

ANTONIO CASTRO REVILLA, AS GUARDIAN OF THE MINORS LUZ AND AMPARO FANLO Y SANZ, PETITIONER, VS. LEONARDO GARDUÑO, JUDGE OF FIRST INSTANCE OF ROMBLON, ET AL., RESPONDENTS.

G.R. No. 30179. November 16, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of mandamus to compel the respondent judge to reopen an order dated March 16, 1928, and to receive additional evidence in support of certain allegations made by the herein petitioner. The order in question reads as follows:

"Se trata de una motion presentada en 26 de enero de 1928 por el tutor Antonio Castro Revilla de las menores Luz y Amparo apellidados Fanlo y Sanz, y otra adicional de 24 de febrero de este mismo ano, presentada por el mismo tutor y por Leonor Sanz y los esposos Pilar Sanz y Candido Fanlo en las que por las razones expresadas en las mismas, piden la nulidad del auto de este Juzgado de fecha 15 de octubre de 1917 aprobando el convenio de particidn extrajudicial entre los herederos. No vamos por ahora a considerar las mociones por sus fundamentos. Simplemente vamos a resolver si procede admitir o no dichas mociones.

"El auto, cuya nulidad se pidef fue dictado en 15 de octubre de 1917 por el que entonces presidia este Juzgado Hon. Fermin Mariano.

"Han transcurrido desde entonces diez afios, tres meses y diez y seis dias. Este auto esta firme y ejecutorio. Nadie ha apelado y nadie se ha excepcionado siquiera del mismo. Permitir que, despues de mas de diez anos como sucede en el presente caso, un auto del Juzgado firme y ejecutorio sea reconsiderado, seria abrir las puertas del Juzgado a aquella practica de entonces de eternizar los asuntos en perjuicio de la pronta administration de justicia, practica que no esta ahora permitida ni tolerada por nuestras leyes. Para algo se han aprobado las leyes procesales y establecido los reglamentos de los juzgados; unas y otros deben ser cumplidos y observados.

"Por tanto, el Juzgado es de opini6n de que no procede considerar las mociones.

"Asi se ordena."

Mandamus is a high prerogative writ, and, as a general rule, will not lie where there is another plain, speedy, and adequate remedy at law. As will be readily seen, the order quoted is not merely interlocutory or incidental; as far as the Court of First Instance is concerned, it is a final determination of the proceedings initiated by the motions referred to in the order. In these circumstances, an appeal, and not a petition for a writ of mandamus, would be the proper remedy.

It is true that where an inferior court refuses to exercise its jurisdiction, a writ of mandamus is a proper remedy to compel the court to act, and it has also been held that if a court has erroneously decided some question of law or

of practice, presented as a preliminary objection, and upon such erroneous construction has refused to go into the merits of the case, mandamus will lie to compel it to proceed (High on Extraordinary Legal Remedies, sec. 151). But that is far from being this case. Here there has been no violation of the rules of practise; the motions in question were duly heard, stipulations or admissions of more or less essential facts were made, and lengthy arguments delivered by counsel (see respondents' Exhibit 1). The resulting order must therefore be regarded as a decision upon the merits in accordance with the views of the court below. The respondent judge may have erred in declining to receive oral evidence as to the coersive measures alleged to have been brought to bear upon Rosario Sanz, the mother of the minors Luz and Amparo Fanlo, in order to obtain her consent to the partition of the estate of the deceased, but if such error there be, it cannot be controlled by mandamus but must be corrected by appeal.

In view of the circumstances stated, it is unnecessary here to go into the merits of the case, but we may observe that there is nothing in the record to show that the partition in question was unjust to the herein petitioners. The fact that the deceased Pedro Sanz in his will devised and bequeathed the property partitioned to only three of his heirs was not necessarily conclusive as against the other legitimate heirs; the probate of a will is conclusive only as to its due execution and as to the testamentary capacity of the testator, but not as to the validity of any provisions made in the will (secs. 625 and 634, Code of Civil Procedure; *Castañeda vs. Alemany*, 3 Phil., 426).

The petition for a writ of mandamus is denied with the costs against the petitioners. So ordered.

Johnson, Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

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