

EUSEBIO QUIZON AND FLORDELIZA QUIZON, PETITIONERS, VS. HONORABLE MODESTO CASTILLO, JUDGE OF FIRST INSTANCE OF BATANGAS, ET AL., RESPONDENTS.

G.R. No. 49113. May 03, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

In special proceedings No. 3906 of the Court of First Instance of Batangas for the summary distribution of the estate of Gregorio Mayo Villapando, deceased, alleged to be worth P4,000, the respondent judge rendered judgment decreeing that said estate be partitioned equally among three groups of heirs, of which the herein petitioners formed the third group. The petitioners, who claim to be the sole heirs to the exclusion of the two other groups, filed in due time a notice of appeal from said judgment, whereupon the respondent judge, in an order dated December 6, 1943, fixed the appeal bond at P2,000. A subsequent motion filed by the petitioners to reduce the bond to P60 in accordance with section 5 of Rule 41 was denied by the respondent judge, which denial he reiterated in a subsequent resolution of petitioners' motion for reconsideration.

Assailing the validity of said order on the ground that it constituted a grave abuse of discretion, the petitioners have instituted the present certiorari proceedings to annul the said order and to permit them to file an appeal bond of P60 only.

Rule 41, which provides for the appeal from the Court of First Instance to the Court of Appeals in ordinary actions and which is made applicable to special proceedings by section 2 of Rule 73, says in its section 5 that:

"The appeal bond shall be in the amount of sixty (P60) pesos unless the court shall fix, a different amount, or unless a supersedeas bond is filed. The appeal bond shall be approved by the court and is conditioned for the payment of costs which the appellate court may award against the appellant."

The only purpose of an appeal bond is to secure the payment of the costs which may be awarded against the appellant and which ordinarily does not exceed P60. If the costs are estimated at more than this amount, the court must so state in the order fixing the amount of the bond; otherwise it will be understood as the amount estimated in the above-quoted section of the Rules.

The order of the respondent judge under review is silent as to the estimated amount of the costs; and, indeed, from the nature of the case we can discern no reason for anticipating extraordinary costs. Hence, should the herein petitioners put up an appeal bond of P2,000 as required by the respondent judge the same would and could respond only for the costs which may be awarded in favor of the appellees and which are estimated not to exceed P60. Therefore, the amount of P2,000 fixed in the order of the respondent court is unnecessarily excessive and arbitrary, and the court's refusal to reduce it to the reglementary amount of P60 is not warranted by the Rules of Court and constitutes a grave abuse of discretion amounting to an excess of jurisdiction.

The order assailed is revoked and the respondent judge is directed to accept the reglementary appeal bond of P60

to be furnished by the petitioners within ten days from the entry of final judgment herein, with costs against the individual respondents.

Moran, Horrilleno, Paras, and Bocobo, JJ., concur.

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