

**RICARDO C. SILVERIO, SR., PETITIONER, VS. COURT OF APPEALS,
SPECIAL SEVENTH DIVISION, HON. FRANCISCO X. VELEZ,
PRESIDING JUDGE, RTC, MAKATI, BRANCH 57, AND EDGARDO S.
SILVERIO, ...**

G.R. No. 109979. March 11, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] of the Court of Appeals (Special Seventh Division)[2] dated January 20, 1993 in CA GR SP No. 29038.

On October 7, 1987, Beatriz Silverio died without leaving any will in the Municipality of Makati, Metro Manila, she was survived by the legal heirs, namely:

NAMES

RELATION

1. Ricardo Silverio Husband
2. Edmundo Silverio Son
3. Edgardo Silverio Son
4. Ricardo Silverio, Jr. Son
5. Nelia Silverio Daughter
6. Ligaya S. dela Merced Daughter[3]

On November 12, 1990, or more than three (3) years from the death of the deceased, Edgardo Silverio filed a Petition for Letters of Administration with Branch 57, of the Regional Trial Court in Makati City. On November 28, 1990, he filed an Urgent Petition for Appointment of Special Administrator, alleging that during her marriage with Ricardo Silverio, the deceased acquired real and personal properties in the Philippines and outside the country, the character, identity and aggregate value of which are still undetermined and not known to petitioner except the personal properties estimated to be worth P1,000,000.00; that during the lifetime of the late Beatriz Silverio, the surviving spouse has not made any settlement, judicial or extrajudicial, of the properties of the deceased; that their surviving son, Ricardo Silverio, Jr., has taken control and management of the properties left by the deceased for his own benefit and advantage; that petitioner, one of the legal heirs of the deceased, is competent and willing to act as administrator.

On December 4, 1990, the respondent judge issued an Order to the following effect:

"WHEREFORE, notice is hereby given that said Petition is set for hearing on January 24, 1991 at 8:30 o'clock in the morning, at which date and time, all interested parties are hereby cited to appear and show cause if any they have, why said Petition should not be granted.

Let this Order be published at the expense of the Petitioner, once a week for three (3) consecutive weeks in a newspaper of general circulation, the publication of which is to be assigned to the newspaper chosen after the raffle conducted by the Executive Judge of this Court.

Likewise, let this Order and the Petition be posted at least two (2) weeks before hearing by the Branch Sheriff at petitioner's expense in the Bulletin Board of the Clerk of Court of Makati, Metro Manila, Municipal Building and Public Market of Makati, Metro Manila.

Let copies of this Order be sent by registered mail to all the surviving heirs of the late BEATRIZ SILVERIO mentioned above." [4]

On December 17, 1990, respondent Judge Francisco X. Velez of Branch 57, Regional Trial Court, Makati City, issued the following Order appointing Edgardo Silverio as Special Administrator:

"WHEREFORE, EDGARDO SILVERIO is hereby appointed as Special Administrator pending appointment of a Regular Administrator and the Branch Clerk of this Court is hereby commissioned to administer the oath of EDGARDO SILVERIO." [5]

On January 24, 1991, Ricardo Silverio, Sr. interposed his Opposition to the Petition for Letter of Administration.

On February 21, 1991, the private respondent testified on his behalf and was cross-examined on October 7, 1991.

The reception of evidence for petitioner was scheduled on October 25 and 28, 1991. However, on October 22, 1991, the petitioner filed an Urgent Motion to Transfer the Hearing to any day during the last week of November or first week of December 1991 because he had a settlement conference in the case against Land Use Development Corporation at Department 8 of the Superior Court of Contra Costa Country at 725, Court Street, Martinez, California, in Case No. C-105-025, entitled Silicor USA, Inc. vs. Kraft Developers, Incorporated, et al.

On October 28, 1991, the trial judge declared that the failure of petitioner to appear and adduce evidence on his behalf amounted to a waiver of his right to present evidence; ratiocinating, thus:

"When this case was called for hearing today, for the start of the reception of the evidence for the Oppositor, Ricardo Silverio, Sr., counsel for the said Oppositor instead invited the attention of this Court to this URGENT MOTION FOR TRANSFER OF HEARING dated October 21, 1991 and pointed out to this Court that the said motion was also intended to postpone the hearing set for today. For his part, petitioner's counsel thereupon reiterated his vehement objection to another postponement, pointing out that eventhough the said oppositor filed his OPPOSITION herein as early as January 1991, yet the said Oppositor never has appeared personally nor exerted any effort to prosecute his Opposition and has instead, employed all means to postpone or otherwise defer the reception of his evidence, even after the herein petitioner had been designated by this Court as Special Administrator (see our Order of December 17, 1990). Petitioner's counsel also pointed out that the opposing counsel is aware that he resides in Sydney, Australia and incurs substantial expenses everytime he comes to Philippines for the hearing of this case, and then only to be faced by a postponement sought each time by the oppositor's counsel.

This Court recalls the setting of this case on October 25 and 28, 1991 were fixed after the oppositor's counsel assured this Court that the oppositor would return from the United States for this purpose. Yet, again, we are now confronted with another effort of the oppositor to postpone the hearing of this case, despite the petitioner's own open court motion to consider the oppositor as having waived his right to adduce evidence in support of

his petition. Since there is no indication whatever that the oppositor is serious in his opposition, other than the assurances of his counsel which have all turned out to be false inasmuch as the oppositor has never appeared as promised since January of this year, thereby resulting in the undue delay bereft of any progress in this present case, the court, hereby resolves to consider the failure of the Oppositor Ricardo Silverio, Sr. to appear or present evidence in his behalf as a waiver of his right to present evidence in support of his opposition."[6]

On October 29, 1991, the respondent judge appointed the private respondent as regular administrator in an Order stating:

"WHEREFORE, EDGARDO SILVERIO is hereby appointed as regular ADMINISTRATOR of the Intestate Estate of the late Beatriz Silverio to serve with a P200,000.00 bond. He is hereby required to take possession and management of all the real and personal estate of the deceased and shall return to this Court a true inventory and appraisal of all the properties of the deceased which shall come into his possession and knowledge within three (3) months from date thereof."[7]

xxx xxx xxx"

On November 19, 1991, the Oppositor presented an Omnibus Motion to transfer the hearing set on June 4, 1992 on the ground that oppositor movant was preoccupied with a) post-election matters and b) preparation for his assumption of office as Congressman for the Third District of Bulacan, but the said motion was denied on June 4, 1992, respondent Judge ruling, as follows:

"In response thereto, the petitioner's counsel registered his vehement objections to the postponement, first upon the ground that the excuse given in the said motion is not a valid ground for the cancellation of hearing. Furthermore, according to petitioner's counsel, the hearing today was set as a result of a joint agreement of the contending counsels arrived in open Court during the last hearing on Feb. 5, 1991 and that said petitioner's counsel was not given ample time to react thereto because the said motion was filed only last June 1, 1992 and the said petitioner's counsel has not even received yet a copy thereof. Moreover, petitioner's counsel likewise recalled to the Court that he agreed to postpone his cross-examination of the Oppositor during the last hearing of this case upon the declared agreement for its resumption set for today. Lastly, petitioner's counsel complains that both the respondent and his counsel complains that both the respondent and his counsel are aware of the fact that petitioner's counsel is domiciled in Sydney, Australia and it has cost a lot of time, effort and money for the said petitioner's counsel to travel to the Philippines in order to be present in court today, and only to find out that both Oppositor and his counsel have not appeared. As correctly concluded by the petitioner's counsel, the Oppositor and his counsel have no legal ground to presume that their motion for transfer of hearing will be approved by this Court."[8]

So also, on August 17, 1992, the respondent judge denied the Motion for Reconsideration filed by the petitioner on June 29, 1992.

On September 23, 1992, Ricardo C. Silverio Sr. filed a Petition for Certiorari with Prayer for a Writ of Preliminary Injunction, Prohibition and/or Restraining Order with the Court of Appeals docketed as CA GR SP No. 29038, seeking to annul and set aside the following orders of the respondent judge, to wit:

- "a) Order dated December 17, 1990 appointing Private Respondent as Special Administrator;
- b) Order dated October 28, 1991;
- c) Order dated October 29, 1991 appointing Private Respondent as Regular Administrator;
- d) Order dated June 4, 1992;
- e) Order dated August 17, 1992."[9]

On January 20, 1993, the respondent court dismissed for lack of merit the petition for certiorari, pursuant to

Section 2(c), Rule 6 of the Revised Internal Rules of the Court of Appeals, ratiocinating thus:

"First of all, with respect to respondent Judge Benito of Branch 152, RTC of Makati, there is no showing that said respondent has acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction in Civil Case No. 11-9146. When private respondent filed the said civil case, he had been appointed as special administrator by respondent Judge Velez of Branch 57 of the same court in Sp. Proc. M-2629. x x x

Secondly, petitioner is estopped by laches from questioning the validity of the Order December 17, 1990 appointing private respondent as special administrator considering that he participated in the subsequent proceedings without assailing said order in due time.

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xxx. The petition failed to show that respondent Judge was whimsical or capricious in issuing said orders. It is evident from said orders that the herein petitioner has not been true to his assurance that he will be present the next hearing agreed upon by the parties. xxx

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The rule is clear and unequivocal. It does not provide that the surviving spouse takes precedence exclusive of and over all other heirs of the deceased in the appointment of the administrator. xxx"

Lastly, xxx If at all an error is committed by respondent Judge Velez, it is an error of judgment that is correctible only by appeal. Errors of judgment are not within the province of a special civil action for certiorari (Purefoods Corp. vs. NLRC, 171 SCRA 415) Petitioner made mention of an appeal brought by him to this Court but a verification from the Judicial Record Division does not show that an appeal from the orders appointing private respondent as regular administrator and denying petitioner's motion for reconsideration has been perfected. xxx"[10]

On April 27, 1993, respondent court denied the motion for reconsideration of its Decision dated February 8, 1993.

Undaunted, petitioner found his way to this Court via the present petition for review on certiorari, contending that:

I

RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONER WAS NOT DENIED DUE PROCESS OF LAW

II

RESPONDENT COURT ERRED IN ITS INTERPRETATION THAT SECTION 6, RULE 78[11] OF THE REVISED RULES OF COURT DOES NOT PROVIDE FOR AN ORDER OF PREFERENCE IN THE APPOINTMENT OF THE ADMINISTRATOR.

III

RESPONDENT COURT ERRED IN NOT RULING THAT PRIVATE RESPONDENT HAS NOT SATISFACTORILY ESTABLISHED BY AT LEAST AN IOTA OF PROOF THAT HE IS QUALIFIED AND COMPETENT TO ACT AS ADMINISTRATOR.[12]

On July 26, 1993, the private respondent sent in a Comment stating as follows:

"Another cognate reason that militates against the appointment of petitioner as administrator, is his utter failure to show that he is a fit and proper person to discharge the duties of an administrator. The conduct of the petitioner in relation to the management of the assets of the conjugal partnership between petitioner and the deceased spouse betrays his moral fitness to act as administrator of the intestate estate of the decedent. Petitioner was not only cheating on his wife by maintaining illicit relationship with another woman. He was also at the same time systematically stripping assets of their conjugal partnership then under his administration.

During the period covering June 1965, June 1971 and February 1974 the petitioner acting in his capacity as administrator/trustee of the conjugal partnership between him and his wife Beatriz S. Silverio, and using funds of said conjugal partnership, purchased three (3) properties situated at North Forbes, Makati, Metro Manila, Old Forbes, Makati, Metro Manila, and Bel Air Makati, Metro Manila. In breach of his fiduciary duty as administrator of the said conjugal partnership, and without the knowledge and consent of his wife Beatriz, petitioner fraudulently and surreptitiously caused the said properties to be registered in the names of three (3) illegitimate children with his mistress Carmen Zuniga, in order to place said properties beyond the reach of his lawful wife Beatriz Silverio.

To deprive further his legitimate wife of her lawful share in the conjugal assets, petitioner removed assets of the conjugal partnership from the Philippines and invested them in California, U.S.A. under his name and/or corporation, to the exclusion of his legal wife. Thus, having stripped the conjugal partnership of assets, no reasonable mind can perceive the petitioner, as administrator, bringing suit against himself for the recovery of those assets of the conjugal partnership, which he had fraudulently removed and concealed for his own benefit and advantage.

In the meantime, private respondent, as administrator, had already succeeded in identifying four (4) valuable real properties belonging to the conjugal partnership of petitioner and the deceased Beatriz S. Silverio. Suits have been commenced for the recovery of said properties from the present registered owners holding the same for petitioner. xxx Amended Complaint filed by the private respondent as administrator of the intestate estate of the late Beatriz S. Silverio against petitioner Ricardo C. Silverio, Sr. and his alter ego Pilipinas Development Corporation, docketed as Civil Case No. 91-1146, RTC Makati. xxx Amended Complaint-in-intervention filed by the private respondent, herein, as administrator, against petitioner Ricardo C. Silverio Sr. and his three (3) illegitimate children with Carmen Zuniga, docketed as Civil Case No. 17467, RTC Makati, for the recovery of three (3) valuable real properties placed by petitioner in the names of his illegitimate children.

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Aside from the conflict of interest, the moral reputation and integrity of the petitioner is dubious - if not totally wanting, as evidenced by the news item in the Philippine Daily Inquirer last April 23, 1991, which reported that the Supreme Court upheld 'action taken by a Cebu Judge to cancel the bailbond of businessman Ricardo C. Silverio, Sr., who had allegedly delayed the resolution of tax evasion charges filed against him.' xxx

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In sheer desperation to oust private respondent as administrator of the intestate estate of the late Beatriz S. Silverio, petitioner's counsel, with a measure of haughtiness unworthy of his professional calling, embarked in character assassination by wilfully (sic) and unlawfully labeling the private respondent, as a greedy and avaricious person, and fabricating an alleged unholy alliance among the private respondent, Biomega Corporation, and creditor of petitioners and Delta Motor Corporation. Petitioner meticulously alleges that respondent through Biomega Corporation with offices at No. 384 E. Rodriguez Avenue, Cubao Quezon City, offered their services to collect whatever claims Toyota Motor Corporation has with Delta Motor Corporation and advised Toyota Motor Corporation that they had definite information concerning assets pertaining to Delta Motor Corporation and the petitioner, both in the Philippines and overseas that are held in the names of third parties.'

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In resorting to character assassination, the motive of petitioner is highly suspicious. Firstly, private respondent was never a subscriber, director or officer of any entity known as Biomega Corporation; secondly, verification with the Securities and Exchange Commission discloses that Biomega Corporation is non-existent; thirdly, it is unthinkable that a letter supposedly addressed to a certain Masao Mitake, President of Toyota Motor Philippines, Inc. would be sent to Atty. Marcelo P. Villanueva; and lastly, the interest of Delta Motor Corporation is totally separate and distinct from that of the intestate estate of the late Beatriz S. Silverio, so

much so that even granting for argument's sake that private respondent proposes to act in behalf of the Toyota Motor Corporation to recover its claims against Delta Motor Corporation, such actuation has no bearing or relevance to the administration of the intestate estate of the late Beatriz S. Silverio. xxx"[13]

On August 18, 1993, Ricardo C. Silverio, Sr. filed a Reply alleging, among others:

"Private respondent attached in his Comment a new clipping from the Philippine Daily Inquirer dated April 23, 1991 xxx wherein it was reported that 'In a decision the tribunal upheld the action taken by a Cebu Judge to cancel the bail bond of businessman Ricardo Silverio, Sr. who had allegedly delayed the resolution of the tax evasion charges filed against him during the Marcos regime due to frequent trips abroad'. Private respondent has been capitalizing on this alleged 'tax evasion charges'. The case referred to is Crim. Case No. CBU-6304 entitled 'People of the Phils. vs. Ricardo C. Silverio, Sr. et. al.' for violation of Securities Act and not for tax evasion. Petitioner in the said case was charged together with some officers of Philippine Underwriters and Finance Corporation in his capacity as Chairman of the Board of the defunct financing company. The case is still pending in the sala of Judge Ramon Gaviola of Cebu where Petitioner herein has filed a Demurrer to the Evidence. Petitioner has since then been given clearance to travel.

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Private Respondent does not have the business acumen that his stepfather has. It is of public knowledge that Petitioner has built a business empire from car assembly to appliance manufacturing, banking and finance to shipping and mining and real estate.

Private respondent endeavored to show conflict of interest which are merely gratuitous allegations.

x x x."[14]

On September 7, 1993, the petitioner presented a Supplemental Reply to the Comment Attached thereto was the Information in Criminal Case No. CBU-6304, entitled: "People of the Philippines vs. Ricardo Silverio, Sr., Hermilo Rodis, Sr., Edgar Quinto, Ruben Rodis, Jose A.M. Flores and Douglas San Diego, "For Violation of Section 20(4) of the Revised Securities Act."

In his Rejoinder dated October 13, 1993, private respondent asserted that:

In the instant case, petitioner gratuitously concludes that he can no longer avail of the remedy provided for by Section 2, Rule 82 of the Rules of Court 'because the appeal had been perfected and respondent Judge has lost jurisdiction over the case.'

With respect, it is submitted that such conclusion is unwarranted and completely erroneous. The mere perfection of an appeal from an Order appointing a regular administrator does not deprive the intestate court of jurisdiction to entertain application for removal of an administrator pursuant to Section 2, Rule 82 of the Rules of Court. An appeal from said Order does not stay the implementation thereof, especially where administrator appointed has taken his oath and commenced to discharge the duties of his office as such. Hence, the original record of the case remains with the intestate court, so that the intestate court may deal with other matters related to the administration of the estate of the deceased.

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In any event, there is nothing on record to show that petitioner was indeed preoccupied with his alleged legal struggle in the U.S. over the administration of the estate of the deceased in the United States. Besides, the existence of any legal contest between petitioner and his son, Ricardo S. Silverio, Jr. in the United States, is not a legal impediment to the filing of the proper petition for letters of administration over the estate of the deceased spouse in the proper courts of the Philippines.

Anent the allegation that private respondent has not presented up to now any evidence that petitioner was not only cheating on his wife by maintaining illicit marital relationship with another woman, and systematically

stripping assets of their conjugal partnership then under administration, the Court may please take judicial notice that in Civil Case No. 17467 of the Regional Trial Court of Makati, Metro Manila entitled `Edgardo S. Silverio, as special administrator of the intestate estate of the late BEATRIZ S. SILVERIO vs. Maria Rowena Z. Silverio-De Los Reyes, Ricardo C. Silverio, Sr., et al., petitioner candidly admitted that during the lifetime of his legal wife Beatriz Silverio, he was cohabiting with a certain Carmen Zuniga with whom he has three (3) children namely, Maria Rowena Z. Silverio, Maria Roxanne Z. Silverio, and Ricardo Z. Silverio III. Petitioner also admitted in said civil case that he purchased three (3) valuable real properties in Cambridge Circle, North Forbes, Intsia Street, Old Forbes, and Taurus Street, Bel Air, all in Makati, Metro Manila, and placed said properties in the names of his three (3) illegitimate children.

xxx Be that as it may, is (sic) a person charged of violation of the Securities Act morally forthright and honest? The Court may please take judicial notice that many investors of Philfinance, Inc., a corporation of which petitioner is either a stockholders, (sic) directors, (sic) and/or officers, (sic) lost their lifesavings as a result of serious breach of the Securities Act by the officer of said corporation.

xxx But this imaginary business acumen of the petitioner is not enough to warrant his appointment as administrator of the estate of his deceased spouse, for it is also of public knowledge that petitioner built his business empire during the time his crony, Ferdinand Marcos, was President of the Philippines. As well, it is also of public knowledge that petitioner succeeded in managing his companies into bankruptcy, so much so that none of the alleged businesses built by petitioner is presently operating.

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More significantly, the private respondent has demonstrated his competence and fitness as administrator of the intestate estate of the late Beatriz Silverio. Just recently, the private respondent has obtained a judgment in Civil Case No. 17467 of the Regional Trial Court of Makati, Metro Manila, entitled "Edgardo S. Silverio etc. vs. Ricardo C. Silverio, Sr., et al.," whereby the defendants were ordered to reconvey the three (3) real properties placed by petitioner in the names of his illegitimate children to the conjugal partnership of petitioner and the late Beatriz S. Silverio. Petitioner received a copy of said decision, through the counsel, on 31 August, 1993, and no appeal has been taken therefrom by petitioner notwithstanding the lapse of the period for perfecting an appeal. xxx

xxx there are indications that the letters addressed to Mr. Masao Mitake and Toyota Motor Corporation, Tokyo, Japan, are fabricated, particularly the transmission thereof to petitioners counsel. The Honorable Court may please take note that it takes the fastest facsimile machine (GROUP III) at least one (1) minute to transmit one (1) page of a document. Yet, as indicated in the notation on each of the letters allegedly received by petitioner's counsel, each letter bears the notation `10/03/91 at 14.24' indicating that all the three letters were sent at 14:25 or 2:25 pm which is physically impossible.[15]"

On November 4, 1993, the petitioner filed a Respectful Manifestation as regards the order of acquittal in Crim. Case No. CBU-6304 for violation of the Securities Act and not for tax evasion issued by Hon. Judge Benigno Gaviola of Branch 9, Regional Trial Court, Cebu City.[16]

On June 28, 1996, petitioner filed a Respectful Urgent Manifestation and Motion for the Issuance of a Temporary Restraining Order and/or Early Resolution, alleging:

"4. That on April 22, 1996, Petitioner received through the undersigned counsel a "Petition To Allow Claim Against the Estate and For Annotation of Attorney's Lien filed by Atty. Cesar P. Uy, counsel of Private Respondent Edgardo S. Silverio. In this Petition, Counsel of Private Respondent Edgardo S. Silverio claims that he is entitled to Thirty three and one-third (33 1/3%) percent of the fair market value of the properties he allegedly recovered for the estate of Beatriz S. Silverio as Intervenor in Civil Case No. 17467 of the Regional Trial Court, Makati, Branch 143 as his attorney's fees as counsel of the "Administrator" Edgardo S. Silverio. Atty. Uy estimated that the said properties have a total value of P450,000,000.00, more or less. Not only did

Atty. Uy claim that Edgardo S. Silverio is the "Administrator" but he also peremptorily changed the caption of the case in Branch 57, RTC, Makati from "Edgardo S. Silverio, Petitioner" to "Edgardo S. Silverio, Administrator". xxx

xxx It is the respectful submission of the Petitioner herein Respondent Judge Francisco X. Velez, whose Orders are being subject of review should wait for the Decision/Resolution of this Honorable Supreme Court. xxx

xxx xxx xxx

8. xxx despite Petitioner's plea that Respondent Judge should wait for the resolution/decision of this Honorable Supreme Court as a matter of judicial courtesy and respect to this Honorable Supreme Court and not to pre-empt the decision that might be rendered by this Honorable Supreme Court in the above-entitled case, Respondent Judge appears to have shown undue interest in the case, bias and partiality towards Private Respondent Edgardo S. Silverio and his counsel Atty. Cesar P. Uy.

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10. That on the same date, June 21, 1996, Petitioner herein filed a "Motion To Inhibit" addressed to Respondent Judge for him to voluntarily inhibit himself from hearing the "PETITION TO ALLOW CLAIM AGAINST THE ESTATE AND FOR ANNOTATION OF ATTORNEY'S LIEN" and for presiding in the SUBSEQUENT HEARINGS for the settlement of the INTESTATE ESTATE OF THE LATE BEATRIZ S. SILVERIO and that the case before Respondent Judge be re-raffled for assignment to another branch of the Regional Trial Court, Makati City, in order to avoid any suspicion of bias, partiality and/or prejudice and in the interest of substantial justice. xxx"[17]

On July 10, 1996, Edgardo S. Silverio filed his Comment on the said motion for the issuance of a temporary restraining order, theorizing that the relief sought by the petitioner should be threshed out in a separate proceeding instead of cluttering the records of this case. He added that according to Section 1(e), Rule 109 of the Revised Rules of Court which provides that "no appeal shall be allowed from the appointment of a special administrator", the Order appointing a special administrator of a decedent could not be stayed by a special civil action of certiorari, considering that such order is usually issued as dictated by the urgent need of an administrator to preserve the estate of the deceased person.

Anent Petitioner's Motion for Inhibition, private respondent placing reliance on Sections 4 and 5 of Rule 15 of the Revised Rules of Court and Philippine Virginia Tobacco Administration vs. De los Angeles, G.R. No. 27829, August 19, 1988, and Sembrano vs. Ramirez, G.R. No. L-45447, September 28, 1988, maintains that the same must be denied since it did not contain a notice of hearing and was addressed to the Branch Clerk of Court and not to the parties.

The allegation of bias or partiality without a recitation of facts constituting the alleged bias or partiality is insufficient to disqualify a judge or deny him the authority to proceed with the case and it carries with it the insidious insinuation of malice on the part of the respondent judge, highly offensive, disparaging, and clear insult to the judicial officer without justifiable cause.

Meanwhile, on July 17, 1996, Edmundo S. Silverio, one of the heirs, presented a Manifestation and Motion, contesting the appointment of Edgardo S. Silverio as regular administrator without his knowledge and consent and questioning why publication was resorted to instead of personal notice for him to timely object to the said appointment.

On August 19, 1996, Ricardo C. Silverio filed a Supplemental to Respectful Urgent Manifestation and Motion for the Issuance of the Temporary Restraining Order and/or Early Resolution, which is the subject of the Order of the

respondent judge, dated July 31, 1996, which reads:

"Accordingly, the Court hereby:

(1) approves the Agreement for Attorney's Contingent Fee and allows the herein movant the corresponding claim against the estate of the deceased Beatriz S. Silverio equivalent to 33 1/3 percent of the fair market value of all the properties recovered by the said petitioner's counsel including the properties recovered in CV 17467 which originated from Br. 143 of the Regional Trial Court of Makati;

(2) directs the Register of Deeds of Makati City to annotate forthwith in the proper books of his office and in the original copies of TCT Nos. (147129) 137156, (436570) 137155 and (36986) 337033 or any other transfer certificate of titles issued in lieu thereof the movant's claim of attorney's fees equivalent to 33 1/3 percent of all recovery for the estate of the late Beatriz S. Silverio; and

(3) authorizing and ordering the Administrator to sell any and/or all of the aforesaid real properties for such amount or amounts approximating their fair market value and to pay out from the proceeds of such sale the corresponding attorney's fees of petitioner's counsel Atty. Cesar P. Uy equivalent to 33 1/3 percent of the fair market value of the aforementioned three properties recovered by said petitioner's counsel for the benefit of the intestate estate of Beatriz S. Silverio."[18]

On October 10, 1996, Ricardo C. Silverio filed a Reply alleging that:

"In the aforesaid Order dated July 31, 1996, respondent Judge Francisco X. Velez approved the Agreement for Attorney's Contingent Fee which was allegedly entered into by Atty. Cesar P. Uy with private respondent on January 21, 1991 for his approval. This alleged agreement was not previously submitted to respondent Judge immediately after January 21, 1991 for his approval. Neither were the heirs specially the petitioner herein informed of the unconscionable agreement which will give to Atty. Cesar P. Uy 33 1/3 percent of the estate to the prejudice of the heirs. For the subject properties, which according to Atty. Cesar P. Uy is estimated to have a fair market value of P450,000,000.00, the latter claims that he is entitled to 33 1/3 percent or P150,000,000.00, much bigger than the share of the petitioner who is a partner in the conjugal properties and an heir expects to get. xxx

Even assuming arguendo that the appointment of Edgardo Silverio as a special administrator was valid and that his act of retaining Atty. Cesar P. Uy as counsel for the subject estate of a contingent fee of 33-1/3 % of any recovery was also valid, the Order of July 31, 1996 nevertheless erred in awarding to Atty. Cesar P. Uy a 33-1/3 % interest in the three Makati real properties. The reason is that Atty. Uy was retained only as a counsel for the subject estate and not for herein petitioner.

Petitioner herein was already represented by the law firm of Quisumbing Torres and Evangelista in Civil case No. 17467 where the three Makati properties were recovered. The said law firm was also representing the original plaintiff Nelia Silverio Dee. Nelia Silverio Dee who was the first to prosecute the cause of action to declare the defendants holding title to the Makati properties in trust for the conjugal partnership, and for reconveyance thereof to the conjugal partnership. xxx

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Respondent Judge has no power to authorize the private respondent Edgardo S. Silverio to sell the conjugal partnership properties and even real properties of the estate to pay the attorney's fees of Atty. Cesar P. Uy. The Special Administrator may only sell properties which are not perishable and personal properties not real properties in pursuance of his responsibility to preserve the estate and it is for the best interest of the estate.

A special administrator may be allowed to sell the properties of the estate if the purpose is to preserve the properties and its value but not payment of debts. (Public Administrator vs. Burdell, 4 Brad, Surr. (N.Y.) 252). The order of respondent judge authorizing private respondent to sell the subject properties of any portion thereof to pay to pay (sic) alleged attorney's fees of Atty. Cesar P. Uy in the estimated amount of

P150,000,000.00 is definitely a grave abuse of judicial discretion amounting to lack of jurisdiction. This is not preservation but dissipation of the estate.

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The properties which form part of the conjugal assets and the estate were accumulated through the efforts of petitioner and private respondent must not be allowed to dilute the same to his advantage and to the detriment of the other heirs and therefore must be stopped. The interest of the private respondent in the estate is only 1/8 as against petitioner herein and the other heirs supporting petitioner which is 7/8. Respondent Judge did not consider these facts in all his actuations.

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xxx and that the motion is not a contentious and litigious pleading.[19]

The petition is devoid of merit.

To begin with, petitioner contends that he was denied due process of law when the respondent judge considered his failure to be present on October 28 and 29, 1991 and adduce evidence on his behalf as a waiver of his right.

After a careful study, the Court is of the view, and so holds, that contrary to petitioner's contention, the respondent judge did not err in so ruling, as it is evident from the Decision of the respondent court that the petitioner was not sincere in his own motion made in open court to attend the scheduled hearings for the reception of evidence.

Well settled to the point of being elementary is the doctrine that the findings by the trial courts are binding on appellate courts and will not be disturbed on appeal. After a thorough review and examination of the evidence on hand, we discern no ground or basis for disregarding the findings and conclusion arrived at by the respondent judge.

"xxx

"Factual findings of the trial court shall not be disturbed on appeal unless the trial court has overlooked or ignored some fact or circumstance of sufficient weight or significance which if considered, would alter the situation. xxx" (The Heirs of Felicidad Canque, et al. v. Court of Appeals, et al., 275 SCRA 741)

"xxx applicable here, is the hornbook precept that factual findings of the trial court, specially when affirmed by the Court of Appeals, are deemed final and conclusive by this Court when supported by substantial evidence." (Ugddan v. Court of Appeals, et al., 275 SCRA 35) xxx

"Factual findings of the Court of Appeals are final and may not be reviewed on appeal by the Supreme Court except when the lower court and the Court of Appeals arrived at diverse factual findings." (Yobido, et al. v. Court of Appeals, et al., 281 SCRA 1)

"xxx Where the factual findings of both the trial court and the Court of Appeals coincide, the same are binding on the Supreme Court. xxx" (National Steel Corporation v. Court of Appeals, et al., 283 SCRA 45)

With respect to the contention that petitioner was denied due process, the same is also untenable, it appearing from the records of the case that petitioner was amply given the opportunity to present his evidence, which he, however, waived. In a long line of decisions, this Court ruled that:

xxx

"The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense." (Salonga v. Court of Appeals, 269 SCRA 534; PMI Colleges v. National Labor Relations Commission, 277 SCRA 462)

"What is repugnant to due process is the denial of the opportunity to be heard." (Garment and Textile Export

Board v. Court of Appeals, 268 SCRA 258)

"There is no denial of due process where a party was given an opportunity to be heard." (Gutierrez v. Commission on Elections, 270 SCRA 413)

"The essence of due process is simply an opportunity to be heard and not that an actual hearing should always and indispensably be held." (Conti v. National Labor Relations Commission, 271 SCRA 114)

"The essence of due process is simply an opportunity to be heard." Ysmael v. Court of Appeals, 273 SCRA 165 and Carvajal v. Court of Appeals, 280 SCRA 351)

"A formal type or trial-type hearing is not at all times and in all instances essential to due process the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of controversy." (Taberrah v. National Labor Relations Commission, 276 SCRA 431)

"For as long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met." (Bangalisan v. Court of Appeals, 276 SCRA 619)

"As long as the party was given an opportunity to defend her interests in due course, she cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process." (Legarda v. Court of Appeals, 280 SCRA 642)

Anent the issue concerning the interpretation of Section 6, Rule 78 of the Revised Rules of Court, we are of the view, and so hold, that the order of preference in the appointment of an administrator depends on the attendant facts and circumstances. In the case under consideration, the appointment of Edgardo S. Silverio as administrator is proper.

Although in the case of Inestate Estate of the deceased Geronima Uy Coque. Juan Navas L. Sioca vs. Jose Garcia, 44 Phil 711 [1923], this Court held that:

"A probate court cannot arbitrarily disregard the preferential rights of the surviving spouse to the administration of the estate of a deceased person; but if the person enjoying such preferential rights is unsuitable the court may appoint another person."

In the same case, the court disregarded the order of preference ratiocinating, thus:

xxx "The determination of a person's suitability for the office of administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and such judgment will not be interfered with on appeal unless it appears affirmatively that the court below was an error."

xxx "Unsuitableness for appointment as administrator may consist in adverse interest of some kind or hostility to those immediately interested in the estate." xxx

In the case of Esler vs. Tad-y, 46 Phil 854, this Court answered in the affirmative the query whether the probate court, in the exercise of its discretion, may disregard the order of preference to the administration, set forth in the Rules of Court.

"The deceased left a widow and a minor child. A person named as executor in a will which was not probated because not executed according to law was appointed administrator. the widow appealed on the ground that such administrator should not have been appointed without her consent. HELD: If the administrator was appointed by the trial court for the estate in accordance with Rule 79, section 6 of the Rules of Court, the trial court had discretion to issue the letters of administration to any of the persons mentioned in said section, and unless there has been an abuse of discretion, which does not appear to have been committed in the present case, appointment shall not be revoked on appeal." [20]

So, also, in the case of *Villamor vs. Court of Appeals*, 162 SCRA 578, 579, this Court held that:

"We do not consider as 'intriguing' the observation of the lower court and concurred in by the Court of Appeals that in both Special Proceedings in question, the administrators appointed were complete strangers to the decedents. There is nothing repulsive in this nor is this an indicium of fraud and collusion as found by the courts. Section 642 of the Code of Civil Procedure enumerates the persons who can act as executors and administrators. It provides that in case the persons who have the preferential right to be appointed are not competent or are unwilling to serve, administration may be granted to such other person as the court may appoint."

And in the case of *En el intestado del finado BERNABE BUSTAMANTE, RUFINA AREVALO contra JOSE BUSTAMANTE, ET AL.*, 69 Phil 656, [1940], the Court said:

"No es ciertamente destitucion la que le hizo cesar en el cargo al apelante, porque destitucion supone siempre correccion o castigo, sino revocacion de la orden en virtud de la cual fue nombrado Administrador judicial, por causa de incapacidad. Es que en esta jurisdiccion, como ya se ha resuelto, el tener interes adverso a los de una Testamentaria o un Intestado, o a los de aquellos que estan interesados en ellos, es motivo suficiente de incapacidad para ser nombrado Administrador judicial de cualquiera de los mismos. xxx"

"The appointment of a special administrator in a probate case lies in the sound discretion of the court, and he may be removed without reference to section 653 of the Code of Civil Procedure." (*De Gala v. Gonzales and Ona*, 53 Phil 104 [1929])

We discern no ground to disregard the finding of the respondent judge and the respondent court on the competence of the decedent's son, Edgardo S. Silverio, to act as administrator, his appointment as special, and later, as the regular administrator is sanctioned by law.

Petitioner's Respectful Urgent Manifestation and Motion for the Issuance of a Temporary Restraining Order and/or Early Resolution on the Petition to Allow Claim against the Estate and for the Annotation of Attorney's Lien filed by counsel for private respondent, which was favorably acted upon by the respondent court, is impressed with merit. The respondent court is not vested with the power to order the special administrator to sell real properties of the estate pending determination of the validity of the regular administrator's appointment pursuant to Section 2, Rule 80 of the Revised Rules of Court, which provides:

"Powers and duties of special administrator. Such special administrator shall take possession and charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintains suits as administrator. He may sell only such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debt of the deceased unless so ordered by the court."

In the case of *Testamentary Proceedings, Estate of the Deceased Juan Pimentel. Tecla Arganda v. Velez et al.*, Vol. XXXV, No. 134 O.G. 2429, the Court found that:

"Under the title 'Sale of Estate' in Chapter XXXVI of the Code of Civil Procedure, and the provisions which it comprises, from Section 714 to 724, the Court treats of and designates the powers of the Court of First Instance in testamentary and intestate proceedings, in connection with the sale of property belonging to the Estate. By virtue of the authority conferred by sections 714 to 724, the court may grant permission or authority for the sale of said property upon previous petition of the executor or administrator, provided the legal requirements are complied with, and the grounds required by the law in each case provided for in the above-mentioned sections are shown. The executor or administrator must comply with the rules established by section 722 of the Code. Of course in exercising its powers, when the court is convinced that a sufficient valid reason exists, it may order the executor or administrator to request permission or authority to sell property; but it cannot

directly order its sale, because that would be neglecting to comply with the rules which must be observed before granting the said permission or authority. Section 722 requires that satisfactory proof be adduced and that the rules established in the first paragraph be complied with, before granting the permission or authority to the executor or administrator. (Baun v. Heirs of Baun, 53 Phil., 654)

With the exception of the case provided for in section 717 regarding the sale of the entire personalty or part thereof for the purpose of preserving the other property of the deceased, and of that provided for in section 720 with reference to the sale of realty acquired by the executor or administrator by virtue of the execution of a judgment or the foreclosure of a mortgage the legal provisions above referred to, only recognize as a ground for the court to authorize the sale of the estate of a deceased person subject to administration, the application of its proceeds to the payment of the debts or expenses of administration or the settlement of any legacy (secs. 714, 715, 716, 717, 718, 719 and 721)."

As a rule and as a matter of courtesy and respect, the respondent court has to wait for the Decision of this Court before ruling on the matter of the claim for agreed contingent attorney's fees by Atty. Cesar P. Uy, amounting to thirty three and one third (33 1/3 %) per cent of the fair market value of the recovered properties. However, the issue has become moot and academic in light of the finding by this Court that Edgardo Silverio has been duly appointed as regular administrator.

As regards the Motion to Inhibit the respondent judge, respondent Judge Francisco X. Velez may voluntarily inhibit himself pursuant to Section 1(2), Rule 137 of the Revised Rules of Court[21] and in line with the following ruling of this court:

"xxx no judge should not handle a case which he might be perceived, rightly or wrongly, to be susceptible to bias and partiality. His judgment must not be tainted by even the slightest suspicion of improbity or preconceived interest. The rule is aimed at preserving at all times the faith and confidence in courts of justice by any party to the litigation. xxx" (Urbanes, Jr., v. Court of Appeals, 236 SCRA 72, 77)

However, this is not the attendant circumstance in this case. Petitioner's mere allegation of partiality and bias without the supporting facts is insufficient for the respondent judge to be required to decline from presiding over the subsequent proceedings. We are of the view that it does not constitute " just and valid reason."

WHEREFORE, the petition is partly granted and the Decision of the Court of Appeals AFFIRMED except the Order of Judge Francisco X. Velez, dated July 31, 1996, approving the Petition to Allow Claim for the Estate and for Annotation of Attorney's Lien which is SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 202-210.

[2]J. Ma. Alicia Austria-Martinez as ponente and JJ. Nathanael P. De Pano, Jr. and Nicholas P. Lapena, Jr., as members.

[3] Order, Sp. Proc. No. M-2629, p. 1, Rollo, p. 546.

[4] Rollo, p. 83.

[5] Annex A, Petition for Ceritiorari, Order, SP, PROC. M-2629, Rollo, p. 59.

[6]Annex B, Petition for Certiorari, rollo, p. 60-61.

[7] Annex C, Petition for Certiorari, Rollo, p. 62.

[8] Annex D, Petition for Certiorari, Rollo, p. 63

[9] Petition for Certiorari, p. 2; Rollo p. 34.

[10] Rollo, pp. 204, 208, 209.

[11] When and to whom letters of administration granted. - If no executor is named in a will, or the executor or executors are incompetent, refuse the trust, or fail to give a bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case maybe, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or the widow, or next of kin neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select..

[12] Petition, p. 8, Rollo, 9.

[13] Private respondent's Comment, pp. 15, 16, 17, 18, Rollo, pp. 257, 258, 259, 260.

[14] Petitioner's Reply to Comment, p. 13, Rollo, p. 305-306.

[15] Private respondent Rejoinder, pp. 11, 13, 14-15, 16, 17, Rollo, pp. 331, 333, 334, 335, 336, 337.

[16] Rollo, 353.

[17] Rollo, pp. 445, 446, 448.

[18] SP. Proc. M-2629, Order dated July 31, 1996, p. 2, Rollo, p. 506.

[19] Rollo, pp. 511, 512, 513, 514, 515.

[20] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, vol. III, p. 646.

[21] xxx A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above (see first paragraph).

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