

**ILDEFONSO LACHENAL, ELIAS LACHENAL, IRENEA L. SANTOS,
FLORA L. SANCHEZ AND NATIVIDAD D. LACHENAL, PETITIONERS,
VS. HON. EMILIO V. SALAS, PRESIDING JUDGE OF THE COURT OF
FIRST IN...**

G.R. No. L-42257. June 14, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Victorio Lachenal died on November 20, 1969. His testate estate is pending settlement in the Court of First Instance of Rizal, Pasig, Branch I (Special Proceeding No. 5836). His son, Ildefonso Lachenal, was named executor of his will. Among the properties included in the inventory of his estate is a fishing boat called Lachenal VII.

On April 1, 1971 the executor filed in that proceeding a motion to require the spouses Lope L. Leonio and Flaviana Lachenal-Leonio to pay the rentals for the lease of Lachenal VII and to return the boat to Navotas, Rizal for drydocking and repair.

Mrs. Leonio, who was a daughter of the testator, opposed the executor's motion. She countered with a motion to exclude the fishing boat from the decedent's estate. She claimed that she is the owner of the boat because she purchased it from her father in 1967. The executor opposed the motion for exclusion.

The probate court in its order of January 28, 1972 designating a commissioner to receive the evidence of the parties relative to the ownership of the motorboat. Mrs. Leonio had already finished the presentation of her evidence before the commissioner.

The executor did not present his countervailing evidence. Instead, on July 8, 1975 he and the testator's other children named Flora, Elias and Irene, and the children of a deceased child filed in the Caloocan City Branch of the Court of First Instance of Rizal an action against the Leonio spouses and the other three children of the testator named Crispula, Modesto and Esperanza, for the recovery of the motorboat Lachenal VII, allegedly valued at P150,000, together with back rentals and damages (Civil Case No. 3597). It was alleged in the complaint that Victorio Lachenal in 1964 leased the said motorboat to his son-in-law, Lope L. Leonio, for a monthly rental of P2,000 and that after Victorio's death, the executor of his estate demanded from Leonio the return of the boat and the payment of the back rentals.

On July 20, 1975 the said plaintiffs in Civil Case No. 3597 filed in the probate court their own motion to exclude the said motorboat from the decedent's estate on the ground that the probate court has no jurisdiction to decide the question as to its ownership because that matter has to be resolved by the Caloocan court where Civil Case No. 3597 is pending.

The probate court denied that motion. It held that it has jurisdiction over the issue of ownership because the heirs had agreed to present their evidences on that point before a commissioner.

It invoked the rule that generally "question of title to property cannot be passed upon in testate or intestate proceedings, except when the parties interested are all heirs of the deceased, in which event it is optional upon them to submit to the probate court the question as to title to property and when so submitted, said probate court may definitely pass judgment thereon. The reason is that questions of collation or of advancement are generally inevitably involved therein which are proper matters to be passed upon in the due course of administration. And it has also been held that with the consent of the parties, matters affecting property under administration may be taken cognizance of by the court in the course of the intestate proceedings provided the interests of third persons are not prejudiced." (3 Moran's Comments on the Rules of Court, 1970 Edition, page 473, citing *Alvarez vs. Espiritu*, L-18833, August 14, 1965, 14 SCRA 892, 899; *Pascual vs. Pascual*, 73 Phil. 561; *Vda. de Mañalac vs. Ocampo*, 73 Phil. 661; *Cunanan vs. Amparo*, 80 Phil. 227; *Dinglasan vs. Ang Chia*, 88 Phil. 476; *Baquial vs. Amihan*, 92 Phil. 501).

On January 5, 1976 the executor and his co-plaintiffs in Civil Case No. 3597 filed these special civil actions of prohibition and certiorari against the probate court.

The issue is whether the probate court should be allowed to continue the hearing on the ownership of the fishing boat or whether that question should be left to the determination of the Caloocan court where the subsequent separate action (now in the pre-trial stage) for the recovery of the motorboat is pending.

We hold that the title to the fishing boat should be determined in Civil Case No. 3597 because it affects the lessee thereof, Lope L. Leonio, the decedent's son-in-law, who, although married to his daughter or compulsory heir, is nevertheless a third person with respect to his estate. "The administrator may not pull him against his will, by motion, into the administration proceedings" (*De la Cruz vs. Camon*, 63 O. G. 8704, 16 SCRA 886; *De Paula vs. Escay*, *infra*).

This case falls under the general rule that questions as to title to property cannot be passed upon in the testate or intestate proceeding but should be ventilated in a separate action (*Ongsingco vs. Tan*, 97 Phil. 330, 334; *Bernardo vs. Court of Appeals*, 117 Phil. 385; *Magallanes vs. Kayanan*, L-31048, January 20, 1976; *Recto vs. De la Rosa*, L-42799, March 16, 1976).

Where a party in a probate proceeding prays for the inclusion in, or exclusion from, the inventory of a piece of property, the probate court may provisionally pass upon the question without prejudice to its final determination in a separate action (*Garcia vs. Garcia*, 67 Phil. 353; *Guinguing vs. Abuton*, 48 Phil. 144, 147; *Junquera vs. Borromeo*, L-18498, March 30, 1967, 19 SCRA 656; *Borromeo vs. Canonoy*, L-25010; March 30, 1967, 19 SCRA 667).

The Court of First Instance is a court of general original jurisdiction invested with power to take cognizance of all kinds of cases: civil cases, criminal cases, special proceedings, land registration, guardianship, naturalization, admiralty and insolvency cases (Sec. 39, Judiciary Law; *De Paula vs. Escay*, 97 Phil. 617, 619; *Manalo vs. Mariano*, L-33850, January 22, 1976).

Whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a question of jurisdiction over the subject matter. It is in essence a procedural question involving a mode of practice "which may be waived" (*Cunanan vs. Amparo*, *supra*, page 232. Cf. *Reyes vs. Diaz*, 73 Phil. 484 re jurisdiction over the issue).

Probate jurisdiction includes all matters relating to the settlement of estates and the probate of wills of deceased persons (Sec. 599, Act 190), particularly the administration of the decedent's estate, the payment of his debts,

questions as to collation or advancements to the heirs, the liquidation of the conjugal partnership, and the partition and distribution of the estate (De la Cruz vs. Camon, supra).

For the recovery or protection of the property or rights of the decedent, an executor or administrator may bring or defend in the right of the decedent, actions for causes which survive. Actions to recover real or personal property, or an interest therein, from the decedent's estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against an executor administrator (Secs. 1 and 2, Rule 87, Rules of Court).

In the instant case, the executor, by virtue of section 2 of Rule 87, filed a separate action in the Caloocan court for the recovery of the fishing boat and back rentals from the Leonio spouses.

In the De la Cruz case, supra, it was held that rentals allegedly due to the decedent's estate may not be collected by the administrator by filing a motion in the testate proceeding. The said rentals do not constitute property in the administrator's hands and are not thus within the effective control of the probate court. The proper procedure in collecting such rentals is to file an independent action in the Court of First Instance so that the right of the estate thereto may be threshed out in a full-dress trial on the merits.

The ruling in the De la Cruz case applies with stronger force to this case because here the executor seeks to re-cover not only the rentals but also the leased property itself, as to which the wife of the lessee had asserted adverse title.

Normally, it is expedient and convenient that the question of title to property, which arises between the decedent's estate and other persons, should be adjudicated in a separate action because such a question requires the presentation of appropriate pleadings (complaint, motion to dismiss, answer, counterclaim and reply). A resort to the modes of discovery may be necessary so that the issues may be clearly defined and the trial may be expedited. Those matters can be effectively accomplished in an ordinary action rather than in the testamentary or intestate proceeding (Mangaliman vs. Gonzales, L-21033, December 28, 1970, 36 SCRA 462).

The court may also have to resolve ancillary issues as to damages and counterclaims for money or property. Ultimately, execution has to be issued. The execution of a judgment is usually made by the Court of First Instance in an ordinary action and not in a special proceeding (See Magallanes vs. Kayana, supra).

In the instant case, inasmuch as the controversy over the fishing boat concerns members of the same family, the Caloocan court should endeavor before trial to persuade the litigants to agree upon some fair compromise (Arts. 222 and 2029, Civil Code; Sec. 1[j] Rule 16, Rules of Court).

WHEREFORE, the probate court's orders of September 17, and October 20, 1975, asserting its jurisdiction to decide the title to the fishing boat, Lachenal VII, are set aside. No costs.

SO ORDERED.

Fernando, (Chairman), Antonio, and Martin, JJ., concur.

Barredo, J., concurs in a separate opinion.

Concepcion, Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

CONCURRING OPINION

BARREDO, J.:

I concur in the judgment setting aside the orders of respondent court upholding its jurisdiction as probate court to pass on the issue of ownership of the subject fishing boat, Lachenal VII and recognizing the jurisdiction already acquired by the Caloocan Court of First Instance in Civil Case No. 3597. I am adding this few lines to the well grounded main opinion written by Mr. Justice Aquino just to point out that the argument of estoppel advanced by respondent cannot hold in this case, considering that according to the record, respondent judge had merely delegated the reception of evidence to a commissioner and the proceedings before said commissioner has been pending for quite sometime, more than three years, without being completed. Questions of ownership as very aptly emphasized in the main opinion should as a rule be threshed out on the basis of appropriate proceedings and evidence duly received by the court. Under the circumstances obtaining in the instant case, the best interests of justice require that preference be given to the proper action which anyway has already been instituted for the purpose. It might be a different case, however, if both parties had already presented all their evidence before the judge himself of the probate court.

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