

## GRACIANO A. BORJA, PETITIONER, VS. MAMERTO ROXAS AND JOSE DE BORJA, RESPONDENTS.

*G.R. No. 48461. August 10, 1942*

Ponente: BOCOBO, J.

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### **BOCOBO, J.:**

The question raised in these certiorari proceedings is whether the Court of First Instance could authorize the Clerk of Court to deliver the sum of P8,305 to respondent Jose de Borja upon filing of bond by the latter.

Upon suit being brought by Jose de Borja against the National Union Fire Insurance Co. to recover an insurance indemnity of P20,000 after the destruction by fire of a rice mill and warehouse, petitioner Graciano A. Borja as administrator of the estate of Luis Borja intervened, claiming one-half of said indemnity, because, he alleged, the property insured belonged to a partnership composed of Jose de Borja and the deceased Luis Borja.

At the pre-trial held on March 18, 1941, attended by the three parties concerned, with their respective lawyers, it was agreed that the insurance company would pay P15,000 in full payment of the policy, and would renounce its claim for P1,610 the proceeds of the goods saved from the fire. It was further agreed that, pending decision of the court on the claim of intervenor, Graciano A. Borja, the amount of P8,305 should be deposited in the office of the Clerk of Court. The agreement on this point reads thus:

"(b) En que se deposite en la Escribania de este Juzgado la mitad de dichas dos cantidades, o sea, la cantidad de P8,305 y que la compañía aseguradora pague inmediatamente al demandante Jose de Borja el resto de P6,695 que reaulta, despues de dedueir P8,305 de los P15,000 que dicha compañía aseguradora hn ofrecido pagar, en pago completo del importe de la poliza;"

However, on motion of respondent Jose de Borja and over the objection of petitioner, the Court of First Instance on July 14, 1941, ordered that the amount thus deposited with the Clerk of Court be turned over to respondent Jose de Borja after the filing of a bond conditioned upon the payment of said sum to intervenor in case final judgment should be rendered in favor of the latter. It is this order of the court that is impugned by petitioner.

Recently, that is, on May 25, 1942, the Court of First Instance rendered judgment in favor of Jose de Borja on the question of the right to the amount of P8,305. But petitioner herein has appealed from such judgment.

We do not believe the court below rightly ordered that the amount in question be delivered to respondent Jose de Borja even upon the filing of a bond. Such order contravened the compromise entered into by the parties at the pre-trial. Under Rule 25, section 1 of the new Rules of Court, the agreement reached at the pre-trial, approved in an order of the Court on March 21, 1941, cannot be altered because "such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice." We perceive no manifest injustice in this continuance of the deposit in the office of the Clerk of Court, in consonance with the arrangement agreed upon at the conference among the parties. Save in extraordinary situations, pre-trial agreements should not be disturbed. Pre-trial conferences should be encouraged because they bring the parties together, thus making possible an amicable settlement, or at least the non-essentials of a case are done away with

from the beginning.

The order appealed from is hereby reversed, with costs against the respondent Jose de Borja. So ordered.

Yulo, C. J., Moran, Ozaeta and Paras, JJ., concur.

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