

TERESITA N. DE LEON, ZENAIDA C. NICOLAS AND THE HEIRS OF ANTONIO NICOLAS, PETITIONERS, VS. HON. COURT OF APPEALS, HON. PABLO P. INVENTOR AND RAMON NICOLAS, RESPONDENTS.

G.R. No. 128781. August 06, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court which prays that the Decision dated February 28, 1997 and the Resolution dated April 3, 1997 issued by the Court of Appeals in CA-G.R. SP No. 42958,[1] be set aside; and, that another judgment be entered ordering the Presiding Judge of Branch 123 of the Regional Trial Court of Caloocan City to give due course to petitioners' notice of appeal, to approve their record on appeal and to elevate the records of Sp. Proc. No. C-1679 to respondent appellate court for further proceedings.

The factual background:

Herein petitioner Teresita N. de Leon was appointed administratrix of the estate of Rafael C. Nicolas in Sp. Proc. No. C-1679, entitled, "In the Matter of the Intestate Estate of Rafael C. Nicolas". Said case was subsequently consolidated with Sp. Proc. No. C-1810[2] and Civil Case No. C-17407.[3] Deceased spouses Rafael and Salud Nicolas were the parents of petitioner Teresita N. de Leon, Estrellita N. Vizconde, Antonio Nicolas (deceased husband of petitioner Zenaida Nicolas and predecessor of the petitioners Heirs of Antonio Nicolas), Ramon Nicolas and Roberto Nicolas.

On September 19, 1994, private respondent Ramon G. Nicolas, an oppositor-applicant in the intestate proceedings, filed a "Motion for Collation," claiming that deceased Rafael Nicolas, during his lifetime, had given the following real properties to his children by gratuitous title and that administratrix-petitioner Teresita failed to include the same in the inventory of the estate of the decedent:

"1. Title No. T-36734 located at Polo, Bulacan with an area of 14,119 sq. m. distributed as follows:

1.1 10,110 sq. m. given to daughter Estrellita N. Visconde—

1.2 4,009 sq. m. given to son Antonio Nicolas

2. Title No. T-40333 located at Polo, Bulacan with an area of 1,000 sq. m. given to son Antonio Nicolas

3. Title No. T-36989 located at Polo, Bulacan with an area of 4,000 sq. m. given to daughter Teresita N. de Leon (herein petitioner)

4. Title No. T-36987 located at Polo, Bulacan with an area of 283 sq. m. given to son Antonio Nicolas

5. T-33658 located at Polo, Bulacan with an area of 6,109 sq. m. given to daughter Teresita N. de Leon

6. T-68554 located at Caloocan City with an area of 690 sq. m. given to son Ramon (Oppositor-Applicant

herein)

7. T-10907 located at Caloocan City with an area of 310 sq. m. given to son Ramon but was somehow transferred to Antonio Nicolas, and the property is now titled in the name of the latter's widow, Zenaida Carlos Nicolas."

x x x x x x x x."[4]

On September 27, 1994, the RTC issued an Order directing Ramon "to submit pertinent documents relative to the transfer of the properties from the registered owners during their lifetime for proper determination of the court if such properties should be collated, and set it for hearing with notice to the present registered owners to show cause why their properties may not be included in the collation of properties."[5]

On October 10, 1994, respondent Ramon filed an Amended Motion for Collation specifying the properties to be collated and attaching to said motion, the documents in support thereof, to wit:

"3. A more complete list of the properties to be collated is as follows:

1. Title No. T-36734 located at Polo, Bulacan with an area of 14,119 sq. m., xerox copy hereto attached as Annex "A", distributed as follows:

1.1 10,110 sq. m. given to daughter Estrellita N. Visconde, under TCT No. V-554 of Valenzuela Bulacan (Annex "B"), and later sold by Estrellita to Amelia Lim Sy for P3,405,612.00 and the Deed of Sale hereto attached as Annex "B-1";

"1.2 4,009 sq. m. given to son Antonio Nicolas, xerox copy hereto attached as Annex "C";

2. Two lots, covered by TCT No. T-36989 located at Polo, Bulacan with an area of 4,000 sq. m. and TCT No. T-33658 located at Polo, Bulacan with an area of 6,109 sq. m. "given to daughter Teresita N. de Leon by a Deed of Sale, xerox copies are hereto attached as Annex "D", "D-1" and "D-2";

The 4,000 sq. m. lot was sold by Petitioner Teresita for the amount of P1,888,000.00, xerox copy of the Deed of Sale is hereto attached as Annex "D-3";

4. Son Antonio received additional properties under a Deed of Sale, hereto attached as Annex "E", which are those covered by TCT No. T-36987 located at Polo, Bulacan with an area of 283 sq. m.; TCT No. T-40333 located at Polo, Bulacan with an area of 1,000 sq. m. and TCT No. T-10907 located at Caloocan City with an area of 310 sq. m., xerox copies hereto attached as Annexes "E-1", "E-2" and "E-3";

The lot with an area of 310 sq. m. is supposedly earmarked for Oppositor-applicant Ramon but was somehow included in the Deed of Sale to son Antonio, and the property is now titled in the name of the latter's widow, Zenaida Carlos Nicolas;

5. TCT No. T-68554 located at Caloocan City with an area of 690 sq. m. where the ancestral home is presently located;

6. Son Antonio received another property with an area of 1,876 sq. m. and sold for P850,000.00, hereto attached as Annex "F";

7. Son Antonio received another property with an area of 1,501 sq. m. and sold for P200,000.00, hereto attached as Annex "G";

x x x x x x x x."[6]

A comparison with the original motion for collation reveals that the amended motion refers to the same real

properties enumerated in the original except Nos. 6 and 7 above which are not found in the original motion.

On November 11, 1994, the RTC issued an Order, to wit:

“Acting on the Amended Motion for Collation filed by oppositor-applicant Ramon G. Nicolas and the comment thereto filed by petitioner-administratrix, the Court finds the following properties to be collated to the estate properties under present administration, to wit:

- (1). 4,009 sq. m. given to son Antonio Nicolas described in paragraph 1.2 of the Amended Motion For Collation, marked as Annex “C”; (the xerox copy of the transfer certificate of title in the name of Antonio Nicolas did not state “the number and the technical description of the property. The administratrix should get hold of a certified copy of the title of Antonio Nicolas about subject property;
- (2). Two lots, covered by TCT No. T-36989 located at Polo, Bulacan with an area of 4,000 sq. m. and TCT No. T-33658 located at Polo, Bulacan with an area of 6,109 sq. m. given to daughter Teresita N. de Leon by a Deed of Sale;
- (3). The property covered by TCT No. T-36987 located at Polo, Bulacan, with an area of 283 sq. m.; the property covered by TCT No. T-40333 located at Polo, Bulacan, with an area of 1,000 sq. m. and another property covered by TCT No. T-10907 located at Caloocan City with an area of 310 sq. m. xerox copies of which are attached to the Amended Motion For Collation, marked as Annexes “E’1”, “E-2” and “E-3”;
- (4). The lot with an area of 310 sq. m. given to son Antonio Nicolas which property is now titled in the name of the latter’s widow, Zenaida Carlos Nicolas.

“Accordingly, the Administratrix is hereby ordered to include the foregoing properties which were received from the decedent for collation in the instant probate proceedings.

“SO ORDERED.”[7]

We note that only those lots described under paragraphs 3.1.2, 3.2 and 4 of the “Amended Motion for Collation” were ordered included for collation.

On November 18, 1994, petitioner Teresita N. de Leon filed a Motion for Reconsideration alleging that the properties subject of the Order “were already titled in their names years ago”[8] and that titles may not be collaterally attacked in a motion for collation. On February 23, 1995, the RTC issued an Order denying said motion, ruling that it is within the jurisdiction of the court to determine whether titled properties should be collated,[9] citing Section 2, Rule 90 of the Rules of Court which provides that the final order of the court concerning questions as to advancements made shall be binding on the person raising the question and on the heir.

Petitioner Teresita N. de Leon filed a Motion for Reconsideration of the Order dated February 23, 1995[10] which respondent opposed.[11]

On July 18, 1995, the RTC issued an Order, pertinent portions of which read:

“x x x Foremost to be resolved is the issue of collation of the properties of the deceased Rafael Nicolas which were disposed by the latter long before his death. The oppositor-applicant Ramon Nicolas should prove to the satisfaction of the Court whether the properties disposed of by the late Rafael Nicolas before the latter’s death was gratuitous or for valuable consideration. The Court believes that he or she who asserts should prove whether the disposition of the properties was gratuitously made or for valuable consideration.

The Court has already set for hearing on July 21, 1995, at 8:30 a.m., the reception and/or presentation of evidence in the issue of collated properties disposed before the death of Rafael Nicolas.”[12]

On November 4, 1996, the RTC removed petitioner from her position as administratrix on ground of conflict of interest considering her claim that she paid valuable consideration for the subject properties acquired by her from their deceased father and therefore the same should not be included in the collation;^[13] and, ordered the hearing on the collation of properties covered by TCT No. T-V-1211 and T-V-1210 only.^[14]

On November 28, 1996, acting on the impression that the collation of the real properties enumerated in the Order dated November 11, 1994 is maintained by the RTC, petitioner Teresita N. de Leon filed a Motion for Reconsideration praying that her appointment as administratrix be maintained; and that the properties covered by TCT Nos. T-36989, T-33658, T-36987, T-40333, T-10907 and a portion of TCT No. T-13206 described as Lot 4-A with 4,009 square meters be declared and decreed as the exclusive properties of the registered owners mentioned therein and not subject to collation.^[15]

The RTC denied said motion in its Order dated December 23, 1996.^[16]

Petitioners Teresita N. de Leon, Zenaida Nicolas (the surviving spouse of Antonio Nicolas) and the Heirs of Antonio Nicolas filed with the Court of Appeals a petition for certiorari, prohibition and mandamus with prayer for a temporary restraining order and writ of preliminary injunction claiming that:

"I

“RESPONDENT JUDGE HAS ACTED IN EXCESS OF HIS JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION WHEN WITHOUT GIVING PETITIONERS OPPORTUNITY TO VENTILATE THEIR APPEAL HE INSISTED ON HEARING THE MATTERS ON THE APPOINTMENT OF A REGULAR ADMINISTRATOR AND COLLATION ON DECEMBER 24, 1996 AND RESETTING ITS CONTINUATION TO JANUARY 21 and 28, 1997 INSPITE OF THE PENDENCY OF THE NOTICE OF APPEAL AND/OR RE-AFFIRMATION OF THE NOTICE OF APPEAL FROM WHICH ACTS THERE IS NO APPEAL NOR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.”

“II

“RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION WHEN HE DID NOT INCLUDE IN HIS ORDER-ANNEX J THE HEARING ON THE FINAL DETERMINATION OF TCT NOS. T-36734, T-36989, T-33658, T-36987, T-40333 and T-10907 (WHETHER THEY ARE STILL PART OF THE ESTATE OR SHOULD BE EXCLUDED FROM THE INVENTORY/ESTATE) THEREBY ASSUMING WITHOUT ANY BASIS THAT THESE PROPERTIES TO BE STILL PART OF THE ESTATE OF RAFAEL NICOLAS WHEN THEY ARE NOT BECAUSE THEY HAVE BEEN SOLD WAY BACK IN 1979 FOR VALUABLE CONSIDERATIONS TO PETITIONER TERESITA N. DE LEON AND ANTONIO NICOLAS HUSBAND OF PETITIONER ZENAIDA NICOLAS.”^[17]

After private respondent Ramon had filed his comment, and petitioners, their reply, and after hearing the oral arguments of the parties, the Special Fourth Division of the Court of Appeals found the petition devoid of merit, ruling that the Order dated November 11, 1994 directing the inclusion of the properties therein enumerated in the estate of the deceased Rafael Nicolas had already become final for failure of petitioners to appeal from the order of collation; that the appeal of the petitioner from the Orders dated November 4, 1996 and December 3, 1996 removing petitioner as administratrix is timely appealed; and, observing that the notice of appeal and record on appeal appear to be unacted upon by the RTC, the appellate court resolved:

“WHEREFORE, while finding no grave abuse of discretion on the part of respondent Judge, he is hereby ORDERED to act on petitioner’s appeal on the matter of the removal of petitioner as administratrix.

SO ORDERED.”^[18]

Hence, herein petition anchored on the following assignments of error:

“FIRST ASSIGNMENT OF ERROR

“RESPONDENT HONORABLE COURT ERRED WHEN IT DECLARED IN THE QUESTIONED DECISION THAT THE ORDER OF THE COURT A QUO DATED NOVEMBER 11, 1994 WAS FINAL.

“SECOND ASSIGNMENT OF ERROR

“RESPONDENT HONORABLE COURT ERRED WHEN IT DECLARED IN THE QUESTIONED RESOLUTION THAT THERE WAS NO COGENT OR COMPELLING REASON TO DISTURB THE QUESTIONED DECISION.”[19]

Petitioners claim that: private respondent never presented any document to prove that the properties transferred by their deceased parents to petitioners are by gratuitous title; private respondent never notified petitioner of any hearing on said documents to give them opportunity to show cause why their properties should not be collated; the assailed Order dated November 11, 1994 is arbitrary, capricious, whimsical, confiscatory, depriving them of due process; the said order is interlocutory in nature and therefore non-appealable; the properties acquired by petitioner Teresita N. de Leon and her deceased brother Antonio Nicolas, married to petitioner Zenaida C. Nicolas and their children, were sold to them as evidenced by public documents; and, the properties were already titled in their respective names or sold to third persons.

Private respondent contends that: due process has been afforded the petitioners when the RTC resolved the issue of collation of the subject properties after hearing; petitioner deliberately omitted certain material facts in the petition to mislead the Court because petitioners were actually given at least three (3) times the opportunity to ventilate and oppose the issue of collation; as stated by the appellate court in the Resolution promulgated on February 10, 1997, both parties affirmed that the RTC had proceeded to conduct hearings on January 21 and 28, 1997 as originally scheduled; presentation of evidence had been terminated and the twin issues of the appointment of a new administratrix and the collation of two (2) properties covered by TCT No. T-V-1210 and T-V-1211 were already submitted for resolution to the court below;[20] subject properties are collatable under Articles 1601 and 1071 of the Civil Code and Section 2 of Rule 90 of the Rules of Court and the ruling in *Guinguing v. Abuton and Abuton*, 48 Phil. 144; petitioner failed to present evidence that there was valuable consideration for these properties and failed to rebut the evidence that petitioners do not have the financial capability to pay for these properties as evidenced by the testimony of credible witnesses who are relatives of spouses decedents.

We find the petition partly meritorious.

Contrary to the finding of the Court of Appeals that the Order of November 11, 1994 had become final for failure of petitioners to appeal therefrom in due time, we hold that said Order is interlocutory in nature. Our pronouncement in *Garcia v. Garcia* supports this ruling:

“The court which acquires jurisdiction over the properties of a deceased person through the filing of the corresponding proceedings, has supervision and control over the said properties, and under the said power, it is its inherent duty to see that the inventory submitted by the administrator appointed by it contains all the properties, rights and credits which the law requires the administrator to set out in his inventory. In compliance with this duty the court has also inherent power to determine what properties, rights and credits of the deceased should be included in or excluded from the inventory. Should an heir or person interested in the properties of a deceased person duly call the court’s attention to the fact that certain properties, rights or credits have been left out in the inventory, it is likewise the court’s duty to hear the observations, with power to determine if such observations should be attended to or not and if the properties referred to therein belong prima facie to the intestate, but no such determination is final and ultimate in nature as to the ownership of the said

properties.”[21] (Emphasis supplied)

A probate court, whether in a testate or intestate proceeding,[22] can only pass upon questions of title provisionally.[23] The rationale therefor and the proper recourse of the aggrieved party are expounded in *Jimenez v. Court of Appeals*:

“The patent reason is the probate court’s limited jurisdiction and the principle that questions of title or ownership, which result in inclusion or exclusion from the inventory of the property, can only be settled in a separate action.

“All that the said court could do as regards said properties is determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is a dispute as to the ownership, then the opposing parties and the administrator have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so.”[24]

Further, In *Sanchez v. Court of Appeals*, we held:

“[A] probate court or one in charge of proceedings whether testate or intestate cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties. All that the said court could do as regards said properties is to determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is no dispute, well and good, but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so.”[25]

Guided by the above jurisprudence, it is clear that the Court of Appeals committed an error in considering the assailed Order dated November 11, 1994 as final or binding upon the heirs or third persons who dispute the inclusion of certain properties in the intestate estate of the deceased Rafael Nicolas. Under the foregoing rulings of the Court, any aggrieved party, or a third person for that matter, may bring an ordinary action for a final determination of the conflicting claims.

Private respondent’s reliance on Section 2, Rule 90 of the Rules of Court, to wit:

“SEC. 2. Questions as to advancement to be determined. – Questions as to advancement made, or alleged to have been made, by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings; and the final order of the court thereon shall be binding on the person raising the question and on the heir.”

in support of his claim that the assailed Order is a final order and therefore appealable and that due to petitioners’ failure to appeal in due time, they are now bound by said Order, is not feasible.

What seems to be a conflict between the above-quoted Rule and the afore-discussed jurisprudence that the Order in question is an interlocutory and not a final order is more apparent than real. This is because the questioned Order was erroneously referred to as an order of collation both by the RTC and the appellate court. For all intents and purposes, said Order is a mere order including the subject properties in the inventory of the estate of the decedent.

The Court held in *Valero Vda. de Rodriguez v. Court of Appeals*[26] that the order of exclusion (or inclusion) is not a final order; that it is interlocutory in the sense that it did not settle once and for all the title to the subject lots; that the prevailing rule is that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties.

In the Rodriguez case, the Court distinguished between an order of collation and an order of exclusion from or inclusion in the estate's inventory, thus:

"We hold further that the dictum of the Court of Appeals and the probate court that the two disputed lots are not subject to collation was a supererogation and was not necessary to the disposition of the case which merely involved the issue of inclusion in, or exclusion from, the inventory of the testator's estate. The issue of collation was not yet justiciable at that early stage of the testate proceeding. It is not necessary to mention in the order of exclusion the controversial matter of collation.

"Whether collation may exist with respect to the two lots and whether Mrs. Rustia's Torrens titles thereto are indefeasible are matters that may be raised later or may not be raised at all. How those issues should be resolved, if and when they are raised, need not be touched upon in the adjudication of this appeal.

"The intestate and testate proceedings for the settlement of the estates of the deceased Valero spouses were consolidated, as ordered by the lower court on November 21, 1974, so that the conjugal estate of the deceased spouses may be properly liquidated, as contemplated in section 2, Rule 73 of the Rules of Court and Act No. 3176.

"We have examined the expedientes of the two cases. We found that the proceedings have not yet reached the stage when the question of collation or advancement to an heir may be raised and decided. The numerous debts of the decedents are still being paid. The net remainder (remanente liquido) of their conjugal estate has not yet been determined. On the other hand, up to this time, no separate action has been brought by the appellants to nullify Mrs. Rustia's Torrens titles to the disputed lots or to show that the sale was in reality a donation.

"In this appeal, it is not proper to pass upon the question of collation and to decide whether Mrs. Rustia's titles to the disputed lots are questionable. The proceedings below have not reached the stage of partition and distribution when the legitimes of the compulsory heirs have to be determined." [27]

In the light of the foregoing, Section 2, Rule 90 should be interpreted in the context of Section 1 of the same Rule, to wit:

"Section 1. When order for distribution of residue made. – When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such person may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

Based thereon, we find that what the parties and the lower courts have perceived to be as an Order of Collation is nothing more than an order of inclusion in the inventory of the estate which, as we have already discussed, is an interlocutory order. The motion for collation was filed with the probate court at the early stage of the intestate estate proceedings. We have examined the records of the case and we found no indication that the debts of the decedents spouses have been paid and the net remainder of the conjugal estate have already been determined, and the estates of the deceased spouses at the time filing of the motion for collation were ready for partition and distribution. In other words, the issue on collation is still premature.

And even if we consider, *en arguendo*, that said assailed Order is a collation order and a final order, still, the same would have no force and effect upon the parties. It is a hornbook doctrine that a final order is appealable. As such, the Order should have expressed therein clearly and distinctly the facts and the laws on which it is based as mandated by Section 14, Article VIII of the 1987 Constitution of the Republic of the Philippines, which provides:

“SEC. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefore.”

An examination of the subject Order as quoted earlier,[28] readily reveals that the presiding Judge failed to comply with the said constitutional mandate. The assailed Order did not state the reasons for ordering the collation of the properties enumerated therein. The Order simply directed the inclusion of certain real properties in the estate of the deceased. It did not declare that the properties enumerated therein were given to the children of the deceased gratuitously, despite the title in the children’s names or deeds of sale in their favor. Moreover, in his Comment, private respondent makes mention of the testimonies of his witnesses but these were not even mentioned in the Order of November 11, 1994. Petitioner would have been deprived of due process as they would be divested of the opportunity of being able to point out in a motion for reconsideration or on appeal, any errors of facts and/or law considering that there were no facts or laws cited in support of the assailed Order of collation. As a final Order, it is, on its face patently null and void. It could have never become final. A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it.[29] For it to be considered as a valid final order, the RTC must then first rule and state in its order whether the properties covered by TCT Nos. T-36734, T-36989, T-33658, T-36987, T-40333, T-10907 and the 4,009 square meter lot were acquired by petitioners from the deceased parents of the parties by onerous or gratuitous title; and must specifically state in its order the reasons why it ordered the subject properties collated. It is only then that the order of collation may be the subject of a motion for reconsideration and/or appeal within the 15-day reglementary period. Until and unless the constitutional mandate is complied with, any appeal from said Order would have been premature.

Either way therefore, whether the Order in question is a final or interlocutory order, it is a reversible error on the part of the appellate court to rule that the so-called order of collation dated November 11, 1994 had already attained finality.

As to the prayer of petitioners that the RTC be ordered to give due course to their notice of appeal from the Orders dated November 4, 1996 and December 23, 1996 removing petitioner Teresita N. de Leon as administratrix of the estate of private parties’ deceased parents,[30] to approve their record on appeal[31] and to elevate the records of Special Proceeding No. C-1679 to the Court of Appeals – It is not disputed by the parties that said Orders are appealable. In fact, the Court of Appeals had correctly directed the RTC to give due course to petitioners’ appeal and this is not assailed by the private respondent.

But, the approval or disapproval of the record on appeal is not a proper subject matter of the present petition for review on certiorari as it is not even a subject-matter in CA-G.R. SP No. 42958. Whether or not the record on appeal should be approved is a matter that is subject to the sound discretion of the RTC, provided that Sections 6 to 9, Rule 41 of the Rules of Court are observed by appellant.

Finally, the elevation of the records of Special Proceedings No. C-1679 to the Court of Appeals for the purpose of petitioners’ appeal from the order removing the administratrix is unnecessary where a record on appeal is allowed under the Rules of Court. The court *a quo* loses jurisdiction over the subject of the appeal upon the approval of the

record on appeal and the expiration of the time to appeal of the other parties; but retains jurisdiction over the remaining subject matter not covered by the appeal.[32]

WHEREFORE, the petition is partly GRANTED. The assailed Decision dated February 28, 1997 and Resolution dated April 3, 1997 of the Court of Appeals are MODIFIED. The Order dated November 11, 1994 issued by the Regional Trial Court and all other orders of said court emanating from said Order which involve the properties enumerated therein are considered merely provisional or interlocutory, without prejudice to any of the heirs, administrator or approving parties to resort to an ordinary action for a final determination of the conflicting claims of title.

The Regional Trial Court of Caloocan City (Branch 123) is directed to immediately act, without further delay, on petitioners' appeal from the Orders dated November 4, 1996 and December 23, 1996, subject to Sections 6 to 9, Rule 41 of the Rules of Court.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Kapunan, JJ., concur. Vitug, and Ynares-Santiago, JJ., in the result.

[1] Entitled, "Teresita N. de Leon, et al. v. Hon. Pablo P. Inventor, as Judge RTC of Caloocan City Branch 123 and Ramon Nicolas."

[2] Entitled, "In the Matter of the Intestate Estate of Salud G. Nicolas, Teresita N. de Leon, Petitioner."

[3] Entitled, "Teresita N. de Leon as Administratrix of the Intestate Estate of Rafael C. Nicolas v. United Coconut Planters Bank and Ramon Nicolas".

[4] Petition, Annex "D", Rollo, p. 36.

[5] Petition, Annex "E", Rollo, p. 38.

[6] Comment, Annex "A", Rollo, pp. 120-121.

[7] Petition, Annex "K", Rollo, pp. 39-40.

[8] Petition, Annex "G", Rollo, pp. 41-42.

[9] Petition, Annex "H", Rollo, p. 44.

[10] Petition, Annex "I", Rollo, p. 45.

[11] Petition, Annex "J", Rollo, p. 47.

[12] Petition, Annex "K", Rollo, p. 51.

[13] Petition, Annex "L", Rollo, p. 53.

[14] Ibid.

[15] Petition, Annex "M", Rollo, p. 67.

[16] Petition, Annex "N", Rollo, p. 73.

[17] CA Rollo, p. 9.

[18] CA Rollo, p. 185.

[19] Petition, Rollo, p. 4.

[20] CA Rollo, p. 81.

[21] 67 Phil. 353, 356-357 (1939).

[22] IntestaTe Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals, 265 SCRA 733, 749 (1996).

[23] Jimenez v. Court of Appeals, 184 SCRA 367, 371 (1990).

[24] Id., p. 372.

[25] 279 SCRA 647, 672-673 (1997), citing *Ortega v. Court of Appeals*, 153 SCRA 96, 102-103, August 14, 1987, per Paras, J. See also *Morales v. CFI of Cavite, Br. V*, 146 SCRA 373, 381-383, December 29, 1986.

[26] 91 SCRA 540, 545-546 (1979).

[27] *Id.*, 546.

[28] See p. 5.

[29] *Republic v. Court of Appeals*, 309 SCRA 110 (1999).

[30] Petition, Annex “O”, Rollo, p. 75.

[31] Petition, Annex “P”, Rollo, p. 76.

[32] 1997 Rules of Civil Procedure, as amended, Annotated by Justice Jose T. Feria, p. 169.

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