

OCTAVIO S. MALOLES II, PETITIONER, VS. PACITA DE LOS REYES PHILLIPS, RESPONDENT.*G.R. No. 129505. January 31, 2000*

Ponente: MENDOZA, J.

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These are petitions for review on certiorari of the decisions of the Thirteenth and the Special Eighth Divisions of the Court of Appeals which ruled that petitioner has no right to intervene in the settlement of the estate of Dr. Arturo de Santos. The cases were consolidated considering that they involve the same parties and some of the issues raised are the same.

The facts which gave rise to these two petitions are as follows:

On July 20, 1995, Dr. Arturo de Santos, Filipino and a resident of Makati City, filed a petition for probate of his will[1] in the Regional Trial Court, Branch 61, Makati, docketed as Sp. Proc. No. M-4223. In his petition, Dr. De Santos alleged that he had no compulsory heirs; that he had named in his will as sole legatee and devisee the Arturo de Santos Foundation, Inc.; that he disposed by his will his properties with an approximate value of not less than P2,000,000.00; and that copies of said will were in the custody of the named executrix, private respondent Pacita de los Reyes Phillips. A copy of the will[2] was annexed to the petition for probate.

On February 16, 1996, Judge Fernando V. Gorospe, Jr. of RTC-Makati, Branch 61 issued an order granting the petition and allowing the will. The order reads:

On 03 August 1995, the Court issued an Order setting the hearing of the petition on 12 September 1995, at 8:30 o'clock in the morning, copies of which were served to Arturo de Santos Foundation, Inc. and Ms. Pacita de los Reyes Phillips (Officer's Return, dated 04 September 1995 attached to the records). When the case was called for hearing on the date set, no oppositor appeared nor any written opposition was ever filed and on motion of petitioner, he was allowed to adduce his evidence in support of the petition.

Petitioner personally appeared before this Court and was placed on the witness stand and was directly examined by the Court through "free wheeling" questions and answers to give this Court a basis to determine the state of mind of the petitioner when he executed the subject will. After the examination, the Court is convinced that petitioner is of sound and disposing mind and not acting on duress, menace and undue influence or fraud, and that petitioner signed his Last Will and Testament on his own free and voluntary will and that he was neither forced nor influenced by any other person in signing it.

Furthermore, it appears from the petition and the evidence adduced that petitioner in his lifetime, executed his Last Will and Testament (Exhs. "A", "A-1", "A-2", "A-4", "A-5") at his residence situated at 9 Bauhinia corner Intsia Streets, Forbes Park, Makati City; said Last Will and Testament was signed in the presence of his three (3) witnesses, namely, to wit: Dr. Elpidio Valencia (Exhs. "A-6", "A-7", "A-8", "A-16", "A-16-A"), Atty. Edward J. Berenguer (Exhs. "A-3", "A-3-A", "A-9", "A-10", & "A-11"), and Atty. Victoria C. delos Reyes (Exhs. "A-12", "A-13", "A-14", "A-17", & "A-18"), who in turn, in the presence of the testator and in the presence of each and all of the witnesses signed the said Last Will and Testament and duly notarized before

Notary Public Anna Melissa L. Rosario (Exh. "A-15"); on the actual execution of the Last Will and Testament, pictures were taken (Exhs. "B" to "B-3").

Petitioner has no compulsory heirs and Arturo de Santos Foundation, Inc., with address at No. 9 Bauhinia corner Intsia Streets, Forbes Park, Makati City has been named as sole legatee and devisee of petitioner's properties, real and personal, approximately valued at not less than P2 million, Ms. Pacita de los Reyes Phillips was designated as executor and to serve as such without a bond.

From the foregoing facts, the Court finds that the petitioner has substantially established the material allegations contained in his petition. The Last Will and Testament having been executed and attested as required by law; that testator at the time of the execution of the will was of sane mind and/or not mentally incapable to make a Will; nor was it executed under duress or under the influence of fear or threats; that it was in writing and executed in the language known and understood by the testator duly subscribed thereof and attested and subscribed by three (3) credible witnesses in the presence of the testator and of another; that the testator and all the attesting witnesses signed the Last Will and Testament freely and voluntarily and that the testator has intended that the instrument should be his Will at the time of affixing his signature thereto.

WHEREFORE, as prayed for by the petitioner (testator himself) the petition for the allowance of the Last Will and Testament of Arturo de Santos is hereby APPROVED and ALLOWED.

Shortly after the probate of his will, Dr. De Santos died on February 26, 1996.

On April 3, 1996, petitioner Octavio S. Maloles II filed a motion for intervention claiming that, as the only child of Alicia de Santos (testator's sister) and Octavio L. Maloles, Sr., he was the sole full-blooded nephew and nearest of kin of Dr. De Santos. He likewise alleged that he was a creditor of the testator. Petitioner thus prayed for the reconsideration of the order allowing the will and the issuance of letters of administration in his name.

On the other hand, private respondent Pacita de los Reyes Phillips, the designated executrix of the will, filed a motion for the issuance of letters testamentary with Branch 61. Later, however, private respondent moved to withdraw her motion. This was granted, while petitioner was required to file a memorandum of authorities in support of his claim that said court (Branch 61) still had jurisdiction to allow his intervention.[3]

Petitioner filed his memorandum of authorities on May 13, 1996. On the other hand, private respondent, who earlier withdrew her motion for the issuance of letters testamentary in Branch 61, refiled a petition for the same purpose with the Regional Trial Court, Makati, which was docketed as Sp. Proc. No. M-4343 and assigned to Branch 65.

Upon private respondent's motion, Judge Salvador Abad Santos of Branch 65 issued an order, dated June 28, 1996, appointing her as special administrator of Dr. De Santos's estate.

On July 29, 1996, petitioner sought to intervene in Sp. Proc. No. M-4343 and to set aside the appointment of private respondent as special administrator. He reiterated that he was the sole and full blooded nephew and nearest of kin of the testator; that he came to know of the existence of Sp. Proc. No. M-4343 only by accident; that the probate proceedings in Sp. Proc. No. M-4223 before Branch 61 of the same court was still pending; that private respondent misdeclared the true worth of the testator's estate; that private respondent was not fit to be the special administrator of the estate; and that petitioner should be given letters of administration for the estate of Dr. De Santos.

On August 28, 1996, Judge Abad Santos ordered the transfer of Sp. Proc. No. M-4343 to Branch 61, on the ground that "[it] is related to the case before Judge Gorospe of RTC Branch 61 . . ."

It appears, however, that in Sp. Proc. No. M-4223, Judge Gorospe had denied on August 26, 1996 petitioner's

motion for intervention. Petitioner brought this matter to the Court of Appeals which, in a decision[4] promulgated on February 13, 1998, upheld the denial of petitioner's motion for intervention.

Meanwhile, Judge Gorospe issued an order, dated September 4, 1996, returning the records of Sp. Proc. No. M-4343 to Branch 65 on the ground that there was a pending case involving the Estate of Decedent Arturo de Santos pending before said court. The order reads:

Acting on the ORDER dated 28 August 1996 of Branch 65, this Court, transferring this case to this Branch 61 on the ground that this case is related with a case before this Court, let this case be returned to Branch 65 with the information that there is no related case involving the ESTATE OF DECEDENT ARTURO DE SANTOS pending before this Branch.

There is, however, a case filed by ARTURO DE SANTOS, as petitioner under Rule 76 of the Rules of Court for the Allowance of his will during his lifetime docketed as SP. PROC. NO. M-4223 which was already decided on 16 February 1996 and has become final.

It is noted on records of Case No. M-4223 that after it became final, herein Petitioner Pacita de los Reyes Phillips filed a MOTION FOR THE ISSUANCE OF LETTERS TESTAMENTARY, which was subsequently withdrawn after this Court, during the hearing, already ruled that the motion could not be admitted as the subject matter involves a separate case under Rule 78 of the Rules of Court, and movant withdrew her motion and filed this case (No. 4343).

Octavio de Santos Maloles [II] filed a MOTION FOR INTERVENTION before Case No. M-4223 and this motion was already DENIED in the order (Branch 61) of 26 August 1996 likewise for the same grounds that the matter is for a separate case to be filed under Rule 78 of the Rules of Court and cannot be included in this case filed under Rule 76 of the Rules of Court.

It is further noted that it is a matter of policy that consolidation of cases must be approved by the Presiding Judges of the affected Branches.

Initially, in his decision dated September 23, 1996,[5] Judge Abad Santos appeared firm in his position that " . . . it would be improper for (Branch 65) to hear and resolve the petition (Sp. Proc. No. M-4343)," considering that the probate proceedings were commenced with Branch 61. He thus ordered the transfer of the records back to the latter branch. However, he later recalled his decision and took cognizance of the case "to expedite the proceedings." Thus, in his Order, dated October 21, 1996, he stated:

Considering the refusal of the Hon. Fernando V. Gorospe, Jr. of Branch 61 to continue hearing this case notwithstanding the fact that said branch began the probate proceedings of the estate of the deceased and must therefore continue to exercise its jurisdiction to the exclusion of all others, until the entire estate of the testator had been partitioned and distributed as per Order dated 23 September 1996, this branch (Regional Trial Court Branch 65) shall take cognizance of the petition if only to expedite the proceedings, and under the concept that the Regional Trial Court of Makati City is but one court.

Furnish a copy of this order to the Office of the Chief justice and the Office of the Court Administrator, of the Supreme Court; the Hon. Fernando V. Gorospe, Jr.; Pacita De Los Reyes Phillips, Petitioner; and Octavio de Santos Maloles, Intervenor.

On November 4, 1996, Judge Abad Santos granted petitioner's motion for intervention. Private respondent moved for a reconsideration but her motion was denied by the trial court. She then filed a petition for certiorari in the Court of Appeals which, on February 26, 1997, rendered a decision[6] setting aside the trial court's order on the ground that petitioner had not shown any right or interest to intervene in Sp. Proc. No. M-4343.

Hence, these petitions which raise the following issues:

- Whether or not the Honorable Regional Trial Court - Makati, Branch 61 has lost jurisdiction to proceed with the probate proceedings upon its issuance of an order allowing the will of Dr. Arturo de Santos
- Whether or not the Honorable (Regional Trial Court - Makati, Branch 65) acquired jurisdiction over the petition for issuance of letters testamentary filed by (private) respondent.
- Whether or not the petitioner, being a creditor of the late Dr. Arturo de Santos, has a right to intervene and oppose the petition for issuance of letters testamentary filed by the respondent.
- Whether or not (private) respondent is guilty of forum shopping in filing her petition for issuance of letters testamentary with the Regional Trial Court - Makati, Branch 65 knowing fully well that the probate proceedings involving the same testate estate of the decedent is still pending with the Regional Trial Court - Makati, Branch 61.

First. Petitioner contends that the probate proceedings in Branch 61 of RTC-Makati did not terminate upon the issuance of the order allowing the will of Dr. De Santos. Citing the cases of *Santiesteban v. Santiesteban*[7] and *Tagle v. Manalo*,[8] he argues that the proceedings must continue until the estate is fully distributed to the lawful heirs, devisees, and legatees of the testator, pursuant to Rule 73, §1 of the Rules of Court. Consequently, petitioner contends that Branch 65 could not lawfully act upon private respondent's petition for issuance of letters testamentary.

The contention has no merit.

In cases for the probate of wills, it is well-settled that the authority of the court is limited to ascertaining the extrinsic validity of the will, i.e., whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law.[9]

Ordinarily, probate proceedings are instituted only after the death of the testator, so much so that, after approving and allowing the will, the court proceeds to issue letters testamentary and settle the estate of the testator. The cases cited by petitioner are of such nature. In fact, in most jurisdictions, courts cannot entertain a petition for probate of the will of a living testator under the principle of ambulatory nature of wills.[10]

However, Art. 838 of the Civil Code authorizes the filing of a petition for probate of the will filed by the testator himself. It provides:

Civil Code, Art. 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.

The testator himself may, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's death shall govern.

The Supreme Court shall formulate such additional Rules of Court as may be necessary for the allowance of wills on petition of the testator.

Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution.

Rule 76, §1 likewise provides:

Sec. 1 Who may petition for the allowance of will. - Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.

The testator himself may, during his lifetime, petition in the court for the allowance of his will.

The rationale for allowing the probate of wills during the lifetime of testator has been explained by the Code Commission thus:

Most of the cases that reach the courts involve either the testamentary capacity of the testator or the formalities adopted in the execution of wills. There are relatively few cases concerning the intrinsic validity of testamentary dispositions. It is far easier for the courts to determine the mental condition of a testator during his lifetime than after his death. Fraud, intimidation and undue influence are minimized. Furthermore, if a will does not comply with the requirements prescribed by law, the same may be corrected at once. The probate during the testator's life, therefore, will lessen the number of contest upon wills. Once a will is probated during the lifetime of the testator, the only questions that may remain for the courts to decide after the testator's death will refer to the intrinsic validity of the testamentary dispositions. It is possible, of course, that even when the testator himself asks for the allowance of the will, he may be acting under duress or undue influence, but these are rare cases.

After a will has been probated during the lifetime of the testator, it does not necessarily mean that he cannot alter or revoke the same before his death. Should he make a new will, it would also be allowable on his petition, and if he should die before he has had a chance to present such petition, the ordinary probate proceeding after the testator's death would be in order.[11]

Thus, after the allowance of the will of Dr. De Santos on February 16, 1996, there was nothing else for Branch 61 to do except to issue a certificate of allowance of the will pursuant to Rule 73, §12 of the Rules of Court. There is, therefore, no basis for the ruling of Judge Abad Santos of Branch 65 of RTC-Makati that -

Branch 61 of the Regional Trial Court of Makati having begun the probate proceedings of the estate of the deceased, it continues and shall continue to exercise said jurisdiction to the exclusion of all others. It should be noted that probate proceedings do not cease upon the allowance or disallowance of a will but continues up to such time that the entire estate of the testator had been partitioned and distributed.

The fact that the will was allowed during the lifetime of the testator meant merely that the partition and distribution of the estate was to be suspended until the latter's death. In other words, the petitioner, instead of filing a new petition for the issuance of letters testamentary, should have simply filed a manifestation for the same purpose in the probate court.[12]

Petitioner, who defends the order of Branch 65 allowing him to intervene, cites Rule 73, §1 which states:

Where estate of deceased persons settled. - If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

The above rule, however, actually provides for the venue of actions for the settlement of the estate of deceased persons. In *Garcia Fule v. Court of Appeals*, it was held:[13]

The aforequoted Section 1, Rule 73 (formerly Rule 75, Section 1), specifically the clause "so far as it depends on the place of residence of the decedent, or of the location of the state," is in reality a matter of venue, as the caption of the Rule indicates: "Settlement of Estate of Deceased Persons. Venue and Processes." It could not have been intended to define the jurisdiction over the subject matter, because such legal provision is contained

in a law of procedure dealing merely with procedural matters. Procedure is one thing, jurisdiction over the subject matter is another. The power or authority of the court over the subject matter "existed was fixed before procedure in a given cause began." That power or authority is not altered or changed by procedure, which simply directs the manner in which the power or authority shall be fully and justly exercised. There are cases though that if the power is not exercised conformably with the provisions of the procedural law, purely, the court attempting to exercise it loses the power to exercise it legally. However, this does not amount to a loss of jurisdiction over the subject matter. Rather, it means that the court may thereby lose jurisdiction over the person or that the judgment may thereby be rendered defective for lack of something essential to sustain it. The appearance of this provision in the procedural law at once raises a strong presumption that it has nothing to do with the jurisdiction of the court over the subject matter. In plain words, it is just a matter of method, of convenience to the parties.

Indeed, the jurisdiction over probate proceedings and settlement of estates with approximate value of over P100,000.00 (outside Metro Manila) or P200,000.00 (in Metro Manila) belongs to the regional trial courts under B.P. Blg. 129, as amended. The different branches comprising each court in one judicial region do not possess jurisdictions independent of and incompatible with each other.[14]

It is noteworthy that, although Rule 73, §1 applies insofar as the venue of the petition for probate of the will of Dr. De Santos is concerned, it does not bar other branches of the same court from taking cognizance of the settlement of the estate of the testator after his death. As held in the leading case of *Bacalso v. Ramolote*: [15]

The various branches of the Court of First Instance of Cebu under the Fourteenth Judicial District, are a coordinate and co-equal courts, and the totality of which is only one Court of First Instance. The jurisdiction is vested in the court, not in the judges. And when a case is filed in one branch, jurisdiction over the case does not attach to the branch or judge alone, to the exclusion of the other branches. Trial may be held or proceedings continue by and before another branch or judge. It is for this reason that Section 57 of the Judiciary Act expressly grants to the Secretary of Justice, the administrative right or power to apportion the cases among the different branches, both for the convenience of the parties and for the coordination of the work by the different branches of the same court. The apportionment and distribution of cases does not involve a grant or limitation of jurisdiction, the jurisdiction attaches and continues to be vested in the Court of First Instance of the province, and the trials may be held by any branch or judge of the court.

Necessarily, therefore, Branch 65 of the RTC of Makati City has jurisdiction over Sp. Proc. No. M-4343.

Second. Petitioner claims the right to intervene in and oppose the petition for issuance of letters testamentary filed by private respondent. He argues that, as the nearest next of kin and creditor of the testator, his interest in the matter is material and direct. In ruling that petitioner has no right to intervene in the proceedings before Branch 65 of RTC-Makati City, the Court of Appeals held:

The private respondent herein is not an heir or legatee under the will of the decedent Arturo de Santos. Neither is he a compulsory heir of the latter. As the only and nearest collateral relative of the decedent, he can inherit from the latter only in case of intestacy. Since the decedent has left a will which has already been probated and disposes of all his properties the private respondent can inherit only if the said will is annulled. His interest in the decedent's estate is, therefore, not direct or immediate.

His claim to being a creditor of the estate is a belated one, having been raised for the first time only in his reply to the opposition to his motion to intervene, and, as far as the records show, not supported by evidence.

. . . . [T]he opposition must come from one with a direct interest in the estate or the will, and the private respondent has none. Moreover, the ground cited in the private respondent's opposition, that the petitioner has deliberately misdeclared the truth worth and value of the estate, is not relevant to the question of her competency to act as executor. Section 2, Rule 76 of the Rules of Court requires only an allegation of the

probable value and character of the property of the estate. The true value can be determined later on in the course of the settlement of the estate.[16]

Rule 79, §1 provides:

Opposition to issuance of letters testamentary. Simultaneous petition for administration. - Any person interested in a will may state in writing the grounds why letters testamentary should not issue to the persons named therein as executors, or any of them, and the court, after hearing upon notice, shall pass upon the sufficiency of such grounds. A petition may, at the same time, be filed for letters of administration with the will annexed.

Under this provision, it has been held that an "interested person" is one who would be benefited by the estate, such as an heir, or one who has a claim against the estate, such as a creditor, and whose interest is material and direct, not merely incidental or contingent.[17]

Even if petitioner is the nearest next of kin of Dr. De Santos, he cannot be considered an "heir" of the testator. It is a fundamental rule of testamentary succession that one who has no compulsory or forced heirs may dispose of his entire estate by will. Thus, Art. 842 of the Civil Code provides:

One who has no compulsory heirs may dispose by will of all his estate or any part of it in favor of any person having capacity to succeed.

One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of this Code with regard to the legitimate of said heirs.

Compulsory heirs are limited to the testator's -

(1)

Legitimate children and descendants, with respect to their legitimate parents and ascendants;

(2)

In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

(3)

The widow or widower;

(4)

Acknowledged natural children, and natural children by legal fiction;

(5)

Other illegitimate children referred to in Article 287 of the Civil Code.[18]

Petitioner, as nephew of the testator, is not a compulsory heir who may have been preterited in the testator's will.

Nor does he have any right to intervene in the settlement proceedings based on his allegation that he is a creditor of the deceased. Since the testator instituted or named an executor in his will, it is incumbent upon the Court to respect the desires of the testator. As we stated in *Ozaeta v. Pecson*:[19]

The choice of his executor is a precious prerogative of a testator, a necessary concomitant of his right to dispose of his property in the manner he wishes. It is natural that the testator should desire to appoint one of his confidence, one who can be trusted to carry out his wishes in the disposal of his estate. The curtailment of this

right may be considered a curtailment of the right to dispose.

Only if the appointed executor is incompetent, refuses the trust, or fails to give bond may the court appoint other persons to administer the estate.[20] None of these circumstances is present in this case.

Third. Petitioner contends that private respondent is guilty of forum shopping when she filed the petition for issuance of letters testamentary (Sp. Proc. No. M-4343) while the probate proceedings (Sp. Proc. No. M-4223) were still pending. According to petitioner, there is identity of parties, rights asserted, and reliefs prayed for in the two actions which are founded on the same facts, and a judgment in either will result in *res judicata* in the other.

This contention has no merit. As stated earlier, the petition for probate was filed by Dr. De Santos, the testator, solely for the purpose of authenticating his will. Upon the allowance of his will, the proceedings were terminated.

On the other hand, the petition for issuance of letters testamentary was filed by private respondent, as executor of the estate of Dr. De Santos, for the purpose of securing authority from the Court to administer the estate and put into effect the will of the testator. The estate settlement proceedings commenced by the filing of the petition terminates upon the distribution and delivery of the legacies and devises to the persons named in the will. Clearly, there is no identity between the two petitions, nor was the latter filed during the pendency of the former. There was, consequently, no forum shopping.

WHEREFORE, the petition is DENIED and the decisions of the Court of Appeals are hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] G.R. No. 129505, Rollo, pp. 107-109.

[2] *Id.*, at 110-111.

[3] RTC order, dated April 26, 1996. G.R. No. 133359, Rollo, pp. 54-55.

[4] Per Justice Rodrigo V. Cosico and concurred in by Justices Delilah Vidalon-Magtolis (Acting Chairman) and Artemio G. Tuquero. This is the subject of G.R. No. 133359.

[5] G.R. No. 129505, Rollo, p. 83.

[6] Per Justice Hector L. Hofileña and concurred in by Justices Jainal D. Rasul (Chairman) and Artemio G. Tuquero. This is the subject of G.R. No. 129505.

[7] 68 Phil. 367 (1939).

[8] 105 Phil. 1123 (1959).

[9] *Pastor, Jr. v. Court of Appeals*, 207 Phil. 758 (1983); *Montañano v. Suesa*, 14 Phil. 676 (1909).

[10] 79 Am Jur 2d, Wills, §851: It seems clear that in the absence of statute expressly conferring such jurisdiction, a court does not have the power to entertain a suit for the establishment or annulment of the will of a living testator. The ambulatory nature of a will, and the absence of parties in interest, which results from the rule that a living person has neither heirs nor legatees, render impossible the assumption that a court has inherent power to determine the validity of a will prior to the death of the maker. It has been held that a statute providing for the probate of a will before the death of the testator, leaving him at liberty to alter or revoke it, or to escape the effect of any action under it by removal from the jurisdiction, is alleged and void on the ground that such a proceeding is

not within the judicial power.

[11] Report of The Code Commission, pp. 53-54, quoted in 3 A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 149 (1992).

[12] G.R. No. 129505, Rollo, p. 83.

[13] 74 SCRA 189, 198 (1976).

[14] *Ella v. Salonga*, 146 Phil. 91 (1970).

[15] 128 Phil. 559, 564-565 (1967).

[16] G.R. No. 129505, Rollo, pp. 38-39.

[17] *Teotico v. Del Val Chan*, 121 Phil. 392 (1965).

[18] Civil Code, Art. 887.

[19] 93 Phil. 416, 420 (1953).

[20] Rules of Court, Rule 78, §6.

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