

FRANCISCO SALAZAR, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF LAGUNA AND SABINA RIVERA, RESPONDENTS.*G. R. No. 45642. September 25, 1937*

Ponente: IMPERIAL, J.

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The petitioner instituted special proceeding No. 3109 in the Court of First Instance of Laguna and, in the petition filed by him, prayed for the probate of the will allegedly made on May 13, 1924, by his deceased mother Damiana Capistrano, who died in the municipality of Pagsanjan, Laguna, on December 21, 1936. The petition was opposed by the respondent Sabina Rivera, who filed a pleading entitled "Opposition and Counter-Petition." In her pleading the respondent, after opposing the probate of said will for the reasons stated therein, prayed for the probate of the will of the deceased allegedly made on May 11, 1930, copy of which was attached thereto, and for the issuance, to that effect, of the order setting the hearing thereof and directing such publications as required by law. The court denied the motion for publication and ordered the respondent to institute another proceeding and apply separately for the probate of the alleged will. The respondent filed a motion for reconsideration and the court, on March 31, 1937, issued an order setting aside the former one and directing that the will presented by the respondent be set for hearing, that the publications required by law be made and that said will be heard jointly with the will presented by the petitioner in the same proceeding instituted by the latter. Sometime later, the court ordered that the expenses for the publications made in the newspapers be defrayed by the respondent. The petitioner filed two motions for reconsideration which were denied and, finally, instituted this certiorari proceeding. In order that the hearing and publications ordered by the court may be carried out, the respondent, on July 20, 1937, deposited P24 and filed the original of the will the probate of which had been sought by her.

I. The petitioner raises only one question of law, to wit: that the court acquired no jurisdiction to take cognizance of the counter-petition for the probate of the second will, or to set the same for hearing and to order, as it did, the publications to be made and the hearing of said will to be held in the same proceeding jointly with the first will, on the ground that the respondent had not previously filed her pleading nor paid the fees of the clerk of court fixed by section 788 of the Code of Civil Procedure, as amended by Act No. 3395. The pertinent part of said section, as amended, reads as follows:

"SEC. 788. Fees of clerks of Court of First Instance.— Fees shall be assessed in accordance with the following schedule:

* * * * *

"(g) For all clerical services in the allowance of wills, granting letters of administration, appointment of guardians, trustees, settlement of the accounts of executors, administrators, guardians, trustees, and recording final and interlocutory orders, judgments, and decrees therein, filing all inventories and appraisements, and for all other work as clerk pertaining to any one estate, fees payable out of the estate shall be collected in accordance with the value of the property involved in each proceeding, as follows:"

* * * * *

The jurisdiction of the Courts of First Instance in probate matters is determined in the following sections of the above-cited Code:

"SEC. 599. Jurisdiction.—Courts of First Instance shall have jurisdiction in all matters relating to the settlement of estates and probate of wills of deceased persons, the appointment and removal of guardians and trustees, and the powers, duties, and rights of guardians and wards, trustees, and cestuis que trust. This jurisdiction shall be called probate jurisdiction.

"SEC. 600. Where resident's estate settled.—If an inhabitant of the Philippine Islands dies, whether a citizen or alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resided at the time of his death.

"Sec. 601. Where nonresident's estate settled.—If a person resided out of the Philippine Islands at the time of his death, his will shall be allowed and recorded, and letters testamentary or of administration shall be granted in the Court of First Instance of any province in which he had estate."

* * * * *

"SEC 6265. Custodian of will to deliver.—The person who has the custody of a will shall, within thirty days after he knows of the death of the testator, deliver the will into the court which has jurisdiction, or to the executor named in the will.

"SEC. 627. Executor to present will and accept or refuse trust.—A person named as executor in a will, shall within thirty days after he knows of the death of the testator, or within thirty days after he knows that he is named executor, if he obtained such knowledge after knowing of the death of the testator, present such will to the court which has jurisdiction, unless the will has been otherwise returned to said court, and shall, within such period, signify to the court his acceptance of the trust, or make known in writing his refusal to accept it."

* * * * *

"SEC. 630. Court to appoint hearing on will.—When a will is delivered to a court having jurisdiction of the same, the court shall appoint a time and place when all concerned may appear to contest the allowance of the will, and shall cause public notice thereof to be given by publication in such newspaper or newspapers as the court directs of general circulation in the province, three weeks successively, previous to the time appointed, and no will shall be allowed until such notice has been given. (At the hearing all testimony shall be taken under oath, reduced to writing and signed by the witnesses."

Under the foregoing provisions, a Court of First Instance acquires jurisdiction to probate a will when it is shown by evidence before it: (1) That a person has died leaving a will; (2) in the case of a resident of this country, that he died in the province where the court exercises territorial jurisdiction; (3) in the case of a nonresident, that he has left an estate in the province where the court is situated, and (4) that the testament or last will of the deceased has been delivered to the court and is in the possession thereof.

The law is silent as to the specific manner of bringing the jurisdictional allegations before the court, but practice and jurisprudence have established that they should be made in the form of an application and filed with the original of the will attached thereto. It has been the practice in some courts to permit attachment of a mere copy of the will to the application, without prejudice to producing the original thereof at the hearing or when the court so requires. This precaution has been adopted by some attorneys to forestall its disappearance, which has taken place in certain cases.

According to the facts alleged and admitted by the parties, it is evident that the court has acquired jurisdiction to

probate the second will, in view of the presence of all the jurisdictional facts above-stated. The respondent's counter-petition should, in this case, be considered as a petition for the probate of the second will, the original of which was filed by her on July 20, 1937.

II. The payment of the fees of the clerk of court for all services to be rendered by him in connection with the probate of the second will and for the successive proceedings to be conducted and orders to be issued, in accordance with section 788, as amended, is not jurisdictional in the sense that its omission does not deprive the court of its authority to proceed with the probate of a will, as expressly provided for by section 630. It is the inevitable duty of the court, when a will is presented to it, to appoint hearing for its allowance and to cause notices thereof to be given by publication. The duty imposed by said section is imperative and noncompliance therewith would be a mockery at the law and at the last will of the testator. Section 785 (a) of the Code of Civil Procedure, as amended recently by Act No. 3250, permits the remission or postponement of the payment of the clerk's fees in cases of poverty, at the discretion of the court, and if this were done in one case and the payment of the fees for filing the application were jurisdictional, as claimed, then the court, in admitting the will to probate and in allowing it, would have acted entirely without jurisdiction. Finally, it should be taken into consideration that the court, in this case, did not exempt the respondents from paying the fees in question but merely failed to make provision therefor.

III. When the court ordered that the second will be set for hearing, that publication be made thereof and that said will be heard in the same proceeding jointly with the first will, it merely ordered the consolidation! of the two applications and the two hearings on the probate of both wills, instead of conducting separate hearings, undoubtedly because it understood that the form so chosen was the most convenient for the parties and their attorneys.

There are three ways of consolidating actions or special proceedings where the questions at issue and the parties in interest are the same. The first consists in recasting the cases already instituted, conducting only one hearing and rendering only one decision; the second takes place when the existing cases are consolidated, only one hearing held and only one decision rendered; and the third takes place when, without recasting or consolidating the cases, the principal one is heard, the hearing on the others being suspended until judgment has been rendered in the first case. The court, in the exercise of its sound discretion, may adopt any of these three forms of consolidation whenever in its opinion the proceeding is beneficial to and convenient for the parties. The power so exercised is discretionary.) In the case under consideration, the court acquired jurisdiction from the moment the counter-petition was presented and the second will came to its possession and under its control and, consequently, it likewise had full discretion to order, as it did, the probate thereof in the proceeding already instituted for the purpose of rendering later only one decision. It should furthermore be taken into consideration that the consolidation so ordered was the form most convenient for and beneficial to the parties as well as to the court, because if the first will were opposed on the ground that it was revoked by the second will, the best evidence of the revocation would be said second will and once the publications are made, if the second will was executed with the formalities prescribed by law, the court could order the probate thereof, without the necessity of multiplying the proceedings.

The decisions inserted hereinbelow are in support of the consolidation of special proceedings in the cases where more than one will of a deceased person has been presented:

"The question involved in the two cases is, which, if either, of the instruments presented for probate is the last will of Margaret Rouletti. The trial of one case would not necessarily determine the other, as a verdict in one for the caveat would not establish the instrument propounded in the other, and a verdict in Roulett's case, finding that the paper offered by him was the last will of Margaret Roulett, would not be binding upon Mulherin,

because he is not a party to Roulett's proceeding. We are, therefore, of the opinion, in view of the complications that might arise from separate trials and the facility with which the whole matter may be determined by consolidating the cases, that the trial judge might, in his discretion, pass an order directing that the two cases be consolidated and heard together, and in this manner have all the issues disposed of by a judgment binding and conclusive upon all the parties before the court. In such trial the person who filed the first application in the court of ordinary would be entitled to open and conclude." (Roulett vs. Mulherin, 100 Ga., 694.)

"In probate proceedings it was a proper course to try the validity of two alleged wills, the latest of which had been lost or destroyed at the same time, and evidence as to the revoking clause in the lost will was admissible, but its effect on the earlier will must be determined in view of the admissibility of the latter will to probate as a will." (In re Thompson's Estate, 198 Pac, 795.)

"Where two wills are offered for probate and applications consolidated, submission of both for determination as to whether one, or if not that the other, is true will, held not erroneous." (Lillard vs. Tolliver, 285 S. W., 576.)

"Where two instruments are propounded by different parties as wills, and several applications are made for probate, they will be consolidated and tried together as one proceeding." (In re Potter's Will, 155 N. Y. S., 939.)

"The question of consolidation is discretionary with the court. In both of the above-entitled proceedings, the parties are identical. No issues have been tried in either proceeding. It therefore would be an unnecessary expense to both the parties in interest and the county, and an unnecessary delay in the determination of both proceedings, not to consolidate them. I am therefore of the opinion that a seasonable demand was made for a jury trial of the issues raised by the objections filed to the probate of the will dated May 8, 1912, and that the proceedings should be consolidated, and also that the issues raised in said proceedings can be more speedily and conveniently tried before the acting surrogate and a jury." {In re Potter's Will, 158 N. Y. S., 1001.)

"Where separate scripts are propounded for probate as the last will and testament of an alleged testator, the probate proceedings in a proper case may be consolidated for trial." {In re Martin's Will, 141 N. Y. S., 784.)

"Consolidation of proceedings.—At common law the court could order all testamentary papers to be produced in court in a proceeding to probate any one of them, and now, under the statutory procedure in effect in the various jurisdictions, the validity of two or more papers claimed to be the last will and testament of deceased may be tried at the same time, or a consolidation of separate proceedings to probate or contest various testamentary papers purported to be by the same testator may be made. A motion for such a consolidation, however, is addressed to the surrogate presiding at the trial and should be made when the trial of the probate proceeding comes on for the hearing and not prior thereto, or before the surrogate sitting for the dispatch of chambers business." (68 C. J., 1038, 1039, sec. 830.)

"The court may, in its discretion, consolidate proceedings instituted by different persons for the purpose of having different instruments each probated as the last will and testament of decedent. Separate contests of a will and a codicil, or of two wills, each claimed to be the last will of testator, may be consolidated by the court and heard together." (Page on Wills, page 375, paragraph 323.)

It is the conclusion of this court, therefore, that the respondent court did not act in excess of its sound discretion in issuing the order of March 31, 1937, and for the foregoing reasons, the remedy applied for is hereby denied, with costs to the petitioner. So ordered.

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

Writ denied.

RESOLUTION

October 13, 1937

IMPERIAL, J.:

The attorney for the petitioner seeks permission to file a second motion for reconsideration already attached to his petition. With the motion for reconsideration before it, this court will now take up the same for decision on its merits.

It is alleged that the interpretation of paragraph (g) of section 788 of the Code of Civil Procedure, as amended by section 1 of Act No. 3395, was one of the questions raised by the petition for certiorari, but that both in the decision and in the resolution of the motion for reconsideration this court has neither given nor interpreted the meaning and scope of the phrase "in each proceeding" appearing at the end of the legal provision in question.

On page 2 of the decision, this court stated that the only question of law raised by the petition was whether or not the court had acquired jurisdiction when it provided in its orders that the counter-petition and the second will be heard in the proceeding already instituted at the initiative of the petitioner and that the expenses of publication of the hearing be defrayed by the respondent. This court then said: "The petitioner raises only one question of law, to wit: that the court acquired no jurisdiction to take cognizance of the counter-petition for the probate of the second will, or to set the same for hearing and to order, as it did, the publications to be made and the hearing of said will to be held in the same proceeding jointly with the first will, on the ground that the respondent had not previously filed her pleading nor paid the fees of the clerk of court fixed by section 788 of the Code of Civil Procedure, as amended by Act No. 3395."

In connection with the fees of the clerk of court prescribed by section 788 (g) of the Code of Civil Procedure, as amended, this court, on pages 6 and 7 of the decision, said: "The payment of the fee³ of the clerk of court for all services to be rendered by him in connection with the probate of the second will and for the successive proceedings to be conducted and orders to be issued, in accordance with section 788, as amended, is not jurisdictional in the sense that its omission does not deprive the court of its authority to proceed with the probate of a will, as expressly provided for by section 630. It is the inevitable duty of the court, when a will is presented to it, to appoint hearing for its allowance and to cause notices thereof to be given by publication. The duty imposed by said section is imperative and noncompliance therewith would be a mockery at the law and at the last will of the testator. Section 785 (a) of the Code of Civil Procedure, as amended recently by Act No. 3250, permits the remission or postponement of the payment of the clerk's fees in cases of poverty, at the discretion of the court, and if this were done in one case and the payment of the fees for filing the application were jurisdictional, as claimed, then the court, in admitting the will to probate and in allowing it, would have acted entirely without jurisdiction. Finally, it should be taken into consideration that the court, in this case, did not exempt the respondents from paying the fees in question but merely failed to make provision therefor."

It having been decided that the payment of said fees is not jurisdictional, this court, in fact, determined the principal and only question of law raised by the petition and there was no necessity of interpreting said legal provision for the purpose of laying down another unnecessary conclusion.

In the second motion for reconsideration, however, the attorney for the petitioner asks this court to interpret expressly the phrase "in each proceeding" to determine whether or not the respondent was and is obliged to pay said clerk's fees. If the interpretation asked for is to determine the question of jurisdiction, that is, whether or not the court acquired jurisdiction in issuing its orders appealed from, it has already been done and it was said that the payment of said fees is not jurisdictional. If the interpretation sought to be obtained is for the purpose of having

this court decide now whether the respondent should, or should not, pay the clerk's fees, then this court holds that such pronouncement is unnecessary and improper for the following reasons: (1) Because to decide whether or not the petition is meritorious, there is no necessity of determining whether or not the respondent is obliged to pay the clerk's fees, and (2) because it behooves the lower court to decide this question in the first instance and it is improper for this appellate court to exercise the functions belonging to the former.

In view of the foregoing, the second motion for reconsideration is denied.

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

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