

**MARIA ROA, PETITIONER, VS. HON. JUDGE L. PASICOLAN, ET AL.,
RESPONDENTS.***G.R. No. L-18482. January 31, 1964*

Ponente: MAKALINTAL, J.

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Petitioner is the administratrix in Special Proceeding No. 106 of the Court of First Instance of Pampanga, presided by respondent Honorable Judge L. Pasicolan. The proceeding is for the settlement of the testate estate of the deceased Poteriana Ducuco. As administratrix, petitioner filed a complaint on June 5, 1954 against herein respondents Emilio Santos and Rosenda S. Vda. de Golding for the annulment of a deed of sale executed by the said Potenciana Ducuco on March 26, 1958 in favor of Emilio Santos, covering five (5) lots situated in Sta. Ana, Pampanga. Golding was included as defendant because a one-half share in the properties was subsequently sold by Santos in her favor.

After some preliminary incidents the defendants in said case filed their answer, denying that the deed of sale in question was fictitious, as alleged by the plaintiff; denying likewise the other material allegations in the complaint; and by way of affirmative defense stating that the action had prescribed, since the deed of sale sought to be annulled was executed in 1938 and the complaint was filed in 1954. Judgment was rendered by respondent Judge on November 2, 1960, dismissing the complaint and upholding the validity of the deed of sale. The plaintiff, petitioner here, received copy of the decision on November 18, 1960. The next day, November 19, she filed a notice of appeal, followed by the record on appeal on November 28, together with a petition to be allowed to appeal as pauper. This last petition was denied on December 7, 1960. On December 10, 1960 petitioner filed a motion for reconsideration of the judgment on the grounds (1) that it was contrary to law, particularly to Article 776 of the Civil Code; and (2) that it was also contrary to the evidence.

On February 24, 1961 respondent Judge issued an order stating that notwithstanding the denial of the petition to appeal as pauper plaintiff had failed to post the necessary appeal bond; that the motion for reconsideration dated December 10, 1960 was not in the nature of a motion for new trial under Rule 37 and did not interrupt the running of 30-day period for the perfection of the appeal; and that, the decision having already become final and executory, the record on appeal was disapproved.

Petitioner moved to reconsider the aforesaid order on the ground that the motion for reconsideration of December 10, 1960 had not been heard. The latest motion was denied, and the plaintiff filed with this Court the instant petition for certiorari, praying that respondent court be ordered to consider and resolve the motion for reconsideration of December 10, 1960.

We are of the opinion that the writ should issue. It should be remembered that what was before the trial court was not the question of whether the appeal should be given due course or not but rather the motion for reconsideration of the decision. Petitioner was entitled to a resolution of said motion. Obviously the court believed that the motion was pro forma in character, and so, without denying it expressly, proceeded to disapprove the appeal on the

ground that the decision had become final, since the motion for reconsideration did not interrupt the period for such appeal. With this we do not agree. The citation of Article 776 of the Civil Code assailed the pronouncement of respondent Judge in his decision to the effect that the right to file the action to contest the sale did not appear to have been expressly transmitted by the deceased Potenciana Ducuco to her heir, or to the representative of her estate, in this case herein petitioner. Petitioner's position is that there need be no express transmission of such right by will, because under Article 776 "the inheritance includes all the property, rights and obligations of a person which are not extinguished by his death."

With respect to the second ground of the motion for reconsideration filed by petitioner, namely, that the decision is contrary to the evidence, the evidence referred to is a certain portion of the testimony of the witness Potenciana Piring "as to the cause of her godmother's departure from Rosenda de Golding's house in Arayat," which "clearly reveals the woman's attitude in the matter." There is also petitioner's statement in the motion that the defense of secret payment raised by defendants, respondents here, "betrays their intention to commit fraud—to rob the old woman's prospective heirs." The foregoing argument, while not so clear as might be desired, nevertheless deserves to be ruled upon on the merits and not simply dismissed as of a pro forma character.

Wherefore, the writ applied for is granted; the order of respondent Judge of February 24, 1961 is set aside and he is directed to consider and resolve petitioner's motion for reconsideration of December 10, 1960. With costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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