

GENARO SENEN, PLAINTIFF AND APPELLEE, VS. MAXIMA A. DE PICHAY, DEFENDANT AND APPELLANT.*G.R. No. L-14391. May 30, 1960*

Ponente: LABRADOR, J.

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Maxima A. de Pichay, defendant," the defendant appealed to the Court of Appeals from an adverse decision of the Court of First Instance. By virtue of a resolution dated April 17, 1958 of the Court of Appeals, the case was certified to this Court because one of the issues involved in the appeal is the jurisdiction of the said Court of First Instance to try the case.

In Civil Case No. 27818 of the Court of First Instance of Manila, entitled "Genaro Senen, plaintiff, vs.

The record discloses the following facts: In special proceedings No. Q-86, the Court of First Instance of Rizal (Branch III), sitting at Quezon City, appointed the defendant Maxima A. de Pichay, guardian over the person. and properties of the minors Genaro, Rufina, Perfecto and Simplicio, all surnamed Senen. But said guardianship proceedings were dismissed by said court on March 16, 1955, by reason of abandonment (p. 8, Record on Appeal; p. 7, Brief for Defendant-Appellant). On September 30, 1955, Genaro Senen, one of the wards, brought the present action against the guardian, Maxima A. de Pichay, for a full accounting of the amounts she had received for the wards, alleging the appointment of defendant as guardian of his brothers and sister and himself, and that defendant had received for the wards the sum of P900.45, as arrears in pay of their deceased father, Pfc. Carlos Senen, and P10.00 a month "as pension for each of the wards since June 26, 1950 until they reach 18 years of age; that defendant withheld the pensions due plaintiff and his brothers and sister and appropriated the same to her own use, so that the children had rely upon other people for support; that his brothers Roberto, Perfecto and Simplicio, are still minors; that by reason of the malevolent acts of the defendant, the plaintiff and his brothers and sister suffered damages. Plaintiff prays that the court order defendant to render full accounting of the money of her wards and indemnify them for their rightful share in the estate of their deceased father, revoke the letters of guardianship issued to defendant in special proceedings No. Q-86 and appoint plaintiff in her place, and award plaintiff and his brothers and sister actual damages of P3,310.45, moral damages of P5,000 and attorney's fees of P1,000.

Defendant filed a motion to dismiss the complaint, on the ground that the claim of petitioner or plaintiff has been released by the dismissal of the guardianship proceedings, Case No. Q-86, and on the further ground that the venue is improperly laid. An opposition thereto was filed and the court denied the motion; so defendant filed her answer, denying having appropriated the amounts she had received as guardian, or committing a breach of her trust, with a counterclaim for P220.00. The court below, after trial, rendered judgment ordering defendant to pay plaintiff the amount of P2,859, which represents the pension of the wards and the backpay of their father, the sum of P1,000 as moral damages, and a similar amount as attorney's fees. In the same decision, the court appointed plaintiff guardian of the persons and properties of his minor brothers. This is the decision sought to be reviewed on appeal.

One question of law was raised in this appeal, thus: Had the court below jurisdiction over the subject matter of the action?

Defendant-appellant claims that the Court of First Instance of Quezon City, which appointed defendant as guardian, still retains exclusive jurisdiction over the guardianship proceedings and no other court can validly interfere with its continuing jurisdiction. This argument cannot be sustained. The jurisdiction of a court in a guardianship proceeding and all incidents thereof exists as long as the case is pending in that court. But when the case is terminated, by dismissal or otherwise, the court ceases to exercise the power and authority to try said case or any incidental matters thereof.

"After final judgment or decree has been rendered and the parties dismissed, in general, the jurisdiction of the court is exhausted * * *." (21 C.J.S. 147.)

"After termination, by dismissal or otherwise, of litigation in one court * * * any exclusive jurisdiction or freedom from interference it may have possessed is at an end; and another court may deal with the property or subject matter which, by the former suit, was not withdrawn forever from subsequent litigation." (Id., p. 816.)

A petition for accounting, etc., which is an incident of a guardianship proceeding, should be filed in the court where the guardianship proceedings are pending. But once the guardianship proceeding is terminated, said petition can no longer be filed in the same case, but must be filed as a separate case, in the same court, or in any other court of competent jurisdiction.

"The general rule that the authority of the court first acquiring jurisdiction must prevail is subject to the exception that where the proceeding in the court first acquiring jurisdiction is terminated, abandoned, or void, then another court of concurrent jurisdiction may take jurisdiction of the same subject matter." (14 Am. Jur. 445.)

"An action for accounting may be brought in a court of law whenever the guardianship for any reason terminates without any prior settlement in the court." (39 C.J.S. 253.)

The court below, therefore, validly acquired jurisdiction over the present case.

The other issues involved are factual. To speedily administer justice in this case, we have resolved them.

The parties agree that defendant had received P757.94 as backpay of the deceased father of plaintiff and his brothers and sister (five in all), and the sum of P2,450 as monthly pensions of the latter while minors under the age of 18. For convenience we have taken as basis the "inventory and accounting," dated April 10, 1956, signed under oath by defendant and presented in court as Exhibit "1". Also for convenience we have grouped the different items into three, namely, (1) judicial and administrative expenses, (2) expenses for burial of the deceased mother of plaintiffs and debts of said mother for the support and maintenance of the minors, and (3) the amounts spent by defendant-guardian for the maintenance and support and education of the minors, including plaintiff herein.

The judicial expenses include P80 paid to Atty. Marino Alagar for preparing papers for the claim for compensation, P50 expenses in securing affidavits and supporting papers for the claim and P69 judicial expenses incurred in the guardianship proceedings, or a total of P199.00. These expenses are not disputed and the claim of defendant, therefore, should be, as it hereby is, approved, the same to be charged against the monthly pensions of the minors.

The sum of P200 appears to have been loaned to the mother of the minors in the year 1943 in cash and in rice, corn and tobacco for the mother and her children (See Exh. "1-A"). Another amount of P130 was paid by defendant to Eligia A. Aquino (Exh. "1-B") who had advanced said sum for the burial expenses of the mother of

the minors. The amount spent by the deceased mother of minors for the support of the latter and the burial expenses of the mother of minors are legally chargeable against the earnings of the husband, which in the present case is his backpay. The defendant should be credited with said payments totalling P350 against the backpay of the minors' father of P757.94, so that of said backpay defendant should pay to plaintiffs the sum of P407.94.

As to defendant's claim for expenses for the support of plaintiff and his brothers and sister, the record discloses that except for plaintiff, the testimonies of the witnesses were taken before the clerk of court. We have, therefore, taken the trouble to read all the testimonies that we may better determine who is to be believed, plaintiff and his witnesses or defendant and hers.

There is no question, however, that in the year 1949, defendant took into her house four of the minors, namely, Genaro, Roberto, Rufina and Rogelio and in May, 1950 she also took Simplicio with her. This was necessary for she had to bring them before the court of the guardianship proceedings and to get their pension from the Judge Advocate General's Office. Defendant is married to a sergeant in the Army, with whom she had some ten children. That the minors lived for some time in her home is corroborated by Severino Tangan, who lived next door to them and Anastacio Eduarte, also a soldier and brother-in-law of defendant. This is also corroborated by the school record of the three minors, Simplicio, Rufina and Rogelio (Exh. "3"). The issue is, how long did each of them live with defendant and was supported by her and what should be the amount to be charged by her against them for such stay.

On the question of the length of time that each of the minor wards stayed with their guardian, we have found the following: Genaro Senen testified that he stayed with the defendant, her aunt, for only three months in 1955. But he admits that upon the death of his father in 1950, defendant called him for the purpose of collecting the money awarded his father by the Judge Advocate General's Office. Defendant, on the other hand, testified that Genaro, Rufina and Roberto were taken by her since 1949 when she applied for the guardianship proceedings, and that Genaro stayed with her until he was employed in the Bureau of Census from 1953 to 1955. In this respect her testimony is corroborated by those of Anastacio Eduarte, a soldier and Severino Tangan, who lived beside the house of Mrs. Pichay. Rufina declared that she stayed with defendant since 1950 when defendant went to get her from an uncle, but thereafter went away and returned to her in 1952 till she got married in October, 1953; that of the five children only four of them stayed with defendant, namely, Genaro, Rogelio, Roberto and herself and were brought to the Judge Advocate General's Office, but that they went away later to their grandfather in the provinces. But her testimony is contradicted by that of defendant and her witnesses, and by Exhibit "3", which shows that she, Rogelio and Simplicio were enrolled in 1949-1950, 1950-1951 and 1950-1951, respectively, which shows that she was lying. Rogelio Senen, 16, denied having lived with defendant, although he admits that defendant gave P40 to the aunt with whom he was living. Simplicio, Senen, 14, also testified, denying ever having lived with defendant. Since these boys testified in 1955, it is possible that they did not tell the truth or had forgotten where they had lived some five or six years before. The witnesses for defendant, however, asserted that they were living with defendant and their enrollment in school from 1950-1951 seems to support the claim of defendant and the testimonies of her two witnesses. Besides, one witness presented by plaintiff who appears to be credible, Juan Asistin, lived in the provinces and came to Quezon City to the house of defendant only once, and he could not tell with whom the minors were actually living.

After considering all the testimonies, we are led to the conclusion that those of defendant and her witnesses preponderate against the denials of plaintiff and his minor brothers. The appraisal by the lower court of their credibility is not to be given much weight as only plaintiff and an employee of the Judge Advocate General's Office testified in his presence, all the testimonies of the others having been taken before the clerk of court as commissioner. We believe, as Rufina Senen had admitted, that the minors must have stayed with plaintiff for from

one and a half years to two years, or at least eighteen months each.

As to the amount to which defendant is entitled, her claim of P30 per month is not justified. The pension each minor under 18 years is supposed to receive is P10. She should not be allowed an amount beyond this as what was legally authorized to be spent for each child is only P10 a month. For 18 months she was, authorized to spend for each of the five minors only P180, or a total amount of P900. Since she actually received for their pensions P2,450, the amount of P1,550 remains due from her.

As to moral damages, we do not consider the act of defendant so malicious as to make her liable for moral damages. She certainly must have, in some way, taken advantage of the sums she had received, but the fact that she enrolled the minors in school and tried to keep them in her home, although the pensions were very limited and she herself had ten children of her own, should be sufficient reason for exempting her from moral damages.

As to attorney's fees, the Court believes that in view of the poverty of the minors, their lawyer should be entitled only to ten per centum of the recovery, the same to be charged against the defendant. As the sums awarded are P407.94 and P1,500 or a total of P1,907.94, plaintiff's attorney should be paid P200 as attorney's fees.

Wherefore, the defendant is hereby ordered to pay plaintiff for himself and as guardian of his minor brothers the sum of P1,907.94, to pay plaintiff's, attorney the sum of P200 as fees, plus the costs. The order of the court appointing plaintiff guardian of his minor brothers is hereby affirmed. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Barrera, and Gutierrez David, JJ., concur.
Reyes, J.B.L., and Endencia, JJ., took no part.

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