

**IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF
MATEO AYLLON SR., (DECEASED) ERLINDA S. AYLLON,
PETITIONER-APPELLANT, VS. PRIMA A. SEVILLA, PILAR A. SALAZAR,
MERCED A. PABE...**

G.R. No. L-79244. December 10, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

A petition for probate of a holographic last will and testament of Mateo Ayllon, Sr. was filed on 7 November 1977 by the petitioner with the Court of First Instance (now Regional Trial Court), Branch VI, of Guiuan, Eastern Samar. The case was docketed as Special Proceeding No. 459. In said will, the testator made disposition of specific properties to the petitioner, as his surviving spouse with whom he had no children, and to the respondents, as his sons and daughters by a first marriage. The respondents opposed the probate, and so hearings were held until the case was submitted for decision at about the end of 1981.

While the case was awaiting the court's decision, the petitioner, without the aid of a lawyer, entered into a verbal amicable settlement with the respondents. Relying on the verbal settlement and believing that she will be given one-half (1/2) of the house and lot situated at Concepcion Street, Guiuan, Eastern Samar, in return for her abandoning the rest of the properties willed to her, petitioner wrote her lawyer a letter requesting the latter to file a motion to dismiss the case. Petitioner's lawyer complied with her request. On 14 March 1984, the case was dismissed. However, the respondents apparently did not comply with their verbal agreement with the petitioner. Hence, the petitioner filed an affidavit with the court on 22 March 1984, asking for the withdrawal of her motion to dismiss and for revival of the case.

On 7 September 1984, the trial court reconsidered the order of dismissal, and revived the case. But, on 10 September 1985, the court issued an order recalling the order of 7 September 1984, thereby reviving the order of dismissal of 14 March 1984, on the grounds that (1) the case was amicably settled, and (2) the petitioner failed to present three (3) witnesses who could identify the handwriting of the testator in the disputed holographic will, as provided under Article 811 of the Civil Code.

On 23 September 1985, petitioner filed a motion for reconsideration of the order of the trial court dismissing the case, but the motion was denied.

Upon petitioner's appeal to the Court of Appeals, the latter court required the petitioner to file a Record on Appeal within sixty (60) days from notice. The counsel of the petitioner received the notice on 11 February 1987, so that the last day to file the record on appeal was on 12 April 1987. But, instead of preparing and eventually filing the Record on Appeal, the petitioner's counsel filed an Appeal Brief dated 28 February 1987, but actually filed through the mails on 17 March 1987. Hence, in a Resolution*, dated 29 May 1987, the Court of Appeals dismissed the appeal on account of failure of counsel of the petitioner to file a record on appeal, which is required in appeals in special proceedings, under Section 39 of B.P. Blg. 129, and Section 19 (b) of the Interim Rules and

Guidelines.

Petitioner filed a motion for reconsideration of the Resolution of the Court of Appeals of 29 May 1987. It was denied. Hence, the present petition for certiorari, with the petitioner praying that her case be revived, and that she be allowed to submit a record on appeal.

Petitioner's counsel failed to file a record on appeal despite due notice and the period of sixty (60) days given to him to file said record on appeal. Instead of filing the record on appeal, as required, what the petitioner's counsel did was to file an Appeal Brief. And even after petitioner's counsel received a copy of the respondents' Motion for the Dismissal of the Appeal for failure of the petitioner to file record on appeal, nothing was done by petitioner's counsel to correct or amend the erroneous procedure he had taken. Thus, it is clear that the failure of the petitioner, through counsel, to file the record on appeal was not inadvertent. In other words, petitioner's counsel ignored compliance with the requirement of filing a record on appeal, as provided for by the Rules. Hence, there is no reversible error on the part of the Court of Appeals, in dismissing petitioner's appeal.

The foregoing narration of facts and events illustrates once more an instance where the client has to suffer due to the fault of counsel. But, as held in several cases^[1], a client is bound by the mistakes and omissions of his counsel, so that if an appeal is lost through the unjustified neglect of counsel, as happened in the instant case, that loss is binding upon the client.

However, even as we sustain the action taken by the respondent Court of Appeals in dismissing petitioner's appeal, and, with said dismissal, petitioner has, in effect, lost the right to establish the validity of the alleged holographic will of the late Mateo Ayllon, yet, as his surviving spouse, petitioner has not lost her hereditary rights which are acquired by law. And, in the interest of justice, and to avoid multiplicity of suits, the trial court in Special Proceeding No. 459 may be required, as it is hereby required to determine and adjudicate the respective hereditary shares of petitioner and respondents in the estate of the late Mateo Ayllon, in accordance with the rules on intestate succession.

WHEREFORE, the petition is DENIED, but the case is remanded to the trial court for further proceedings, specifically, to determine and adjudicate to the petitioner and respondents their respective hereditary shares in the estate left by Mateo Ayllon, in accordance with the rules on intestate succession.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, and Sarmiento, JJ., concur.

Paras, J., no part. My wife penned the assailed decision.

* Penned by Justice Gloria C. Paras with the concurrence of Justices Ricardo P. Tensuan and Conrado T. Limcaoco

[1] *Rizal Commercial Banking Corporation v. Dayrit*, No. L-63372, June 28, 1983, 123 Scra 203 and *Gaba v. Castro*, No. L-56171, January 31, 1983, 120 Scra 505

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