

**IN THE MATTER OF THE SUMMARY DISTRIBUTION OF THE ESTATE
OF THE DECEASED ESTEBAN M. MANZANERO. FORTUNATO
MANZANERO, PETITIONER AND APPELLANT, VS. REMEDIOS
BONGON, WIDOW OF THE DE...**

G.R. No. 45506. April 27, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal from the order of the Court of First Instance of Batangas annulling all the proceedings in the matter of the "Summary Distribution of the Estate of the Deceased Esteban M. Manzanero", special proceedings No. 3128, and ordering the petitioner and his co-heirs to deposit within ten days with the clerk of court all the sums of money which they might have received under the orders dated April 23 and May 4, 1935—orders which have likewise been held null and void.

Upon the death of Esteban M. Manzanero on February 15, 1935 in the Provincial Hospital of Albay, Province of Albay, his brother Dr. Fortunato Manzanero filed a petition with the Court of First Instance of Batangas asking that the properties left by the said deceased be summarily distributed under section 597 of the Code of Civil Procedure, after paying his indebtedness consisting in petitioner's credit for P500, and other judicial expenses. In his sworn petition the petitioner alleged: that the deceased was a resident of Sto. Tomas, Province of Batangas, although he temporarily resided in the Province of Albay and died in the Provincial Hospital; that he left no property except a life insurance policy for P5,000, issued by the Filipinas Life Assurance Company; that the only surviving relatives of the deceased are: his widow Remedios Bongon, residing in Tabaco, Albay, and his sisters Barbara, Marcelina and Fernanda, surnamed Manzanero, and the petitioner; and that the said deceased while living was indebted to him in the sum of P500 which had not been paid. The petition was set for trial on April 11, 1935 in the session hall of the Court of First Instance of Batangas, and the order to that effect was published in the weekly *Kayumangui* edited in Lipa, Batangas. On the date set for trial nobody appeared to oppose the petition and the judge on vacation in the province, who was then acting in the Province of Tayabas, ordered on the same date that the clerk of Court of First Instance of Batangas receive the evidence to be presented in the case. The clerk of court filed his report with the evidence thus presented and the judge on vacation, by an order of April 16, 1935, required the petitioner to state the beneficiary or beneficiaries of the life insurance policy. On the same date, April 16, 1935, the petitioner stated in, writing, dated in Lucena, Tayabas, that according to the enclosed telegram of the Filipinas Life Assurance Company, the beneficiary was the mother of the deceased, named Ursula Mujer, and reiterated the allegations contained in his sworn petition. On the 20th of April of the same year the clerk of the Court of First Instance of Tayabas notified the petitioner and the widow Remedios Bongon by registered mail that the trial of the case was set by the court for the 22nd of the same month, at 8.00 a. m., and required them to appear to protect their respective interests. This notice was received by the widow at her residence in Tabaco, Albay, in the morning of the same day set for the trial, hence, she found it materially impossible to appear and be present at the trial. On the same date, April 22, 1935, the court called the case for trial and after hearing the petitioner's

evidence issued an order on the following day, April 23d, wherein it is provided that his credit for P500 be paid and that the balance of the amount of the life insurance policy be equally distributed among the fourth brother and sisters of the deceased, to wit, the petitioner Fortunato Manzanero, Barbara Manzanero, Marcelina Manzanero and Fernanda Manzanero, the distribution being subject to any valid claim which may be presented within two years. On the 26th of April of the same year the widow filed a motion in court alleging that the notice of trial was received by her in the morning of the same day set for that purpose, wherefore, she was unable to appear, and asking that the court furnish her with a copy of the inventory of the properties of the deceased when the same is filed. On April 30th of the same year, at the instance of the petitioner, the court fixed at P3,800 the bond which the heirs should file before the balance of the policy is distributed among them. Upon the filing of the bond, the court approved the same by its order of May 4, 1935, and ordered the Filipinas Life Assurance Company to pay to the said heirs the entire amount of the life insurance policy of the deceased. On the same date the court denied the motion of the widow asking that she be furnished with a copy of the inventory. On May 7th of the same year the widow wired the clerk of court asking for the suspension of the distribution of check No. 98413-G issued by the Philippine National Bank in favor of the Manzanero family because she will question the same in court. On May 7th of the same year, the petitioner filed a motion in court alleging that Filipinas Life Assurance Company had issued check No. 98413-G for the sum of P4,276.03, the amount of the life insurance policy of the deceased, in favor of the clerk of court and the latter declines to turn it over to him without order of the court, and asking that an order be issued authorizing the clerk of court to indorse the check to him inasmuch as he had a power of attorney from his sisters to receive the same and collect its amount. On the same date the court issued an order directing the clerk of court to indorse the check in favor of the petitioner and after the latter has cashed the same to distribute the amount thereof in accordance with the other order of April 23, 1935. The clerk of court complied with the said order, indorsed the check to the petitioner, the latter cashed it, and the money was distributed among the petitioner and his sisters. On May 10, 1935, the widow filed a motion asking for the setting aside of the order of May 4th of the same year which ordered that the amount of the check be distributed among the petitioner and his sisters, and for an order that the sum of P4,276.03 representing the amount of the check be turned over to her. On the 16th of the same month of May the widow filed another motion wherein she prayed that the court revoke the appointment of Barbara Manzanero as administratrix, and that another order be issued appointing her administratrix of the estate of her deceased husband. On June 21, 1935, the widow through her counsel Ticzon, filed an amended motion praying that the petitioner and his sisters be ordered to return the amount of the check and the life insurance policy which they had received and, once deposited in court, that the latter order the delivery thereof to her as beneficiary of the, said policy. The latter motion was filed when the two previous motions were still pending resolution. In this state of the case, the widow, on July 17, 1935, filed with this court a petition for certiorari (G. R. No. 44042, 61 Phil., 850), wherein, for the reasons stated, she asked that all the proceedings in the present case be nullified, that the court be declared to be without jurisdiction and that the amount of the life insurance policy be delivered to her as the sole beneficiary thereof. The petition was denied for the sole and principal reason that the extraordinary remedy sought did not lie under section 603 of the Code of Civil Procedure because the widow had a remedy by appeal from the questioned orders, a remedy which was more adequate and speedy in the ordinary course of law. On September 28, 1935, the widow, through counsel, filed another motion asking that all the proceedings in the case be annulled and that the petitioner and his three sisters, or their sureties, be ordered to return and deposit with the court all the amounts of money which they had collected from the life insurance policy. This motion was opposed by the petitioner and his three sisters and at the trial their counsel objected to the presentation of evidence by the widow in support of the allegations of her motion. On January 31, 1936, as a result of the trial which had taken place, at which evidence was adduced by the widow and none by the petitioner and his sisters because their counsel waived said right, the court issued the appealed order mentioned at the beginning of this decision. On the 11th of February of the same year, the

petitioner and his sisters excepted to the order, announced their intention to appeal and, finally, filed the record on appeal which was approved without objection.

The motion which was filed by the widow on September 28, 1935 was not supported by any affidavit. In their first assigned error the appellants contend that the court should neither have accepted nor favorably considered the same because it was in violation of Rule 18 of the Rules of Courts of First Instance. It is true that this rule expressly provides that all motions, except those made in the presence of the adverse party or those made in the course of a trial, should be accompanied with the affidavits and other papers supporting the same, but this rule is neither absolute nor inflexible, nor does it deprive the court of its discretionary power to take cognizance of and pass upon a motion on the merits, like the one assailed, wherein it is specifically alleged that the court acted without or in excess of its jurisdiction when it issued the orders or resolutions the nullity of which was therein sought. In the present case the defect which infected the motion was remedied by the evidence subsequently adduced by the widow during the trial of the motion and at which the appellants were present and duly represented by counsel. When it is alleged in a motion that the court issued orders or resolutions without or in excess of its jurisdiction, and its other allegations show clearly that the movant also avails himself of the remedy provided by section 113 of the Code of Civil Procedure, and the motion is filed within six months from the issuance of the orders or resolutions sought to be nullified, the court, in its sound discretion, may consider and pass upon the motion although not accompanied with affidavits as provided by Rule 18; and when it is shown by the evidence adduced by the petitioner that the motion is meritorious, it may grant the remedy prayed for. The questioned motion is of this nature and we conclude that the court did not err in considering and passing upon it favorably.

In the following and last assignments of error the appellants contend that the court erred because it had no jurisdiction either to nullify all the proceedings in the case, including the questioned orders or resolutions principally that of April 23, 1935, directing the payment of the credit of the petitioner and the delivery of the balance of the amount of, the policy to said petitioner and his sisters, or to order that the appellants deposit with the clerk of court all the amounts which they had received as coheirs of the deceased.

The court annulled all the proceedings, and particularly the order of summary distribution, because the widow had established that the deceased Esteban M. Manzanero died in the Albay Provincial Hospital while he had his legal residence in the municipality of Tabaco of the aforesaid province. We hold that in so acting the court did not commit any error because under section 600 of the Code of Civil Procedure the Court of First Instance of Batangas which took cognizance of the petition for summary distribution and granted the same, was without jurisdiction and was not the competent court. Said section provides that the Court of First Instance of the place where the deceased had his legal residence at the time of his death has jurisdiction to take cognizance of the estate of the deceased (*Garcia Verdejo vs. Escudero*, G. R. No. 23375, March 12, 1925, not reported).

Section 602 of the same Code of Civil Procedure provides that the Court of First Instance which has first taken cognizance of the settlement of the estate of a deceased person shall have jurisdiction of the disposition and settlement of such estate, to the exclusion of all other courts; and section 603 provides that 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. Belying upon this last provision the appellants contend that the court was without jurisdiction to issue the appealed order because the orders or resolutions which it annulled had not been appealed and had become final; they also argue that the motion filed on September 28, 1935 was not the remedy by appeal authorized by section 603. To our mind the contention is unsound. The motion of September 28, 1935 was a motion tiled under section 113 of the Code of

Civil Procedure and virtually invoked the extraordinary remedy therein provided, and it being of this character the remedy thus availed of by the widow was one of those authorized by section 603. Moreover, this last section cannot be deemed violated because the lack of jurisdiction of the court to issue the order of April 23, 1935 appeared in the record or special proceedings, for according to the death certificate, verified by the petitioner himself in his capacity as a doctor and presented by him as a part of his evidence, the deceased has his legal residence in Tabaco, Albay, at the time of his death.

As to that part of the appealed order requiring the appellants to deposit within ten days in the office of the clerk of court the amounts of money which they had received as coheirs, we hold that the court committed no error. All the proceedings in the case being null and void, that money should be returned to the court to be delivered to, or distributed among the persons entitled thereto. As to the money, there exist various theories. The appellants contend that their deceased mother, Ursula Mujer, was the beneficiary of the life insurance policy; if this is true it was useless to commence the intestate of the deceased insured; the proper thing to do is to ask for the administration of the estate of the deceased mother. The widow, in turn, contends that she is the beneficiary of the said policy; if this is the case she should bring the proper action to recover the money to be deposited, representing the amount of the life insurance policy.

In view of the foregoing considerations; the appealed order is affirmed, with the costs of this instance to the appellants. So ordered.

Avanceña, C. J., Villa-Real, Diaz, and Moran, JJ., concur.

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