

HEIRS OF RAMON PIZARRO, SR., PETITIONERS, VS. HON. FRANCISCO Z. CONSOLACION, CFI OF DAVAO AND LUIS TAN ALIAS CHEN YEY-AN, RESPONDENTS.

G.R. No. L-51278. May 09, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for review on certiorari seeking the reversal of the Order of June 1, 1979, of the then Court of First Instance of Davao[**] dismissing petitioners' claim against the estate of the late Dominga Garcia, and questioning the legality of the Order of the same court dated 17, 1979 which denied due course to the petitioners' notice of appeal to the Court of Appeals and directed them to file instead a petition for review before this Tribunal.

Petitioners are the oppositors in Special Proceeding No. 2116 in the then Court of First Instance (CFI) of Davao City Branch II, for settlement of the estate of the deceased Dominga Garcia, filed by private respondent herein, Luis Tan alias Chen Yeh-An.

The records disclose that on August 12, 1977, Luis Tan filed a verified petition with the CFI of Davao for the issuance of letters of administration in favor of a certain Alfonso Atilano. The petition alleged, among others, that private respondent is the only surviving son of the deceased Dominga Garcia who died intestate sometime in 1930 in Canton, China; that the deceased left a parcel of land[1] located at C.M. Recto Avenue, Davao City; and that the said lot is in the possession of the heirs of Ramon Pizarro,[2] petitioners herein.

On October 4, 1977, petitioners filed an opposition to the said petition claiming that they are the heirs of Ramon Pizarro who died intestate on June 16, 1974 and that the deceased was the vendee of one-half (1/2) of the aforementioned lot by virtue of an extrajudicial settlement of estate and deed of absolute sale executed by Vicenta Tan in Hongkong on May 27, 1966. Petitioners prayed that letters of administration of Dominga Garcia's estate be issued in favor of anyone of them.

The respondent court set the petition for hearing. Said order and the petition were duly published in the Mindanao Times[***]. The City of Davao[3] was likewise served with a copy of said petition. On December 6, 1977; after private respondent had begun presentation of evidence in support of his petition, the parties herein entered into a compromise whereby petitioners agreed, among others, to withdraw their opposition to the appointment of private respondent's recommendee and for the intestate proceedings to proceed in due course. Said agreement was approved in the order of respondent court dated December 6, 1977.[4]

Accordingly, on March 27, 1978, after the judicial administrator had qualified and his inventory of the assets of the late Dominga Garcia was approved, respondent court issued an order requiring the filing of creditors' claim against the said estate within the period of six (6) months from the date of the first publication.[5] Copy of said order was received by petitioners through counsel on March 28, 1979.[6]

Meanwhile, on January 23, 1979, private respondent and the City of Davao filed a joint motion asking respondent court to take notice of their agreement which in substance provides for an agreement to file a joint motion in the CFI of Davao to proceed with the determination of the heirs of the deceased Dominga Garcia which shall be determinative of their respective claims against the estate. On February 19, 1979, petitioners filed their opposition to the said joint motion on the sole ground that it is without procedural basis. Private respondent filed his reply thereto on February 21, 1979. On February 22, 1979, respondent court issued an order taking note of the agreement between private respondent and the City of Davao.

On February 28, 1979, private respondent filed a motion to drop and exclude the petitioners on the ground that they do not even claim to be the heirs of the deceased Dominga Garcia and that the extrajudicial deed of partition and deed of absolute sale allegedly executed in Hongkong in favor of the petitioners' deceased father is spurious and simulated. On March 5, 1979, petitioners filed their opposition to said motion. They likewise filed a claim against the estate of the deceased Garcia in the amount of P350,000.00 representing services allegedly rendered by their deceased father in favor of Vicenta Tan. On March 8, 1979, private respondent filed a reply to petitioners' opposition and a motion to strike out or dismiss the claim on the ground that it is spurious and barred for having been filed beyond the six (6) month period set in the notice for the filing of creditors' claim. On March 29, 1979, petitioners filed another claim against the estate for P200,000.00 allegedly advanced by their deceased father for the payment of realty and income taxes of the said lot sometime in 1936, to which claim private respondent filed an opposition on the ground that it is barred for having been filed beyond the six (6) month period and that it was merely intended to delay the proceedings.

In the Order of June 1, 1979, respondent court dismissed both claims of the petitioners on the ground that they are barred for having been filed out of time.[7] On June 26, 1979, petitioners filed a notice of appeal stating that they are appealing the order of June 1, 1979 to the Court of Appeals in so far as it declared their claims barred.[8] On July 5, 1979, private respondent filed an opposition to the projected appeal on the ground that the appeal involves a pure question of law and thus, the same should be directed to the Supreme Court.[9] On July 17, 1979, respondent court issued an order dismissing petitioners' appeal and directed petitioners to file instead a petition for review on certiorari before this Court.[10]

Hence, the present petition.[****]

It is the position of the petitioners that the order of June 1, 1979 of the respondent court, which directed that the filing of claims against the estate of the late Dominga Garcia be filed within six (6) months after the first publication of the notice thereof, is null and void in that it is violative of Section 2, Rule 86 of the Revised Rules of Court. They contend that said provision mandates that the filing of such claims should be for a period of six (6) months starting from the sixth month after the date of the first publication of the notice down to the twelfth month.[11] They argue that to require filing of claims within the sixth month from publication of notice will shorten the period in violation of the mandatory provisions of Section 2, Rule 86, which provides:

"Sec. 2. Time within which claims shall be filed. - In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. However, at anytime before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one (1) month."

We agree. The range of the period specified in the rule is intended to give the probate court the discretion to fix the period for the filing of claims. The probate court is permitted by the rule to set the period provided it is not less than six (6) months nor more than twelve (12) months from the day of the first publication of the notice

thereof. Such period once fixed by the court is mandatory.

The purpose of the law, in fixing a period within which claims against an estate must be presented, is to insure a speedy settlement of the affairs of the deceased person and the early delivery of the property to the person entitled to the same.[12]

In *Sikat vs. Vda. de Villanueva*[13] this Court ruled that the speedy settlement of the estate of deceased persons for the benefit of creditors and those entitled to the residue by way of inheritance or legacy after the debts and expenses of administration have been paid is the ruling spirit of our probate law.

However, in this case the trial court set the period for the filing of the claims within six (6) months from the date of the first publication of the notice. It was obviously short of the minimum limit of six (6) months provided for by the law. Petitioner correctly observed that the trial court thereby shortened the period set by the law.

Since the notice issued and the period set by the trial court was not in accordance with the requirements of Section 2, Rule 86 of the Rules of court, what should then apply is the period as provided for by the rules which is not less than six months nor more than twelve (12) months from the date of first publication of notice. The first publication of the notice in the *Mindanao Times* was on March 30, 1978. Thus the two claims of petitioners against the estate which were filed on March 5, 1979 and March 29, 1979 respectively were filed on time.

The other issue raised in the petition is the authority of the trial court to determine whether the appeal involves a question of law or both questions of law and facts. The petitioners cite Section 3, Rule 50 of the Rules of Court, which provides as follows:

"SEC. 3. Where appealed case erroneously brought. - Where the appealed case has been erroneously brought to the Court of Appeals, it shall not dismiss the appeal, but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor."

Petitioners contend that it is the Court of Appeals which has the authority to determine whether the issue in the appeal is purely a question of law in which case it shall certify the same to the proper court, which in this case is this Tribunal.

In the present case, when the lower court found that the order sought to be appealed was its order of June 1, 1979 wherein it held that the claims filed by petitioners against the estates were barred having been filed beyond the period fixed by the trial court in the notice, which appeal involves an interpretation of Section 2, Rule 86 of the Rules of Court, instead of giving due course to the notice of appeal to the Court of Appeals filed by petitioners, the petitioners were instructed to file a petition for review with this Court as the issue is a pure question of law.

We find the action taken by the trial court to be well-taken. Certainly, it is within the competence and jurisdiction of the trial court to determine whether the appeal interposed was based on pure questions of law or involves both questions of law and facts in considering the appeal.[14] The provision of Section 3, Rule 50 of the Rules of Court applies only when the appeal is already brought to the Court of Appeals at which time it may, instead of dismissing the appeal, upon determination that it involves a pure question of law, order that the case be certified to this Court.

It must be noted that in the notice of appeal it is not even required that the appellant indicate the court to which its appeal is being interposed. The requirement is merely directory and failure to comply with it or error in the court indicated is not fatal to the appeal.[15]

WHEREFORE, the petition is GRANTED and the orders of the respondent court of June 1, 1979 and July 17, 1979 are reversed and set aside in so far as the claims filed by petitioners were found to be barred, the same

having been timely filed, without pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, and Grino-Aquino, JJ., concur.

[**] Penned by Judge Francisco Z. Consolacion.

[1] Covered by TCT No. 296 (T-2774) of the Register of Deeds of Davao City.

[2] He is claimed to be the attorney-in-fact of a certain Vicenta Tan, private respondent's sister who actually resided in Canton. People's Republic of China, from 1933 to 1975 until she was allowed to go back to the Philippines.

[***] A newspaper of general circulation in Davao City.

[3] Petitioner in an escheat proceeding over said lot in G.R. No. L-44347.

[4] Annex "1", Memorandum of private respondent; pages 168 to 169, Rollo.

[5] Said notice was first published on March 30, 1978 in the Mindanao Times (page 6; Rollo, Annex "1", Petition).

[6] Certification of the Branch Clerk of Court, Annex "2", Memorandum of private respondent; page 171, Rollo.

[7] Annex "1", Petition; page 7, Rollo.

[8] Annex "2", Id.; pages 9 to 10, Rollo.

[9] Annex "3", Id.; page 11, Rollo.

[10] Annex "5", Id.; page 13, Rollo.

[****] In a motion filed on October 8, 1979, petitioners prayed that the present petition be also considered as a special civil action for certiorari on the ground that it also raises questions of jurisdiction (Pages 36-39, Rollo).

[11] Pages 22-23, Rollo.

[12] Santos vs. Manarang, 27 Phil. 209, 213, citing In re Estate of De Dios, 24 Phil. 574.

[13] 57 Phil. 486, 494.

[14] Section 7, Rule 41, Rules of Court.

[15] Sonora vs. Tongoy, 44 SCRA 411 (1972).

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