

**MIGUEL FLORENDO, CELEDONIO FLORENDO, TRINIDAD FLORENDO,
ESPERANZA F. VDA. DE ITCHON, AND FELIX VERZOSA,
PETITIONERS, VS. COURT OF FIRST INSTANCE OF ILOCOS SUR AND
JUAN S. FLOREN...**

G. R. No. 11353. September 30, 1958

Ponente: REYES, A., J.

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REYES, A., J.:

On August 17, 1955, the now respondent Juan S. Florentino filed a petition in the Court of First Instance of Ilocos Sur for the probate of the will of Concepcion Ontanon and for his appointment as administrator of her estate. The petition alleged that the testatrix died on the 8th of that same month, leaving properties worth not less than P37,450.00; that she was survived by no forced heirs; and that, according to information, her nearest relatives were Miguel, Celedonio, Trinidad and Esperanza, all surnamed Florendo.

Probate of the will was opposed by several sets of alleged relatives, who, on the basis of their respective claims, may be grouped into two categories: third degree relatives (alleged nephews and nieces of the testatrix) and fourth degree relatives (her alleged first cousins). However, at the instance of the proponent of the will, the court ordered the opposition of the first cousins discarded on the theory that, in case of intestacy and absence of forced heirs, the nearest relatives exclude the more distant ones and that, as held in *Paras vs. Narciso* (39 Phil. 244), "strangers should not be permitted, over the objections of the real parties in interest, to embarrass the proceedings by meddling or intruding themselves in matters with which they have no concern."

Reconsideration of this order was asked by the Florendos, four of the alleged first cousins, on the ground that though their relationship to the testatrix was more remote than that of her alleged nephews and nieces, the latter were, on the other hand, illegitimate relatives and hence not entitled to inherit from her. But the court, after hearing evidence, found no reason to alter its ruling and resolved to maintain the order sought to be reconsidered.

Some five months after this resolution, the Florendos, now joined by Felix Verzosa, another alleged first cousin of the deceased, filed a second motion for reconsideration. At first, the court, at that time already presided by another judge, resolved "to give the movants opportunity to present their evidence in support of their motion"; but it later desisted from doing so upon becoming aware that the order whose reconsideration was being sought for the second time and which had already become final, "was not interlocutory hut a final order in so far as they (the movants) were concerned because it effectively excluded them from participating in the proceedings (*Angel Ortiz vs. Grant Trent*, 13 Phil. 131)" and no appeal was taken therefrom within the reglementary period. The court, therefore, rejected the second motion for reconsideration by reaffirming the order sought to be reconsidered.

Two months after the denial of their second motion for reconsideration, the Florendos, later joined by Felix Verzosa, came to this Court with the present petition for certiorari and mandamus, asking that the order discarding their opposition to the probate of the will and whose reconsideration had already been denied twice be set aside and the lower court compelled to allow them to prosecute the said opposition.

Answering the petition, the respondents called attention to the fact that the order complained of had long become final and could, for that reason, no longer be disturbed.

The petition must, in our opinion, be denied. As pointed out by the learned trial judge, the order discarding petitioners' opposition to the probate of the will was a final one in so far as they were concerned and, therefore, appealable. This view is in accord with the opinion of this Court in the above-cited case of *Angel Ortiz vs. Grant Trent*. (See, also, section 1[e] of Rule 105.) Petitioners could, therefore, have appealed the order to cure any defect or infirmity therein. But they neglected to do so and allowed the order to become final. Having thus lost their remedy by appeal due to their own neglect, they cannot now seek redress by certiorari and mandamus, it not appearing that the lower court has acted without jurisdiction. (*Profeta et al. vs. Gutierrez David et al.*, 71 Phil, 582.) Certiorari and mandamus will not lie as a substitute for an appeal. Especially would this be true where, as in the present case, the factual basis of the order complained of is challenged so that there is need of going into the sufficiency of the evidence presented.

Wherefore, the petition for certiorari and mandamus is denied, with costs against the petitioners.

Paras C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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