

INTESTATE ESTATE OF JULIAN A. WOLFSON, DECEASED. RICARDO VITO CRUZ, ADMINISTRATOR. MANUEL Y. MACAS, PETITIONER-APPELLANT, VS. RICARDO VITO CRUZ, JUAN G. QUIJANO, ROSS, SELPH, SAL...

G.R. No. L-28947. January 17, 1973

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

G.R. No. L-28947

Petitioner-appellant Manuel Y. Macias appeals from the orders dated November 24, 1967 and January 13, 1968 denying his petition for relief from the order dated May 12, 1967; both issued by the Presiding Judge of Branch IV in Special Proceedings No. 57405. .

It appears that Julian A. Wolfson, an American resident of the Philippines, died in Manila on June 15, 1964 without a will. Intestate proceedings were instituted on June 16, 1964 by petitioner-appellant Atty. Manuel Macias for the settlement of Julian's estate and for the appointment of Ricardo Vito Cruz as administrator, docketed as Special Proceedings No. 57405 before Branch IV of the Manila Court of First Instance now presided over by Judge Serafin R. Cuevas. Because he died a bachelor without any ascendant nor descendant, his only sister Rosina Marguerite Wolfson, an American resident, was his sole heir in intestacy. The court appointed Ricardo Vito Cruz as administrator of Julian's estate.

However, Julian left a Memorandum to his sister, Rosina, pars. 5 and 6 of which read:

"5. After my estate is settled I hope you will at your convenience and at times convenient to you, deliver to the persons named in paragraph 6 hereof, the amounts set opposite their respective names, upon the distinct understanding that from the amounts stated there be first deducted all taxes you may have paid on said amounts. There is no reason why these beneficiaries should not reimburse you their respective portion of taxes incurred, x x x

"6.

"Name

Address

Amount in Phil.

currency — taxes

to be deducted

before payment

Faustino A. Reis

Manila

P10,000.00

Severino Baron

"

10,000.00

Ricardo Vito Cruz

"

10,000.00

Dominador M. Milan

"

1,000.00

Vicente D. Serato

"

1,000.00

Manuel Y. Macias

"

500.00"

x x x

x x x

x x x

Before she could comply with the aforesaid Memorandum of Julian, Rosina died on September 14, 1965 in San Francisco, California, U.S.A., leaving a will and three codicils duly probated by the California court, and under which the University of Michigan is named as the residuary legatee. Her estate is pending settlement in Special Proceeding No. 63866 before Branch VIII of the Manila Court of First Instance, then presided over by former Judge, now Court of Appeals Justice Manuel P. Barcelona.

On November 4, 1966, petitioner-appellant Atty. Manuel Y. Macias filed a motion in the intestate estate of Julian (Sp. Proc. No. 57405), praying that he be given copies of all notices of the proceedings on the ground that he is "a beneficiary of this (Mr. Wolfson's) estate, having been named specifically as such in the last written instructions made by the decedent Julian A. Wolfson with which his sister, the decedent Rosina Marguerite Wolfson was called upon to comply," which motion was opposed on November 10, 1966 by administrator Ricardo Vito Cruz on the ground that:

"x x the claim of Any. Macias has already been filed in the Intestate Estate of Rosina Marguerite Wolfson, Special Proceeding No. 63866 pending in Branch 8 of this Honorable Court. That being the case, he cannot file the same claim in this proceeding just to enable him to have a standing in this case." (P. 34, rec. on appeal.)

On November 10, 1966, in said Special Proceeding No. 57405 over Julian's estate, the trial court denied the said motion of petitioner-appellant, thus;

"In view of the opposition of the administrator through counsel, dated November 9, 1966 to the motion of Atty. Manuel Y. Macias dated October 23, 1966, praying that he be furnished with copies of all notices, orders and processes and pleadings filed or to be filed in the above-entitled case, the Court hereby denies said motion."

from which petitioner-appellant admittedly did not appeal (pp. 34-35, rec. on appeal; pp. 4-5, appellant's consolidated reply brief).

Thereafter, petitioner-appellant did not make any attempt to further intervene in said Special Proceeding No. 57405 in any capacity whatsoever.

In said Special Proceeding No. 57405 before Branch IV, administrator Ricardo Vito Cruz filed on May 10, 1967 a motion for partial distribution of the estate. Then Judge Felix Q. Antonio, now Associate Justice of the Supreme Court, in an order dated May, 12, 1967, granted said motion, declared the late Rosina as the sole heir of the deceased Julian, and directed the immediate delivery and transfer of certain real properties and securities specified therein to Rosina's estate, and, as payment of their respective fees, to administrator Ricardo Vito Cruz, to Attys. Quijano and Arroyo, to

Attys. Ross, Selph, Salcedo, del Rosario, Bito and Misa (pp. 9,121-123, ROA).

Upon learning of the aforesaid order of May 12,1967, petitioner-appellant, still insisting on his pretension that he is such a beneficiary of Julian's estate, filed a petition for relief dated July 20,1967 (more than six months after the order of November 10, 1966) from the aforesaid order of May 12,1967 claiming that the said order is null and void ab initio; because —

(1) no previous notice had been given to the beneficiaries including himself of the motion for partial distribution by administrator Ricardo Vito Cruz;

(2) no previous hearing was held on the said motion nor evidence presented to justify such substantial although partial distribution of the estate in violation of the first paragraph of Section 1 of Rule 90 of the Rules of Court;

(3) the huge payment to the administrator and the lawyers as their fees are exorbitant, fraudulent and unconscionable, as well as unfair to the sole heir Rosina; and

(4) the partial distribution was to be made in favor of person or persons who have no interest in the estate whatsoever;

and prayed for an order

(1) nullifying the order of May 12, 1967;

(2) commanding the administrators and the lawyers to restore the properties distributed to them;

(3) dismissing Ricardo Vito Cruz as administrator on the ground of infidelity;

(4) appointing petitioner-appellant in his stead as administrator;

(5) directing all the parties and the clerk of court to furnish the petitioner-appellant copies of all pleadings, processes, orders and notices in the said case, and

(6) issuing meanwhile a writ of preliminary injunction enjoining the aforesaid distributees and the various corporations in which the decedent Julian Wolfson owned shares of stocks from implementing the order of May 12, 1967 and from making further transfers of shares of stocks to the distributees and their transferees (pp. 8-27, ROA).

In his Answer dated August 4, 1967, administrator Ricardo Vito Cruz opposed the petition for relief on the grounds, among others;

(1) that the Memorandum of Julian to his sister expressing the hope that Rosina at her convenience will deliver P500 to petitioner-appellant after deducting taxes and after the settlement of his estate, is not a will in the strict legal sense and the implementation thereof is not mandatory;

(2) that the delivery of the amounts contained in her brother's memorandum to her will be made by the administrator of Rosina's estate, to be taken from whatever inheritance she may receive from her brother, which petitioner-appellant conceded in his two separate but identical motions in this proceeding as well as in Special Proceeding No. 63866 respectively dated November 4, 1966 and October 23, 1966;

(3) that on November 10, 1966, the court issued an order denying the motion of petitioner-appellant dated October 23, 1966 praying that he be furnished with copies of all orders and processes as well as pleadings filed or to be filed in this case, from which denial petitioner-appellant did not appeal, despite the fact that said denial is not interlocutory and consequently, said denial became final and petitioner-appellant lost whatever standing he had in this proceeding and therefore is not entitled to service of copies of orders, notice, pleadings and processes in this court;

(4) that petitioner-appellant should register his P500 claim in Special Proceeding No. 63866, which was done by the other persons named in the Memorandum of Julian to his sister Rosina, who have bigger claims ranging from P1,000 to P10,000 each;

(5) that petitioner-appellant is employing his P500 expectancy as a desperate measure to compel the other parties in this proceeding to withdraw their appeal from the award to petitioner-appellant of P90,000 in cash for attorney's fees which he had already collected;

(6) that at any rate, the remaining assets of the estate can fully cover his P500 expectancy, which he (Ricardo Vito Cruz) as administrator is only too willing to deliver to him (p. 41, ROA) and said amount of P500 was actually set aside by appellees with the approval of the Presiding Judge of Branch IV of the Manila Court of First Instance (p. 157, rec. — joint opposition to appellant's motion to disqualify and motion for reconsideration);

(7) that petitioner-appellant does not specify who are the other beneficiaries of the estate of Rosina whom he presumptuously and officiously claims to represent;

(8) that all the estate and inheritance taxes had been paid, although pending claims against various debtors prevent the closure of these proceedings, which claims of the estate once collected from the debtors, shall be turned over to the estate of Rosina as the sole heir;

(9) that since the cash position of the estate of Julian was low, the partial distribution of his estate was the most practical way by which the fees of the administrator and the lawyers could be paid, to which Wells Fargo Bank as executor of Rosina's estate and its local attorneys-in fact agreed, which conformity justified the immediate presentation of the motion for partial distribution to the court for approval and which the Court readily approved in the questioned order dated May 12, 1967 by reason of its non-controversial nature; and

(10) that the main bulk of the estate of Julian had already been transferred to the estate of Rosina pending settlement in Special Proceeding No. 63866 before Branch VIII of the Manila Court of First Instance, and hence a writ of preliminary injunction will not lie (pp. 30-49, ROA).

The Answer of Ricardo Vito Cruz was adopted by respondents attorneys-in-fact Quijano, Arroyo, Ross, Salcedo, del Rosario, Bito and Misa (pp. 51, 54, ROA), to which Answer petitioner-appellant filed his reply dated August 23, 1967 (pp. 55-58, ROA).

After hearing, respondent Judge Serafin R. Cuevas denied the petition for a writ of preliminary injunction in an order dated September 19, 1967 (p. 60, ROA).

In another order dated November 24, 1967, respondent Judge Cuevas dismissed the petition for relief on the ground that petitioner-appellant lacks legal capacity and personality sufficient for him to seek relief from the order of May 12, 1967 as he is neither an heir nor legatee nor creditor of the decedent (pp. 61-67, ROA).

Petitioner-appellant's motion for reconsideration with offer of evidence dated December 26, 1967, wherein he contends that the late Julian's memorandum to Rosina created a trust in his favor (pp. 68-75, ROA), to which Ricardo Vito Cruz, the University of Michigan, and Wells Fargo Bank filed their oppositions dated January 11, 1968, was likewise denied by the court in an order dated January 13, 1968 (p. 98, ROA).

And on January 17, 1968, petitioner-appellant appealed to US. On January 31, 1968, the record on appeal was approved (pp. 99-100, 124-125, ROA). He urges that the order of May 12, 1967 is a nullity; for as a beneficiary, he was not notified of the motion for partial distribution of Julian's estate.

G.R No. L-29235

Unaware that she died with a will and codicils duly probated in the Superior Court of San Francisco, California, in a pleading dated January 10, 1966, petitioner-appellant Manuel Y. Macias, for and in behalf of Ricardo Vito Cruz, filed a petition for letters of administration and for appointment of special administrator and regular administrator of Ricardo Vito Cruz over the intestate estate of the late Rosina Marguerite Wolfson in the Philippines. The petition avers as ground that Ricardo Vito Cruz was employed since 1945 successively as clerk, records custodian, secretary, chief clerk and accountant in the law firm of Julian A. Wolfson, whose estate is now in the process of settlement and was appointed by the court as special administrator and then regular administrator of Julian's estate in Special Proceeding No. 57405 of the Manila Court of First Instance (pp. 8-14, ROA).

This petition of Ricardo Vito Cruz filed for and in his behalf by petitioner-appellant Atty. Manuel Y. Macias is entitled "In the Matter of the Testate Estate of Rosina Marguerite Wolfson (also known as Marguerite Wolfson), deceased, Ricardo Vito Cruz, petitioner," docketed as Special Proceeding No. 63 866 and assigned to Branch VIII, then presided over by then Judge, now Court of Appeals Justice Manuel P. Barcelona.

On January 12, 1966, respondent Judge Manuel Barcelona issued an order appointing Ricardo Vito Cruz as special administrator of Rosina's estate (pp. 15-16, ROA).

However, even before the filing of said petition, as heretofore intimated, Rosina's will and three codicils were duly probated (pp. 42-45, ROA) before the Superior Court of San Francisco county, California, U. S. A., with the Wells Fargo Bank appointed as executor in accordance with the direction of the said last will and three codicils (pp. 21-45, ROA). As such executor of Rosina's will, the Wells Fargo Bank designated the local law firm of Ross, Selph, Salcedo, Del Rosario, Bito and Misa as its attorney-in-fact to institute ancillary administration proceedings over the estate of Rosina in the Philippines and to take such measures as are necessary to probate her last will and three codicils which were duly authenticated by the Philippine Consul in San Francisco, California. The designation of the law firm of Ross, Salcedo, et. al. as the attorney-in-fact of the executor Wells Fargo Bank was in accordance with the direction of the third codicil of Rosina dated October 9, 1964 nominating her friend Ewald E. Selph of the law firm of Ross, Selph, Carrascoso as an executor in the Philippines in the event that the Wells Fargo Bank cannot act as executor (p. 37, ROA).

By virtue of such designation as attorney-in-fact, Ross, Selph, Salcedo, del Rosario, Bito and Misa filed on August 13, 1966 a petition dated August 11, 1966 in Special Proceeding No. 63866 to convert the said proceeding into a petition for the allowance of the last will and codicils of Rosina and for their appointment as ancillary administrator, attaching thereto certified copies of the last will and three codicils of Rosina and the order of the Superior Court of San Francisco, California admitting the same to probate duly authenticated by the Philippine Consul in San Francisco, California (pp. 17-45, ROA).

In a manifestation dated September 12, 1966, special administrator Ricardo Vito Cruz informed the court that his principal attorneys in Special Proceeding No. 63866 are Quijano and Arroyo upon whom service of pleadings, processes, orders and notices and other papers intended for him should be made (pp. 46-47, ROA).

In a motion dated October 23, 1966, petitioner-appellant Atty. Manuel Y. Macias prayed that he be allowed to withdraw as counsel for special administrator Ricardo Vito Cruz in said Special Proceeding No. 63866 on the ground that Ricardo Vito Cruz, who had hired his services, has repeatedly humiliated him by serving notice to the court that his principal attorneys are Messrs. Quijano and Arroyo and that Ricardo Vito Cruz as special administrator repeatedly refused to pay his proper fees for services rendered in Special Proceeding No. 63866 and in other proceedings (pp. 48-50, ROA).

Petitioner-appellant Macias filed another motion also dated October 23, 1966, alleging that he is a beneficiary of the estate of Rosina by virtue of the "last written instructions" (actually Memorandum) made by the late Julian addressed to his late sister Rosina, claims that he is entitled to and therefore prays that he be furnished copies of all notices, processes, orders and pleadings filed in Special Proceeding No. 63866 (pp. 51-53, ROA), to which Attys. Quijano and Arroyo in behalf of special administrator Ricardo Vito Cruz filed an opposition dated November 9, 1966 on the ground that petitioner-appellant Macias had already filed a claim in Special Proceeding No. 57405 over the intestate estate of Julian based on the alleged last instruction of Julian to his sister Rosina, and that therefore petitioner-appellant cannot file the same claim in Special Proceeding No. 63866 just to enable him to have a standing therein (pp. 54-55, ROA).

In a manifestation dated November 9, 1966, Attys. Quijano and Arroyo stated that they have no objection to the withdrawal of petitioner-appellant Macias as counsel of special administrator Ricardo Vito Cruz in Special Proceeding No. 63866 but except to all the other allegations in the motion therefor dated October 23, 1966 filed by petitioner-appellant Macias (pp. 56-57, ROA).

In an order dated November 15, 1966, respondent Judge Manuel P. Barcelona, now Associate Justice of the Court of Appeals, allowed petitioner-appellant to withdraw as counsel of special administrator Ricardo Vito Cruz in Special Proceeding No. 63866; but denied appellant's motion praying that he be furnished with copies of all notices, orders and process, pleadings filed or to be filed in said Special Proceeding No. 63866 on the ground that he had already filed his claim in Special Proceeding No. 57405 over the intestate estate of Julian pending before Branch IV of Manila Court of First Instance (pp. 58-59, ROA).

Appellant Macias admits that he did not appeal from said order (p. 2, Appellant's Reply Brief).

In an order dated December 15, 1966, Judge Barcelona set for hearing on January 14, 1967 the petition of respondent Ricardo Vito Cruz for his appointment as regular administrator of the estate of Rosina worth about P194,000.00 (pp. 60-61, ROA).

In a pleading dated January 6, 1967, petitioner-appellant Macias opposed the petition of Ricardo Vito Cruz to be appointed as regular administrator of the estate of Rosina in Special Proceeding No. 63866 on the ground, among others:

(a) that Ricardo Vito Cruz has no wish to present for probate and to implement the last will and testament and codicils of Rosina in whose estate he (Macias) has a legal interest as a beneficiary of Julian, who directed Rosina to deliver a bequest to him with which she was not able to comply before she died;

(b) that Ricardo Vito Cruz appears to have reached an agreement with the University of Michigan as the residuary legatee of Rosina's estate represented by petitioner Arturo del Rosario and the latter's law firm, Ross, Selph, Salcedo, del Rosario, Bito and Misa, for the settlement of Rosina's estate without implementing the provisions of Rosina's last will and testament requesting her late brother Julian to use in his absolute discretion a part of her estate bequeathed by her to him

(1) to provide a suitable memorial in the City of Manila to their parents, and

(2) to provide help and assistance to former Filipino dependents of herself and her parents if such help, and assistance should be required (pp. 27-28, ROA),

which agreement is contrary to law, good morals and public policy and therefore null and void;

(c) that the overwhelming majority of the former dependents and employees of the Wolfson family indorsed and strongly supported the undersigned appellant's petition in Special Proceeding No. 67302 for his own appointment as regular administrator of Rosina's estate; and

(d) that Vito Cruz has shown himself to be an unfit administrator of the estate of Julian in Special Proceeding No. 57405, having committed certain corrupt practices with a view to his unjust enrichment;

and prays inter alia that he (petitioner-appellant Macias) be appointed as regular administrator of Rosina's estate (pp. 62-70, ROA).

Upon joint motion dated February 11, 1967 of Ricardo Vito Cruz, Arturo del Rosario and petitioner-appellant Macias on the ground that they have no opposition to the probate of the last will and codicils of the late Rosina (pp. 71-72, ROA), the clerk of court was authorized by respondent Judge Barcelona to receive the evidence thereon in an order dated February 3, 1967 (pp. 73-74, ROA).

Acting on the petition dated August 13, 1966 of petitioner Arturo del Rosario through his counsel praying for the admission to probate and allowance of the will and codicils of the late Rosina as well as the conversion of the instant proceeding No. 63866 from intestate to testate, and after considering the evidence submitted by the parties before the clerk of court, respondent Judge Manuel Barcelona in an order dated April 27, 1967 admitted to probate the last will and codicils of the decedent Rosina and directed the conversion of Special Proceeding No. 63866 from intestate to testate (pp. 75-79, ROA).

In a pleading dated September 12, 1967, petitioner-appellant Macias submitted another motion for admission of supplemental opposition to the appointment of Ricardo Vito Cruz and for his own appointment as administrator of Rosina's estate together with the supplemental opposition also bearing the same date, September 12, 1967 (pp. 80-82, ROA), to which Ricardo Vito Cruz through counsel filed an opposition and a motion to strike out said supplementary opposition of said petitioner-appellant Manuel Y. Macias (pp. 83-91, ROA).

On October 21, 1967, petitioner-appellant Manuel Macias submitted his formal offer of evidence in Special Proceeding No. 63866, Exhibit 1 to Exhibit 16, inclusive, Exhibit 1 being the Memorandum of Julian Wolfson to his sister Rosina, expressing the hope, that Rosina will deliver at her convenience to petitioner-appellant Macias the sum of P500 (pp. 92-107, ROA).

Likewise, respondent Ricardo Vito Cruz through counsel formally offered his evidence Exhibits A to F-4 on October 24, 1967 (pp. 108-112, ROA).

In a pleading dated October 25, 1967, respondent Ricardo Vito Cruz objected to the admission of all the exhibits of petitioner-appellant Macias as incompetent, immaterial and irrelevant, impertinent as well as hearsay, and especially:

Exhibit 1 -

on the further ground that the said memorandum is not a will, and has not been presented nor admitted to probate, hence, it cannot transmit rights or interest

and

Exhibit 2 -

the alleged indorsement of the former Filipino employees and dependents of the late Julian and Rosina to the appointment of petitioner appellant as regular administrator of Rosina's estate dated December 22, 1966, on the ground that the alleged Filipino dependents and employees referred to therein are not named nor identified in the will and therefore they cannot pretend to be beneficiaries (pp. 113-115, ROA).

In a well-reasoned order dated December 26, 1967 respondent Judge Manuel Barcelona, after considering the evidence and arguments of the parties and making an adverse observation on the conduct of petitioner-appellant Macias as former counsel of Ricardo Vito Cruz in Special Proceeding No. 63866, granted the petition of Ricardo Vito Cruz and appointed him ancillary administrator of the estate in the Philippines left by the late Rosina (pp. 116-130, ROA), from which order petitioner-appellant interposed this appeal with appeal bond on January 25, 1968. The record on appeal was approved on May 28, 1968 (pp. 131-132, 142-143, ROA).

G.R No. L-30935

Atty. Manuel Y. Macias filed a petition for certiorari, prohibition and mandamus with restraining order against the respondents University of Michigan; Wells Fargo Bank; Ross, Selph, Salcedo, del Rosario, Bito and Misa; Ricardo Vito Cruz; Juan G. Quijano; Joker V. Arroyo; Judge Manuel P. Barcelona of Branch VIII, Judge Serafin R. Cuevas of Branch IV; and Leonardo Alcid, assistant clerk of court and chief of the Probate Division of the Manila Court of First Instance, alleging the same basic averments in L-28054 (decided against petitioner-appellant on June 15, 1972), L-28947 and L-29235, that he is a beneficiary of the estates of Julian and Rosina Marguerite Wolfson, plus:

that by reason of his perfected appeals in the aforesaid case G.R. Nos. L-28054, L-28947 and L-29235, respondent Judge Serafin R. Cuevas of Branch IV and respondent Judge Manuel P. Barcelona of Branch VIII of the Manila Court of First Instance lost jurisdiction over the estates of Julian and Rosina, respectively in Special Proceedings No. 57407 and No. 63866 "except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal x x x" (Sec. 9, Rule 41, Revised Rules of Court) and as a consequence, aside from lack of prior notice of hearing to him, said respondent Judges could not validly issue

(a) the two orders of February 11, 1969 of respondent Judge Serafin R. Cuevas in Special Proceeding No. 57405 granting the petition dated February 5, 1969 of Ricardo Vito Cruz praying "that whatever residuary assets that have to be delivered and turned over to the estate of the late Rosina Marguerite Wolfson, the sole heir, from this proceeding (Special Proceeding No. 57405), be transmitted directly to the domiciliary executor of her estate, the Wells Fargo Bank, x x x" as well as his petition for supplemental distribution dated February 6, 1969, whereby 300 shares of the Philippine American Life Insurance Company belonging to the estate of

Julian were distributed among respondent University of Michigan represented by respondent Wells Fargo Bank, and respondents Ricardo Vito Cruz, Attys. Juan G. Quijano and Ross, Salcedo, del Rosario, Bito and Misa;

(b) the two orders of February 22, 1969, of respondent Judge Serafin R. Cuevas in Special Proceeding No. 57405 modifying the earlier order of February 11, 1969 granting Vito Cruz's petition for supplemental distribution so as to make respondent Wells Fargo Bank the direct recipient of 193 shares of the capital stock of the Philippine American Life Insurance Company or of the proceeds of the sale of such shares, instead of respondent Vito Cruz; and granting the motion dated February 15, 1969 of respondent Ricardo Vito Cruz to reduce his bond from P20,000 to P5,000;

(c) the order of June 3, 1969, of respondent Judge Serafin R. Cuevas issued in Special Proceeding No. 57405 granting the motion of respondent Vito Cruz dated May 29, 1969 for authority to execute as administrator of the estate of Julian A. Wolfson, an instrument of "COMPROMISE AND GENERAL RELEASE" in favor of the heirs and estate of Henry Bellis and in favor of Anna Allsman, against both of whom the estate of Julian had money claims "originally initiated and prosecuted by petitioner Macias as counsel for the estate of Julian A. Wolfson prior to his ouster as such by respondents Vito Cruz and Quijano and Arroyo." in consideration of the direct payment to respondent Wells Fargo

(f) Bank as domiciliary executor of the sole heir Rosina Marguerite Wolfson, of \$7,500 by the heirs and estate of Henry Bellis and of \$7,500 by Anna Allsman in discharge of said money claims, to the prejudice of petitioner Macias who duly filed his attorney's lien on all moneys which the estate of Julian might receive on account of said claims; and

(d) the orders of respondent Judge Barcelona in Special Proceeding No. 63866 of April 15, 1969 directing the Manila Register of Deeds to cancel the notice of lis pendens on TCT 49877, 49878, 49880, and 49881 all issued in the name of Rosina, of April 16, 1969 authorizing respondent Ricardo Vito Cruz to sell the real property covered by the aforementioned transfer certificates of title, and of April 24, 1969 approving the deed of sale executed by respondent Vito Cruz on April 21, 1969 in favor of Reliable Realty Corporation covering the real estate in Tondo, Manila for only P400,000, pursuant to which orders, the aforementioned transfer of certificates of title in the name of Rosina were cancelled and in lieu thereof new transfer certificates of title Nos. 96471, 96472, 96473 and 96474 were issued in the name of Reliable Realty Corporation; and the proceeds of the sale in the amount of P400,000 were distributed by respondent Vito Cruz as follows: to Wells Fargo Bank for eventual delivery to the University of Michigan (P222,893.51), as reserve for deficiency taxes (P90,000.00), to respondent Vito Cruz as administrator's fees (P21,570.33), to respondent Quijano and Arroyo as lawyers' fees (P21,570.33), to respondents Ross, Salcedo, Bito, Del Rosario and Misa as fees (P21,570.33), 5% commission of Atty. J. V. Natividad as real estate broker (P20,000.00), and for documentary stamps (P2,395.50).

Petitioner-appellant Macias, claiming that there is no appeal or any other plain or speedy and adequate remedy in the ordinary course of law, prays for an order or judgment (1) nullifying the questioned orders of the respondent Judges Serafin Cuevas and Manuel Barcelona; (2) directing all the respondents concerned to furnish him copies of all pleadings, notices, processes and orders of respondent Judges as well as accountings, inventories and reports of administration in both estates of Julian and Rosina; (3) commanding respondent Judge Manuel Barcelona to give due course to his appeal from the orders of April 15, April 16, and April 24, 1969 and to certify said appeal which he perfected on May 26, 1969 to the Supreme Court (decided against him in L-31174 on May 30, 1972); (4) requiring respondents University of Michigan and Wells Fargo Bank jointly and severally, Ricardo Vito Cruz, Juan G. Quijano and Joker V. Arroyo jointly and severally, and Ross, Salcedo, Del Rosario, Bito and Misa, to return whatever money or properties had been distributed to and received by them pursuant to the challenged orders of the respondent Judges in both the estates of Julian and Rosina; and (5) enjoining all the respondents from distributing both estates, with the further prayer for the corresponding restraining order during the pendency

of the appealed cases.

In their joint answer tiled on October 7, 1969, private respondents stressed and reiterated, *inter alia*,

(1) that petitioner-appellant Manuel Y. Macias is not a beneficiary in either estate as he has no interest to give him personality to intervene therein;

(2) that petitioner-appellant is not entitled to any notice of the pleadings, orders, processes and inventories and reports of the administrator in both estates after his petition for intervention was denied in Special Proceeding No. 57405 on November 10, 1966, from which order appellant Macias did not appeal. (Appellant also failed to appeal from the order of November 15, 1966 in Special Proceeding No. 63866 denying his intervention.)

(3) that after said order of denial, which is not interlocutory, petitioner-appellant did not appeal therefrom nor make any attempt to re-enter his appearance in Julian's estate in any capacity whatsoever;

(4) that subsequently, after the finality of the said order dated November 10, 1966 denying his claim to notice and service of all orders, processes and pleadings in Special Proceeding No. 57405 of Julian's estate, no notice of any kind was sent to or served on petitioner-appellant;

(5) that upon motion of respondent Ricardo Vito Cruz as administrator of Julian's estate for partial distribution under date of May 10, 1967 with the conformity of the other private respondents, the trial court approved the partial distribution considering that all taxes due the government and claims of debtors had been paid and settled, declared the late Rosina as Julian's sole heir, and authorized the delivery of Julian's residuary assets to Rosina's estate (presumably the order of May 12, 1967); and

(6) that thus, the main bulk of Julian's estate is now in Rosina's estate pending settlement in Special Proceeding No. 63866 before Branch VIII of the Manila Court of First Instance. Some assets of Julian's estate will not and cannot be included in the distribution because of some unresolved question then pending concerning their transferability, like the Philippine American Life Insurance Company, Inc. shares of stock, and the administration has to remain open to enable the administrator to collect debts owing the estate of Julian.

I

The motions filed by petitioner-appellant Manuel Macias respectively on October 23 and November 4, 1966 pray that he be given copies of all notices, orders, processes, and pleadings, in Special Proceedings Nos. 63866 and 57405 (L-28947 and L-29235), are in effect motions for intervention; because he claims an interest in both estates as a beneficiary thereof and as such may be affected by the distribution or disposition of the assets belonging to both estates.

A motion for intervention is addressed to the sound discretion of the court,[1] which "shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding." [2] Any arbitrary or capricious denial of the said motion is correctible by mandamus, if an ordinary appeal would not be an adequate and speedy remedy. [3]

Plaintiff-appellant's motions for intervention in the two Special Proceedings Nos. 57405 and 63866 respectively over the estates of Rosina and Julian were denied respectively on November 10 and 15, 1966. Petitioner-appellant did not appeal from said orders of denial (p. 2, appellant's brief in G.R. No. L-29235; pp. 34-35, ROA; p. 45, appellant's consolidated reply brief in L-28947). Neither did he file mandamus proceedings to compel the trial judge to allow him to intervene. Such failure to appeal or to file the petition for mandamus, precludes petitioner-appellant from further intervening in the two special proceedings over the estates of Rosina and Julian. Consequently, he is not entitled to copies of notices, orders, processes and pleadings in said two special

proceedings, because the orders denying his motions therefor, which had already become final, operated to bar him from intervening in the settlement of both estates of Julian and Rosina.

This Court so ruled as early as the 1909 case of *Ortiz vs. Trent*.^[4] In said case, Ortiz claimed the right to intervene as purchaser and owner of the interest of one of the heirs of the estate, which was denied by the court, from which denial he filed an appeal. When the trial court refused to allow the appeal, he filed a petition for mandamus to compel the allowance of his appeal. WE ruled therein that

"the order in question was a final order so far as Ortiz was concerned, because it effectively excluded him from participation in the proceeding relating to the settlement of the estate. As to him, no further order would be made in the case. A person who claims the right to intervene in the settlement of the estate of a deceased person and who is denied such a right, is a person legally interested in the order denying him such a right. In holding that the appeal should be allowed, WE, of course, make no ruling upon the questions decided by the court below. We do not decide whether or not Ortiz has acquired the rights of Dona Matilde Aramburu, one of the heirs, nor do We decide whether, if he has acquired such right, he has a right to intervene in the proceedings. We simply decide that he has a right to have these questions argued and determined in this court by means of an appeal from the order." [5]

The orders dated November 10 and 15, 1966 are final in character, not merely interlocutory; because they put an end to the particular claim of petitioner-appellant that he has an interest in both estates, on which he anchored his prayer that he be furnished all copies of notices, orders, processes and pleadings issued and/or filed in Special Proceedings Nos. 57405 and 63866. Said orders are not provisional, because they do not leave any substantial proceeding to be heard in connection with petitioner-appellant's assertion of material interest in said estates.^[6]

As heretofore stated, his failure to appeal from aforesaid orders of November 10 and 15, 1966 or to file a mandamus suit to allow his intervention, resulted in the forfeiture of his right to participate in the two special proceedings over the estates of Julian and Rosina. As a matter of fact, in Special Proceeding No. 57405, petitioner-appellant did not make any attempt to further intervene after the order of November 10, 1966. Neither did he file any petition for relief from said orders of November 10 and 15, 1966 issued in the two cases. Instead he filed a petition for relief from the order of May 12, 1967.

As an inevitable consequence, after the lower court denied recognition to his alleged interest, petitioner-appellant cannot seek sanctuary in the due process clause as thereafter he was no longer entitled to notice of the order of May 12, 1967 granting the motion of administrator Ricardo Vito Cruz for partial distribution of the estate of Julian or of any other orders, processes or pleadings in Special Proceeding No. 57405 (L-28947). And the motion for partial distribution carried the express conformity of all the parties whose interest in the estate was recognized by the court. Moreover, his claim in the amount of P500.00 is amply covered by the remainder of the estate. As a matter of fact, the said amount of P500.00 has been set aside for his claim, to be paid to him on demand.

Hence, his petition for relief from said order of May 12, 1967 was properly dismissed by the lower court in its orders dated November 24, 1967 and January 13, 1968, as he was no longer entitled to notice of the order dated May 12, 1967 and all other orders issued in Special Proceeding No. 57405 after November 10, 1966 and November 15, 1966 when his motions (— in effect —for intervention) to be furnished copies of all orders, notices, processes and pleadings in Special Proceedings Nos. 57405 and 63866 were denied.

II

The appointment of an ancillary administrator is likewise committed to the wisdom of the trial court.

The trial court, in the challenged order appointing Ricardo Vito Cruz ancillary administrator of the estate in the

Philippines of Rosina, instead of appellant Macias, found, among others, that Ricardo Vito Cruz was appointed special administrator on January 12, 1966 at the instance of oppositor-appellant Macias himself, who, as then counsel of Vito Cruz, instituted Special Proceeding No. 63866 over the estate of Rosina; that as such special administrator, Vito Cruz has "indubitably x x x performed his functions well"; that all the estate, inheritance, income and real estate taxes due the Philippine Government had been paid by Vito Cruz as such special administrator; that there is nothing left to be done except to pay the creditors, if any, and thereafter to dispose of the estate in accordance with the law; that the Wells Fargo Bank as domiciliary executor named in the codicil and so appointed by the California Court and the University of Michigan as the residuary and principal beneficiary named in the will and codicils of Rosina, nominated Vito Cruz for administrator; that Vito Cruz as such nominee should be preferred since he is qualified;[7] that Vito Cruz is named as a beneficiary of the amount of P10,000 in the memorandum of Julian to Rosina, very much greater than the sum of P500 allotted for oppositor-appellant, the smallest amount in the said memorandum (pp. 18-19, appellant's brief in L-29235); that the alleged former employees of the decedent who allegedly indorsed him are not named in Rosina's will and that their alleged interest in her estate must first be established before they can be legally allowed to intervene in the proceedings; that the University of Michigan as principal and residuary beneficiary, flatly rejected oppositor-appellant Macias's solicitation for its support in his bid to be appointed as ancillary administrator; and that appellant Macias violated his duty as previous counsel of Vito Cruz 'to maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client x x x[8] "concerning his obligation "to represent the client with undivided fidelity and not to divulge his secrets or confidences x x x," when appellant Macias, despite the adverse ruling of the court upon objection of counsel for Vito Cruz, insisted in testifying on matters which were privileged communications between him as lawyer and Vito Cruz as his former client, which obligation survives the termination of the lawyer-client relationship (pp. 124-129, ROA).

Moreover the appointment of Vito Cruz as regular ancillary administrator of Rosina's estate is most convenient as he is also the regular administrator of Julian's estate in Special Proceeding No. 57405. Hence, many difficulties could be avoided thereby as he is conversant with the estate of Julian, the residue of which will have to be and was in fact turned over to the estate of Rosina, as Julian's sole heir.

Furthermore, Special Proceeding No. 57405 over the estate of Julian appears to have been terminated, after the remaining assets of the estate had already been turned over by Ricardo Vito Cruz as administrator of Julian's estate to himself as administrator of Rosina's estate in Special Proceeding No. 63866.

WE find no cogent reason to disagree with the views expressed by respondent Judge Manuel P. Barcelona in his challenged order dated December 26, 1967 that if respondent Ricardo Vito Cruz as regular administrator of Julian's estate had committed acts of maladministration or had defrauded Julian's estate petitioner-appellant Macias should have sought the removal of respondent Ricardo Vito Cruz as administrator of Julian's estate on said grounds in Special Proceeding No. 57405 over Julian's estate pending before Branch IV presided over by respondent Judge Serafin Cuevas, and not in Special Proceeding No. 63866 over Rosina's estate pending before Branch VIII presided over by then Judge Manuel P. Barcelona.

Thus, there is no showing that respondent Judge Manuel Barcelona gravely abused his discretion in appointing respondent Ricardo Vito Cruz as ancillary administrator of Rosina's estate in Special Proceeding No. 63866.

III

It having been determined that petitioner-appellant Manuel Macias ceased to be a party in Special Proceedings Nos. 57405 and 63866 before Branch IV and Branch VIII, respectively, of the Manila Court of First Instance, by his omission to appeal from the orders respectively dated November 10 and-15,1966 denying his motions for

intervention in both special proceedings, thereafter he is no longer entitled to notices of any motion, pleading, resolution, order or process filed and/or issued therein. Consequently, his appeal in G.R. Nos. L-28947 and L-29235 as well as his petition in G.R. No. L-30935 should be dismissed.

At any rate, he was not deprived of any right without due process of law; because, the courts a quo reserved for him the amount of P500.00, which Julian hoped that Rosina will deliver to him, and respondent Ricardo Vito Cruz, as regular administrator of Rosina's estate, is ready, willing and able to pay the said amount to him the moment petitioner-appellant demands it.

This fact renders unnecessary a resolution of the issue raised by appellant whether Julian's memorandum to Rosina created an express trust in favor of appellant.

With respect to Rosina's request in her will for her brother Julian to provide a suitable memorial in the city of Manila to their parents and to provide help and assistance to her former Filipino dependents and those of their parents, We stated last June 15, 1972 in G.R. No. L-28054 entitled "Intestate Estate of Rosina Marguerite Wolfson, deceased, Ricardo Vito Cruz, petitioner and appellee" that "it would seem presumptuous on the part of petitioner-appellant that Rosina's desire as expressed in her will to provide a suitable memorial in the city of Manila to her parents and to provide help and assistance to her former Filipino dependents and those of their parents could not be adequately implemented by the probate court." [9]

It should be stressed that Rosina's executor and the University of Michigan as the residuary beneficiary to whom the bulk of Rosina's estate shall eventually pertain, never questioned any of the actuations of respondent administrator Ricardo Vito Cruz in his administration of both estates of Julian and Rosina nor the challenged orders of the respondent Judges granting partial distribution of the estates. Yet petitioner-appellant, riding on his claim to an insignificant amount of P500, has taken upon himself the officious duty of appearing to be the champion of the other beneficiaries, whose identities have not been ascertained as the former dependents of Rosina and her parents. This Court would not want to entertain the impression that petitioner-appellant would demean himself by regarding himself as a dependent of Rosina, simply because she once contracted his services as a lawyer to file ejectment cases in her behalf. The other members of the Philippine Bar would certainly not subscribe to appellant's position on this point.

Aside from the fact that no restraining order or preliminary injunction was issued by this Court against the respondents and/or appellees, the motion of appellant to cite them for contempt has neither legal nor factual basis.

WHEREFORE, THE APPEALS AND PETITION IN ALL THESE THREE CASES ARE HEREBY DISMISSED. WITH COSTS AGAINST PETITIONER-APPELLANT IN ALL INSTANCES IN THESE THREE CASES.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, and Esguerra JJ., concur.

Fernando, J., took no part in all these cases.

Antonio, J., took no part in G.R. No. L-28947.

[1] Jerez vs. Nietes, et. al, L-26876, Dec. 27, 1969, 30 SCRA 904, 911; Cue vs. Dolla, 23 SCRA 832 (1968).

[2] Sec. 2(b), Rule 12, Revised Rules of Court of 1964.

[3] Dizon vs. Romero, L-26252, Dec 24, 1968, 26 SCRA 452, 456-57; Cue vs. Dolla, L-27598, May 27, 1968, 23 SCRA 832, 836; Balane vs. de Guzman, L-21281, May 24, 1967, 20 SCRA 177, 178, 179; Tavera-Luna vs.

Nable, 67 Phil. 340, 344; Vol. I, Moran, Comments on the Rules of Court, 1970 Ed., p. 416.

[4] 13 Phil. 130.

[5] 13 Phil. 131; italics supplied.

[6] People vs. Doriquez, Nos. L-24444-45, July 29, 1968, 24 SCRA 163, 166; Bairan vs. Tan Siu Lay, L-19460, Dec. 28, 1966, 18 SCRA 1235, 1239.

[7] Johannes vs. Harvey, 43 Phil. 117, 179.

[8] Sec. 20(e), Rule 138 of the Revised Rules of Court, as well as Canon No. 6 of the Canons of Professional Ethics.

[9] 45 SCRA 381, 390.

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