

JOAQUINA R-INFANTE DE ARANZ, ANTONIO R-INFANTE, CARLOS R-INFANTE, MERCEDES R-INFANTE DE LEDNICKY, ALFREDO R-INFANTE, TERESITA R-INFANTE, RAMON R-INFANTE, FLORENCIA R-INFANTE DE ...

G.R. No. 77047. May 28, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals, dated 13 January 1987, in CA-G.R. SP-No. 09622, entitled "Joaquina R-Infante de Aranz, et al., petitioners vs. Hon. Nicolas Galing, etc., et al., respondents", dismissing petitioners' petition for certiorari and prohibition assailing the orders[2] of the Regional Trial Court of Pasig, Branch 166, dated 12 May 1986 and 30 May 1986, respectively, in Sp. Proc. No. 9995, entitled, "In the Matter of Petition for Approval of the Last Will and Testament of Montserrat R-Infante y G-Pola, Joaquin R-Infante, Petitioner".

On 3 March 1986, private respondent filed with the Regional Trial Court of Pasig, Branch 166, a petition for the probate and allowance of the last will and testament of the late Montserrat R-Infante-y G-Pola. The petition specified the names and addresses of herein petitioners as legatees and devisees, as follows:

"Joaquina R-Infante Roxas de Aranz residing at No. 86 10th St., New Manila, Quezon City, Metro Manila;

Antonio R-Infante Roxas residing at #91 Cambridge, North Forbes, Makati, Metro Manila;

Carlos R-Infante Roxas residing at 046 Washington St., Greenhills, San Juan, Metro Manila;

Mercedes R-Infante Roxas de Lednický residing at #386 P. Guevarra St., San Juan, Metro Manila

Alfredo R-Infante Roxas residing at #27 A Scout Tobias St., Quezon City, Metro Manila;

Teresita R-Infante Roxas residing at #121 9th Street New Manila, Quezon City, Metro Manila;

Ramon R-Infante Roxas residing at #27 B Scout Tobias St., Quezon City, Metro Manila;

Florencia R-Infante Roxas de Diaz residing at Calle Soncho Davila, 13-19-D, Madrid, 28028 Spain;

Martin R-Infante Roxas residing at #2 Bongavilla St., Cubao, Quezon City, Metro Manila;

Jose R-Infante Link residing at 174R-Pascual St., San Juan, Metro Manila;

Joaquin R-Infante Campbell C/O Pilar Campbell, 15 Briones, Makati, Metro Manila"[3]".

On 12 March 1986, the probate court issued an order setting the petition for hearing on 5 May 1986 at 8:30 o'clock in the morning. Said order was published in the "Nueva Era" a newspaper of general circulation in Metro Manila once a week for three (3) consecutive weeks. On the date of the hearing, no oppositor appeared. The hearing was then reset to 12 May 1986, on which date, the probate court issued the following order:

"There being no opposition to this instant case, as prayed for, the Branch Clerk of Court is hereby designated Commissioner to receive evidence ex-parte of the petitioner.

"SO ORDERED[4]".

On the same day (12 May 1986), private respondent presented his evidence ex-parte and placed Arturo Arceo, one of the testamentary witnesses, on the witness stand. During the proceedings, private respondent was appointed executor.

On 14 May 1986, petitioners filed a motion for reconsideration of the order of 12 May 1986 alleging that, as named legatees, no notices were sent to them as required by Sec. 4, Rule 76 of the Rules of Court and they prayed that they be given a period of ten (10) days within which to file their opposition to the probate of the will.

On 30 May 1986, the probate court, acting on the opposition of private respondent and the reply thereto of petitioners, issued an order denying petitioners' motion for reconsideration.

Thereafter, petitioners filed with this Court a petition for certiorari and prohibition which was, however, referred to the Court of Appeals. On 13 January 1987, the Court of Appeals promulgated a decision dismissing the petition.[5] Hence, the instant petition.

It is the view of petitioners that the Court of Appeals erred in holding that personal notice of probate proceedings to the known legatees and devisees is not a jurisdictional requirement in the probate of a will. Contrary to the holding of the Court of Appeals that the requirement of notice on individual heirs, legatees and devisees is merely a matter of procedural convenience to better satisfy in some instances the requirements of due process, petitioners allege that under Sec. 4 of Rule 76 of the Rules of Court, said requirement of the law is mandatory and its omission constitutes a reversible error for being constitutive of grave abuse of discretion.[6]

We grant the petition.

Sec. 4, Rule 76 of the Rules of Court reads:

"SEC. 4. Heirs, devisees, legatees, and executors to be notified by mail or personally. The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as coexecutor not petitioning, if their places of residence be known. Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing."

It is clear from the aforecited rule that notice of the time and place of the hearing for the allowance of a will shall be forwarded to the designated or other known heirs, legatees, and devisees residing in the Philippines at their places of residence, if such places of residence be known. There is no question that the residences of herein petitioners legatees and devisees were known to the probate court. The petition for the allowance of the will itself indicated the names and addresses of the legatees and devisees of the testator[7]. But despite such knowledge, the probate court did not cause copies of the notice to be sent to petitioners. The requirement of the law for the allowance of the will was not satisfied by mere publication of the notice of hearing for three (3) weeks in a newspaper of general circulation in the province.

The case of *Joson vs. Nable*[8] cited by the Court of Appeals in its assailed decision to support its theory is not applicable in the present case. In that case, petitioners Purificacion Joson and Erotita Joson failed to contest the will of Tomas Joson because they had not been notified of the hearing of the petition for probate. While the

petition included the residence of petitioners as Dagupan Street No. 83, Manila, petitioners claimed that their residence was not Dagupan Street No. 83, Manila. There the Court said:

"Petitioners maintain that no notice was received by them partly because their residence was not Dagupan Street No. 83 as alleged in the petition for probate. If the allegation of the petition was wrong and the true residence of petitioners was not known, then notice upon them individually was not necessary. Under the provision above quoted, individual notice upon heirs, legatees and devisees is necessary only when they are known or when their places of residence are known. In other instances, such notice is not necessary and the court may acquire and exercise jurisdiction simply upon the publication of the notice in a newspaper of general circulation. xxx[9].

In Re: Testate Estate of Suntay[10], the Court, speaking thru Mr. Justice Sabino Padilla, said:

x x x It is a proceedings in rem and for the validity of such proceedings personal notice or by publication or both to all interested parties must be made. The interested parties in the case were known to reside in the Philippines. The evidence shows that no such notice was received by the interested parties residing in the Philippines (pp. 474, 476, 481, 503-4, t.s.n., hearing of 24 February 1948). The proceedings had in the municipal district court of Amoy, China, may be likened to a deposition or to a perpetuation of testimony, and even if it were so it does not measure or come up to the standard of such proceedings in the Philippines for lack of notice to all interested parties and the proceedings were held at the back of such interested parties.

x x x

x x x In view thereof, the will and the alleged probate thereof cannot be said to have been done in accordance with the accepted basic and fundamental concepts and principles followed in the probate and allowance of wills. Consequently, the authenticated transcript of proceedings held in the municipal district court of Amoy, China, cannot be deemed and accepted as proceedings leading to the probate or allowance of a will and, therefore, the will referred to therein cannot be allowed, filed and recorded by a competent court of this country"[11].

WHEREFORE, the decision of the Court of Appeals dated 13 January 1987 is hereby ANNULLED and SET ASIDE. The case is hereby ordered remanded to the Regional Trial Court of Pasig for further proceedings in accordance with this decision. No costs.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Penned by Justice Jose A.R. Melo, Justices Ricardo L. Pronove and Oscar M. Herrera, concurring.

[2] Issued by Judge Nicolas Galing.

[3] Decision of the Court of Appeals, p. 2.

[4] Annex G, Rollo, p. 40.

[5] Rollo, pp. 24-29.

[6] Petition, p. 13.

[7] Annex F, Rollo, pp. 38-39.

[8] 87 Phil. 337.

[9] Ibid., pp. 339-340.

[10] 95 Phil. 500.

[11] Ibid., pp. 511-512.

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