

**BENEDICTO LEVISTE, PETITIONER, VS. THE COURT OF APPEALS,
HON. JUDGE LUIS B. REYES, COURT OF FIRST INSTANCE OF MANILA,
ROSA DEL ROSARIO, RITA BANU, CARMEN DE GUZMAN-MARQUEZ,
JESU...**

G.R. No. L-29184. January 30, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The issue in this case is whether or not an attorney who was engaged on a contingent fee basis may, in order to collect his fees, prosecute an appeal despite his client's refusal to appeal the decision of the trial court.

On September 7, 1963, the petitioner, a practicing attorney, entered into a written agreement with the private respondent Rosa del Rosario to appear as her counsel in a petition for probate of the holographic will of the late Maxima C. Reselva. Under the will, a piece of real property at Sales Street, Quiapo, Manila, was bequeathed to Del Rosario. It was agreed that petitioner's contingent fee would be thirty-five per cent (35%) of the property that Rosa may receive upon the probate of the will (Annex "A", p. 59, Rollo).

In accordance with their agreement, Leviste performed the following services as Del Rosario's counsel:

- (1) Thoroughly researched and studied the law on probate and succession;
- (2) Looked for and interviewed witnesses, and took their affidavits;
- (3) Filed the petition for probate in Special Proceeding No. 58325;
- (4) Made the proper publications;
- (5) Presented at the trial the following witnesses:
 - a) Eleuterio de Jesus
 - b) Lucita de Jesus
 - c) Purita L. Llanes
 - d) Rita Banu
 - e) Jesus Lulod.

On August 20, 1965, Leviste received a letter from Ms. Del Rosario, informing him that she was terminating his services as her counsel due to "conflicting interest." This consisted, according to the letter, in petitioner's moral obligation to protect the interest of his brother-in-law, Gaudencio M. Llanes, whom Del Rosario and the other parties in the probate proceeding intended to eject as lessee of the property which was bequeathed to Del Rosario under the will (Annex "B", p. 60, Rollo).

On September 20, 1965, petitioner filed a "Motion to Intervene to Protect His Rights to Fees for Professional Services." (Annex "B", p. 60, Rollo.)

In an order dated November 12, 1965 the trial court denied his motion on the ground that he had "not filed a claim for attorney's fees nor recorded his attorney's lien." (p. 3, Rollo.)

On November 23, 1965, petitioner filed a "Formal Statement of Claim for Attorney's Fees and Recording of Attorney's Lien," which was noted in the court's order of December 20, 1965 (Annexes "D" and "E", pp. 63 & 64, Rollo).

Although the order denying his motion to intervene had become final, petitioner continued to receive copies of the court's orders, as well as the pleadings of the other parties in the case. He also continued to file pleadings. The case was submitted for decision without the respondents' evidence.

On November 23, 1966, Del Rosario and Rita Banu, the special administratrix-legatee, filed a "Motion to Withdraw Petition for Probate" alleging that Del Rosario waived her rights to the devise in her favor and agreed that the De Guzman brothers and sisters who opposed her petition for probate, shall inherit all the properties left by the decedent. (Annex "F", p. 65, Rollo.)

In an order of April 13, 1967 the trial court denied the motion to withdraw the petition for being contrary to public policy (Annex "G", pp. 66-67, Rollo).

Nonetheless, on August 28, 1967, the court disallowed the will, holding that the legal requirements for its validity were not satisfied as only two witnesses testified that the will and the testatrix's signature were in the handwriting of Maxima Reselva.

The petitioner filed an appeal bond, notice of appeal, and record on appeal. The private respondents filed a motion to dismiss the appeal on the ground that petitioner was not a party in interest.

The petitioner opposed the motion to dismiss his appeal, claiming that he has a direct and material interest in the decision sought to be reviewed. He also asked that he be substituted as party-petitioner, in lieu of his former client, Ms. Del Rosario.

On March 28, 1968, the trial judge dismissed the appeal and denied petitioner's motion for substitution.

The petitioner filed in the Court of Appeals a petition for mandamus (CA-G.R. No. 41248) praying that the trial court be ordered to give due course to his appeal and to grant his motion for substitution.

On May 22, 1968, the Court of Appeals dismissed the petition for being insufficient in form and substance as the petitioner did not appear to be the proper party to appeal the decision in Special Proceeding No. 58325 (Annex I, p. 77, Rollo).

Upon the denial of his motion for reconsideration, petitioner appealed by certiorari to this Court, assigning the following errors against the Court of Appeals' resolution:

1. The Court of Appeals erred in finding that the petitioner appears not to be the proper party to appeal the decision in Sp. Proc. No. 58325 of the Court of First Instance of Manila.
2. Assuming the petitioner's right to appeal is doubtful, the Court of Appeals erred in dismissing his petition for mandamus; and
3. The Court of Appeals erred in not reversing the decision in Sp. Proc. No. 58325 denying the probate of the holographic will of the late Maxima C. Reselva, said decision being patently erroneous.

Under his first assignment of error, petitioner argues that by virtue of his contract of services with Del Rosario, he is a creditor of the latter, and that under Article 1052 of the Civil Code which provides:

"ART. 1052. If the heir repudiates the inheritance to the prejudice of his own creditors, the latter may petition the court to authorize them to accept it in the name of the heir.

"The acceptance shall benefit the creditors only to an extent sufficient to cover the amount of their credits. The excess, should there be any, shall in no case pertain to the renouncer, but shall be adjudicated to the persons to whom, in accordance with the rules established in this Code, it may belong."

he has a right to accept for his client Del Rosario to the extent of 35% thereof the devise in her favor (which she in effect repudiated) to protect his contingent attorney's fees.

The argument is devoid of merit. Article 1052 of the Civil Code does not apply to this case. That legal provision protects the creditor of a repudiating heir. Petitioner is not a creditor of Rosa del Rosario. The payment of his fees is contingent and dependent upon the successful probate of the holographic will. Since the petition for probate was dismissed by the lower court, the contingency did not occur. Attorney Leviste is not entitled to his fee.

Furthermore, Article 1052 presupposes that the obligor is an heir. Rosa del Rosario is not a legal heir of the late Maxima C. Reselva. Upon the dismissal of her petition for probate of the decedent's will, she lost her right to inherit any part of the latter's estate. There is nothing for the petitioner to accept in her name.

This Court had ruled in the case of *Recto vs. Harden*, 100 Phil. 1427, that "the contract (for contingent attorney's fees) neither gives, nor purports to give, to the appellee (lawyer) any right whatsoever, personal or real, in and to her (Mrs. Harden's) aforesaid share in the conjugal partnership. The amount thereof is simply a basis for the computation of said fees."

The Court of Appeals did not err in dismissing the petition for mandamus, for while it is true that, as contended by the petitioner, public policy favors the probate of a will, it does not necessarily follow that every will that is presented for probate, should be allowed. The law lays down procedures which should be observed and requisites that should be satisfied before a will may be probated. Those procedures and requirements were not followed in this case resulting in the disallowance of the will. There being no valid will, the motion to withdraw the probate petition was inconsequential.

Petitioner was not a party to the probate proceeding in the lower court. He had no direct interest in the probate of the will. His only interest in the estate is an indirect interest as former counsel for a prospective heir. In *Paras vs. Narciso*, 35 Phil. 244, We had occasion to rule that one who is only indirectly interested in a will may not interfere in its probate. Thus:

"x x x the reason for the rule excluding strangers from contesting the will, is not that thereby the court maybe prevented from learning facts which would justify or necessitate a denial of probate, but rather that the courts and the litigants should not be molested by the intervention in the proceedings of persons with no interest in the estate which would entitle them to be heard with relation thereto." (*Paras vs. Narciso*, 35 Phil. 244, 246.)

Similarly, in *Morente vs. Firmalino*, 40 O.G. 21st Supp. 1, We held:

"We are of the opinion that the lower court did not err in holding that notice of an attorney's lien did not entitle the attorney-appellant to subrogate himself in lieu of his client. It only gives him the right to collect a certain amount for his services in case his client is awarded a certain sum by the court."

WHEREFORE, the petition for certiorari is denied for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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