

**TESTATE ESTATE OF THE DECEASED DAMASA CRISOSTOMO.
NAZARIO TRILLANA, ADMINISTRATOR AND APPELLEE VS.
CONSORCIA P. CRISOSTOMO, ET ALS., PETITIONERS AND
APPELLANTS.**

G. R. No. L-3378. August 22, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from an order of the Court of First Instance of Bulacan denying the appellants' petition for relief from the judgment of the said court allowing the will of October 19, 1948, executed by the deceased Damasa Crisostomo.

The appellants, in support of their sole assignment that the lower court erred in denying their petition for relief from the judgment of January 5, 1949, admitting to probate the will of October 19, 1948, submits to this Court three propositions, to wit: (a) "The judgment of January 5, was obtained through fraud;" (b) "The lower court failed to perform its legal duty to set a date for proving the will of August 16, 1948;" and (c) "The failure to set aside a date for proving the will of August 16 jointly with the will of October 19 was entirely due to the lower court's fault or negligence."

In support of their proposition (a), attorneys for the appellant allege that the fraud in obtaining the judgment of January 5 consisted in that the proponents of the will of October 19 did not cause personal notice of the hearing to be made upon the legal heirs of the decedent, contrary to the requirement of Rule 77, sec. 4 of the Rules of Court. We can not consider now for the first time in this appeal the question whether the lower court (not the proponents) complied with the requirement of said sec. 4 of Rule 77 of the Rules of Court, for that question has not been raised by the appellants in the court below, either in their original petition for relief of May 12, 1949 (pp. 2-8, Record on Appeal), or in their motion for reconsideration dated August 27, 1949, of the order denying their petition for relief (pp. 67-71). And there being no evidence to the contrary, the legal presumption is that the court which probated the will of October 19, 1948, complied with its duty and acted in lawful exercise of its jurisdiction in probating said will (Sec. 69 (m) (n), Rule 123 of the Rules of Court). Besides, the appellee's attorney, in the statement of facts in his reply to the appellants' petition for relief, stated that "This Honorable Court set its hearing [of the petition for allowance of the will of October 19, 1948] on December 2, 1948. Copy of this order was published in "The Star Reporter", a newspaper of general circulation in Bulacan on November 5, 12 and 19 respectively, and the corresponding notices served by the office of the Clerk of Court, in accordance with law" (pp. 25, 26, Record on Appeal). And the attorneys for the petitioners-appellants had not denied said statement.

The petitioners-appellants having failed to show that the judgment of the lower court of January 5, 1948, probating the will of testatrix of October 19, 1948, was obtained through fraud, the lower court did not commit any error in denying the appellants' petition for relief under sec. 2, Rule 38 of the Rules of Court, and therefore it is not necessary for us to discuss and pass upon the other propositions of the appellant.

"Where a will is duly probated after publication pursuant to section 630 of the Code of Civil Procedure, the order admitting the will is, in the absence of fraud, effective against all persons. The fact that an heir or other interested party lives so far away as to make it impossible for such party to be present at the date appointed for the probate of the will does not render the order of probate void for lack of due process." (In re Estate of Johnson, 39 Phil. 156)

Besides, even assuming without deciding, that under Sec. 3 of Rule 77, the court shall set aside a date for proving a will even without petition when it is delivered to the court having jurisdiction, as contended by the appellants, the lower court was right in not setting a date for proving the will of August 16, 1948, because this will was expressly and absolutely revoked by the subsequent will of October 19, 1948, executed by the same executrix or deceased, which was filed for allowance on November 1, 1948, with the same Court of First Instance of Bulacan. According to the attorneys for the appellant, the will dated August 16, 1948, was sent together with a writing called "Manifestation" by registered mail on October 30, 1948, from Manila to the Court of First Instance of Bulacan, by Attorney Mr. Tomas V. Barnes, and said will must have been received by the Clerk of said Court on or after November 1, 1943, the date when the subsequent will of October 19, was filed for probate. It stands to reason that if two wills are presented for allowance but one of them revokes expressly and absolutely the other, the revoked will cannot be included in the probate of the latter subsequent will, because it would be a waste of time to allow the revoked will if the subsequent revoking will is also allowed. The revoked will may be probated and allowed only if the subsequent revoking will is disallowed. (11. *McAra vs. MacCay*, L. R. 23 Ir., 138; *Pepper vs. Pepper*, Ir. R. 5 Eq., 85; *Matter of Palmer*, 58 L. J. P. D. and Adm., 44; *Matter of Stephens*, 22 L. T. Rep., N.S. 727.) [68 C. J. 886]

Besides, the appellants in the present case, who merely alleged in their petition for relief that they are "nephews and nieces and therefore legal heirs of the deceased Damasa Crisostomo," without specifying the degree of relationship they had with the latter, do not pretend that if the will of October 19, 1949, be disallowed, they will inherit the estate left by the testatrix. They contend that said will should be probated jointly or together with the will of August 16, 1948, and the latter be allowed instead of the former. As in her will of October 19, 1949, as well in that of August 16, 1948, the testatrix is leaving all her properties as legacies to other persons, the appellants have no interest in the probate of said wills, and they can not appeal from the judgment which allowed one of them instead of the other.

Appellants argue that they are interested parties and therefore may appeal in the present case, because in the event the will of October 19 is disallowed and in its stead that of August 16 is allowed, and the legacies made in the latter are declared invalid or the legatees incapable to inherit, the legacies will go to appellants. This argument has no merit. In civil actions and special proceedings, unless otherwise provided by law, the interest required in order that a person may be a party on appeal must be material and direct, so that he will be materially and directly benefited or injured by the court's order, decree or judgment; and not indirect or contingent (*Espinosa vs. Barrios*, 40 Off. Gaz., [8 Supp. No. 12] p. 145). The interest claimed by the appellants is purely contingent or dependent upon several uncertain and future events, to wit: (1) The disallowance of the will of October 19, 1948, (2) The allowance of the will of August 16, 1948, and (3) The invalidation of certain legacies left in the said will of August 16, 1948.

In view of all the foregoing, the order appealed from is affirmed with costs against the appellants. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

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