

THE HEIRS OF THE LATE JESUS FRAN AND CARMEN MEJIA RODRIGUEZ, PETITIONERS, VS. HON. BERNARDO LL. SALAS, CONCEPCION MEJIA ESPINA AND MARIA MEJIA GANDIONGCO, RESPONDENTS.

G.R. No. 53546. June 25, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court, with prayer for a writ of preliminary injunction, to annul and set aside, for having been issued without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction, the following Orders of the respondent Judge in Special Proceedings No. 3309-R of Branch VIII of the then Court of First Instance (now Regional Trial Court) of Cebu entitled "In The Matter of the Petition for Probate of the Last Will and Testament of Remedios Mejia Vda. de Tiosejo:"

1. The Order of 26 February 1980 setting for hearing private respondents' Omnibus Motion for Reconsideration[1] which was filed six (6) years, ten (10) months and eighteen (18) days after the probate judgment was rendered and six (6) years and twenty-one (21) days after the testate proceedings was declared closed and terminated; and
2. The Order of 2 June 1980 finding the signature of the testatrix in the last will and testament to be a forgery and (a) declaring the testatrix as having died intestate; (b) declaring the testamentary dispositions in said last will and testament as null and void; (c) setting aside the order dated 10 September 1973 declaring the testate proceedings closed and terminated; (d) revoking the appointment of Jesus Fran as executor while appointing respondent Concepcion M. Espina as administratrix; and (e) ordering the conversion of the proceedings to one of intestacy.[2] This Order effectively annulled and set aside the probate judgment of 13 November 1972.

Petitioners would also have this Court nullify all other actions of respondent Judge in said Sp. Proc. No. 3309-R; restore the status quo therein prior to the issuance of the foregoing orders; and permanently enjoin respondent Judge from reopening said proceedings.

The following facts are not controverted:

Remedios M. Vda. de Tiosejo, a widow, died on 10 July 1972 in Cebu City with neither descendants nor ascendants; she left real and personal properties located in Cebu City, Ormoc City and Puerto Bello, Merida, Leyte. Earlier, on 23 April 1972, she executed a last will and testament[3] wherein she bequeathed to her collateral relatives (brothers, sisters, nephews and nieces) all her properties, and designated Rosario Tan or, upon the latter's death, Jesus Fran, as executor to serve without bond. Instrumental witnesses to the will were Nazario Pacquiao, Alcio Demerre and Primo Miro.

On 15 July 1972, Jesus Fran filed a petition with the Court of First Instance of Cebu for the probate of Remedios' last will and testament.[4] The case was raffled to the original Branch VIII thereof which was then presided over

by Judge Antonio D. Cinco. The petition alleged that Rosario Tan is not physically well and, therefore, will not be assuming the position of administratrix. Tan signed a waiver in favor of Jesus Fran on the third page of the said petition. The probate court issued an order setting the petition for hearing on 18 September 1972. Meanwhile, on 31 July 1972, the court appointed petitioner Jesus Fran as special administrator.

On 10 August 1972, the private respondents, who are sisters of the deceased, filed a manifestation^[5] alleging that they needed time to study the petition because some heirs who are entitled to receive their respective shares have been intentionally omitted therein, and praying that they be given ample time to file their opposition, after which the hearing be reset to another date.

Private respondents did not file any opposition. Instead, they filed on 18 September 1972 a "Withdrawal of Opposition to the Allowance of Probate (sic) of the Will" wherein they expressly manifested, with their "full knowledge and consent that x x x they have no objection of (sic) the allowance of the x x x will of the late Remedios Mejia Vda. de Tiosejo," and that they have "no objection to the issuance of letters testamentary in favor of petitioner, Dr. Jesus Fran."^[6]

No other party filed an opposition. The petition thus became uncontested.

During the initial hearing, petitioner Fran introduced the requisite evidence to establish the jurisdictional facts.

Upon a determination that the court had duly acquired jurisdiction over the uncontested petition for probate, Judge Cinco issued in open court an order directing counsel for petitioner to present evidence proving the authenticity and due execution of the will before the Clerk of Court who was, accordingly, so authorized to receive the same.

The reception of evidence by the Clerk of Court immediately followed. Petitioner Fran's first witness was Atty. Nazario R. Pacquiao, one of the subscribing witnesses to the will. The original of the will, marked as Exhibit "F", and its English translation, marked as Exhibit "F-Translation", were submitted to the Clerk of Court.^[7] Petitioner Fran was the second and also the last witness. He enumerated the names of the surviving heirs of the deceased.

On 13 November 1972, the probate court rendered a decision admitting to probate the will of the testatrix, Remedios Mejia Vda. de Tiosejo, and appointing petitioner Fran as executor thereof.^[8] The dispositive portion of the decision reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered declaring the last will and testament of the deceased Remedios Mejia Vda. de Tiosejo marked as Exhibit F as admitted to probate. Dr. Jesus Fran is hereby appointed as executor of the will. Let letters testamentary be issued in favor of Dr. Jesus Fran. The special administrator's bond put up by Dr. Jesus Fran as special administrator duly approved by this Court shall serve and be considered as the executor's bond considering that the special administrator and executor are one and the same person."

The requisite notice to creditors was issued, but despite the expiration of the period therein fixed, no claim was presented against the estate.

On 4 January 1973, petitioner Fran filed an Inventory of the Estate;^[9] copies thereof were furnished each of the private respondents.

Subsequently, a Project of Partition based on the dispositions made in the will and signed by all the devisees and legatees, with the exception of Luis Fran, Remedios C. Mejia and respondent Concepcion M. Espina, was submitted by the executor for the court's approval.^[10] Said legatees and devisees submitted certifications wherein they admit receipt of a copy of the Project of Partition together with the notice of hearing, and state that they had no objection to its approval.^[11]

The notice of hearing referred to in these certifications is the 6 August 1973 notice issued by the Clerk of Court setting the hearing on the Project of Partition for 29 August 1973.[12]

After the hearing on the Project of Partition, the court issued its Order of 10 September 1973[13] approving the same, declaring the parties therein as the only heirs entitled to the estate of Remedios Mejia Vda. de Tiosejo, directing the administrator to deliver to the said parties their respective shares and decreeing the proceedings closed. The dispositive portion thereof reads:

"WHEREFORE, the signers (sic) to the project of partition are declared the only heirs entitled to the estate; the project of partition submitted is ordered approved and the administrator is ordered to deliver to each one of them their respective aliquot parts as distributed in the said project of partition. It is understood that if there are expenses incurred or to be incurred as expenses of partition, Section 3 of Rule 90 shall be followed.

Let this proceedings be now declared closed.

SO ORDERED."

Thereafter, the aforesaid Branch VIII of the Court of First Instance of Cebu was converted to a Juvenile and Domestic Relations Court. On November 1978, by virtue of Presidential Decree No. 1439, Branch XVII (Danao City) of the Court of First Instance of Cebu, presided over by herein respondent Judge, was officially transferred to Cebu City and renumbered as Branch VIII.

On 1 October 1979, private respondents filed with the new Branch VIII an Omnibus Motion for Reconsideration of the probate judgment of 13 November 1972 and the Order of partition of 10 September 1973; in said motion, they ask the court to declare the proceedings still open and admit their opposition to the allowance of the will,[14] which they filed on 1 October 1979. They allege that: (a) they were not furnished with a copy of the will; (b) the will is a forgery; (c) they were not notified of any resolution or order on their manifestation requesting time within which to file their opposition, or of the order authorizing the clerk of court to receive the evidence for the petitioner, or of the order closing the proceedings; (d) the reception of evidence by the clerk of court was void per the ruling in *Lim Tanhu vs. Ramolete*;^[15] (e) the project of partition contains no notice of hearing and they were not notified thereof; (f) the petitioner signed the project of partition as administrator and not as executor, thereby proving that the decedent died intestate; (g) the petitioner did not submit any accounting as required by law; and (h) the petitioner never distributed the estate to the devisees and legatees.

In a detailed opposition^[16] to the above Omnibus Motion for Reconsideration, petitioner Fran refuted all the protestations of private respondents. Among other reasons, he stresses therein that: (a) private respondents are in estoppel to question the will because they filed their Withdrawal Of Opposition To The Allowance of Will which states that after thoroughly studying the petition, to which was attached a copy of the English translation of the will, they have no objection to its allowance; the order directing the clerk of court to receive the evidence was dictated in open court in the presence of private respondents; private respondent Maria M. Gandiongco signed the Project of Partition and private respondent Concepcion M. Espina submitted a certification stating therein that she received the notice of hearing therefor and has no objection to its approval; (b) except for some properties, either covered by a usufruct under the will or agreed upon by the parties to be held in common by reason of its special circumstance, there was an actual distribution of the estate in accordance with the Project of Partition; insofar as private respondents are concerned, they not only received their respective shares, they even purchased the shares of the other devisees. To top it all, private respondents' children, namely Rodrigo M. Gandiongco, Jr. and Victor Espina, mortgaged their respective shares in favor of a bank.

Notwithstanding petitioners' objections, respondent Judge issued on 26 February 1980 an Order setting for hearing the said Omnibus Motion for Reconsideration on 8 April 1980 so that "the witnesses and the exhibits

(may be) properly ventilated."[17]

On 25 March 1980, petitioners filed a Motion to Dismiss the Omnibus Motion and to Reconsider the 26 February 1980 Order setting it for hearing on 17 April 1980,[18] but the respondent Judge prematurely denied it for lack of merit in his Order of 31 March 1980.[19]

Consequently, on 8 April 1980, the instant petition was filed challenging the jurisdiction of the lower court in taking cognizance of the Omnibus Motion for Reconsideration considering that the probate judgment and the order approving the Project of Partition and terminating the proceedings had long become final and had in fact been executed. Private respondents had long lost their right to appeal therefrom. The Omnibus Motion for Reconsideration cannot likewise be treated as a petition for relief from judgment for under Rule 38 of the Revised Rules of Court, the same must be filed within sixty (60) days from receipt of notice of the judgment/order and within six (6) months from the date of said judgment. Therefore, this remedy can no longer be availed of.

On 8 April 1980, the date the instant petition was filed, respondent Judge proceeded with the hearing of the Omnibus Motion for Reconsideration. He received the testimonies of private respondents and one Romeo O. Varena, an alleged handwriting expert from the Philippine Constabulary, who averred that the signature of the testatrix on the will is a forgery. The respondent Judge likewise issued an Order on the same date stating that unless he received a restraining order from this Court within twenty (20) days therefrom, he will reopen Sp. Proc. No. 3309-R.

On 14 April 1980, petitioners filed a Supplemental Petition asking this Court to restrain respondent Judge from reopening the case.[20]

In their voluminous Comments and Opposition to the petition and Supplemental Petition,[21] private respondents not only amplify in great detail the grounds raised in their Omnibus Motion for Reconsideration, they also squarely raise for the first time the following issues:

- (a) The probate court never acquired jurisdiction over the case since petitioner Jesus Fran failed to submit to the court the original of the will.
- (b) They were deprived of the opportunity to examine the will as petitioner Jesus Fran did not attach it to the petition; what was attached was only the English translation of the will.
- (c) Even assuming that the probate judge could validly delegate the reception of evidence to the Clerk of Court, the proceeding before the latter would still be void as he failed to take an oath of office before entering upon his duties as commissioner and failed to render a report on the matters submitted to him.
- (d) Respondent Maria M. Vda. de Gandiongco was defrauded into (sic) signing the Project of Partition and respondent Concepcion M. Espina, her certification, when they were misled by petitioner Fran into believing that the Agreement of Partition to be submitted to the court is the Extra Judicial Partition they signed on 7 May 1973.
- (e) Petitioner Fran is guilty of fraud in undervaluing the estate of the late Remedios M. Vda. de Tiosejo by reporting properties worth only P400,000.00 when in truth and in fact the estate has an aggregate value of P2,094,333.00.

In the Resolution dated 2 June 1980, We issued a restraining order enjoining respondent Judge from reopening Sp. Proc. No. 3309-R.[22]

However, on the same date, before the restraining order was served on him, respondent Judge issued the impugned order declaring the testamentary dispositions of the will void, finding the signature of the late

Remedios M. Vda. de Tiosejo to be a forgery, decreeing the reopening of Sp. Proc. No. 3309-R and converting the same into an intestate proceeding.[23]

Hence, on 6 June 1980, petitioners filed their Second Supplemental Petition[24] asking this Court to declare as null and void the Order of 2 June 1980 and, pending such declaration, to restrain respondent Judge from enforcing the same. Private respondents filed their Comment and Opposition to the Second Supplemental Petition on 9 July 1980.

Thereafter, as mandated in the resolution of 30 June 1980,[25] this Court gave due course to this case and required the parties to file their respective Memoranda, which private respondents complied with on 16 August 1980;[26] petitioners filed theirs on 27 August 1980.[27] Consequently, the parties continued to file several pleadings reiterating substantially the same allegations and arguments earlier submitted to this Court.

On 22 March 1984, counsel for petitioners filed a manifestation informing this Court of the death of petitioner Fran on 29 February 1984 and enumerating therein his surviving heirs. On 2 April 1984, this Court resolved to have said heirs substitute him in this case.

Over a year later, respondent Maria M. Vda. de Gandiongco filed an affidavit,[28] sworn to before the acting Clerk of Court of the Regional Trial Court in Cebu City, disclosing the following material facts: (a) she signed the Omnibus Motion for Reconsideration dated 1 October 1979 without knowing or reading the contents thereof; (b) she saw the will of the late Remedios M. Vda. de Tiosejo written in the Cebuano dialect after the same was executed by the latter; the said will bearing the authentic signature of Remedios was the very one presented to the probate court by petitioner's counsel; (c) she received the notice of hearing of the petition for probate and because she was convinced that the signature of the testatrix was genuine, she, together with Concepcion M. Espina, withdrew her opposition; (d) she received her share of the estate of the late Remedios M. Vda. de Tiosejo which was distributed in accordance with the provisions of the latter's will; and (e) she did not authorize Atty. Numeriano Estenzo or other lawyers to present a motion to this Court after 25 February 1981 when Estenzo withdrew as counsel for private respondents. She then asks this Court to consider as withdrawn her Opposition to the Allowance of the Will, her participation in the Omnibus Motion for Reconsideration and her Opposition to this petition.

Due to this development, We required private respondent Concepcion M. Espina to comment on the affidavit of private respondent Maria M. Vda. de Gandiongco.

On 17 August 1985, private respondents filed a joint manifestation[29] wherein they claim that Maria M. Vda. de Gandiongco does not remember executing the affidavit. A few weeks before the affidavit was filed, particularly on 17 June 1985, Maria M. Vda. de Gandiongco was confined in the hospital; she could not recall having signed, during this period, any affidavit or recognized her sisters and other relatives.

On 19 September 1985, respondent Maria M. Vda. de Gandiongco, through special counsel, filed a Manifestation/Motion with a second Affidavit attached thereto[30] confessing that she signed the Joint Manifestation dated 16 August 1985 "without knowing or being informed of its contents, and only upon Mrs. Concepcion Espina's request." She reiterated her desire to withdraw from the Omnibus Motion for Reconsideration filed in Sp. Proc. No. 3309-R as well as from the instant petition.

Despite the valiant attempt of private respondent Concepcion M. Espina to influence and control the action of Maria Gandiongco, there is nothing in the records that would cast any doubt on the irrevocability of the latter's decision to withdraw her participation in the Omnibus Motion for Reconsideration and Opposition to this case. That decision, however, is not a ground for dropping her as a private respondent as the respondent Judge had

already issued the abovementioned Order of 2 June 1980.

The petition and the supplemental petitions are impressed with merit.

We do not hesitate to rule that the respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction when he granted the Omnibus Motion for Reconsideration and thereafter set aside the probate judgment of 13 November 1972 in Sp. Proc. No. 3309-R, declared the subject will of the testatrix a forgery, nullified the testamentary dispositions therein and ordered the conversion of the testate proceedings into one of intestacy.

It is not disputed that private respondents filed on the day of the initial hearing of the petition their "Withdrawal of Opposition To Allowance of Probate (sic) Will" wherein they unequivocally state that they have no objection to the allowance of the will. For all legal intents and purposes, they became proponents of the same.

After the probate court rendered its decision on 13 November 1972, and there having been no claim presented despite publication of notice to creditors, petitioner Fran submitted a Project of Partition which private respondent Maria M. Vda. de Gandiongco voluntarily signed and to which private respondent Espina expressed her conformity through a certification filed with the probate court. Assuming for the sake of argument that private respondents did not receive a formal notice of the decision as they claim in their Omnibus Motion for Reconsideration, these acts nevertheless constitute indubitable proof of their prior actual knowledge of the same. A formal notice would have been an idle ceremony. In testate proceedings, a decision logically precedes the project of partition, which is normally an implementation of the will and is among the last operative acts to terminate the proceedings. If private respondents did not have actual knowledge of the decision, they should have desisted from performing the above acts and instead demanded from petitioner Fran the fulfillment of his alleged promise to show them the will. The same conclusion refutes and defeats the plea that they were not notified of the order authorizing the Clerk of Court to receive the evidence and that the Clerk of Court did not notify them of the date of the reception of evidence. Besides, such plea must fail because private respondents were present when the court dictated the said order.

Neither do We give any weight to the contention that the reception of evidence by the Clerk of Court is null and void per the doctrine laid down in *Lim Tanhu vs. Ramolete*.^[31] In the first place, *Lim Tanhu* was decided on 29 August 1975, nearly four (4) years after the probate court authorized the Clerk of Court to receive the evidence for the petitioner in this case. A month prior to *Lim Tanhu*, or on 30 July 1975, this Court, in *Laluan vs. Malpaya*,^[32] recognized and upheld the practice of delegating the reception of evidence to Clerks of Court. Thus:

"No provision of law or principle of public policy prohibits a court from authorizing its clerk of court to receive the evidence of a party litigant. After all, the reception of evidence by the clerk of court constitutes but a ministerial task -- the taking down of the testimony of the witnesses and the marking of the pieces of documentary evidence, if any, adduced by the party present. This task of receiving evidence precludes, on the part of the clerk of court, the exercise of judicial discretion usually called for when the other party who is present objects to questions propounded and to the admission of the documentary evidence proffered.³³ More importantly, the duty to render judgment on the merits of the case still rests with the judge who is obliged to personally and directly prepare the decision based upon the evidence reported.³⁴

But where the proceedings before the clerk of court and the concomitant result thereof, i.e., the judgment rendered by the court based on the evidence presented in such limited proceedings, prejudice the substantial rights of the aggrieved party, then there exists sufficient justification to grant the latter complete opportunity to thresh out his case in court."³⁵

Monserate vs. Court of Appeals,³⁶ decided on 29 September 1989, reiterated this rule. *Lim Tanhu* then cannot be

used as authority to nullify the order of the probate court authorizing the Clerk of Court to receive the evidence for the rule is settled that "when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof."³⁷ It may also be emphasized in this connection that Lim Tanhu did not live long; it was subsequently overruled in *Gochangco vs. Court of First Instance of Negros Occidental*,³⁸ wherein this Court, en banc, through Justice, now Chief Justice, Andres R. Narvasa, in reference to what the trial court termed as "the doctrinal rule laid down in the recent case of *Lim Tan 'Hu (sic) vs. Ramolete*," ruled:

"Now, that declaration does not reflect long observed and established judicial practice with respect to default cases. It is not quite consistent, too, with the several explicitly authorized instances under the Rules where the function of receiving evidence and even of making recommendatory findings of facts on the basis thereof may be delegated to commissioners, inclusive of the Clerk of Court. These instances are set out in Rule 33, x x x; Rules 67 and 69, x x x; Rule 86, x x x; Rule 136, x x x. In all these instances, the competence of the clerk of court is assumed. Indeed, there would seem, to be sure, nothing intrinsically wrong in allowing presentation of evidence ex parte before a Clerk of Court. Such a procedure certainly does not foreclose relief to the party adversely affected who, for valid cause and upon appropriate and seasonable application, may bring about the undoing thereof or the elimination of prejudice thereby caused to him; and it is, after all, the Court itself which is duty bound and has the ultimate responsibility to pass upon the evidence received in this manner, discarding in the process such proofs as are incompetent and then declare what facts have thereby been established. In considering and analyzing the evidence preparatory to rendition of judgment on the merits, it may not unreasonably be assumed that any serious error in the ex-parte presentation of evidence, prejudicial to any absent party, will be detected and duly remedied by the Court, and/or may always, in any event, be drawn to its attention by any interested party.

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It was therefore error for the Court a quo to have declared the judgment by default to be fatally flawed by the fact that the plaintiff's evidence had been received not by the Judge himself but by the clerk of court."

The alternative claim that the proceedings before the Clerk of Court were likewise void because said official did not take an oath is likewise untenable. The Clerk of Court acted as such when he performed the delegated task of receiving evidence. It was not necessary for him to take an oath for that purpose; he was bound by his oath of office as a Clerk of Court. Private respondents are obviously of the impression that by the delegation of the reception of evidence to the Clerk of Court, the latter became a commissioner as defined under Rule 33 of the Rules of Court entitled *Trial by Commissioner*. This is not correct; as this Court said in *Laluan*:

"The provisions of Rule 33 of the Rules of Court invoked by both parties properly relate to the reference by a court of any or all of the issues in a case to a person so commissioned to act or report thereon. These provisions explicitly spell out the rules governing the conduct of the court, the commissioner, and the parties before, during, and after the reference proceedings. Compliance with these rules of conduct becomes imperative only when the court formally orders a reference of the case to a commissioner. Strictly speaking then, the provisions of Rule 33 find no application to the case at bar where the court a quo merely directed the clerk of court to take down the testimony of the witnesses presented and to mark the documentary evidence proffered on a date previously set for hearing."

Belatedly realizing the absence of substance of the above grounds, private respondents now claim in their Comments to the Petition and the Supplemental Petition that the trial court never acquired jurisdiction over the petition because only the English translation of the will -- and not a copy of the same -- was attached to the petition; the will was not even submitted to the court for their examination within twenty (20) days after the death of the testatrix; and that there was fraud in the procurement of the probate judgment principally because they were

not given any chance to examine the signature of the testatrix and were misled into signing the withdrawal of their opposition on the assurance of petitioner Fran and their sister, Rosario M. Tan, that the will would be shown to them during the trial. These two grounds easily serve as the bases for the postulation that the decision is null and void and so, therefore, their omnibus motion became all the more timely and proper.

The contentions do not impress this Court.

In *Santos vs. Castillo*³⁹ and *Salazar vs. Court of First Instance of Laguna*,⁴⁰ decided six (6) months apart in 1937, this Court already ruled that it is not necessary that the original of the will be attached to the petition. In the first, it ruled: "The original of said document [the will] must be presented or sufficient reasons given to justify the nonpresentation of said original and the acceptance of the copy or duplicate thereof."⁴¹ In the second case, this Court was more emphatic in holding that:

"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."⁴²

That the annexing of the original will to the petition is not a jurisdictional requirement is clearly evident in Section 1, Rule 76 of the Rules of Court which allows the filing of a petition for probate by the person named therein regardless of whether or not he is in possession of the will, or the same is lost or destroyed. The section reads in full as follows:

"SECTION 1. Who may petition for the allowance of will. -- Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed."

In the instant case, a copy of the original will and its English translation were attached to the petition as Annex "A" and Annex "A-1", respectively, and made integral parts of the same. It is to be presumed that upon the filing of the petition the Clerk of Court, or his duly authorized subordinate, examined the petition and found that the annexes mentioned were in fact attached thereto. If they were not, the petition cannot be said to have been properly presented and the Clerk of Court would not have accepted it for docketing. Under Section 6, Rule 136 of the Rules of Court, the Clerk of Court shall receive and file all pleadings and other papers properly presented, endorsing on each such paper the time when it was filed. The presumption of regularity in the performance of official duty militates against private respondents' claim that Annex "A" of the petition was not in fact attached thereto.

The certification of the Assistant Clerk of Court issued on 8 April 1980,⁴³ or SIX (6) months after the filing of the motion for reconsideration, to the effect that as per examination of the records of Sp. Proc. No. 3309-R, "the copy of the Will mentioned in the petition as Annex "A" is not found to be attached as of this date in the said petition; only the English Translation of said Will is attached thereof (sic) as Annex "A-1"" does not even save the day for private respondents. It is not conclusive because it fails to state the fact that as hereafter shown, the pages of the records which correspond to the four (4) pages of Annex "A" were missing or were detached therefrom. As emphatically asserted by the petitioners in their Reply to the Comments of private respondents,⁴⁴ duly supported by a certification of the former Clerk of Court of the original Branch VIII of the court below,⁴⁵ and which private respondents merely generally denied in their motion for reconsideration with comments and opposition to consolidated reply,⁴⁶ the four-page xerox copy of the will, marked as Annex "A" of the petition,

became, as properly marked by the personnel of the original Branch VIII of the court below upon the filing of the petition, pages 5, 6, 7 and 8 while the translation thereof, marked as Annex "A-1", became pages 9, 10, 11 and 12 of the records. The markings were done in long hand. The records of the case were thereafter sent to the Clerk of Court, 14th Judicial District, Cebu City on 9 February 1978. These records, now in the possession of the respondent Judge, show that said pages 5, 6, 7 and 8 in long hand are missing. As a consequence thereof, petitioners filed with the Executive Judge of the court below an administrative complaint.

It is not likewise disputed that the original of the will was submitted in evidence and marked as Exhibit "F". It forms part of the records of the special proceedings -- a fact which private respondents admit in their Omnibus Motion for Reconsideration, thus:

"9. That an examination of the alleged will of our deceased sister has revealed that the signatures at the left hand margin of Exhibit "F", are written by (sic) different person than the signature appearing at the bottom of said alleged will x x x."47

The availability of the will since 18 September 1972 for their examination renders completely baseless the private respondents' claim of fraud on petitioner Fran's part in securing the withdrawal of their opposition to the probate of the will. If indeed such withdrawal was conditioned upon Fran's promise that the private respondents would be shown the will during the trial, why weren't the appropriate steps taken by the latter to confront Fran about this promise before certifications of conformity to the project of partition were filed?

Granting for the sake of argument that the non-fulfillment of said promise constitutes fraud, such fraud is not of the kind which provides sufficient justification for a motion for reconsideration or a petition for relief from judgment under Rule 37 and Rule 38, respectively, of the Rules of Court, or even a separate action for annulment of judgment. It is settled that for fraud to be invested with such sufficiency, it must be extrinsic or collateral to the matters involved in the issues raised during the trial which resulted in such judgment.⁴⁸

In Our jurisdiction, the following courses of action are open to an aggrieved party to set aside or attack the validity of a final judgment:

- (1) Petition for relief under Rule 38 of the Rules of Court which must be filed within sixty (60) days after learning of the decision, but not more than six (6) months after such decision is entered;
- (2) By direct action, via a special civil action for certiorari, or by collateral attack, assuming that the decision is void for want of jurisdiction;
- (3) By an independent civil action under Article 1114 of the Civil Code, assuming that the decision was obtained through fraud and Rule 38 can not be applied.⁴⁹

It is not difficult to see that private respondents had lost their right to file a petition for relief from judgment, it appearing that their omnibus motion for reconsideration was filed exactly six (6) years, ten (10) months and twenty-two (22) days after the rendition of the decision, and six (6) years, one (1) month and thirteen (13) days after the court issued the order approving the Project of Partition, to which they voluntarily expressed their conformity through their respective certifications, and closing the testate proceedings.

Private respondents did not avail of the other two (2) modes of attack.

The probate judgment of 13 November 1972, long final and undisturbed by any attempt to unsettle it, had inevitably passed beyond the reach of the court below to annul or set the same aside, by mere motion, on the ground that the will is a forgery. Settled is the rule that the decree of probate is conclusive with respect to the due execution of the will and it cannot be impugned on any of the grounds authorized by law, except that of fraud, in any separate or independent action or proceeding.⁵⁰ We wish also to advert to the related doctrine which holds

that final judgments are entitled to respect and should not be disturbed; otherwise, there would be a wavering of trust in the courts.⁵¹ In *Lee Bun Ting vs. Aligaen*,⁵² this Court had the occasion to state the rationale of this doctrine, thus:

"Reasons of public policy, judicial orderliness, economy and judicial time and the interests of litigants, as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of the courts or tribunals of competent jurisdiction."

This is so even if the decision is incorrect⁵³ or, in criminal cases, the penalty imposed is erroneous.⁵⁴

Equally baseless and unmeritorious is private respondents' contention that the order approving the Project of Partition and closing the proceedings is null and void because the Project of Partition did not contain a notice of hearing and that they were not notified of the hearing thereon. In truth, in her own certification⁵⁵ dated 5 September 1973, private respondent Concepcion M. Espina admitted that she "received a copy of the Project of Partition and the Notice of Hearing in the above-entitled proceeding, and that she has no objection to the approval of the said Project of Partition." The notice of hearing she referred to is the Notice of Hearing For Approval of Project of Partition issued on 6 August 1973 by the Clerk of Court.⁵⁶ Private respondent Espina was lying through her teeth when she claimed otherwise.

The non-distribution of the estate, which is vigorously denied by the petitioners, is not a ground for the re-opening of the testate proceedings. A seasonable motion for execution should have been filed. In *De Jesus vs. Daza*,⁵⁷ this Court ruled that if the executor or administrator has possession of the share to be delivered, the probate court would have jurisdiction within the same estate proceeding to order him to transfer that possession to the person entitled thereto. This is authorized under Section 1, Rule 90 of the Rules of Court. However, if no motion for execution is filed within the reglementary period, a separate action for the recovery of the shares would be in order. As We see it, the attack of 10 September 1973 on the Order was just a clever ploy to give a semblance of strength and substance to the Omnibus Motion for Reconsideration by depicting therein a probate court committing a series of fatal, substantive and procedural blunders, which We find to be imaginary, if not deliberately fabricated.

WHEREFORE, the instant petition and supplemental petitions are GRANTED. The Order of respondent Judge of 2 June 1980 and all other orders issued by him in Sp. Proc. No. 3309-R, as well as all other proceedings had therein in connection with or in relation to the Omnibus Motion for Reconsideration, are hereby ANNULLED and SET ASIDE.

The restraining order issued on 2 June 1980 is hereby made PERMANENT.

Costs against private respondent Concepcion M. Espina.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Romero, JJ., concur.
Feliciano, J., no part.

[1] Rollo, 13.

[2] Rollo, 475-486.

[3] Id., 370-373.

[4] Rollo, 14-16.

[5] Id., 18-19.

[6] Rollo, 20.

[7] Xerox copies thereof are on pages 370-373 and 388-391 of Rollo.

[8] Rollo, 394-403.

[9] Annex "J" to Consolidated Reply to Respondents' Comment, etc.; Id., 410-415.

[10] Id., 21-26.

[11] Rollo, 27; 29. More specifically, private respondent Concepcion Espina's certification, dated 5 September 1973, reads: "The undersigned, legatee and heir of the deceased Remedios Mejia vda. de Tiosejo, hereby certify (sic) that she received a copy of the Project of Partition and the Notice of Hearing in the above-entitled proceeding, and that she has no objection to the approval of the said Project of Partition."

[12] Annex "H" to Consolidated Reply to Respondents' Comment, etc.; Id., 406.

[13] Id., 28-29.

[14] Rollo, 30-36.

[15] 66 SCRA 425 [1975].

[16] Rollo, 37-50.

[17] Rollo, 13.

[18] Id., 51-78.

[19] Id., 81.

[20] Rollo, 87-95.

[21] Id., 119-157; 240-290.

[22] Rollo, 320.

[23] Id., 474-486.

[24] Id., 459-472.

[25] Rollo, 449.

[26] Id., 779-971.

[27] Id., 985-1027.

[28] Id., 1369-1370, with the English translation at 1371-1372.

[29] Rollo, 1375-1376.

[30] Rollo, 1425-1430.

[31] Supra.

[32] 65 SCRA 4?????4 ?????

35 At pages 499-500.

36 178 SCRA 153 [1989].

37 People vs. Jabinal, 55 SCRA 607 [1974].

38 157 SCRA 40 [1988].

39 64 Phil. 211 [1937].

40 64 Phil. 785 [1937].

41 Underscoring supplied for emphasis.

42 Underscoring supplied for emphasis.

43 Annex "1" of Comments; Rollo, 158.

44 Rollo, 335, et seq.

45 Annex "C" of the Reply.

46 Rollo, op. cit., 624, et seq.

47 Rollo, 31-32.

48 Anuran vs. Aquino, 38 Phil. 29 [1918]; Garchitorena vs. Sotelo, 74 Phil. 25 [1942]; Ramos vs. Albano, 92 Phil. 834 [1953].

49 Anuran vs. Aquino, supra.; Banco Español-Filipino vs. Palanca, 37 Phil. 921 [1918]; Garchitorena vs. Sotelo, supra.; Santiago vs. Ceniza, 5 SCRA 494 [1962].

50 Manahan vs. Manahan, 58 Phil. 448, 451 [1933], citing several cases.

51 Yuseco vs. Court of Appeals, 68 SCRA 484 [1975]; San Juan Cuento, 160 SCRA 277 [1988].

52 76 SCRA 416 [1977]; see also Turqueza vs. Hernando, 97 SCRA 483 [1980].

53 Balais vs. Balais, 159 SCRA 37 [1988]; San Juan vs. Cuento, supra.

54 Castillo vs. Donato, 137 SCRA 210 [1985]; Icao vs. Apalisok, 180 SCRA 680 [1989].

55 Annex "F" of Petition; Rollo, 27.

56 Id., 501.

57 77 Phil. 152 [1946]; see also Torres vs. Encarnacion, 89 Phil. 678 [1951].

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