

REMEDIOS BONGON VIUDA DE MANZANERO, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF BATANGAS, FORTUNATO, BARBARA, MARCELINA AND FERNANDA, SURNAMED MANZANERO, AND FILIPINAS LIFE A...

G.R. No. 44042. August 27, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for certiorari filed by Remedios Bongon Viuda de Manzanero against the Court of First Instance of Batangas and others, praying for the annulment, after due process, of the proceedings of said court in the case for the summary settlement of the estate left by the deceased Esteban M. Manzanero, for having acted without jurisdiction and committed therein irregularities nullifying said proceedings.

The following pertinent facts are necessary for the resolution of the questions raised in this petition, to wit:

Esteban M. Manzanero, then assistant district engineer of the Province of Albay, died in the provincial hospital of said province on February 15, 1935. On March 7, 1935, his brother, Fortunato Manzanero, filed in the Court of First Instance of Batangas a sworn application which was docketed as special proceedings No. 3128, alleging that his deceased brother, Esteban M. Manzanero, in life, had his legal residence in Santo Tomas, Batangas; that he had left no property except a life insurance policy of P5,000 with the Filipinas Life Assurance Co., of Manila; that his said deceased brother owed him the sum of P500; that he was survived by a widow, the herein petitioner, Remedios Bongon, residing in Tabaco, Albay; and praying for a summary settlement of his estate. A copy of said application was sent by ordinary mail to said widow.

On March 11, 1935, the herein respondent, Court of First Instance of Batangas, issued an order setting said application for hearing at 8:30 o'clock in the morning of April 11, 1935, and directing the publication of the notice for the time fixed by law in *Kayumangui*, a newspaper published in Lipa, Batangas, and of general circulation in the province.

When the application was called for hearing on April 11, 1935, only the applicant Fortunato Manzanero appeared through his attorney, Eпитacio Panganiban. As the vacation Judge, Eduardo Gutierrez David, was holding judicial sessions in Lucena, Tayabas, said applicant and his attorney requested the clerk of the Court of First Instance of Batangas to send the record to Lucena which he did.

Upon petition of the applicant, and after making sure that no opposition to the application had been presented, Judge Eduardo Gutierrez David ordered the clerk of court of Tayabas to take the evidence in the case and to submit his report.

On April 15, 1935, the clerk of the Court of First Instance of Tayabas forwarded the evidence with his report to said court.

On April 20, 1935, the case was set for hearing at 8 o'clock in the morning of April 22, 1935, and the corresponding notice thereof sent by registered special delivery mail to the herein petitioner, Remedios Bongon Viuda de Manzanero, and to Fortunato Manzanero on the same day, April 22, 1935.

On April 23, 1935, the case was called for hearing without the petitioner having appeared to oppose the application. On the same date, Judge Eduardo Gutierrez David issued an order stating, among other things, that the evidence presented by said applicant disclosed that Esteban M. Manzanero was a resident of Santo Tomas, Batangas, with temporary residence in Tabaco, Albay, where he was assistant district engineer, and directing the summary distribution of the sum of P5,000, after payment of the sum of ₱500 which said deceased supposedly owed his brother, Fortunato Manzanero, and after the filing of a bond of P3,500 by the alleged heirs, said distribution to be subject to any valid claim that might be presented within two years against said distribution.

In an order of May 4, 1935, Eduardo Gutierrez David, vacation Judge of the Court of First Instance of Batangas, required the Filipinas Assurance Company to pay to the heirs of the deceased Esteban M. Manzanero the proceeds of his insurance policy.

Pursuant to said order, said insurance company sent the net proceeds of the policy amounting to P4,276.03 to the clerk of said court.

Having been informed that the proceeds of the policy had been distributed among the heirs of her deceased husband, the petitioner, on June 21, 1935, filed a motion praying for the return and delivery to her of the money, the hearing of said motion having been set for June 28, 1935. This motion was not heard as Judge Platon then presiding the Court of First Instance of Batangas refrained from trying the case.

The first question to be decided is whether or not the question of jurisdiction of a court to take cognizance of a summary settlement of the estate of a deceased person, by reason of residence, may be raised by means of the extraordinary remedy of certiorari.

Section 603 of the Code of Civil Procedure provides:

"Sec. 603. Jurisdiction, when may be contested.—The jurisdiction assumed by a Court of First Instance, for the settlement of an estate, so far as it depends on the place of residence of a person, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record."

According to the above cited legal provision, the jurisdiction assumed by a Court of First Instance, for the settlement of an estate, so far as it depends on the place of residence of a person, or of the location of his estate, cannot be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

From the pleadings before us, which are copies of their originals attached to the record in the Court of First Instance of Batangas, the want of jurisdiction of said court does not clearly appear. The communication of the municipal treasurer of Tabaco, Albay, stating that the deceased Esteban M. Manzanero appears in the list of registered voters, and the affidavit of the municipal president thereof stating that the deceased resided before his death in Tabaco, Albay, do not form part of the record of the lower court.

It not appearing from the orders of the lower court, as disclosed by the copies thereof attached to the record of these certiorari proceedings, that said court lacks jurisdiction to take cognizance of the application for summary settlement by reason of the legal residence of the deceased, Esteban M. Manzanero, certiorari does not lie, an appeal being specially provided in such case by section 603 of the Code of Civil Procedure.

As to the alleged irregularities, some involve a question of fact, as the absence of publication of the hearing, and they cannot be the object of certiorari; and others, as the taking of evidence before the clerk of court of Tayabas, while involving questions of law which may affect the validity of the proceedings, it does not appear that the lower court's attention has been called thereto by means of a motion to reconsider its proceedings, without which requisite certiorari does not lie, as held in the cases of the Municipal Council of Masantol vs. Guevara (44 Phil., 580); and Herrera vs. Barretto and Joaquin (25 Phil., 245).

Furthermore, it appears of record that there is a motion in the special proceeding for the summary settlement of the estate under consideration, praying that the heirs of the deceased Esteban M. Manzanero, who received the latter's property, be ordered to return it to the court for delivery to the herein petitioner, Remedios Bongon Viuda de Manzanero, as the only alleged beneficiary named in the insurance policy of her deceased husband. This motion is pending decision and is in accordance with the reservation made by Judge Eduardo Gutierrez David in his order of April 23, 1935, directing the distribution of the net proceeds of the insurance policy among the brothers and sisters of the deceased, after payment of the only indebtedness of P500. Said reservation is in accordance with the provision of section 598 of said Code of Civil Procedure.

Under the law and under said order, the petitioner, therefore, has a plain, speedy and adequate remedy for the enforcement of her rights, and consequently, this petition for certiorari does not lie.

For the foregoing considerations, it is held that the petition for certiorari filed by the petitioner Remedios Bongon Viuda de Manzanero does not lie and it is ordered dismissed, with costs to the petitioner. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Petition dismissed.

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