respondent Judge in his order of August 27, 1954 refusing to give due course to the appeal is that his order of December 28, 1953 sought to be appealed did not constitute a final 'determination of the rights of petitioner Julieta with respect to the orders of April 9, 1952 and November 26, 1952 for the reason that she had an adequate remedy granted to her by law, namely, a separate action to annul said two orders on the ground of fraud, if filed within four years after the discovery of the fraud. We believe that the order of December 28, 1953, denying the petition of August 14, 1953 on the ground that it was filed beyond the period required by Rule 38, is appealable (*Paner vs. Yatco*, [*] G. R. No. L-2042, 48 Off. Gaz., No. 1, p. 59). Being appealable, the lower court may not deny the appeal if perfected on time as apparently it was so perfected. Even assuming for a moment that it was a mere interlocutory order, as claimed by respondents and so not appealable under Rule 41, Section 2 of the Rules of Court, nevertheless, it has been held in the case of *Dais vs. Garduño*, 49 Phil., 169, that this rule is not applicable to probate proceedings.

But the lower court says that the order sought to be appealed did not constitute a final determination of the rights of petitioner with respect to the two orders sought to be set aside. We do not agree. If not appealed, then there was nothing to stop or prevent the probate court from enforcing and carrying out the terms of the two orders in question and paying out the large sums involved in them. In other words, within the probate proceedings, the order of December 28, 1953, would constitute a final determination of the rights of appellant-petitioner with respect to the payment of said sums, thereby coming within the purview of Rule 105, section 1(e) which provides that an interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance, where such order or judgment:

"Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator."

The lower court further claims that appellant had another adequate remedy granted to her by law, namely, a separate action to annul said two orders on the ground of fraud. But why compel appellant to resort to another remedy, assuming that it was available, when the remedy by appeal which she is now invoking is not only adequate but the most speedy, convenient and least expensive? Moreover, the adequate remedy referred to by the probate court meant filing a separate action not before the same probate court but before the regular Court of First

Instance, perhaps presided over by another judge who would have no knowledge whatsoever of the facts and circumstances involved in the probate proceedings, particularly those surrounding the issuance of the two orders in question. Aside from the pleadings required in said separate action, evidence would have to be presented, and by the time that the separate action is finally terminated, not excluding appeal by the party dissatisfied with the decision of the lower court, the remedy sought may prove to be too late and empty because the sums whose disbursement was sought to be stopped and prevented, may in the meantime have been paid, and spent by the payees, thereby rendering recovery difficult, if not impossible.

After a probate case is definitely closed, then is the time to consider a separate action to set aside an order or judgment of the probate court, this, in order not to reopen the probate proceedings already terminated. But while the probate proceedings are still open, then the logical tribunal called upon to consider and grant the remedy is the probate court itself.

One would naturally inquire into and it is necessary to ascertain the nature and status of the two orders in question dated April 9, 1952 and November 26, 1952, granting attorney's fees, and whether or not they were such orders or judgments which were covered by Rule 38 of the Rules of Court regarding petitions for relief. Rule 38, particularly sections 2 and 3 thereof refer to orders and judgments which have become final or executory. Do the two orders aforementioned come under this category?

We believe and hold that the two orders in question granting attorney's fees are merely incidental to the probate proceedings and may be regarded as interlocutory in nature, subject to modification or setting aside by the probate court until the proceedings are terminated and the case definitely closed, after which said orders become final and executory. As a rule, during the pendency of special proceedings, the probate court retains control and jurisdiction over incidents connected with it, including its orders not affecting third parties who may by such orders, have acquired vested rights. This control and jurisdiction is particularly extensive to and effective against its own officers, such as administrators appointed by it, and attorneys representing them or representing parties included in the proceedings. As this Court has said in the case of *Onas vs. Javillo*, 54 Phil. 604, "In probate proceedings considerable latitude is allowed a Court of First Instance in modifying or revoking its own orders as long as the proceedings are pending in the same Court and timely application or motions for such modifications or revocations are made by the interested parties." Just as the probate court may increase as it had increased the fees of the attorneys in the present case, it could equally and with the same authority decrease said attorney's fees when so warranted, as for instance, if it is found that the value of the estate is much less than what was originally assessed, and on which erroneous assessment, the original fees were awarded. The same thing is true with regards to fees to be allowed administrators. In other words, an order fixing the fees of an administrator or of an attorney rendering professional services to an administrator, continues to be under the control of the probate court until the case is closed, and until then, the court may modify or set it aside in the sense that it may decrease or increase the same accordingly to the facts and circumstances as they develop and unfold in the course of the probate proceedings; and even if said fees have already been partially or fully paid, they may yet be ordered returned or reimbursed to the estate, or a bond may be required of the court officer receiving them, to guarantee the return or reimbursement if later found to be necessary (*Dais vs. Carduño*, 49 Phil., 165). Respondent Judge therefore erred in denying the petition of Julieta Tambunting dated August 14, 1953 to set aside the two orders of April 9, 1952 and November 26, 1952, in the mistaken belief that said orders had become final and executory and so came under the provisions of Rule 38, and because the petition for relief was filed beyond the period prescribed by said Rule 38.

In this connection, it may be stated that we have carefully gone over the record, particularly the different fees awarded to the rather numerous court officers intervening in these probate proceedings, and we cannot get away

from the impression that the estate cannot be said to have been administered economically. For instance, we are not convinced that it was necessary to have three co-administrators to administer the estate, and each of them being paid P30,000, and on top of that to have each co-administrator represented by a separate attorney who, excluding the P70,000 additional fees now in question, have already been granted and paid P50,000 each. This does not seem to be a case involving much if any litigation, or of numerous claims or complicated accounts. So far, the amount paid to creditors is only about seven thousand pesos. There are no children or heirs of several marriages, with conflicting and adverse interests which should be represented and protected by perhaps separate administrators and counsel. There is only one forced and direct heir and a minor at that. The rest are legatees whose rights, and interests can have no possible, much less serious conflict with those of the direct heir. True, most of the awards and grants of fees to the court officers intervening were based on omnibus petitions and bolstered by the conformity of the co-administrators, the heirs, legatees, and the attorneys themselves, but one might consider the special relationship between the heirs, legatees, co-administrators and their attorneys. As already stated, as co-administrator Vicente Legarda is represented by Atty. Sarte, his father-in-law; co-administratrix Pacifica Price Barrios is represented by Atty. Barrios, her brother-in-law; and as to the minor Vicente Legarda Price now about 10 or 11 years old, he could have been represented by his own father Walter Scott Price his natural guardian but said father after being given a legacy of P25,000 had left the Islands and remarried. The minor could also have been under the guardianship of his grandfather Vicente Legarda but the latter has also remarried and as already said, in his capacity as co-administrator, has engaged as his lawyer his father-in-law. So, the minor is now under the guardianship of his aunt Pacifica Price Barrios but she is also married and in her capacity as co-administratrix, has engaged as her counsel her brother-in-law Atty. Barrios. Considering this special relationships above referred to, which may have the effect of divided loyalty, the omnibus petition agreed to by the legatees, heirs, co-administrators and their attorneys would appear not to have the weight and merit usually accorded such petitions, especially when we bear in mind that the conformity to such omnibus petitions on the part of the minor Vicente Legarda Price, was given not by him personally for he was only about nine or ten years old, but by guardian Pacifica Price de Barrios. Another point not to be lost sight of is that inasmuch as the minor is entitled to 4/5 or 2/3 of the whole estate, naturally, for every amount disbursed as attorney's fees and co-administrators fees, he would have to bear 2/3 of the same. By these observations, it is neither our intention nor our desire to prejudge the merits of the case as regards the propriety or reasonableness of the two orders of April 9, 1952 and November 26, 1952, granting attorney's fees, which will eventually and in due time, be considered and passed upon by the proper court.

We may add that in probate proceedings the probate court acts as a trustee of the estate and as such trustee it should jealously guard the estate under administration (*Dariano vs. Fidalgo*, 14 Phil., 67) and see to it that it is wisely and economically administered and not dissipated. In the case of *Mendoza vs. Pacheco*, 64 Phil., 142, this Court said:

"* * * This state fails wretchedly in its duty to its citizens if the machinery furnished by it for the division and distribution of the property of a decedent is so cumbersome, unwieldy and expensive that a considerable portion of the estate is absorbed in the process of such division. Where administration is necessary, it ought to be accomplished quickly and at very small expense; and a system which consumes any considerable portion of the property which it was designated to distribute is a failure. * * * . (*McMicking vs. Sy Conbieng*, 21 Phil., 211, 220)"

Here, although the estate was originally valued at P200,000 the assessment was later raised to P3,000,000 and still later to P7,000,000, and it seems that the fees of the court officials intervening here were based on this apparently inflated valuation. The three lawyers would appear to have already been paid a total of P202,500, and under existing orders of the probate court, they still have P187,500 coming to them or a total of P390,000. This does not

include the P90,000 already paid to the three co-administrators, all of which would give a grand total of P480,000. And yet the probate court proceedings are not yet terminated. Another thing, up to the present, it seems that nothing has been paid for taxes; and although the tax assessment of the Bureau of Internal Revenue has been reduced from P1,581,671.80 to P493,734.26, the latter sum includes surcharges and penalties which otherwise would not have been incurred had the taxes been paid on time. We repeat that it is the duty of the probate court to jealously guard the estate and see to it that it is administered wisely and economically and also see to it that the expense incurred in the administration, including the fees of the administrators and the attorneys are commensurate with the actual value of the estate and the extent and value of the services rendered, so that at the end of the proceedings the bulk and the greater portion of the estate will remain, to be distributed among those entitled to the same.

As already stated, the present petition for mandamus was presented for the purpose of compelling the respondent Judge to give due course to the appeal of petitioner. We agree with petitioner that she has a right to appeal from the order denying her petition to set aside the orders of April 9, 1952 and November 26, 1952. By merely granting the petition for mandamus, the appeal would be given due course and when the case is elevated to us on appeal, the question or questions to be submitted and discussed would revolve around the nature of said two orders of April 9 and November 26, whether they had become final and executory and therefore beyond the power of the probate court to amend or to set aside, even under a petition for relief under Rule 38, for the reason that said petition was filed beyond the period prescribed by said rule, or whether said two orders may be considered as merely incidental in the special proceedings and consequently, interlocutory in nature, subject to the control of the probate court until the case is finally closed, during which time they may be amended or set aside. This same questions were exhaustively presented and discussed by counsel for both parties and we have carefully considered and passed upon them, our opinion and ruling being that said orders are interlocutory in character and may be modified or even set aside by the probate court when so warranted. For this reason, we have decided in the interest of justice, and to save time, expense and labor to the parties, and avoid further expense to the estate, and also so as not to unduly prolong these probate proceedings, to dispense with the appeal and to consider the present petition as one for certiorari to set aside and annul the order of the probate court of December 28, 1953 denying the petition to set aside the two orders in question, solely on the ground that it was filed out of time.

In view of the foregoing, not only the order of the probate court dated August 27, 1954 denying the appeal is set aside but also its order of December 28, 1953, and respondent Judge is directed to consider and pass upon the petition of August 14, 1953, anew and on its merits. It is also suggested that respondent Judge examine and review the whole proceedings from the beginning to determine whether the expenses incurred in the administration, including the awards of the different amounts to the co-administrators and the attorneys were warranted, and if not, to fix the amounts which in its opinion are reasonable and proper considering the real and actual value of the estate, the extent and value of the services rendered, etc. and take whatever action is necessary. No costs.

Bengzon, Acting C.J., Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador and Reyes, J.B.L., JJ., concur.

Orders set aside.

[*] 87 Phil., 271.

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