

VICENTE URIARTE, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL (12TH JUDICIAL DISTRICT), THE COURT OF FIRST INSTANCE OF MANILA, BRANCH IV, JUAN URI-ARTE ZAMAC...

G.R. Nos. L-21938-39. May 29, 1970

Ponente: DIZON, J.

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DIZON, J.:

On October 3, 1963 petitioner Vicente Uriarte filed an original petition for certiorari - docketed as G. R. L-21938 - against the respondents Juan Uriarte Zamacona, Higinio Uriarte, and the Courts of First Instance of Negros Occidental and of Manila, Branch IV, who will be referred to hereinafter as the Negros Court and the Manila Court, respectively - praying:

"x x x x x that after due proceed-ings judgment be rendered annulling the orders of 19 April 1963 (Annex 'H') and 11 July 1963 (Annex 'I') of respondent Negros court dismiss-ing the first-instituted Special Proceeding No. 6344, supra, and the order of 1 July, 1963 (An-nex 'K') of respondent Manila court denying petitioner's omnibus motion to intervene and to dismiss the later-instituted Special Pro-ceeding No. 51396, supra, both special proceedings pertaining to the settlement of the same estate of the same deceased, and conse-quently annulling all proceedings had in Spe-cial Proceeding No. 51396, supra, of the res-pondent Manila court as all taken without jurisdiction.

"For the preservation of the rights of the parties pending these proceedings, peti-tioner prays for the issuance of a writ of preliminary injunction enjoining respondents Manila court, Juan Uriarte Zamacona and Hi-ginio Uriarte from proceeding with Special Proceeding No. 51396, supra, until further orders of this Court."

Reasons in support of said petition are stated therein as follows:

"6. Respondent Negros court erred in dismissing its Special Proceeding No. 6344, supra, and failing to declare itself 'the court first taking cognizance of the settle-ment of the estate of' the deceased Don Juan Uriarte y Goite as prescribed in Rule 75 section 1 of the Rules of Court. Respondent Manila court erred in failing to dismiss its Special Proceeding No. 51396, supra, notwithstanding proof of prior filing of Special Pro-ceeding No. 6344, supra, in the Negros court."

The writ of preliminary injunction prayed for was granted and issued by this Court on October 24, 1963.

On April 22, 1964 petitioner filed against the same respondents a pleading entitled SUPPLEMENTAL PETITION FOR MANDAMUS - docketed in this Court as G. R. No. L-21939 -praying, for the reasons therein stated, that judgment be rendered annulling the orders issued by the Negros Court on December 7, 1963 and February 26, 1964, the first disapproving his record on appeal and the second denying motion for reconsideration, and further commanding said court to approve his record on appeal and to give due course to his appeal. On July 15, 1964 We issued a resolution deferring action on this Supplemental Petition until the ori-ginal action for certiorari (G. R. L-21938) is taken up on the merits.

On October 21, 1963 the respondents in G. R. L-21938 filed their answer traversing petitioner's contention that the respondent courts had committed grave abuse of discretion in relation to the matters alleged in the petition for certiorari.

It appears that on November 6, 1961 petitioner filed with the Negros Court a petition for the settlement of the estate of the late Don Juan Uriarte y Goite (Special Proceeding No. 6344) alleging therein, inter alia, that, as a natural son of the latter, he was his sole heir, and that, during the life time of said decedent, petitioner had instituted Civil Case No. 6142 in the same Court for his compulsory acknowledgment as such natural son. Upon petitioner's motion the Negros Court appointed the Philippine National Bank as special administrator on November 13, 1961 and two days later it set the date for the hearing of the petition and ordered that the requisite notices be published in accordance with law. The record discloses, however, that, for one reason or another, the Philippine National Bank never actually qualified as special administrator.

On December 19, 1961, Higinio Uriarte, one of the two private respondents herein, filed an opposition to the above-mentioned petition alleging that he was a nephew of the deceased Juan Uriarte y Goite who had "executed a Last Will and Testament in Spain, a duly authenticated copy whereof has been requested and which shall be submitted to this Honorable Court upon receipt thereof", and further questioning petitioner's capacity and interest to commence the intestate proceeding.

On August 28, 1962, Juan Uriarte Zamacona, the other private respondent, commenced Special Proceeding No. 51396 in the Manila Court for the probate of a document alleged to be the last will of the deceased Juan Uriarte y Goite, and on the same date he filed in Special Proceeding No. 6344 of the Negros Court a motion to dismiss the same on the following grounds: (1) that, as the deceased Juan Uriarte y Goite had left a last will, there was no legal basis to proceed with said intestate proceedings, and (2) that petitioner Vicente Uriarte had no legal personality and interest to initiate said intestate proceedings, he not being an acknowledged natural son of the decedent. A copy of the Petition for Probate and of the alleged Will were attached to the Motion to Dismiss.

Petitioner opposed the aforesaid motion to dismiss contending that, as the Negros Court was first to take cognizance of the settlement of the estate of the deceased Juan Uriarte y Goite, it had acquired exclusive jurisdiction over the same pursuant to Rule 75, Section 1 of the Rules of Court.

On April 19, 1963, the Negros Court sustained Juan Uriarte Zamacona's motion to dismiss and dismissed the Special Proceeding No. 6344 pending before it. His motion for reconsideration of said order having been denied on July 27, 1963, petitioner proceeded to file his notice of appeal, appeal bond and record on appeal for the purpose of appealing from said orders to this court on questions of law. The administrator with the will annexed appointed by the Manila Court to Special Proceeding No. 51396 objected to the approval of the record on appeal, and under date of December 7, 1963 the Negros Court issued the following order:

"Oppositor prays that the record on appeal filed by the petitioner on July 27, 1963, be dismissed for having been filed out of time and for being incomplete. In the meantime, before the said record on appeal was approved by this Court, the petitioner filed a petition for certiorari before the Supreme Court entitled Vicente Uriarte, Petitioner, vs. Court of First Instance of Negros Occidental, et al, G. R. No. L-21938, bringing this case squarely before the Supreme Court on questions of law which is tantamount to petitioner's abandoning his appeal from this Court.

"WHEREFORE, in order to give way to the certiorari, the record on appeal filed by the petitioner is hereby disapproved."

In view of the above-quoted order, petitioner filed the supplemental petition for mandamus mentioned heretofore.

On April 15, 1963 Vicente Uriarte filed an Omnibus Motion in Special Proceeding No. 51396 pending in the

Manila Court, asking for leave to intervene therein; for the dismissal of the petition and the annulment of the proceedings had in said special proceeding. This motion was denied by said court in its order of July 1 of the same year.

It is admitted that, as alleged in the basic petition filed in Special Proceeding No. 6344 of the Negros Court, Vicente Uriarte filed in the same court, during the life time of Juan Uriarte y Goite, Civil Case No. 6142 to obtain judgment for his compulsory acknowledgment as his natural child. Clearly inferrable from this is that at the time he filed the action, as well as when he commenced the aforesaid special proceeding, he had not yet been acknowledged as natural son of Juan Uriarte y Goite. Up to this time, no final judgment to that effect appears to have been rendered.

The record further discloses that the special proceeding before the Negros Court has not gone farther than the appointment of a special administrator in the person of the Philippine National Bank who, as stated heretofore, failed to qualify.

On the other hand, it is not disputed that, after proper proceedings were had in Special Proceeding No. 5139, the Manila Court admitted to probate the document submitted to it as the last will of Juan Uriarte y Goite, the petition for probate appearing not to have been contested. It appears further that, as stated heretofore, the order issued by the Manila Court on July 1, 1963 denied petitioner Vicente Uriarte's Omnibus Motion for Intervention, Dismissal of Petition and Annulment of said proceedings.

Likewise, it is not denied that to the motion to dismiss the special proceeding pending before the Negros Court filed by Higinio Uriarte were attached a copy of the alleged last will of Juan Uriarte y Goite and of the petition filed with the Manila Court for its probate. It is clear, therefore, that almost from the start of Special Proceeding No. 6344, the Negros Court and petitioner Vicente Uriarte knew of the existence of the aforesaid last will and of the proceedings for its probate.

The principal legal questions raised in the petition for certiorari are (a) whether or not the Negros Court erred in dismissing Special Proceeding No. 6344, on the one hand, and on the other, (b) whether the Manila Court similarly erred in not dismissing Special Proceeding No. 51396 notwithstanding proof of the prior filing of Special Proceeding No. 6344 in the Negros Court.

Under the Judiciary Act of 1948 [Section 44, paragraph (e)], Courts of First Instance have original exclusive jurisdiction over "all matters of probate", that is, over special proceedings for the settlement of the estate of deceased persons - whether they died testate or intestate. While their jurisdiction over such subject matter is beyond question, the matter of venue, or the particular Court of First Instance where the special proceeding should be commenced, is regulated by former Rule 75, Section 1 of the Rules of Court, now Section 1, Rule 73 of the Revised Rules of Court, which provides that the estate of a decedent inhabitant of the Philippines at the time of his death, whether a citizen or an alien, shall be in the court of first instance in the province in which he resided 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. Accordingly, when the estate to be settled is that of a non-resident alien - like the deceased Juan Uriarte y Goite - the Courts of First Instance in provinces where the deceased left any property have concurrent jurisdiction to take cognizance of the proper special proceeding for the settlement of his estate. In the case before Us, these Courts of First Instance are the Negros and the Manila Courts - province and city where the deceased Juan Uriarte y Goite left considerable properties. From this premise petitioner argues that, as the Negros Court had first taken cognizance of the special proceeding for the settlement of the estate of said decedent (Special Proceeding No. 6344), the Manila Court no longer had jurisdiction to take cognizance of Special Proceeding No. 51396 intended to settle the estate of the same decedent in accordance with his alleged will, and

that consequently, the first court erred in dismissing Special Proceeding No. 6344, while the second court similarly erred in not dismissing Special Proceeding No. 51396.

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.

Upon the facts before Us the question arises as to whether Juan Uriarte Zamacona should have filed the petition for the probate of the last will of Juan Uriarte y Goite with the Negros Court - particularly in Special Proceeding No. 6344 - or was entitled to commence the corresponding separate proceedings, as he did, in the Manila Court.

The following considerations and the facts of record would seem to support the view that he should have submitted said will for probate to the Negros Court, either in a separate special proceeding or in an appropriate motion for said purpose filed in the already pending Special Proceeding No. 6344. In the first place, it is not in accord with public policy and the orderly and inexpensive administration of justice to unnecessarily multiply litigation, especially if several courts would be involved. This, in effect, was the result of the submission of the will aforesaid to the Manila Court. In the second place, when respondent Higinio Uriarte filed an opposition to Vicente Uriarte's petition for the issuance of letters of administration, he had already informed the Negros Court that the deceased Juan Uriarte y Goite had left a will in Spain, of which a copy had been re-requested for submission to said court; and when the other respondent, Juan Uriarte Zamacona, filed his motion to dismiss Special Proceeding No. 6344, he had submitted to the Negros Court a copy of the alleged will of the decedent, from which fact it may be inferred that, like Higinio Uriarte, he knew before filing the petition for probate with the Manila Court that there was already a special proceeding pending in the Negros Court for the settlement of the estate of the same deceased person. As far as Higinio Uriarte is concerned, it seems quite clear that in his opposition to petitioner's petition in Special Proceeding No. 6344, he had expressly promised to submit said will for probate to the Negros Court.

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 waiveable 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.

In his order of April 19, 1963 dismissing Special Proceeding No. 6344, Judge Fernandez of the Negros Court said that he was "not inclined to sustain the contention of the petitioner that inasmuch as the herein petitioner has instituted Civil Case No. 6142 for compulsory acknowledgment by the decedent such action justifies the institution by him of this proceedings. If the petitioner is to be consistent with the authorities cited by him in support of his contention, the proper thing for him to do would be to intervene in the certain estate proceedings entitled Special Proceedings No. 51396 in the Court of First Instance of Manila instead of maintaining an independent action, for indeed his supposed interest in the estate of the decedent is of his doubtful character pending the final decision of the action for compulsory acknowledgment".

We believe in connection with the above matter that petitioner is entitled to prosecute Civil Case No. 6142 until it is finally determined, or intervene in Special Proceeding No. 51396 of the Manila Court, if it is still open, or to ask for its reopening if it has already been closed, so as to be able to submit for determination the question of his acknowledgment as a natural child of the deceased testator, said court having, in its capacity as a probate court, jurisdiction to declare who are the heirs of the deceased testator and whether or not a particular party is or should be declared his acknowledged natural child (II Moran on Rules of Court, 1957 Ed. p. 476; Conde vs. Abaya, 13 Phil. 249, Severino vs. Severino, 44 Phil. 343; Lopez vs. Lopez, 68 Phil. 227, and Jimoga-on vs. Belmonte, 47 O. G. 1119).

Coming now to the supplemental petition for mandamus (G. R. No. L-21939), We are of the opinion, and so hold, that in view of the conclusions heretofore stated, the same has become moot and academic. If the said supplemental petition is successful, it will only result in compelling the Negros Court to give due course to the appeal that petitioner was taking, from the orders of said court dated December 7, 1963 and February 26, 1964, the first being the order of said court dismissing Special Proceeding, No. 6344, and the second being an order denying petitioner's motion for the reconsideration of said order of dismissal. Said orders being, as a result of what has been said heretofore, beyond petitioner's power to contest, the conclusion can not be other than that the intended appeal would serve no useful purpose, or, worse still, would enable petitioner to circumvent our ruling that he can no longer question the validity of said orders.

IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered denying the writs prayed for and, as a result, the petition for certiorari filed in G. R. No. L-21938, as well as the supplemental petition for mandamus docketed as G. R. No. L-21939, are hereby dismissed. The writ of preliminary injunction heretofore issued is set aside. With costs against petitioner.

Concepcion, C.J., Makalintal, Zaldivar, Barredo, and Villamor, JJ., concur.

Reyes, J., in the result.

Fernando and Teehankee, JJ., did not take part.

Castro, J., on official leave.

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