

ANGEL ORTIZ, PLAINTIFF, VS. GRANT TRENT, JUDGE OF THE EIGHTH JUDICIAL DISTRICT, ET AL., DEFENDANTS.*G.R. No. 5099. March 09, 1909*

Ponente: WILLARD, J.

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This is an original suit of mandamus brought in this court to compel the allowance of an appeal from an order made by the Court of First Instance of Albay in special proceedings for the settlement of the estate of Doña Josefa Garcia Pascual. The defendant judge, the administrator of the estate, and one of the heirs have demurred to the complaint.

That mandamus is the proper remedy in cases of this kind, has been decided in the case of *Alemanys vs. Sweeney* (2 Phil. Rep., 654). The order from which the plaintiff sought to appeal was dated on the 24th of October, 1908, and was an order declaring who the heirs of the deceased were, what participation each had in the property, and assigning it to them in undivided interests. The same order also denied a petition presented by the plaintiff Ortiz, holding that he had no right to intervene in the proceeding. This is the only part of the order which it is necessary to consider.

Ortiz claims the right to intervene because he had bought and become the owner of the interest of one of the heirs in the property. The way in which this interest was acquired appears in the case of the estate of Jose Maria Ceballos, *Angel Ortiz, appellant*[1] (No. 4190, 7 Off. Gaz., 37).

We have come to the conclusion that the appeal should have been allowed. Section 783 of the Code of Civil Procedure provides as follows:

"Any person legally interested in any other order, decree, or judgment of a Court, of First Instance in the exercise of its jurisdiction in special proceedings in the settlement of the estates of deceased persons, or the administration of guardians and trustees, may appeal to the Supreme Court from such order, decree, or judgment, when such order, decree, or judgment constitutes a final determination of the rights of the parties so appealing, and the appeal shall be effected in the manner provided in the two preceding sections."

The order in question was a final order so far as Ortiz was concerned, because it effectively excluded him from participation in the proceeding relating to the settlement of the estate. As to him no further order would be made in the case. A person who claims the right to intervene in the settlement of the estate of a deceased person and who is denied such a right, is a person legally interested in the order denying him such a right. In holding that the appeal should be allowed, we, of course, make no ruling upon the questions decided by the court below. We do not decide whether or not Ortiz has acquired the rights of Doña Matilde Aramburu, one of the heirs, nor do we decide whether, if he has acquired such rights, he has a right to intervene in the proceeding. We simply decide that he has a right to have these questions argued and determined in this court by means of an appeal from the order.

In the case of *The matter of the estate of Josef a Garcia Pascual*[(1)](6 Off. Gaz., 1242), this court held that the plaintiff Ortiz had no right to intervene in this proceeding. At that time, however, his standing was only that of a

general creditor of the heirs. Since that time he claims to have acquired and become the owner of the interest of one of the heirs of the estate. It is apparent that the resolution of the former case is not necessarily a resolution of the question that will be presented upon the hearing of the appeal.

It was suggested upon the argument of the case that mandamus would not lie in this class of cases because there was no legal duty resting in the court to admit the appeal, and that it was not even the duty of the court to fix the amount of the bond. This contention can not, in our opinion, be sustained. Section 783, as has been seen, provides that the appeal shall be taken in the manner provided in the two preceding sections. Section 781 provides that a bond shall be executed and filed as provided in section 780 and section 780 is as follows:

"Before an appeal is allowed, the person appealing under the two preceding sections shall give a satisfactory bond to the court, conditioned that he will prosecute the appeal to effect and pay the intervening damages and costs occasioned by such appeal."

This requires, in our opinion, action by the court in fixing the amount of the bond. In refusing to allow the appeal in this case the court necessarily refused to fix the amount of the bond.

The demurrer is overruled and the defendants demurring are given five days within which to file their answer. If no answer is presented within that time, judgment will be entered by the clerk, without further order of this court, against these defendants, directing the court to fix the amount of the bond, and upon the giving of a bond satisfactory to the court, it is directed to approve such bond and allow the appeal. So ordered.

Arellano C. J., Torres, Mapa, and Johnson, JJ., concur.

[1] 11 Phil. Rep., 34.

[(1)] 12 Phil. Rep., 271

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