

**ALEJANDRA, JOSEFA, AND MARIA ASUNCION, SURNAMED
MACASIEB SISON, REPRESENTED BY THEIR CURATOR AD LITEM
ALEJO MABANAG, PETITIONERS, VS. THE COURT OF FIRST
INSTANCE OF PANGASINAN, ...**

G.R. No. 10777. March 25, 1916

Ponente: TORRES, J.

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TORRES, J.:

Alejo Mabanag, attorney at law and curator ad litem of the minors Alexandra, Josefa, and Maria Asuncion, all surnamed Macasieb Sison, filed a petition for the special remedy of certiorari wherein he prays that, if necessary, his appointment as curator ad litem to represent said minors before this court be confirmed; that the Court of First Instance of Pangasinan be ordered to furnish a transcript of the evidence taken in case No. 279, entitled "Proceedings in re the estate of the deceased Rafael Macasieb Sison;" that the order issued by the Honorable Isidro Paredes on September 20, 1913, appointing Bemabe de Guzman and Leon W. Denison as assessors and referees, as well as all the proceedings had, the report of said assessors and referees, and all the orders, judgments and decrees issued by the court founded on said proceedings and report be reversed and declared null and void, and of no legal value or effect; that a writ of preliminary injunction issue against Attorney Pedro Ma. Sison and the administrators of said estate, Perfecto Sison and Cirilo Espino, and also against the Court of First Instance, their agents, mandataries and officers, enjoining them from performing any act or taking any steps tending to put into effect the order of September 29, 1913, in which said Judge Paredes authorized the payment of the sum of P17,470 to said Attorney Pedro Ma. Sison, with the costs against respondents. To this end he alleged that the legitimate father of the said minors had died in the municipality of Calasiao, Pangasinan, on June 21, 1910, leaving a large amount of property, both real and personal, including cattle, in various municipalities of said province; that after the probate of the will executed by said decedent during his lifetime, in which instrument said minors were constituted his heirs, letters of administration were issued to the respondents Perfecto Sison and Cirilo Espino, who after taking oath, duly entered upon the discharge of the duties of their position; that the proceedings in said case No. 279 were still pending; that about the month of July, 1910, Mercedes Aquino, mother of the said minors, also died, in the municipality of Lingayen; that one Fidela Macasieb was thereupon appointed guardian of said minors and, after taking oath and giving bond, took possession of her office; that on the 19th and 20th of September, 1913, the respondent Attorney Pedro Ma. Sison filed two motions in which he set forth the professional services he had rendered at the instance of the administrators of said estate and prayed that the court decree that the sum of P18,000, the reasonable value of said attorney's professional services, be rated as an expense of the administration of said estate, and that said administrators be ordered to pay him, out of the said estate, the sum of P17,470 as attorney's fees; that the administrators and the aforesaid guardian, advised and directed by the said attorney, Sison, as their legal adviser, being in agreement and in collusion with the latter, recorded at the foot of said motions their respective assent to the claim made by said attorney; that, on September 29, 1913, the Honorable Paredes, judge, basing his action exclusively upon the report of the referees, assessors, or commissioners, Leon W. Denison and Bernabe de Guzman, and without himself making any investigation

whatever and in extralimitation of his jurisdiction and powers, issued an order approving the claim of Attorney Sison and ordering the payment of said sum as attorney's fees, considering the sum of P18,000 as expenses of administration, and directing that vouchers covering the same be filed with the court; that at the present time there is no other appropriate remedy available to the said minors than that of certiorari, and that if any other had existed it had lapsed, not through fault of said minors, but through respondent's deceit and fault, inasmuch as from that time until March 20, 1915, the petitioner-minors were not attended nor represented by any curator ad litem, but only by their guardian Fidela Macasieb; that the latter was advised and controlled by the respondent Attorney Sison, who had been and still was counsel for the administrators Perfecto Sison and Cirilo Espino, Alejo Mabanag having been, on March 20, 1915, appointed curator ad litem to represent said minors on the petition of Zoila Aquino, the nearest relative and a friend of the petitioners; that up to date the said sum of P17,470 had not been paid, but that Attorney Sison intended and was endeavoring to collect it from the administrators; that these latter were willing and disposed to pay it and the court was also disposed to authorize its payment, unless they were prevented from so doing to avoid prejudice to the rights of the said minors.

By an order of April 22, 1915, the writ of preliminary injunction was denied and respondents were required to set forth without delay their reasons why said writ of certiorari should not issue.

Counsel for respondents in his answer admitted the allegations contained in paragraphs 1, 2, 3, and 4 of the complaint and alleged that Alejo Mabanag had no authority to represent said minors in these certiorari proceedings; that also there was no cause of action against the respondents, because he did not have nor could he have any right of intervention in the motions presented by Attorney Pedro Ma. Sison, and that the most he could do would be to complain of mismanagement on the part of the administrators of the estate; that the order of September 20, 1913, might have been appealed from but, according to section 217, of Act No. 190, it could not be made the basis of certiorari proceedings; that, even supposing such right of appeal had lapsed through the deceit or fault of the attorney Pedro Ma. Sison, of the guardian Fidela Macasieb, and of the administrators Perfecto Sison and Cirilo Espino, there remained to them the remedy provided in section 113 of the said Act, that of certiorari being improper, for said administrators of their own free will gave their approval to the payment of the fees claimed by Attorney Sison, as did also the guardian Fidela Macasieb, it being a gratuitous assertion that Attorney Sison exercised any control whatever over said administrators and the guardian of the minors; that the judge of the Court of First Instance did not exceed his jurisdiction by hearing the opinion of the attorneys Guzman and Denison as experts in their profession; that furthermore, said administrators and guardian approved the petition of Attorney Sison, there being no procedural law that prohibited the courts from hearing the opinion of experts; that if there had been any error, it should have been corrected by means of an appeal, but that had not been made; that on April 6, counsel for the petitioner-minors moved the court to declare the order awarding Attorney Sison the sum of P18,000 as fees to be null and void, alleging that the judge in so ordering exceeded his jurisdiction, but the court overruled said motion and held it to be without merit by an order of April 10, which became final and no appeal therefrom was taken. He therefore prayed that the petition for the writ of certiorari be denied and that he be granted such relief as might be proper.

In the respective memoranda filed by both parties, the same allegations of fact and of law, much amplified, were set out for the purpose of showing the propriety or impropriety of issuing the writ of certiorari sought in this case.

The purpose of the remedy of certiorari is to prevent or restrain, and to remedy extralimitations of jurisdiction and powers; it is not available to correct judicial errors or mistakes of law, they being proper subjects of appeal. The Supreme Court should not review the proceedings had in the course of an action by certiorari, unless it appear that the lower court has acted in excess of his jurisdiction or authority, and that there is no plain, speedy and adequate remedy by bill of exceptions, or appeal or otherwise. (*Springer vs. Odlin*, 3 Phil. Rep., 344; and *Lagahit vs.*

Nengasca and Wislizenus, 12 Phil. Rep., 423.)

Section 217 of the Code of Civil Procedure says:

"When the ground of the complaint in an action in a Court of First Instance is that an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, and there is no appeal, nor any plain, speedy and adequate remedy, and the court, on trial, finds the allegations of the complaint to be true, it shall render a judgment ordering such inferior tribunal, board, or officer, or other person having the custody of the record or proceedings, at a specified time and place, to certify to the court a transcript of the record and the proceedings, (describing or referring to them with convenient certainty) that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed, if, in the judgment of the court, a stay ought to be granted."

Section 514 of the same code prescribes as follows:

"The Supreme Court shall have concurrent jurisdiction with the Court of First Instance in certiorari proceedings over any other inferior tribunal, board, or officer exercising judicial functions that has exceeded the jurisdiction of such tribunal, board, or officer and where there is no appeal or any plain, speedy, or adequate remedy; and shall likewise have original jurisdiction by certiorari proceedings over the proceedings of Courts of First Instance wherever said courts have exceeded their jurisdiction and there is no plain, speedy adequate remedy by bill of exceptions, or appeal or otherwise. The proceedings of the Supreme Court in certiorari proceedings shall be the same as those provided for such proceedings for Courts of First Instance in sections 217, 218, 219, 220, and 221."

It is unquestionable that an appeal lay to this court from the order of September 29, 1913, not only on the part of the guardian of the minor petitioners, Fidela Macasieb, but also on that of the administrators of the estate, Perfecto Sison and Cirilo Espino; likewise, the curator ad litem of said minors, Attorney Alejo Mabanag, could have appealed from the order of April 10, 1915. If said administrators, guardian, and curator ad litem did not appeal from these orders, in order that this court might correct any error of either of the two judges who dictated them, and if, on the contrary, they consented to and abided by their terms, allowing them to become final, even in face of the prospect that later on they would be put into effect and the large sum claimed by Attorney Sison as fees would be paid to him, they cannot afterwards be permitted to avail themselves of the remedy of certiorari and demand that the proceedings, together with said orders of the trial court, be reviewed. The remedy of certiorari is granted only to such persons as are injured by the court acting in excess of his jurisdiction and powers and this has not been shown to have happened in the case at bar, nor was it shown that the orders afore-mentioned could not have been appealed from.

However serious and important may be the damage which the three minor-petitioners would suffer as a result of compliance with the order of September 29, 1913, yet since their guardian and the administrators of the estate have not availed themselves of the sole remedy provided by law for the correction of any judicial error, and as the record does not show that there was any abuse or extralimitation on the part of the judge in the exercise of his jurisdiction and powers, this court can not grant the remedy of certiorari, as in this case the law does not authorize it to do so.

It is of course understood that said guardian and administrators did not take any appeal from said order' of September 29th, they being advised and directed by the very attorney who claims the fees which said order directs to be paid out of the estate belonging to those minors; but it is well known that these latter enjoy the privilege of restitutio in integrum in case they are injured in their rights and interests, and that said guardian and administrators should have, respectively, given bond before entering upon the discharge of the duties of their respective offices, as security against any waste, diversion or malversation of the property of the estate. Aside

from all this, the minors did not contract with Attorney Sison to defend their interest; the person obligated to pay his fees would be the administrators of the estate and the minors' guardian. So on this supposition, proceedings to recover said fees should have been brought against those directly obligated to pay them, for, upon settling the estate, and paying all expenses, debts and advances, prior to delivering the net proceeds to the minor heirs, accounts must be rendered, approved by the court, of the expenses, debts paid, and expenditures of all kinds, among which are included the fees of the attorney who may have advised the administrators of the estate; and therefore, prior to the settlement of the estate and the distribution of his share to each heir of the decedent, it is improper, before the termination of the probate proceedings, to permit said attorney to attempt to collect his fees directly out of the property of the estate.

Notwithstanding the impropriety of the remedy of certiorari, chosen by the curator ad litem of said minors, some other remedy can be found among the provisions of the law to prevent injury to the minors, if the fees, the collection of which is the reason for these proceedings, are really improper or excessive.

For the foregoing reasons, the remedy of certiorari, applied for by the curator ad litem of the minors Alejandra, Josefa and Maria Asuncion, surnamed Macasieb Sison, is hereby denied, with the costs against their representative. The Court of First Instance of Pangasinan shall be advised of this decision. So ordered.

Arellano, C. J., and Johnson, J., concur.

Moreland, Trent, and Araullo, JJ., concur in the result.

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