

INTESTATE ESTATE OF THE LATE MARIA DE LA CRUZ. MARGARITA DE LA CRUZ, PETITIONER AND APPELLEE, VS. PLARIDEL SURETY & INSURANCE CO., OPPOSITOR AND APPELLANT.

G.R. No. 16483. April 30, 1964

Ponente: DIZON, J.

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DIZON, J.:

In the Intestate Estate of the late Maria de la Cruz (Special Proceedings No. 11-J of the Court of First Instance of Nueva Ecija) herein appellee Margarita de la Cruz filed a motion dated April 28, 1957 for an order requiring appellant Plaridel Surety and Insurance Co. Inc., as surety for Teodorico Adsuara, the former Administrator, to pay the latter's liability in favor of said estate in the sum of P2,413.00. The Court, however, denied the motion on April 29, 1957, on the ground that it was not the proper remedy".

On November 28 of the same year, appellee filed a motion for the reconsideration of said order. This was granted by the court in its order of December 9 whereby it set aside the order of denial aforesaid and granted appellee's original motion of April 28, 1957 by directing herein appellant to pay to the then incumbent administrator the sum of P2,413.00 within 30 days from notice. Subsequently, upon motion of appellant, the Court suspended its order of December 9 and allowed it to file an opposition to appellee's motion for reconsideration. Thereafter, appellant filed two separate oppositions alleging that (1) the order of denial of April 29 had become final without appellee having appealed therefrom; (2) that it cannot be held liable under its bond unless its liability had been previously determined by proper accounting in which it should have been allowed to intervene; (3) that a separate action should be maintained against the principal and surety; and (4) that the bond was not answerable for Adsuara's obligation, the same having been incurred prior to the effectivity of said bond.

On February 28, 1958, the Court issued an order, the dispositive portion of which is as follows:

"Wherefore, this Court hereby reconsiders its order dated April 29, 1957 and resets the hearing on the motion filed by the administrator on April 28, 1957 on March 14, 1958, at 8:30 o'clock in the morning."

On the date set forth in the above-quoted order, appellant's counsel appeared but, instead of going on with the hearing, he manifested his intention to appeal from said order. In fact, on the same date he filed his Notice of Appeal and complied with the other requirements to perfect his appeal.

The main issue to be resolved is whether the order appealed from should be set aside on the ground that when appellee filed her motion for reconsideration on November 28, 1957, the order sought to be reconsidered dated April 29 of the same year had already become final and executory.

The lower court held in the order appealed from that its order of April 29, 1957 was merely interlocutory because, instead of deciding the merits of the motion of the administrator to compel appellant to satisfy the liability of the former administrator, said order denied the motion aforesaid on the ground that it was "not the proper remedy".

It must be borne in mind in this connection that what really determines whether a judgment or an order is final or

merely interlocutory is whether it puts an end to the litigation (*Olsen & Co. vs. Olsen* 48 Phil. 238) or leaves something to be done therein on the merits (*Hodges vs. Villanueva*, 90 Phil., 255, *Gequillana vs. Buenaventura* 87 Phil., 300; 48 Off. Gaz., 63). Thus, an order of dismissal of an action is final in character and not merely interlocutory, "while an order denying a motion to dismiss is merely interlocutory. In our opinion the lower court's order of April 29, 1957- denying appellee's motion of April 28, 1957- which appellee sought to have reconsidered, was final in character because it was a final disposition of the matter involved in the motion aforesaid. That order denied the administrator's motion. Consequently, the latter's remedy was to appeal therefrom, specially because said order was manifestly erroneous, it being well settled in this jurisdiction that the liability of a surety upon the bond filed in favor of the executor or administrator of the estate of a deceased person is enforceable in the same probate proceeding after hearing all the parties concerned. Appellee, however, failed to seek remedy by appeal and instead allowed seven months to elapse before filing her motion for reconsideration on November 28, 1957. At that time, it seems obvious, the order of denial had already become executory.

We hold, therefore, that the lower court committed a reversible error in issuing the appealed order of February 28, 1958, reconsidering the aforesaid executory order and resetting for hearing the same matter which had already been finally disposed of.

Wherefore the order appealed from is set aside, with costs.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Makalintal, JJ., concur.

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