

IN RE ESTATE OF THE DECEASED GABINA MEDINA. ALEJANDRO SAMIA, ADMINISTRATOR AND APPELLANT, VS. IRENE MEDINA ET AL., OPPONENT AND APPELLEES.*G.R. No. 36971. March 08, 1932*

Ponente: VILLA-REAL, J.

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This refers to a motion filed by the appellees praying for the dismissal of the appeal taken by Alejandro Samia, as administrator of the testamentary estate of the late Gabina Medina, from an order of the Court of First Instance of Pampanga granting the motion for the reopening of proceedings for the probate of the aforementioned decedent's will, setting aside the order of allowance of the will, and ordering a new trial.

The motion for dismissal is based upon the contention that the order appealed from is interlocutory and therefore not appealable. The appellant opposes this motion upon the ground that the order, granting the petition for the reopening of the proceedings for the allowance of the will, is final and therefore appealable. The issue then is, whether an order granting a motion to reopen proceedings upon a will, under section 113 of the Code of Civil Procedure, is interlocutory and therefore unappealable, or, final and therefore appealable.

There is a great deal of similarity between an order granting a motion for a new trial based upon "accident or surprise which ordinary prudence could not have guarded against" under section 145 of the Code of Civil Procedure, and an order granting a motion for a new trial based upon "mistake, inadvertence, surprise, or excusable neglect," under section 113 of the Code of Civil Procedure, as both set aside the judgment, order, or proceeding complained of; both call for a new trial, and in both the injured party may question the order granting the motion for the new trial upon appeal from the new judgment rendered upon the merits of the case. The only fundamental difference lies in this, that while the judgment, order, or proceeding coming under section 145 of the Code of Civil Procedure is not final, that coming under section 113 is final. But this does not alter the nature or effect of the order granting the new trial, for this order does not put an end to the litigation in the sense that the party injured thereby has no other remedy short of appeal; he may question the propriety of the new trial on appeal from an adverse judgment rendered after such trial.

In a long line of decisions this court has ruled that an order granting a motion for a new trial under section 145 of the Code of Civil Procedure is interlocutory, and therefore, not appealable. (*Veloso vs. Pacheco*, 1 Phil., 271; *Gruindrod vs. Lizarraga Hermanos*, 1 Phil., 515; *Behn, Meyer & Co. vs. Mitchell*, 7 Phil., 420; *Garcia vs. Balanao*, 8 Phil., 465; *Limpangco vs. Mercado*, 10 Phil., 508; *Smith vs. Mijares*, 23 Phil., 619; *Santa Ana vs. Santa Ana*, 28 Phil., 65; *Soriano vs. Aquino*, 31 Phil., 176.)

It is true that the courts of appeal of the State of California, interpreting that portion of section 473 of the Code of Civil Procedure of the state, from which our section IIS is taken, have uniformly held such orders to be appealable, for the reason that the order or judgment sought to be annulled is already final. (*Magee vs. Superior Court*, 10 Cal. App., 154, 161; *Davis vs. Superior Court*, 184 Cal., 691; *Livermore vs. Campbell*, 52 Cal., 75, 77;

Moorse vs. Thompson, 138 Cal., 23-27; Nicoll vs. Weldon, 130 Cal., 666-668; Glenn Will vs. Lyttle Creek etc., 100 Cal., 544); but this court laid down the following doctrine in Escudero and Marasigan vs. Esguerra (48 Phil., 511)

"Land Registration; Review of Final Decree; Order Reopening Case and Setting it Down for Hearing, Merely Interlocutory.—A tract of land was registered in the name of the appellees and final decree entered. The appellant claimed a portion of the tract, and presented a petition for review on the ground of fraud. Upon hearing, the court on June 8, 1923, reopened the case stating in its order that the registration has been obtained by fraud and directing the appellant to file an adverse claim in the land registration case. Upon filing the adverse claim the case was set for trial upon the merits of the case. After receiving the evidence of both parties the court in March, 1924, rendered a decision revoking the order reopening the case and directed that a certificate of title be issued in conformity with the original decree. Held; that the order of June 8, 1923, reopening the case, was merely interlocutory and not a final adjudication of the ultimate rights of the parties, and that the court did not err in revoking it by the final decision."

In the case just cited, there was not only a final judgment but a final decree as well, issued pursuant thereto, and yet the order granting the motion for a new trial and setting aside the decree was held to be interlocutory, and therefore not appealable.

If there is no difference in point of effect between an order granting a motion for a new trial under section 145 of the Code of Civil Procedure and an order under section 113 of the Code, there is no legal or logical reason why the first should be deemed interlocutory and therefore unappealable, and the second final and therefore appealable.

Between an order denying a motion for a new trial under section 145 of the Code of Civil Procedure, which this court has Held to be interlocutory and hence unappealable (Co-Yengco vs. Reyes, 4 Phil., 709; Benedicto vs. De la Rama, 3 Phil., 34; Bryan, Landon Co. vs. American Bank, 5 Phil., 672; Artadi Co. vs. Chu Baco, 8 Phil., 677), and an order denying a motion for a new trial under section 113 of the Code, which this court held to be final, and therefore, appealable (Philippine Manufacturing Co. and Government of the Philippine Islands vs. Cabangis, 49 Phil., 107; Philippine Manufacturing Co. vs. Imperial, 47 Phil., 810; Pecson vs. Coronel, 43 Phil., 358; Gustilo vs. Sian, 53 Phil., 155) there is this fundamental difference:

In the first case, since the judgment sought in the motion for a new trial to be annulled is not final, the question of the denial of this motion may be raised on appeal from such judgment; in the second, since the judgment sought in the motion for a new trial to be annulled is already final, there is no other remedy than an appeal from the order denying the motion, in order that the question as to its correctness can be raised.

There is this same difference in legal effect between an order granting and another denying a motion for a new trial under section 113 of the Code of Civil Procedure, and therefore, by analogy, the doctrine regarding the appealability of an order granting a motion for a new trial under section 113 of said Code cannot be applied to an order denying said motion.

In view of the foregoing, we are of opinion, and so hold, that an order granting a motion for a new trial under section 113 of the Code of Civil Procedure is interlocutory, and therefore, unappealable.

By virtue whereof, the motion for dismissal is granted. So ordered.

Johnson, Street, Villamor, Ostrand, and Imperial, JJ., concur.

Avanceña, C. J., Malcolm and Romualdez, JJ., dissent.

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