

**MARTINIANO BENIGNO, PETITIONER, VS. BERNARDO DE LA PENA,
JUDGE OF FIRST INSTANCE OF ILOCOS NORTE, AND GASPAR
ACACIO, RESPONDENTS.***G. R. No. 38036. October 15, 1932*

Ponente: VICKERS, J.

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This is a petition for a writ of certiorari. The case was submitted on the petition and the verified answer of the respondents. It appears from an examination of the record that on February 21, 1924 the respondent Gaspar Acacio applied to the Court of First Instance of Ilocos Norte for the summary settlement of the estate of the spouses Lorenzo Acacio and Norberta Benigno, alleging that Norberta Benigno and Lorenzo Acacio died intestate in the municipality of Vintar, Ilocos Norte, in 1921 and 1923, respectively; that they left no ascendants or descendants; that they had acquired during their marriage certain property, described in the petition, which did not exceed P3,000 in value; that they left no debts; that the heirs of Lorenzo Acacio were his brothers and sisters or their children, and that the heirs of Norberta Benigno were her brothers or their children; and praying that if there should be any necessity for the appointment of an administrator of the estate of said spouses he be appointed as such administrator. The court set the petition for hearing on December 11, 1924, and ordered that personal notice be given to the interested parties, and that further notice be given by publication of the order in the manner provided by law. The present petitioner Martiniano Benigno, filed an amended opposition in said summary settlement proceedings, civil case No. 2472, on December 11, 1924 on the ground that some of the properties described in the petition had been sold to him by the deceased spouses. The case was heard by Judge C. Carballo, and on December 17, 1924 he dictated an order, in which he found that Norberta Benigno died in 1919 in the municipality of Vintar, Province of Ilocos Norte, and Lorenzo Acacio in the month of September, 1923; that they were husband and wife, and that they died intestate, without leaving descendants or ascendants; that their nearest relatives and therefore their heirs were the persons named in the petition; that they left real properties having a value of P2,000, more or less; that they left no debts, and that all their properties were conjugal properties that some or all of said properties were in the possession of Martiniano Benigno, son of Clemente Benigno, one of the brothers of the deceased Norberta Benigno, and that he was the only one that opposed the petition. The court ordered the estate to be divided into two equal parts; one-half was to be divided into five equal parts among the heirs of Lorenzo Acacio, and the other half to be divided into three equal parts among the heirs of Norberta Benigno. In view of the fact duly proved by the evidence that some of the properties belonging to the estate were in the possession of third persons, the court appointed Gaspar Acacio as administrator, conditioned upon his filing a bond in the sum of P500, and authorized him to file the corresponding action to recover the properties of the estate.

The petitioner, Martiniano Benigno, was notified of said order on December 17, 1924. On May 18, 1925, Gaspar Acacio as administrator filed civil action No. 2633 in the Court of First Instance of Ilocos Norte against the petitioner herein to recover certain properties belonging to the deceased spouses. That case has been tried, and is

now pending decision.

It appears that on March 25, 1929 and July 16, 1932, the present petitioner attempted to have the order of December 17, 1924 set aside, but his motions of reconsideration were overruled.

The petitioner now prays that the respondent "Judge be ordered to refrain from further proceedings in the tration case and in civil case No. 2633 for the recovery of the real properties, and that in due course the order of December 17, 1924 as well as the appointment of the administrator Gaspar Acacio be declared null and void.

The mere statement of the foregoing facts is sufficient to show that the petition is without merit. The ground on which the petitioner principally relies is that the settlement of the estates of two persons cannot be lawfully had in the same proceeding, and in support of his contention he cites the case of *Sy Hong Eng vs. Sy Lioc Suy* (10 Phil., 209). The decision of this court in that case is not in point. It was there held that one administrator cannot be appointed in one single proceeding for the estates of three different persons, in the case at bar the only property involved was the conjugal property of the deceased spouses, and in our opinion the settlement of their estates and the disposition of their property, in the single proceeding was perfectly proper. Equally without merit is the contention of the petitioner that the appointment of an administrator to recover the property in the possession of third persons was unauthorized by law. Furthermore, it does not appear that the petitioner is an heir of either of the deceased spouses or that he has any right to complain of the order in question. The order which the petitioner seeks to set aside was issued more than seven years ago, and in pursuance thereof the administrator filed an action against the petitioner herein to recover certain real properties in the possession of the petitioner, and that case has been tried and is now pending decision. We see no reason whatever for setting aside the order in the administration proceedings or for suspending the action of ejectment. The petition for a writ of certiorari is therefore denied, with the costs against the petitioner.

Avancena, C. J., Malcolm, Villamor, Ostrand, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

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