LOURDES L. DOROTHEO, PETITIONER, VS. COURT OF APPEALS, NILDA D. QUINTANA, FOR HERSELF AND AS ATTORNEY-IN-FACT OF VICENTE DOROTHEO AND JOSE DOROTHEO, RESPONDENTS.

G.R. No. 108581. December 08, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

May a last will and testament admitted to probate but declared intrinsically void in an order that has become final and executory still be given effect? This is the issue that arose from the following antecedents:

Private respondents were the legitimate children of Alejandro Dorotheo and Aniceta Reyes. The latter died in 1969 without her estate being settled. Alejandro died thereafter. Sometime in 1977, after Alejandro's death, petitioner, who claims to have taken care of Alejandro before he died, filed a special proceeding for the probate of the latter's last will and testament. In 1981, the court issued an order admitting Alejandro's will to probate. Private respondents did not appeal from said order. In 1983, they filed a "Motion To Declare The Will Intrinsically Void." The trial court granted the motion and issued an order, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, Order is hereby issued declaring Lourdes Legaspi not the wife of the late Alejandro Dorotheo, the provisions of the last will and testament of Alejandro Dorotheo as intrinsically void, and declaring the oppositors Vicente Dorotheo, Jose Dorotheo and Nilda Dorotheo Quintana as the only heirs of the late spouses Alejandro Dorotheo and Aniceta Reyes, whose respective estates shall be liquidated and distributed according to the laws on intestacy upon payment of estate and other taxes due to the government."[1]

Petitioner moved for reconsideration arguing that she is entitled to some compensation since she took care of Alejandro prior to his death although she admitted that they were not married to each other. Upon denial of her motion for reconsideration, petitioner appealed to the Court of Appeals, but the same was dismissed for failure to file appellant's brief within the extended period granted.[2] This dismissal became final and executory on February 3, 1989 and a corresponding entry of judgment was forthwith issued by the Court of Appeals on May 16, 1989. A writ of execution was issued by the lower court to implement the final and executory Order. Consequently, private respondents filed several motions including a motion to compel petitioner to surrender to them the Transfer Certificates of Titles (TCT) covering the properties of the late Alejandro. When petitioner refused to surrender the TCT's, private respondents filed a motion for cancellation of said titles and for issuance of new titles in their names. Petitioner opposed the motion.

An Order was issued on November 29, 1990 by Judge Zain B. Angas setting aside the final and executory Order dated January 30, 1986, as well as the Order directing the issuance of the writ of execution, on the ground that the order was merely "interlocutory", hence not final in character. The court added that the dispositive portion of the said Order even directs the distribution of the estate of the deceased spouses. Private respondents filed a motion for reconsideration which was denied in an Order dated February 1, 1991. Thus, private respondents filed a

petition before the Court of Appeals, which nullified the two assailed Orders dated November 29, 1990 and February 1, 1991.

Aggrieved, petitioner instituted a petition for review arguing that the case filed by private respondents before the Court of Appeals was a petition under Rule 65 on the ground of grave abuse of discretion or lack of jurisdiction. Petitioner contends that in issuing the two assailed orders, Judge Angas cannot be said to have no jurisdiction because he was particularly designated to hear the case. Petitioner likewise assails the Order of the Court of Appeals upholding the validity of the January 30, 1986 Order which declared the intrinsic invalidity of Alejandro's will that was earlier admitted to probate.

Petitioner also filed a motion to reinstate her as executrix of the estate of the late Alejandro and to maintain the status quo or lease of the premises thereon to third parties.[3] Private respondents opposed the motion on the ground that petitioner has no interest in the estate since she is not the lawful wife of the late Alejandro.

The petition is without merit. A final and executory decision or order can no longer be disturbed or reopened no matter how erroneous it may be. In setting aside the January 30, 1986 Order that has attained finality, the trial court in effect nullified the entry of judgment made by the Court of Appeals. It is well settled that a lower court cannot reverse or set aside decisions or orders of a superior court, for to do so would be to negate the hierarchy of courts and nullify the essence of review. It has been ruled that a final judgment on probated will, albeit erroneous, is binding on the whole world.[4]

It has been consistently held that if no appeal is taken in due time from a judgment or order of the trial court, the same attains finality by mere lapse of time. Thus, the order allowing the will became final and the question determined by the court in such order can no longer be raised anew, either in the same proceedings or in a different motion. The matters of due execution of the will and the capacity of the testator acquired the character of res judicata and cannot again be brought into question, all juridical questions in connection therewith being for once and forever closed.[5] Such final order makes the will conclusive against the whole world as to its extrinsic validity and due execution.[6]

It should be noted that probate proceedings deals generally with the extrinsic validity of the will sought to be probated,[7] particularly on three aspects:

- ð whether the will submitted is indeed, the decedent's last will and testament;
- ð compliance with the prescribed formalities for the execution of wills;
- ð the testamentary capacity of the testator;[8]
- ð and the due execution of the last will and testament.[9]

Under the Civil Code, due execution includes a determination of whether the testator was of sound and disposing mind at the time of its execution, that he had freely executed the will and was not acting under duress, fraud, menace or undue influence and that the will is genuine and not a forgery,[10] that he was of the proper testamentary age and that he is a person not expressly prohibited by law from making a will.[11]

The intrinsic validity is another matter and questions regarding the same may still be raised even after the will has been authenticated.[12] Thus, it does not necessarily follow that an extrinsically valid last will and testament is always intrinsically valid. Even if the will was validly executed, if the testator provides for dispositions that deprives or impairs the lawful heirs of their legitime or rightful inheritance according to the laws on succession,[13] the unlawful provisions/dispositions thereof cannot be given effect. This is specially so when the courts had already determined in a final and executory decision that the will is intrinsically void. Such

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determination having attained that character of finality is binding on this Court which will no longer be disturbed. Not that this Court finds the will to be intrinsically valid, but that a final and executory decision of which the party had the opportunity to challenge before the higher tribunals must stand and should no longer be reevaluated. Failure to avail of the remedies provided by law constitutes waiver. And if the party does not avail of other remedies despite its belief that it was aggrieved by a decision or court action, then it is deemed to have fully agreed and is satisfied with the decision or order. As early as 1918, it has been declared that public policy and sound practice demand that, at the risk of occasional errors, judgments of courts must at some point of time fixed by law[14] become final otherwise there will be no end to litigation. Interes rei publicae ut finis sit litium - the very object of which the courts were constituted was to put an end to controversies.[15] To fulfill this purpose and to do so speedily, certain time limits, more or less arbitrary, have to be set up to spur on the slothful.[16] The only instance where a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence,[17] which circumstances do not concur herein.

Petitioner was privy to the suit calling for the declaration of the intrinsic invalidity of the will, as she precisely appealed from an unfavorable order therefrom. Although the final and executory Order of January 30, 1986 wherein private respondents were declared as the only heirs do not bind those who are not parties thereto such as the alleged illegitimate son of the testator, the same constitutes res judicata with respect to those who were parties to the probate proceedings. Petitioner cannot again raise those matters anew for relitigation otherwise that would amount to forum-shopping. It should be remembered that forum shopping also occurs when the same issue had already been resolved adversely by some other court.[18] It is clear from the executory order that the estates of Alejandro and his spouse should be distributed according to the laws of intestate succession.

Petitioner posits that the January 30, 1986 Order is merely interlocutory, hence it can still be set aside by the trial court. In support thereof, petitioner argues that “an order merely declaring who are heirs and the shares to which set of heirs is entitled cannot be the basis of execution to require delivery of shares from one person to another particularly when no project of partition has been filed.”[19] The trial court declared in the January 30, 1986 Order that petitioner is not the legal wife of Alejandro, whose only heirs are his three legitimate children (petitioners herein), and at the same time it nullified the will. But it should be noted that in the same Order, the trial court also said that the estate of the late spouses be distributed according to the laws of intestacy. Accordingly, it has no option but to implement that order of intestate distribution and not to reopen and again re-examine the intrinsic provisions of the same will.

It can be clearly inferred from Article 960 of the Civil Code, on the law of successional rights that testacy is preferred to intestacy.[20] But before there could be testate distribution, the will must pass the scrutinizing test and safeguards provided by law considering that the deceased testator is no longer available to prove the voluntariness of his actions, aside from the fact that the transfer of the estate is usually onerous in nature and that no one is presumed to give - Nemo praesumitur donare.[21] No intestate distribution of the estate can be done until and unless the will had failed to pass both its extrinsic and intrinsic validity. If the will is extrinsically void, the rules of intestacy apply regardless of the intrinsic validity thereof. If it is extrinsically valid, the next test is to determine its intrinsic validity – that is whether the provisions of the will are valid according to the laws of succession. In this case, the court had ruled that the will of Alejandro was extrinsically valid but the intrinsic provisions thereof were void. Thus, the rules of intestacy apply as correctly held by the trial court.

Furthermore, Alejandro’s disposition in his will of the alleged share in the conjugal properties of his late spouse, whom he described as his “only beloved wife”, is not a valid reason to reverse a final and executory order. Testamentary dispositions of properties not belonging exclusively to the testator or properties which are part of

the conjugal regime cannot be given effect. Matters with respect to who owns the properties that were disposed of by Alejandro in the void will may still be properly ventilated and determined in the intestate proceedings for the settlement of his and that of his late spouse's estate.

Petitioner's motion for appointment as administratrix is rendered moot considering that she was not married to the late Alejandro and, therefore, is not an heir.

WHEREFORE, the petition is DENIED and the decision appealed from is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Annex "A" of Petition; Rollo, pp. 19-20.

[2] Court of Appeals resolution dated January 11, 1989 reads: "For failure of appellant to file brief within the extended period, the appeal interposed in this case is dismissed pursuant to Section 1(f), Rule 50 of the Rules of Court." (Rollo, p. 20).

[3] Mrs. Cresild Soliman and Zaldy Adalin.

[4] Manolo v. Paredes, 47 Phil. 938; In Re Estate of Johnson, 39 Phil. 156, cited in De la Cerna v. Rebaca-Potot, 12 SCRA 576.

[5] Lopez v. Gonzales, 10 SCRA 167; Mercado v. Santos, 66 Phil. 215; Manahan v. Manahan, 58 Phil. 448; Riera v. Palmanori, 40 Phil. 105; In re Estate of Johnson, 39 Phil. 156; Austria v. Ventinilla, 27 Phil. 180; Montaño v. Suesa, 14 Phil. 676; Chiong Joc-Soy v. Vaño, 8 Phil. 119.

[6] Mercado v. Paredes, 47 Phil. 938.

[7] Ajero v. CA, 236 SCRA 488; Acain v. CA, 155 SCRA 100; Pastor v. CA, 122 SCRA 85.

[8] Vda. de Kilayko v. Tengco, 207 SCRA 600.

[9] Section 1, Rule 75, Rules of Court; Nepomuceno v. CA, 139 SCRA 206; Cayetano v. Leonidas, 129 SCRA 522; Maning v. CA, 114 SCRA 478; Nuguid v. Nuguid, 17 SCRA 449.

[10] Mercado v. Santos, 66 Phil. 215.

[11] Articles 796-798 of the Civil Code.

[12] Estate of Hilario M. Ruiz v. CA, 252 SCRA 541; Maninang, et. al. v. CA, 114 SCRA 473; Coronado v. CA, 191 SCRA 814. See also Castañeda v. Alemany, 3 Phil. 426.

[13] Civil Code, Article 886. "Legitime is that part of the testators property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs." and Article 904 reads "The testator cannot deprive his compulsory heirs of their legitime, except in cases expressly specified by law. Neither can he impose upon the same any burden, encumbrance, condition, or substitution of any kind whatsoever." (emphases supplied).

[14] Dy Cay v. Crossfield and O'Brien, 38 Phil. 521.

[15] De la Cerna v. Rebaca-Potot, 12 SCRA 576 (1964).

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[16] Dy Cay v. Crossfield and O'Brien, 38 Phil. 521.

[17] Vda. De Alberto v. CA, 173 SCRA 436; Vda. de Kilayko v. Tengco, 207 SCRA 600.

[18] Gatmaytan v. CA, 267 SCRA 487; see also Golangco v. CA, 283 SCRA 493.

[19] Petition, p. 13; Rollo, p. 15 citing Quizon v. Castillo, 79 Phil. 9 (1947).

[20] Article 960, Civil Code provides in part: "Legal or intestate succession takes place:

> (1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;
>
> (2) When the will does not institute an heir to, or dispose of all property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;
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> x x x x x x x x x."

[21] Handbook on Legal Maxims, p. 67.

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