

CESAR MERCADER, PETITIONER, VS. ADOLPH WISLIZENUS, JUDGE OF THE TWENTIETH JUDICIAL DISTRICT, RESPONDENT.*G.R. No. 11739. August 25, 1916*

Ponente: MORELAND, J.

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This is a proceeding in this court to obtain a writ of certiorari directed to the Court of First Instance of the Twentieth Judicial District requiring it to send up the record in a proceeding taken to declare Vicenta Escio a lunatic and incompetent to manage her affairs, and for the appointment of a guardian of her person and property, and, in case such proceeding or any portion thereof is found by this court to have been taken outside or in excess of the jurisdiction of the court, to vacate and annul the same.

It is alleged in the complaint that proceedings were duly commenced in the Court of First Instance of the Twentieth Judicial District to declare Vicenta Escio a lunatic and incompetent to manage her affairs and to appoint a guardian of her property. After the hearing and investigation required by the Code of Civil Procedure the court found the respondent to be a lunatic and incompetent to manage her business and affairs and appointed Pantaleon E. del Rosario guardian of her property. An appeal from the order of incompetency and appointment of a guardian was duly taken to this court by those opposing the proceedings. While the appeal was in progress and still pending the guardian named made an application to the Court of First Instance under section 573 of the Code of Civil Procedure in which he alleged that Cesar Mercader, the plaintiff in this proceeding, had taken possession of and was engaged in secreting certain property of the incompetent and was collecting and reducing to possession certain moneys belonging to her; and that, although called upon by the guardian to deliver such property and funds to him as such guardian, Mercader had refused to do so and still retains possession thereof claiming that he is entitled thereto. Due notice having been given and a hearing had, the court made an order directed to Mercader requiring him to appear before the court at 9 o'clock on the 24th day of March, 1916, and then and there to show cause why he should not deliver the property in question to the guardian of the incompetent.

The contention of the plaintiff here is that the order in question, requiring the plaintiff in this proceeding to show cause as aforesaid, was made without and in excess of the jurisdiction of the Court of First Instance for the reason that, the order declaring Vicenta Escio an incompetent and appointing Del Rosario guardian of her property having been appealed to the Supreme Court, the Court of First Instance was deprived of all jurisdiction over that proceeding and was accordingly wholly unauthorized to take any further steps therein and particularly the one which resulted in the order to show cause referred to.

The case having been duly submitted to this court on the merits we proceed to the determination thereof. We do not agree with counsel for the plaintiff. The order declaring the incompetency and appointing a guardian was good, until reversed or set aside, and authorized the guardian, in spite of the appeal, to do whatever was necessary, under the direction of the court, to protect the property of the incompetent. It was not only a right which the court may exercise but it was one which it ought to exercise, it having been shown that Vicenta Escio was incompetent,

to see to it that her property was protected during the pendency of the appeal and to prevent its being wasted or converted by designing persons. Proceedings to declare persons incompetent to manage their affairs and to appoint guardians for them and their property are within the jurisdiction of Courts of First Instance by express provision of law and they are consequently authorized and required to decide all questions which may arise therein during their progress through the courts. So far as the jurisdiction of the court is concerned it is of no consequence which way a particular question may be decided. The fact remains that the court had jurisdiction of the subject matter and that it had authority to decide any question connected herewith. We have held in many cases that certiorari will lie only in cases where the court has acted outside or in excess of its jurisdiction and its action for that reason is void (*Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo*, ante, p. 157; *Arzadon vs. Chanco*, 14 Phil. Rep., 710; *In re Prautch*, 1 Phil. Rep., 132; *Springer vs. Odlin*, 3 Phil. Rep., 344; *Napa vs. Weissenhagen*, 29 Phil. Rep., 180; *De Fiesta vs. Llorente and Manila Railroad Co.*, 25 Phil., Rep., 554; *Herrera vs. Barretto and Joaquin*, 25 Phil. Rep., 245; *Gala vs. Cui and Rodriguez*, 25 Phil. Rep., 522; *Province of Tarlac vs. Gale*, 26 Phil. Rep., 338.)

While the power of the Court of First Instance with regard to a judgment or an order is very much restricted by reason of the fact that an appeal has been perfected, this fact does not mean that the proceeding in which the appeal was taken, and all of the incidents thereof, are withdrawn from the consideration of the court. The proceeding as such is still within the jurisdiction of the court, although certain parts thereof have been withdrawn from the operation of its powers by the appeal. (*Velasco & Co. vs. Gochuico & Co.*, 28 Phil. Rep., 39.) In the case before us the court had jurisdiction to require the plaintiff herein to show cause in the manner ordered and in doing so he did not subject himself to review by certiorari.

The complaint is dismissed on the merits, with costs. So ordered.

Torres and Araullo, JJ., concur.

Johnson and Trent, JJ., concur in the result.

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