

**IN RE INTESTATE ESTATE OF AUGUSTO H. TUASON ET AL.,  
PETITIONERS, VS. ANTONIO MA. BARRETTO Y ROCHA ET AL.,  
RESPONDENTS.***G. R. No. 45366. January 29, 1937*

Ponente: CONCEPCION, J.

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This is a petition for a writ of certiorari and subsidiarily for a writ of mandamus. The writ of certiorari is sought for this court to restrain the Court of First Instance of Manila, which has cognizance of civil case No. 24803 relative to the mayorazgo Tuason, from proceeding with the execution of some interlocutory orders, praying, in case this court deemed such a course as not in accordance with law, for a writ of mandamus to compel said court to approve and certify the bill of exceptions filed by the petitioners in said case.

The facts are as follows: The last time this case came here on appeal, this court, in its decision rendered therein, ordered the trial court to take the necessary steps toward the adjudication and distribution among all the interested parties of their respective participations for the purpose of definitely terminating this mayorazgo suit.[1]

In order to carry out and execute the decision of this court relative to the distribution of the income, the Court of First Instance of Manila, presided over by Judge Abeto, on December 7, 1934; ordered the Bank of the Philippine Islands, the receiver appointed in this case, to make a computation of the respective participations of all the interested parties. In compliance therewith, the bank, on August 30, 1935, submitted its first report containing the lineal as well as the collateral heirs. The defendants made some objections to said report but the court approved it with some alterations in its order of October 21, 1935. According to this order, "the defendants owe the plaintiffs and the intervenors the sum of P317,993.07 representing their participations in the income and fruits of the properties of the mayorazgo, corresponding to the period from 1904 to 1922 \* \* \*" and "that the defendants had made a partial liquidation from the year 1922, which was still unfinished." "In said partial liquidation the defendants, as they themselves admit, owe the plaintiffs and the intervenors the sum of P77,544.17 representing the income and fruits of one-fifth of the mayorazgo from 1923 to 1925." The above-stated sums, added together, amount to P395,537.24 which, in addition to the sum of P200,000 in the hands of the receiver bank, makes a total of P595,537.24. In "said order of October 21, 1935, the court directed that P228,661.45 of the above-stated amount be distributed N among the lineal heirs excluding the defendants who had purchased the participations of some of the plaintiffs and intervenors amounting to P143,549.30. In the same order of October 21, 1935, the court required the defendants to deposit the sum of P223,326.49 in the Bank of the Philippine Islands within 15 days for the protection of the collateral heirs, which sum would be kept by the receiver bank subject to the order of the court. In the same order the defendants were warned that if they failed to deposit said amount within the above-stated period, a writ of execution for said amount would be issued against their respective participations.

On November 9, 1935, the bank submitted its second report in compliance with the above-stated order of October 21, 1935, stating therein and in the statement attached thereto the manner of distributing the sum of P228,665.26

among the plaintiffs and intervenors. After the approval of said report by the court's order of November 11, 1935, the sum of P228,665.26 was distributed, as ordered, among the lineal heirs.

On March 12, 1936, the court issued an order declaring that  $\frac{3}{8}$  of one-fifth of the mayorazgo must be distributed among the collateral heirs, not on the basis of each great-great-grandchild but of each great-grandchild, and directed the bank to submit a report stating the quota corresponding to each of the collateral heirs. Alfonso Rocha, one of the plaintiffs, excepted to this order of March 12th.

On June 1, 1936, the bank, in compliance with the court's order of March 12, 1936, submitted its third report specifying the participations of each of the collateral heirs. This report was approved without any objection by the court's order of June 22, 1936, directing that "the distribution of funds corresponding to the collateral line must be made in accordance with said report,"

On March 12, 1936, intervenor Quintin Montes filed a motion praying that the defendants be ordered to deposit the sum of P223,326.49 to be distributed among the collateral heirs, as directed in the order of October 21, 1935. The defendants objected thereto but the court, in its order of June 17, 1936, required the defendants to deposit the sum of P133,690.67 to enable the receiver to comply with the order of March 12, 1936, relative to the distribution of the funds corresponding to the collateral line. It should be noted that the sum of P223,326.49, which the court had ordered the defendants to deposit in its order of October 21, 1935, was reduced to P133,690.67 in accordance with the last order of June 17, 1936, because the participations of the defendants amounting to P45,798.86 and those of the intervenors Legarda totalling P43,840.71 were deducted therefrom. Said intervenors agreed with the defendants to collect their participations extrajudicially from the latter, all of which appear in the third report of the bank.

The defendants excepted to the order of June 17, 1936, and on the 27th of said month they filed a motion for reconsideration on the ground that as the plaintiff Alfonso Rocha excepted to the above-mentioned order, it was premature, according to them, to order the deposit of the sum of P133,690.67. In said motion the defendants prayed that should the order of June 17th (June 6th, according to them) not be reconsidered, they be given a period of 10 days within which to file a liquidation which they had asked of the bank.

On July 10, 1936, the defendants asked for a period of 30 days to file the aforesaid liquidation of the bank. On July 24, 1936, Judge Mapa denied the motion of June 27th and the petition of July 10th and again ordered the defendants to deposit the sum of P133,690.67 within 3 days. On July 30, 1936, the defendants filed a motion for reconsideration of the order of July 24th and attempted to show that they should deposit only P63,742.86. To obtain the result, however, the defendants included in the income ordered by the court to be distributed, that is, the income from 1904 to 1922, and from 1923 to 1925, other income corresponding to the periods from 1926 to 1929 and from October, 1929, to June, 1936, which had not been the subject matter of the order of July 24th or that of June 17th, and hence was completely immaterial to the question then under consideration. The plaintiffs and the intervenors objected thereto and Judge Mapa, in his order of August 24, 1936, denied the defendants' motion for reconsideration of July 30th and ordered them to comply with the order of July 24th within three days, warning them that otherwise the court would order the attachment of their property to realize the amount referred to in said order.

The defendants received notice of said order on August 28, 1936, and on September 2, 1936, they excepted to the order of August 24th and announced their intention to appeal from the orders of July 24, and August 24, 1936.

They were granted an extension up to September 29, 1936, and on the 19th of said month (September, 1936), they filed the bill of exceptions.

Pending the approval of the bill of exceptions, intervenor Maga and others, on September 30, 1936, filed a motion praying for the issuance of a writ of execution of the order of August 24, 1936. On October 3d, the defendants filed opposition to this motion and the court, on October 17, 1936, ordered the issuance of a writ of execution of the order of June 17, 1936.

On October 22d the defendants excepted thereto and filed a motion for reconsideration of the order of October 17th.

On October 27, 1936, the court disapproved the bill of exceptions.

On November 2, 1936, the court denied the motion for reconsideration of the order of October 17, 1936, and on November 3, 1936, it ordered the issuance of a writ of execution against the properties of Augusto H. Tuason and other persons named in the order.

On November 3d the defendants filed a motion for reconsideration of the order disapproving the bill of exceptions, which motion was denied by the court on November 7th.

From the foregoing statement of facts, it is inferred that the respondent judge acted neither arbitrarily nor in excess of his jurisdiction in issuing the order of November 3, 1936. Said order decreed the issuance of a writ of execution against the persons named therein for the payment of the sum of P133,690.67, the deposit of which had been ordered on June 17th of said year but was not complied with by the defendants for no reason whatsoever. It will be seen that the order in question was issued on November 3, 1936, after the court had disapproved the defendants' bill of exceptions on October 27, 1936. It is alleged that said order was issued in excess of jurisdiction for the purpose of carrying out an interlocutory order and that it includes as parties liable persons who had not been joined as defendants and who are not heirs or successors in interest of any of the original defendants. These allegations are contrary to the true facts, because the order of June 17, 1936, which the court ordered to be executed, was not interlocutory but final and executory in character. As to the persons named therein, they are either original defendants or heirs or successors in interest of the original defendants. At any rate the persons mentioned in said order, who were not original defendants, are not represented by the attorneys for the defendants and therefore said attorneys cannot institute this petition for a writ of certiorari in their name.

It is also alleged that the court exceeded its jurisdiction in making the defendants stated in the order of November 3d jointly and severally liable for the payment of the amount sought to be realized in said order instead of merely jointly liable therefor as they ought to be. In fact the order of November 3d does not determine the extent of the responsibility of said defendants in the payment of the sum of P133,690.67 and, therefore, the alleged abuse of jurisdiction attributed to the court does not exist.

With respect to the writ of mandamus applied for, it appears that the disapproval of the bill of exceptions was perfectly justified inasmuch as the defendants appealed only from the orders of July 24 and August 24, 1936, which were interlocutory in nature, being mere orders denying motions for reconsideration and, as such, were not appealable to this court (sec. 123, Code of Civil Procedure; *Averia vs. Reboldera*, 10 Phil., 316; *Insular Government vs. Roman Catholic Bishop of Nueva Segovia*, 17 Phil., 487). While it is true that the above-stated orders were subject to exception, it is because they are related to another final order, which is that of June 17, 1936. It is said order of June 17, 1936, that was really appealable because it finally decides once and for all the incident relative to the deposit of the sum of P133,690.67 required to be made by the defendants in said order for the purpose of carrying out the distribution of income among the collateral heirs as ordered on March 12, 1936. Said order put to an end the incidental question of the deposit decreed for the first time on October 21, 1935, but the defendants failed to appeal therefrom.

On the other hand, if the bill of exceptions were considered as having been filed for the purpose of perfecting an appeal from the order of June 17, 1936, it would then appear that it was filed outside the statutory period because the two motions of June 27th and July 30th seeking the reconsideration of the orders of June 17th and July 24th, respectively, did not interrupt the running of the period for perfecting the appeal for the reason that they could not be considered as motions for a new trial, not being based upon any of the grounds enumerated in section 145 of the Code of Civil Procedure, as amended by Act No. 2347. Furthermore, they did not ask for the annulment of the order of June 17th and for a new trial (*Pascua vs. Ocampo and Aguilar*, 59 Phil., 48; *Blouse vs. Moreno and Garcia*, 60 Phil., 741).

It is claimed that the bill of exceptions was filed within the extension of time granted by the court. Said extension, however, was erroneously granted because when the defendants asked for it on September 2, 1936, the period within which to appeal from the order of June 17th, of which said defendants were notified on the 19th of the same month had long elapsed.

Therefore mandamus does not lie to compel the court to approve and certify the bill of exceptions filed by the defendants-petitioners.

The petition is denied in toto, with costs to the petitioners. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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[1] 59 Phil., 845, 893.

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