

**IN THE MATTER OF THE TESTATE ESTATE OF WILLIAM C. OGAN,
DECEASED. NECITAS V. BINAMIRA, EXECUTRIX-APPELLEE, ISABELO
V. BINAMIRA, CLAIMANT, VS. NECITAS OGAN-OCCENA, FEDERICO
OGAN,...**

G.R. No. L-27777. March 23, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is an appeal from the Orders of April 18, 1966 and July 16, 1966 of the Court of First Instance of Bohol in Special Proceedings No. 423, interposed by the executrix and the heirs of William C. Ogan.

From the records of the case, it appears that on February 20, 1961, William C. Ogan, a resident of Tagbilaran, Bohol now deceased, executed a will providing among others for the institution of his natural children, namely: Lily Paz Ogan, Federico Milani Ogan, Nancy Paparan, Liboria Pocoy Ogan, Necitas Pocoy Ogan-Occena, William Loserena Ogan and Ruth Alcorido Ogan, appellants herein, as his heirs and the apportionment of their respective shares; the designation of Necitas Ogan Occena as executrix and Atty. I. V. Binamira, appellee herein, as co-executor, both without bond. On March 28, 1961, while the testator was still alive, said will was duly admitted to probate. In the proceedings the testator was assisted by Atty. Felimon Barria.

On February 1, 1963, after the testator's death, on an ex-parte petition, Atty. I.V. Binamira assisted by Attys. Barria and Doron, was appointed Special Administrator of the estate of the late William C. Ogan. The executrix filed a motion for reconsideration and asked for the immediate issuance of letters testamentary in her favor and her co-executor, but it was denied. On March 17, 1963, after due hearing and compliance with the required publication, letters testamentary issued in favor of the designated executors. On the same date the court a quo issued notice to the creditors requiring them to file their respective claims against the estate within six (6) months from the first publication. It appears that the notice was published in the newspaper of general circulation of the place on March 17, 24 and 31, 1963.

On March 19, 1963, Binamira filed a Motion for Approval of his fees as special administrator for thirty five (35) days in the amount of P190,000.00 representing 7% of the gross estate in the amount of P2,782,799.40 as per his submitted inventory of the estate. On March 30, 1963, Binamira's lawyers, Barria and Doron, filed an opposition to the approval of the fees and a manifestation asking that they be excused from defending Binamira's claim, alleging that although they acknowledge the great and diligent efforts, and dedication executed by Binamira, they believe the claim to be excessive. After the parties filed their respective evidence and memoranda, the case was deemed submitted for decision.

On July 10, 1963, Binamira filed a motion indicating among others that aside from his pending claim, he may file additional claims for not more than P300,000.00 between July 8 to September 12, 1963, the last day for the expiration of the six months period. On September 16, 1963, Binamira filed a claim for 33% of the gross estate, and a claim against the lot of the deceased in Puerto Princesa, Lot No. 5806, covered by TCT No. RT-2223,

alleging that said lot was given to him by the testator as acknowledgment of the services he rendered particularly during the Japanese times, and ½ of the shares of stock of the testator in Bohol Land Transportation consisting of 2,363 shares, for alleged various services he rendered in favor of the testator dating back in 1923 for acting as guardian in fact; family consultant; caretaker; business, financial and legal adviser; and as attorney of the testator. The executrix filed an answer setting up Statute of Frauds, bad faith, and due compensation and denied allegation of guardianship. Previous to Binamira's claim it appears that his wife, Dr. Leocadia Binamira filed a claim for P180,000.00 for alleged medical services rendered in favor of the testator since 1945, whereas, Attys. Barria and Doron filed their claims for P160,000.00 and P17,600.00 respectively.

On the other hand, it appears that on September 1, 1964, some of the heirs namely Lily Ogan-Peralta, William Ogan, Jr., Ruth Ogan, and the aforesaid claimants entered into a compromise for the release of the estate against claims. However, said compromise did not materialize. On October 27, 1965, the instituted heirs and the executrix desiring to expedite the settlement of the estate of their late father, entered into a settlement with various claimants against the estate, including Atty. Binamira and his wife, Atty. Barria, and Atty. Doron. The agreement provided among others for the release of P820,000 of the estate's fund, P240,000.00 of which is for the claimants, P100,000.00 for the protection of the estate's interest in Bohol Land Transportation, and the rest for partial distribution of the heirs' shares. In the joint motion dated October 27, 1965, the parties submitted the compromise to the court for its approval and prayed among others that:

"x x x upon acknowledgment of Atty. I.V. Binamira of the amount due him under the agreement, an order issue confirming his resignation as co-executor."

On October 28, 1965, the Court issued a resolution providing among others the approval of the compromise and the release of P820,000.00 and requiring each heir to give a bond of P75,000.00 conditioned for the payment of the inheritance tax and estate tax. On October 29, 1965, Atty. Binamira and his wife acknowledged the receipt of P141,000.00 and P40,000.00 respectively, as full payment of their claims and fees against the estate pursuant to the agreement dated October 27, 1965. On November 29, 1965, the court, upon joint manifestation of the executrix and Atty. Binamira, issued a resolution confirming the approval of the resignation of Binamira as co-executor.

On December 18, 1965, the court issued a resolution requiring Atty. Binamira to submit the final and closing account of the estate. On January 14, 1966, Binamira submitted his final report together with a manifestation and motion praying among others for the payment of P23,000.00 as full settlement of his claim, P2,000.00 as compensation for services rendered from October 27, 1965 to January 14, 1966 and for the annotation of his 40% individual interest over Lot 5306 or for the cancellation of the title and the issuance of a new one in his name and the estate. On February 24, 1966, the executor and the heirs filed an opposition praying that the motion for additional fees be denied on the ground that it is already barred by the compromise agreement. Binamira filed a reply alleging among others that the compromise refers only to past services rendered and not to those subsequently rendered. On April 18, 1966, the court a quo granted the claim and later denied the motion for reconsideration.

Hence, the present appeal before Us, on pure questions of law, raising the following assignment of errors:

"FIRST ERROR

THE LOWER COURT ERRED IN GRANTING FORMER CO-EXECUTOR-APPELLEE I. V. BINAMIRA'S NEW CLAIM OF P2,000.00 FILED UNDER DATE OF JANUARY 14, 1966, DESPITE THE COMPROMISE AGREEMENT INVOLVING THE HEREIN PARTIES DATED OCTOBER 27, 1965, EMBODIED IN A LONG FINAL AND EXECUTORY JUDGMENT OF THE LOWER COURT DATED

OCTOBER 28, 1965 x x x.

SECOND ERROR

THE LOWER COURT ERRED IN PROVIDING IN ITS ORDER OF APRIL 18, 1966 THAT FORMER CO-EXECUTOR I. V. BINAMIRA'S 'OTHER CLAIMS BE PRESENTED IN 30 DAYS FROM RECEIPT OF COPY' OF THE QUESTIONED ORDER OF APRIL 18, 1966 'OR IN 30 DAYS FROM THE DATE THE ACCOUNT BECOMES ACTUALLY DUE AND DEMANDABLE' DESPITE THE COMPROMISE AGREEMENT OF OCTOBER 27, 1965, x x x AND DESPITE THE FACT THAT SUCH PERIOD WAS NOT EVEN SOUGHT BY CLAIMANT-APPELLEE.

THIRD ERROR

THE LOWER COURT ERRED IN DENYING OPPOSITORS-APPELLANTS MOTION FOR RECONSIDERATION AND IN HOLDING x x x THAT 'CLAIMS ORIGINATING FROM TRANSACTIONS AFTER THE DEATH OF DECEDENT ARE ALLOWABLE AS EXPENSES OF ADMINISTRATION AND ARE NOT BARRED BY STATUTE OF NON-CLAIMS.'

FOURTH ERROR

IN THE LIGHT OF THE PREVIOUSLY-DISCUSSED ERRORS, THE LOWER COURT ERRED IN NOT DENYING OR STRIKING OUT FORMER CO-EXECUTOR-APPELLEE'S NEW CLAIM OF JANUARY 14, 1966, WITH DOUBLE OR TREBLE COSTS AGAINST CLAIMANT."

(Note: During the pendency of this appeal, Atty. Binamira died and he was substituted by his heirs as appellees)

Appellants contend that it is an error for the lower court to approve the additional claim of Atty. I. V. Binamira for P2,000.00 representing his compensation for services rendered in filing the final accounts of the estate of the deceased William C. Ogan, as directed in the order of April 18, 1966, of the court a quo, and directing Binamira to present other claims within thirty (30) days from receipt of the aforesaid order, despite approval and finality of the compromise agreement of October 27, 1965, and the receipt by Binamira of P141,000.00, which serves to bar not only re-assertion of all claims against the estate and that the order directing Binamira to present other claims was issued in excess of jurisdiction as it was never prayed for in his motion for additional fees of P2,000.00.

The appeal is meritorious. A close examination of the compromise agreement of October 27, 1965 will disclose that claims against the estate existing at the time of its execution and all future claims of the parties to the compromise including that of Binamira, are barred by the compromise when it provided:

'5. xxx That all lawyers of the claimants and of the CO-EXECUTOR, AS WELL AS THE CO-EXECUTOR, WAIVE WHATEVER RIGHTS, IF ANY, TO COLLECT FROM THE ESTATE AND/OR THE HEIRS ANY AMOUNTS OTHER THAN THOSE MENTIONED IN PAR. 1 ABOVE; EXCEPT THE REIMBURSEMENT DUE THE CO-EXECUTOR I. V. BINAMIRA FOR ALL LEGITIMATE EXPENSES HE INCURRED UP TO THE FINAL APPROVAL OF THIS COMPROMISE by the Court;' (underscoring ours)

In the case at bar, it would be seen and as admitted by appellee himself (p. 3, Appellee's brief) that the second compromise agreement (Oct. 27, 1965) was entered into by the appellants to expedite settlement of claims. Thus, the essence of compromises being mutual concessions by the parties to avoid or end litigation, it is to be expected that neither will be able to maintain his initial demands wholly unaltered.[1]

Hence, the well-settled rule that "a compromise, once approved by final orders of the court has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery"[2] none of which

is alleged herein, is applicable and thus bars the claims of Atty. Binamira.

The lower court ruled that the payment of the additional P2,000.00 is allowed under paragraph 5 of the compromise as reimbursement for expenses of administration incurred by Binamira and accordingly not barred under the statute of non-claims. It ruled further that the compromise cannot be considered as final due to the absence of approval of all concerned.

We do not agree. First, the compromise was signed by Atty. I.V. Binamira and he duly acknowledged receipt of the P141,000.00 as full consideration of his claim and it was the very reason why he acceded to the compromise. He even joined the appellants in their motion to approve his resignation as co-executor. Thus, the right to impugn the finality of the compromise, if ever, may be availed of by the heirs who have not signed the compromise and not by Binamira, who by virtue of his acts is estopped to contest the finality of the compromise, hence, the statute of non-claims finds no room for application.

Second, the provision regarding the allowable reimbursement refers only to legitimate expenses incurred from the time Binamira was appointed co-executor up to the final approval of the compromise, hence, considering that his claim is for compensation of services rendered from October 27, 1965 up to January 14, 1966, it is crystal clear that it does not fall within the ambit of the exception neither as to the nature nor as to the time frame.

Lastly, the finality of the compromise should not be taken to mean that, it in effect terminates Binamira's obligation as co-executor. Under the Revised Rules of Court, Rule 85, Section 8, Atty. Binamira is obliged to render further accounts as the court may require until the estate is wholly settled. Thus, it has been held that,

"x x x the duty of an administrator to render an account is not a mere incident of an administration proceeding which can be waived or disregarded when the same is terminated, but that it is a duty that has to be performed and duly acted upon by the court before the administration is finally ordered closed and terminated. x x x." [3] (underscoring ours)

Hence, the award of the additional amount of P2,000.00 to Atty. Binamira for the submission of the final accounts of the estate of the late William C. Ogan, is contrary to law.

With the doctrine of res judicata at hand, the act of the lower court in incorporating in the questioned order the right of Binamira to file other claims against the estate within the period of thirty (30) days, is in excess of jurisdiction and without jurisdiction considering that Binamira did not seek authority to file other claims against the estate and the matter was never raised as an issue by the claimant, hence the court a quo could not legally grant the same. It is a well-known principle in proceedings that courts of justice have no jurisdiction or power to decide a question not in issue[4].

IN VIEW OF THE FOREGOING, the orders of the court a quo dated April 18, 1966 and July 16, 1966, in Special Proceedings No. 423, are hereby set aside, with double the costs against appellees.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Sarmiento, JJ., concur.

Melencio-Herrera and Feliciano, JJ., on official leave.

[1] Periquet vs. Reyes, L-23886, December 29, 1967, 21 SCRA 1503.

[2] Araneta vs. Perez, L-16187, April 30, 1963, 7 SCRA 923; Serrano vs. Miave, L-14678, March 31, 1965, 13 SCRA 461; Sabino vs. Cuba, L-18328, December 17, 1966, 18 SCRA 981; Vda. de Guilas vs. David, L-24280,

May 27, 1968; Vda. de Corpuz vs. Phodaca-Ambrocio, L-30206, March 30, 1970, 32 SCRA 279.

[3] Joson vs. Joson, 2 SCRA 8286.

[4] Maxima Garcia Lim Toco vs. Go Fay, 80 Phil. 166, L-1423, January 31, 1948.

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