

ANUNCIACION CANDELARIO, ON HER BEHALF, AND AS THE LEGAL GUARDIAN OF THE MINORS AGUSTINA MATUTE Y CANDELARIO, ELENA MATUTE Y CANDELARIO, ET AL., PETITIONERS, VS. HON. ANTONIO CAÑ...

G.R. No. L-17688. March 30, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Two special civil actions are joined in the above entitled proceedings before Us, one for mandamus to compel the sending of the record on appeal and another for certiorari to review an order of the court for the recording of an attorneys lien. Both actions are related to the same subject, the sufficiency of fees already paid to respondent Atty. Paterno R. Canlas for services rendered in the probate proceedings for the testate estate of Amadeo Matute Olave. Petitioners herein are heirs of the deceased.

Upon the opening of special proceedings No. 25876 entitled "Testate Estate of Amadeo Matute OIave" petitioners herein entered into an agreement with Attys. Paterno R. Canlas and Jose L. Matias whereby petitioners agreed to pay the respondent attorneys as fees for their services in representing the petitioners in the probate proceedings, 10% of the shares that they would receive as heirs of the deceased Respondent attorneys appeared on behalf of the petitioners in the proceedings below. In the course of the proceedings, a compromise settlement was agreed upon between the parties in the probate proceedings whereby the respective shares of each heir was determined.

On September 18, 1959, petitioner Candelario, in her name and on behalf of her minor children, filed an urgent motion to stop all payments of attorneys' fees to Attys. Paterno R. Canlas and Jose L. Matias for herself and for the account of the heirs, Agustina Matute Candelario, Elena Matute Candelario and Amadeo Matute Candelario, Jr. It is alleged in the motion that the respondent attorneys had received an advance payment of their attorneys' fees amounting to P77,000.00 up to March 26, 1958, plus an additional amount of P11,710.00; that according to the findings of the Commissioner of Internal Revenue the value of the estate left by the deceased amounted to P2,481,702.28, this appraisal having been made on December 4, 1958; that according to the compromise agreement entered into for the settlement of the estate, each of the petitioners herein were to receive 10% of the 30% of the entire estate; and that according to the agreement entered into between petitioners and respondent lawyers, the latter would be entitled only to P63,968.77. So that there is already an over payment of 924,741.23 made to the said attorneys.

Opposition to the above motion was interposed by respondent attorneys on the ground that the actual value of the estate left by the deceased Amadeo Matute Candelario is 95,000,000, more or less, and based on this value, the attorneys' fees due them under the contract had not been fully paid as alleged.

Further arguments were filed by the respective parties on the issue and on March 13, 1960, the court below entered an order denying the petition of the petitioners to stop the payment of attorneys fees, and requiring the administrator to pay Atty. Paterno R. Canlas the unpaid balance of P29,000.00. In arriving at this conclusion, the

court took account of the fact that an agreement dated July 7, 1958, upon which the order to pay Atty. Canlas P40,000.00 is based, was signed by the petitioners and Atty. Canlas, and according to it, the latter would be entitled to receive by way of attorneys fees a total of P40,000.00 or P10,000.00 from each of his clients, the four heirs; and that P11,000.00 of said amount has already been paid, leaving a balance of P29,000.00 due to respondent Atty. Paterno R. Canlas. The order of the court is as follows:

"Considering that the order of July 16, 1958 has already been partially executed, and considering further that it was issued upon the joint motion of all the heirs and their respective counsel, said order became immediately final and non-appealable. Anunciacion Candelario and her children are estopped and cannot now question the amount that they themselves asked this Court to approve and ordered paid to Paterno R. Canlas under the second advances, for the reason that the amount is fixed in the joint motion filed on July 7, 1958. Moreover, as the records show, even long after appraisal was already made by the Commissioner of Internal Revenue, further payments on the second advances were made to Paterno R. Canlas at P3,000.00 each. As admitted by Anunciacion Candelario and her three minor children in paragraph 3 of her urgent motion to stop payments of attorney's fees, of the P40,000.00 due to Paterno R. Canlas under the second advances, only P11,000.00 has so far been received by Paterno R. Canlas, thereby leaving unpaid a balance of P29,000.00 due to him." (p. 44, R. O. A.)

A motion to set aside the order was presented on the ground that the order for payment of the advances to Atty. Paterno Canlas, amounting to P40,000.00 never became final, as stated in the court order, so it would be unfair and is illegal for the heirs to continue the payment of the advances in excess of 10% of the value of the properties to be received by the heirs as their shares in the inheritance. This motion was denied on June 22, 1960 and thereupon the petitioner filed a notice of appeal. The appeal was objected to by Atty. Canlas on the ground that the order for the payment of P40,000.00 is final and executory, hence, non-appealable. The objection was sustained in an order dated August 24, 1960, and as a result, the court dismissed the appeal. Hence, this petition for mandamus to compel the judge to allow the appeal against its order declaring that the order for the payment of the fees had become final and executory, and denying the original motion to stop payment of attorneys fees.

So much for the petition for mandamus to compel the allowance of the appeal interposed by the herein petitioner. We will now consider the petition for certiorari against the order of the court authorizing registration of respondent attorneys' charging lien.

On January 21, 1960, respondent Atty. Canlas presented a motion before the court praying that a charging lien for attorney's fees amounting to P201,300.00 be created "on whatever properties, rights and interest Anunciacion Candelario and her three minor children will receive in the estate of the deceased Amadeo Matute Olave, plus 10% attorney's fees on whatever future advances that they will receive to be taken from the fruits and products of the property of said estate." Petitioners presented an objection to the motion, denying that the value of the estate of the deceased Matute is P5,000,000, (for the appraised market value thereof is only P2,048,599.34 as per appraisal by the Commissioner of Internal Revenue); that various amounts would still have to be deducted from the market value for claims against the estate presented by various claimants, such as internal revenue taxes, fees of administrator, and attorney's fees of former lawyers for the administrator; that some of the properties adjudicated to the petitioners were due them as heirs in their own right and not as heirs of Amadeo Matute; that the advances received by petitioners were given to them in their own right, as if they are fruits of the estate, and, therefore, respondent attorneys had no right to claim a percentage thereon as attorneys fees; that respondent attorneys had actually received P88,710.00 already and petitioners had already presented a motion to stop further payments of attorneys fees.

On March 18, 1960, the Court overruled the opposition of the petitioners herein and ordered that the charging lien of Atty. Canlas be recorded. It is against this order that the petition for certiorari has been filed before Us,

petitioners contending that the order for the registration of the lien is an abuse of discretion on the part of the court below.

The issue now presented is: Is it not the proper procedure to first ascertain if a full payment has already been made to Attys. Canlas and Matias, as claimed by petitioners, before a charging lien is created in their favor? The payments already made to the respondent attorneys are claimed to be sufficient, and appear to be so, to cover respondents' claims for attorneys' fees.

A consideration of the facts and the circumstances indicated above shows that the one issue remaining undecided before the court is whether payment of the sum of P29,000.00 should be enforced, as demanded by respondent attorneys, or whether payment be stopped because the amounts already received by the respondent attorneys are sufficient to cover the attorneys' fees agreed upon between petitioners and respondent attorneys. This is the claim of petitioners. The same issue is also involved in the petition for certiorari, for if the claim of the petitioners that the fees have already been fully paid is true, then it would be unjust and illegal for the charging lien to be created.

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In connection with the first petition (for mandamus to compel allowance of the appeal), it is true as found by the court below that the payment of P29,000.00 ordered to be made, forms part of the amount of P40,000.00 agreed upon between the petitioners on one hand and the respondent attorneys on the other, to be advanced to respondent attorneys as part of the agreed fees sometime before the motion to stop payments was presented. But the mere fact that the order for the payment of said P40,000.00 was issued as early as July 7, 1958, should not prevent the petitioners herein from showing that the said amount should no longer be demanded from them, because the amount theretofore received by them appears to be already more than the 10% agreed upon. The discovery made by petitioners that the fees to which respondent attorneys are entitled had already been fully paid, was made by the new lawyer of the petitioner, after the latter had changed counsel and terminated the services of the respondent attorneys. True the assessment by the Commissioner of Internal Revenue of P2,481,728 was given to the administrator of the estate as early as December 4, 1958, whereas the motion to stop payment was made on September 17, 1959. But the agreement to pay P40,000.00 was made on July 7, 1958, which is five months before the assessment was made by the Commissioner of Internal Revenue. The petitioners could not have known, at the time of entering into the agreement, of the assessment of the Commissioner of Internal Revenue for this came later. Counsel for petitioners cites the case of "Tambunting de Tengco vs. Hon. Ramon San Jose", 97 Phil., 491, in which We held that as a general rule, the probate court retains control and jurisdiction over incidents connected with it, including its orders not affecting third parties who may have acquired vested rights. Said case is decisive of this case. We are quoting it herein below:

"As a rule, during the pendency of special proceedings, the probate court retains control and jurisdiction over incidents connected with it, including its orders not affecting third parties who may by such orders, have acquired vested rights. This control and jurisdiction is particularly extensive to and effective against its own officers, such as administrators appointed by it, and attorneys representing them or representing parties included in the proceedings. As this Court has said in the case of *Onas vs. Javillo*, 54 Phil., 604, "In probate proceedings considerable latitude is allowed a Court of First Instance in modifying or revoking its own orders as long as the proceedings are pending in the same Court and timely application or motions for such modifications or revocations are made by the interested parties." Just as the probate court may increase as it had increased the fees of the attorneys in the present case, it could equally and with the same authority decrease said attorney's fees when so warranted, as for instance, if it is found that the value of the estate is much less than what was originally assessed, and on which erroneous assessment, the original fees were awarded. The same thing is true with regards to fees to be allowed administrators. In other words, an order fixing the fees of an administrator or of an attorney rendering professional services to an administrator, continues to be under the control of the probate court until the case is closed, and until then, the court may

modify or set it aside in the sense that it may decrease or increase the same according to the facts and circumstances as they develop and unfold in the course of the probate proceedings; and even if said fees have already been partially or fully paid, they may yet be ordered returned or reimbursed to the estate, or a bond may be required of the court officer receiving them, to guarantee the return or reimbursement if later found to be necessary (*Dais vs. Garduno*, 49 Phil., 165). Respondent Judge therefore erred in denying the petition of Julieta Tambunting dated August 14, 1953 to set aside the two orders of April 9, 1952 and November 26, 1952, in the mistaken belief that said orders had become final and executory and so came under the provisions of Rule 38, and because the petition for relief was filed beyond the period prescribed by said Rule 38."

We also held in a recent case (*City of Butuan vs. Hon. Judge Montano Ortiz*, G. R. No. L-18054, prom. December 22, 1961) that after a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend its execution and grant relief as the new facts and circumstances warrant. We, therefore, find that the ruling of the court declaring that the order for the payment of P40,000.00 is final and may not be reversed, is erroneous as above explained.

Another point which we should consider is the fact that the first petition is for mandamus merely to compel allowance of the appeal, which appeal the order of the court below had dismissed. But besides considering whether the appeal should be allowed, we had decided to abbreviate the proceedings by considering the petition for mandamus as a petition for certiorari, thus avoiding the tortious and expensive course of an appeal, and saving the parties and the courts the trouble of going through another proceeding. Having decided to consider the petition for mandamus as a petition for certiorari, and having found that the order appealed from is erroneous, We hereby set it aside, and remand the case anew and receive evidence on the question of whether or not the fees of the respondent attorneys have already been fully paid, in view of the value of the property upon which the agreed fees are to be based.

In the second action (for certiorari), we find that the lower court abused its discretion in ordering the annotation of the lien, notwithstanding the apparently valid claim that the attorneys' fees have been fully paid and without previous trial and finding that the claim of petitioners of full payment of fees is not true or correct.

The order of the lower court for the payment of P29,000.00 to respondent attorneys and for the registration of the charging lien in favor of the said attorneys is hereby set aside and the case remanded to the court below for further proceedings in accordance herewith. Costs against respondents attorneys. So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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