

CYNTHIA C. ALABAN, FRANCIS COLLADO, JOSE P. COLLADO, JUDITH PROVIDO, CLARITA PROVIDO, ALFREDO PROVIDO, MANUEL PROVIDO, JR., LORNA DINA E. PROVIDO, SEVERO ARENGA, JR., SERGIO ARE...

G.R. NO. 156021. September 23, 2005

Ponente: TINGA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-156021/>

TINGA, J.:

This is a petition for review of the Resolutions[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69221,[2] dismissing petitioners' petition for annulment of judgment.

On 8 November 2000, respondent Francisco Provideo (respondent) filed a petition, docketed as SP Proc. No. 00-135, for the probate of the Last Will and Testament[3] of the late Soledad Provideo Eleveccionado ("decedent"), who died on 26 October 2000 in Janiway, Iloilo.[4] Respondent alleged that he was the heir of the decedent and the executor of her will. On 30 May 2001, the Regional Trial Court (RTC), Branch 68, in P.D. Monfort North, Dumangas, Iloilo, rendered its Decision,[5] allowing the probate of the will of the decedent and directing the issuance of letters testamentary to respondent.[6]

More than four (4) months later, or on 4 October 2001, herein petitioners filed a motion for the reopening of the probate proceedings.[7] Likewise, they filed an opposition to the allowance of the will of the decedent, as well as the issuance of letters testamentary to respondent,[8] claiming that they are the intestate heirs of the decedent. Petitioners claimed that the RTC did not acquire jurisdiction over the petition due to non-payment of the correct docket fees, defective publication, and lack of notice to the other heirs. Moreover, they alleged that the will could not have been probated because: (1) the signature of the decedent was forged; (2) the will was not executed in accordance with law, that is, the witnesses failed to sign below the attestation clause; (3) the decedent lacked testamentary capacity to execute and publish a will; (4) the will was executed by force and under duress and improper pressure; (5) the decedent had no intention to make a will at the time of affixing of her signature; and (6) she did not know the properties to be disposed of, having included in the will properties which no longer belonged to her. Petitioners prayed that the letters testamentary issued to respondent be withdrawn and the estate of the decedent disposed of under intestate succession.[9]

On 11 January 2002, the RTC issued an Order[10] denying petitioners' motion for being unmeritorious. Resolving the issue of jurisdiction, the RTC held that petitioners were deemed notified of the hearing by publication and that the deficiency in the payment of docket fees is not a ground for the outright dismissal of the petition. It merely required respondent to pay the deficiency.[11] Moreover, the RTC's Decision was already final and executory even before petitioners' filing of the motion to reopen.[12]

Petitioners thereafter filed a petition[13] with an application for preliminary injunction with the CA, seeking the annulment of the RTC's Decision dated 30 May 2001 and Order dated 11 January 2002. They claimed that after the death of the decedent, petitioners, together with respondent, held several conferences to discuss the matter of

dividing the estate of the decedent, with respondent agreeing to a one-sixth (1/6) portion as his share. Petitioners allegedly drafted a compromise agreement to implement the division of the estate. Despite receipt of the agreement, respondent refused to sign and return the same. Petitioners opined that respondent feigned interest in participating in the compromise agreement so that they would not suspect his intention to secure the probate of the will.[14] They claimed that they learnt of the probate proceedings only in July of 2001, as a result of which they filed their motion to reopen the proceedings and admit their opposition to the probate of the will only on 4 October 2001. They argued that the RTC Decision should be annulled and set aside on the ground of extrinsic fraud and lack of jurisdiction on the part of the RTC.[15]

In its Resolution[16] promulgated on 28 February 2002, the CA dismissed the petition. It found that there was no showing that petitioners failed to avail of or resort to the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies through no fault of their own.[17] Moreover, the CA declared as baseless petitioners' claim that the proceedings in the RTC was attended by extrinsic fraud. Neither was there any showing that they availed of this ground in a motion for new trial or petition for relief from judgment in the RTC, the CA added.[18] Petitioners sought reconsideration of the Resolution, but the same was denied by the CA for lack of merit.[19]

Petitioners now come to this Court, asserting that the CA committed grave abuse of discretion amounting to lack of jurisdiction when it dismissed their petition for the alleged failure to show that they have not availed of or resorted to the remedies of new trial, appeal, petition for relief from judgment or other remedies through no fault of their own, and held that petitioners were not denied their day in court during the proceedings before the RTC.[20] In addition, they assert that this Court has yet to decide a case involving Rule 47 of the Rules of Court and, therefore, the instant petition should be given due course for the guidance of the bench and bar.[21]

For his part, respondent claims that petitioners were in a position to avail of the remedies provided in Rules 37 and 38, as they in fact did when they filed a motion for new trial.[22] Moreover, they could have resorted to a petition for relief from judgment since they learned of the RTC's judgment only three and a half months after its promulgation.[23] Respondent likewise maintains that no extrinsic fraud exists to warrant the annulment of the RTC's Decision, since there was no showing that they were denied their day in court. Petitioners were not made parties to the probate proceedings because the decedent did not institute them as her heirs.[24] Besides, assuming arguendo that petitioners are heirs of the decedent, lack of notice to them is not a fatal defect since personal notice upon the heirs is a matter of procedural convenience and not a jurisdictional requisite.[25] Finally, respondent charges petitioners of forum-shopping, since the latter have a pending suit involving the same issues as those in SP No. 00-135, that is SP No. 1181[26] filed before Branch 23, RTC of General Santos City and subsequently pending on appeal before the CA in CA-G.R. No.74924.[27]

It appears that one of the petitioners herein, Dolores M. Flores ("Flores"), who is a niece of the decedent, filed a petition for letters of administration with the RTC of General Santos City, claiming that the decedent died intestate without any issue, survived by five groups of collateral heirs. Flores, armed with a Special Power of Attorney from most of the other petitioners, prayed for her appointment as administratrix of the estate of the decedent. The RTC dismissed the petition on the ground of lack of jurisdiction, stating that the probate court in Janiway, Iloilo has jurisdiction since the venue for a petition for the settlement of the estate of a decedent is the place where the decedent died. This is also in accordance with the rule that the first court acquiring jurisdiction shall continue hearing the case to the exclusion of other courts, the RTC added.[28] On 9 January 2002, Flores filed a Notice of Appeal [29] and on 28 January 2002, the case was ordered forwarded to the CA.[30]

Petitioners maintain that they were not made parties to the case in which the decision sought to be annulled was rendered and, thus, they could not have availed of the ordinary remedies of new trial, appeal, petition for relief

from judgment and other appropriate remedies, contrary to the ruling of the CA. They aver that respondent's offer of a false compromise and his failure to notify them of the probate of the will constitute extrinsic fraud that necessitates the annulment of the RTC's judgment.[31]

The petition is devoid of merit.

Section 37 of the Rules of Court allows an aggrieved party to file a motion for new trial on the ground of fraud, accident, mistake, or excusable negligence. The same Rule permits the filing of a motion for reconsideration on the grounds of excessive award of damages, insufficiency of evidence to justify the decision or final order, or that the decision or final order is contrary to law.[32] Both motions should be filed within the period for taking an appeal, or fifteen (15) days from notice of the judgment or final order.

Meanwhile, a petition for relief from judgment under Section 3 of Rule 38 is resorted to when a judgment or final order is entered, or any other proceeding is thereafter taken, against a party in any court through fraud, accident, mistake, or excusable negligence. Said party may file a petition in the same court and in the same case to set aside the judgment, order or proceeding. It must be filed within sixty (60) days after the petitioner learns of the judgment and within six (6) months after entry thereof.[33]

A motion for new trial or reconsideration and a petition for relief from judgment are remedies available only to parties in the proceedings where the assailed judgment is rendered.[34] In fact, it has been held that a person who was never a party to the case, or even summoned to appear therein, cannot avail of a petition for relief from judgment.[35]

However, petitioners in this case are mistaken in asserting that they are not or have not become parties to the probate proceedings.

Under the Rules of Court, 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.[36] Notice of the time and place for proving the will must be published for three (3) consecutive weeks, in a newspaper of general circulation in the province,[37] as well as furnished to the designated or other known heirs, legatees, and devisees of the testator.[38] Thus, it has been held that a proceeding for the probate of a will is one in rem, such that with the corresponding publication of the petition the court's jurisdiction extends to all persons interested in said will or in the settlement of the estate of the decedent.[39]

Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.[40] Thus, even though petitioners were not mentioned in the petition for probate, they eventually became parties thereto as a consequence of the publication of the notice of hearing.

As parties to the probate proceedings, petitioners could have validly availed of the remedies of motion for new trial or reconsideration and petition for relief from judgment. In fact, petitioners filed a motion to reopen, which is essentially a motion for new trial, with petitioners praying for the reopening of the case and the setting of further proceedings. However, the motion was denied for having been filed out of time, long after the Decision became final and executory.

Conceding that petitioners became aware of the Decision after it had become final, they could have still filed a petition for relief from judgment after the denial of their motion to reopen. Petitioners claim that they learned of the Decision only on 4 October 2001, or almost four (4) months from the time the Decision had attained finality. But they failed to avail of the remedy.

For failure to make use without sufficient justification of the said remedies available to them, petitioners could no longer resort to a petition for annulment of judgment; otherwise, they would benefit from their own inaction or negligence.[41]

Even casting aside the procedural requisite, the petition for annulment of judgment must still fail for failure to comply with the substantive requisites, as the appellate court ruled.

An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered.[42] The purpose of such action is to have the final and executory judgment set aside so that there will be a renewal of litigation. It is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner,[43] and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process.[44] A person need not be a party to the judgment sought to be annulled, and it is only essential that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and he would be adversely affected thereby.[45]

An action to annul a final judgment on the ground of fraud lies only if the fraud is extrinsic or collateral in character.[46] Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.[47]

To sustain their allegation of extrinsic fraud, petitioners assert that as a result of respondent's deliberate omission or concealment of their names, ages and residences as the other heirs of the decedent in his petition for allowance of the will, they were not notified of the proceedings, and thus they were denied their day in court. In addition, they claim that respondent's offer of a false compromise even before the filing of the petition prevented them from appearing and opposing the petition for probate.

The Court is not convinced.

According to the Rules, notice is required to be personally given to known heirs, legatees, and devisees of the testator.[48] A perusal of the will shows that respondent was instituted as the sole heir of the decedent. Petitioners, as nephews and nieces of the decedent, are neither compulsory nor testate heirs[49] who are entitled to be notified of the probate proceedings under the Rules. Respondent had no legal obligation to mention petitioners in the petition for probate, or to personally notify them of the same.

Besides, assuming *arguendo* that petitioners are entitled to be so notified, the purported infirmity is cured by the publication of the notice. After all, personal notice upon the heirs is a matter of procedural convenience and not a jurisdictional requisite.[50]

The non-inclusion of petitioners' names in the petition and the alleged failure to personally notify them of the proceedings do not constitute extrinsic fraud. Petitioners were not denied their day in court, as they were not prevented from participating in the proceedings and presenting their case before the probate court.

One other vital point is the issue of forum-shopping against petitioners. Forum-shopping consists of filing multiple suits in different courts, either simultaneously or successively, involving the same parties, to ask the courts to rule on the same or related causes and/or to grant the same or substantially same reliefs,[51] on the supposition that one or the other court would make a favorable disposition.[52] Obviously, the parties in the instant case, as well as in the appealed case before the CA, are the same. Both cases deal with the existence and validity of the alleged will of the decedent, with petitioners anchoring their cause on the state of intestacy. In the

probate proceedings, petitioners' position has always been that the decedent left no will and if she did, the will does not comply with the requisites of a valid will. Indeed, that position is the bedrock of their present petition. Of course, respondent maintains the contrary stance. On the other hand, in the petition for letters of administration, petitioner Flores prayed for her appointment as administratrix of the estate on the theory that the decedent died intestate. The petition was dismissed on the ground of lack of jurisdiction, and it is this order of dismissal which is the subject of review in CA-G.R. No. 74924. Clearly, therefore, there is forum-shopping.

Moreover, petitioners failed to inform the Court of the said pending case in their certification against forum-shopping. Neither have they done so at any time thereafter. The Court notes that even in the petition for annulment of judgment, petitioners failed to inform the CA of the pendency of their appeal in CA-G.R. No. 74924, even though the notice of appeal was filed way before the petition for annulment of judgment was instituted.

WHEREFORE, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Dated 8 February 2002 and 12 November 2002.

[2] Cynthia C. Alaban, et al. v. Gerardo D. Diaz, et al.

[3] Rollo, pp. 47-52.

[4] Entitled "In Re: Petition for Probate of Will of Decedent Soledad Provido Elevencionado, Francisco H. Provido, Petitioner"; Id. at 31-32.

[5] Id. at 34-37.

[6] Ibid.

[7] Id. at 38-39.

[8] Id. at 41-45.

[9] Id. at 42-44.

[10] Id. at 53-56.

[11] Id. at 55, 56.

[12] Id. at 55.

[13] Docketed as CA-G.R. SP No. 69221.

[14] Rollo, pp. 58-59.

[15] Id. at 62.

[16] Id. at 69.

[17] Ibid.

[18] Id. at 70.

[19] Resolution dated 12 November 2002, Id. at 92.

[20] Id. at 15.

[21] Id. at 15.

[22] Id. at 103.

[23] Id. at 107.

[24] Id. at 108

[25] Id. at 109.

[26] Entitled "In the Matter of the Issuance of Letters of Administration in the Intestate Estate of Soledad Provido-Elevencionado, Dolores M. Flores, Petitioner."

[27] Rollo, pp. 109-110.

[28] Id. at 126.

[29] CA Rollo, p. 78.

[30] Id. at 79.

[31] Id. at 21.

[32] Sec. 1, Rule 37.

[33] Sec. 1, Rule 38.

[34] Section 1 of Rule 37 of the Rules of Court provides:

Section 1. Grounds of and period for filing motion for new trial or reconsideration.- Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

. . . .

Meanwhile, Sections 1 and 2 of Rule 38 state:

Section 1. Petition for relief from judgment, order, or other proceedings.- When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

Section 2. Petition for relief from denial of appeal.- When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

(Emphasis supplied.)

[35] Metropolitan Bank and Trust Co. v. Alejo, G.R. No. 141970, 10 September 2001, 364 SCRA 812, 817.

[36] Sec. 1, Rule 76, Rules of Court.

[37] Sec. 3, Rule 76, id.

[38] Sec. 4, Rule 76, id.

[39] *Abut v. Abut*, 150-A Phil. 679, 683 (1972).

[40] *Barco v. Court of Appeals*, G.R. No. 120587, 20 January 2004, 420 SCRA 162, 174, citing *Adez Realty v. Court of Appeals*, G.R. No. 100643, 14 August 1992, 22 SCRA 623, 628.

[41] *Manipor, et al. v. Spouses Ricafort*, G.R. No. 150159, 25 July 2003, 407 SCRA 298, 303.

[42] *Islamic Da'Wah Council of the Philippines v. Court of Appeals*, G.R. No. 80892, 29 September 1989, 178 SCRA 185, 184.

[43] Sec. 1, Rule 47, Rules of Court.

[44] *Pinlac v. Court of Appeals*, G.R. No. 91486, 19 January 2001, 349 SCRA 635, 650.

[45] *Islamic Da'Wah Council of the Philippines v. Court of Appeals*, *supra* note 42 at 187.

[46] *Bobis et al. v. Court of Appeals, et al.*, G.R. No. 113796, 14 December 2000, 348 SCRA 23, 27-28.

[47] *Teodoro v. Court of Appeals*, 437 Phil. 336, 345 (2002).

[48] Sec. 3, Rule 76, Rules of Court.

[49] Art. 842, Civil Code.

[50] F.D. REGALADO, *REMEDIAL LAW COMPENDIUM*, Vol. II (2001 ed.) p. 27, citing *In Re Estate of Johnson*, 39 Phil 156; *In Re Testate Estate of Deceased Jose B. Suntay*, 95 Phil 500; *Abut v. Abut, et al.*, 150-A Phil. 679 (1972).

[51] J. FERIA & M.C.S. NOCHE, *CIVIL PROCEDURE ANNOTATED* Vol. 1 (2001) p. 297.

[52] *Gatmaytan v. Court of Appeals*, 335 Phil. 155, 167 (1997).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.