

**INTESTATE OF THE DECEASED KAW SINGCO (ALIAS CO CHI SENG).
CO HO, PETITIONER, VS. QUIRICO ABETO, JUDGE OF FIRST
INSTANCE OF MANILA, AND SY OA, ADMINISTRATRIX OF THE
INTESTATE OF ...***G. R. No. 47631. April 25, 1941*

Ponente: LAUREL, J.

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This is an original petition for mandamus in which the petitioner, Co Ho, seeks to obtain an order compelling the respondent Judge of the Court of First Instance of Manila, Honorable Quirico Abeto, to approve and certify the record on appeal filed by said petitioner in the intestate proceedings of the deceased Kaw Singco (alias Co Chi Seng), civil case No. 56375 of said court.

On February 9, 1940, the respondent Sy Oa instituted in the Court of First Instance of Manila the aforesaid intestate proceedings wherein she prayed that she be appointed administratrix of the intestate estate. In her petition, Sy Oa alleged that Kaw Singco was a resident of the City of Manila at the time of his death which took place in China on January 20, 1921. On February 23, 1940, the respondent judge granted Sy Oa's petition and accordingly appointed her administratrix of the estate of the deceased Kaw Singco. On March 13, 1940, Sy Oa filed a petition for the examination of the herein petitioner, Co Ho, regarding the properties belonging to the deceased Kaw Singco which were then in the possession and under administration of the said Co Ho. The respondent judge, by order of March 20, 1940, granted Sy Oa's petition and accordingly directed the herein petitioner to appear before the court on April 12, 1940, for the examination prayed for, the acting deputy clerk of the court having been commissioned for the purpose. Upon being notified of this order, the petitioner filed a motion praying that the respondent judge declare himself incompetent and without jurisdiction to entertain the intestate proceedings of Kaw Singco, on the ground that the latter was a resident of Bato, Camarines Sur, and not of Manila, at the time of his death. After hearing, the respondent judge, on June 4, 1940, disallowed Co Ho's motion and reiterated his order requiring the latter to appear for examination, for the reasons that the deceased Kaw Singco was a resident of Manila and that Co Ho was a stranger in the intestate proceedings. On June 13, 1940, Co. He excepted to this order and announced his intention to appear therefrom. The next day, or on June 14, 1940, the herein petitioner filed his record on appeal and on July 11, 1940, he deposited an appeal bond in the amount of sixty pesos (P60). The respondent judge, on July 22, 1940, disapproved said record on appeal on the grounds that the order sought to be appealed is interlocutory and that the petitioner, Co Ho, has no interest in the intestate proceedings. Hence, this petition for mandamus. The pleadings filed by the parties in these mandamus proceedings raise an issue as to the residence of the deceased Kaw Singco at the time of his death, and this court commissioned its clerk to receive whatever evidence they may deem proper to adduce on the point.

The principal question raised is whether or not the order of the respondent judge of June 4, 1940 is appealable. [The provision of section 123 of the Code of Civil Procedure that no appeal can be taken from any ruling, order or judgment until final judgment is rendered for one party or the other does not necessarily apply to probate

proceedings (*Dais vs. Garduno and Altavas*, 49 Phil., 165). The reason for this is undoubtedly found in the circumstance that section 783 of the Code of Civil Procedure provides that an appeal may be taken from an order, decree, or judgment of a Court of First Instance in the exercise of its jurisdiction in special proceedings in the settlement of estates of deceased persons, when such order, decree, or judgment constitutes a final determination of the rights of the parties so appealing. We are of the opinion that the order of the respondent judge of June 4, 1940, declaring himself competent to try the intestate proceedings of Kaw Singco and ordering the examination of the herein petitioner, constitutes a final determination of the latter's right not to be examined for lack of jurisdiction on the part of the respondent judge. Hence, said order is appealable. This conclusion finds further support in section 603 of the Code of Civil Procedure which 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. Another reason why said order is appealable is that it is capable of being enforced or of taking effect without any further order.]

"It is deducible from the decisions on this subject, as a general principle, applicable to most cases in the absence of statutory provisions directing otherwise, that any order, judgment, or decree of the probate court capable of being enforced, or taking effect without further order, may be appealed from; and that no action of the probate court can be appealed from which requires a subsequent order or judgment to give it effect." (Woerner, *The American Law of Administration*, Vol. 3, pp. 1860-61.)

More specifically still, it has been held that an order directing one to appear and submit to an examination touching any property in his possession belonging to an intestate, made pursuant to a statute providing that if any person shall neglect to obey the process he shall be attached and committed to prison, is appealable. (*Mallory v. Wheeler*, 151 Wis. 136, 138 NW 97, Ann. Cas. 1914B 101.)

There can be no doubt that the petitioner is entitled to prosecute an appeal from the order complained of, for the reason that he is legally interested in said order (section 783, Code of Civil Procedure), especially more so when the properties concerning which he was to be examined were under his possession and administration, and it is not necessary that the petitioner be interested in the intestate proceedings proper.

What has been said carries us to the conclusion that [the herein petition for mandamus is proper, and the same will accordingly be, as it is hereby, granted, and the respondent judge ordered to approve and certify the petitioner's record on appeal.] So ordered, without pronouncement regarding costs. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ. concur.

Writ granted.

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