

GUILLERMO AMANTE, PETITIONER, VS. PEDRO MA. SISON, JUDGE OF FIRST INSTANCE OF BATANGAS, AND ROSARIO MANZANERO, RESPONDENTS.

G. R. No. 42625. November 26, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioner filed this petition for a writ of certiorari for the purpose of annulling the order entered by the Court of First Instance of Batangas on September 27, 1934, in special proceeding No. 2986 of said court, setting aside another order dated December 21, 1933.

In said special proceeding No. 2986, the herein petitioner filed an application in accordance with the provisions of section 597 of the Code of Civil Procedure, as amended lately by Act No. 3370, praying for the summary settlement and distribution of the estate of the deceased Leopoldo Laurel, the value of which did not exceed P6,000, and the approval, after hearing, of his claim for the sum of P850, of Pedro Marile for P870, of Santiago Jazmin for P300, of Cosme Reyes for P200, and of Juana Mabilangan for P130. On November 17, 1933, an order was entered setting the hearing of the application for December 21st of the same year and directing that said order together with the date of the hearing be published, for the period fixed by law, in the newspaper *Mamara* edited in Manila and with circulation in the Province of Batangas and in the municipality of Sto. Tomas where the deceased was residing at the time of his death. Hearing was held on the appointed date and, after the presentation of evidence, the court entered the order dated December 21, 1933, approving the aforesaid claims and directing Ruperto Carpio, who was appointed special administrator, to sell the real estate of the deceased and with its proceeds pay the claims in question. The special administrator made the required publication and on March 23, 1934, he sold the real estate to the herein petitioner who was the highest bidder. On the same date he executed the corresponding deed of sale which was approved by the court and registered in the registry of deeds of the province. After payment of said claims, there remained a surplus of 9250 which was deposited with the clerk of the court. On January 5, 1934, the widow of the deceased filed a motion for reconsideration praying the court to set aside the order of December 21, 1933, and suspend the proceedings of the case. The motion was denied by an order dated February 7th of the same year. On April 16, 1934, the same widow filed another motion based, according to her counsel, upon the provisions of section 113 of the Code of Civil Procedure, praying that said order of December 21, 1933, be set aside, that the sale of the property be annulled, and that she be permitted to present evidence in support of her contention that the claims were fraudulent. On September 27, 1934, the court entered the order which is the subject of this petition whereby it set aside the order dated December 21, 1933, and appointed the widow as regular administratrix, after filing a bond for P1,000, and directed the parties to submit within five (5) days the names of two persons to be appointed commissioners on claims and appraisal.

The petitioner contends that the order dated September 27, 1934, was entered by the court after loss of jurisdiction, for the reason that the other order dated December 21, 1933, had already become final and had been fully executed. The respondent judge did not comply with the order requiring him to file an answer, but the other

respondent insists, in her answer, that the respondent judge acted within and did not exceed his jurisdiction in issuing the order in question, on the ground that the motion which gave rise thereto had been filed under the provisions of section 113 of the Code of Civil Procedure and it had been shown that the court, in entering the order dated December 21, 1933, had acted without and in excess of jurisdiction, having failed to give the personal notice required by section 597. It is clear that the court based its order of September 27, 1934, on the provisions of section 598 of the Code of Civil Procedure, in view of the birth of the heir Leopoldo Laurel, jr.

Without discussing nor passing upon the legal grounds invoked by counsel for the parties, it being considered unnecessary to do so, this court holds that the petition cannot prosper, on the ground that the respondent judge has not been given an opportunity to reexamine the legal aspect of the case by the filing of a motion for reconsideration. The necessity of filing a motion for reconsideration, before bringing an action for certiorari and similar special remedies, is a rule already established in this jurisdiction, and the same has been upheld in the cases of *Herrera vs. Barretto and Joaquin* (25 Phil., 245), and *Uy Chu vs. Imperial and Uy Du* (44 Phil., 27). In the first mentioned case this court said:

"We cannot leave the case without suggesting that the applicant herein, before coming to this court, should, as the better practice, have made the proper application to the Court of First Instance for a dissolution or modification of the mandatory injunction, and thereby given that court an opportunity, after full argument of counsel and citation of authorities, to pass upon the question of his power and jurisdiction and, even, the correctness and propriety of his action, should power and jurisdiction be found by the court to exist. Questions which Courts of First Instance are required by law to decide should not be summarily taken from them and presented to this court without first giving them an opportunity of deliberately passing on such questions themselves. The most natural and proper thing to do, when such court, in the judgment of one of the parties, has issued an injunction erroneously, is immediately to call the attention of that court to its supposed error and ask for its correction. The strongest reasons of policy and courtesy, if not actual legal right itself, require such procedure; and we discourage all attempts to come to this court upon questions which a court below is entitled to decide without first invoking its judgment thereon. There are special reasons for following this course in cases where the court has acted *ex parte*."

In the latter case the same rule was reiterated in the following terms:

"This rule is a wholesome one and has generally been adhered to by this court except when special circumstances have required immediate and more direct action. No such special circumstances have been shown to exist in the present case, and the additional allegation inserted in the amended petition that previously to the issuance of the order complained of the attention of the court was called to certain defects in the motion upon which the order was based does not take the case out of the rule quoted. The error or irregularity must be brought to the attention of the inferior court by way of a motion for reconsideration."

In view of the foregoing, the petition is denied, with costs against the petitioner. So ordered.

Villa-Real, Butte, and Goddard, JJ., concur.

MALCOLM, J., concurs in the result on the merits.

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