

**IN RE INTESTATE ESTATE OF THE DECEASED YAP SIAM AND YU
TIAIN. YU TIONG, ADMINISTRATOR AND APPELLANT, VS.
GENOVEVA YU, ROSARIO YU, CHING YU, IGNACIA YU AND
EVANGEUSTA YU, MOVANTS...**

G.R. Nos. 15756; 15818; 16200-01. December 29, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

These four appeals concern an order entered by the Court of First Instance of Cebu on 23 March 1959 denying the motions for reconsideration dated 19 January 1959 filed by the counsel for Yu Tiong in Special Proceedings No. 1854—0 (G. R. No. L-15756) and by the counsel for Yu Entong in Special Proceedings No. 189-R (G. R. No. L-15818).[1] The appeal in the two last cases G. R. No. L-16200 and G. R. No. L-16201 is taken by the appellees in the two previous cases, on the ground that the appeal should not have been allowed because the order appealed from is interlocutory.

The dispositive part of the order entered on 12 January 1959, the reconsideration of which was denied, reads, as follows:

IN VIEW OR ALL THE FOREGOING CONSIDERATIONS, the Court hereby—

1. Declares that Special Proceedings No. 189-R is still open and in course;
2. Denies the motion to strike the pleadings filed by Yu Tiong, and the Motion to dismiss, filed by Yu Entong in the said Special Proceedings No. 189-R; and
3. Denies the Motion for reconsideration, dated August 9, 1956, in Special Proceedings No. 1854; and
4. Declares the aforesaid Special Proceedings No. 1854 open and in full force.

* * * * *

Special proceedings No. 1854-0 for the administration and settlement of the estates of the deceased spouses Ya Tiam who died in Cebu City on 12 January 1934 and Yap Siam who died in the same City on 12 April 1933 was commenced on 19 January 1934 in the Court of First Instance of Cebu. Yu Tiong, the eldest child of the deceased spouses, was appointed administrator of the estate. Since there were minors among the heirs, Yu Sun, another heir and second eldest child, was appointed guardian ad litem of the minors. On 16 April 1934 the administrator filed an inventory of the estate and on 10 September 1934 the committee on claims and appraisal, its report. On 1 February 1935 the administrator submitted a project of partition which was approved on 2 February 1935. On 11 December 1935 the administrator filed a motion praying among other things for authority (a) to transfer certain funds deposited in the Philippine National Bank; (b) to execute deeds to convey or transfer to the heirs real property of the estate; (c) to transfer fifty shares of stock of the China Insurance and Surety Co., Inc. in favor of the minor Evangelista Yu, and to apply for guardianship of the minors who are heirs of the deceased spouses. In

the same motion the administrator reported to the probate court on the payment of P586.55 made to the Asiatic Petroleum Co., Ltd., and of inheritance tax, attaching thereto two official receipts evidencing the payment. He further prayed that the proceedings be terminated and closed. At the bottom of the motion the following appears:

Como se pide.

Dic. 13, 1986

(Fdo.) GUILLERMO F. PABLO

Juez

On 18 December 1935 in the same court, proceedings for the appointment of a guardian for the minors Yu Entong et al. was initiated. Yu Sun was appointed guardian ad litem of the minors. On 7 March 1938 the administrator Yu Tiong filed a motion praying for the reopening of Special Proceedings No. 1854-O just for the purpose of including in the inventory of the estate a mortgage executed by Gabriel Herrera of Cantilan, Surigao, and for authority to transfer it to the guardian Yu Tiong for the benefit of the minors. On 19 March 1938 acting on the preceding motion of 7 March 1938 the probate court entered the following—

AUTO

Como se pide, se reabre este expediente y se ordena a Yu Tiong, administrador de los bienes de los finados esposos Tu Tiam y Yap Siam, que traspase el credito hipotecario sobre bienes raices situados en Cantilan, Surigao otorgado por Gabriel Herrera el 27 de Septiembre de 1932, a favor del tutor de los menores Yu Entong, Genoveva Yu, Rosario Yu, Timoteo Yu, Donate Yu, Yu Ching, Ignada Yu, Evangelista Yu y Filomeno Yu, para que dicho tutor incluya en el inventario de los bienes de dichos menores, y cierre de nuevo este expediente.

Asi se ordena.

On 4 April 1966 Genoveva Yu, Rosario Yu, Yu Ching, Ignacia Yu and Evangelita Yu, heirs of the deceased spouses Yu Tiam and Yap Siam, filed a motion charging the administrator Yu Tiong, the "curador ad litem" Yu Sun and their two other brothers Yu Neam and Yu Entong with having confederated together and connived to defraud the movants of their legitimate shares in the estate of the deceased parents including its earnings from 1934 to the date of the filing of their motion, which amounted to more than two million pesos and alleging that Special Proceedings No. 1854-O was still open and in course, because aside from other reasons the administrator has not rendered his final and complete report of his trust.

The administrator objected to the reopening of the proceedings.

On 19 May 1956 the other heirs Donato Yu and Filomeno Yu, two younger brothers of the movants, in a pleading filed by their attorney joined the movants by making as their own all of the latter's pleadings. On 23 May 1956 the movants made also as their own the facts alleged in the pleading filed by Donato Yu and Filomeno Yu on 19 May 1956.

On 6 August 1956 the probate court entered the following—

ORDER

Upon administrator's Motion (pages 83-85 of Record) this proceeding was closed on December 13, 1935 (by the then presiding Judge Honorable Guillermo F. Pablo).

Again upon motion of administrator Yu Tiong on March 19, 1938, the then presiding Judge, Honorable Felix Martinez, issued the following order:

AUTO

Como se pide, se reabre este expediente y se ordena a Yu Tiong, administrator de los bienes de los finados esposos Yu Tiam y Yap Siam, que traspase el credito hipotecario sobre bienes raices situados en Cantilan, Surigao, otorgado por Gabriel Herrera el 27 de Septiembre de 1932, a favor del tutor de los menores Yu Entong Genoveva Yu, Rosario Yu, Timoteo Yu, Donato Yu, Yu Ching, Ignacia Yu, Evangelista Yu y Filomeno Yu, para que dicho tutor induya en el inventario de los bienes de dichos menores, y cierre de nuevo este expediente.

Asi se ordena.

Ciudad de Cebu, M.F., 19 de marzo de 1938.

It must be noted that the foregoing order required the performance by the administrator of certain acts "to transfer the mortgage credit on the lands of the estate in Cantilan, Surigao, executed by Gabriel Herrera on September 27, 1932, in favor of the guardian of the minors Yu Tiong, Genoveva, Rosario, Timoteo, Donato, Ignacia, Evangelista, and Filomeno, all surnamed Yu and Yu Ching, in order that said guardian may include said lands in the inventory of the properties of said minors, and have this proceeding again closed." It would follow, therefore, that such new closing was to be effected only upon the compliance of (with) the aforementioned commitments by the administrator.

A careful examination of the record does not reveal that the administrator had complied with said order, so much so that for all legal purposes, this proceedings cannot be considered as closed.

On April 4, 1956 movants through Attorneys Binamira and Barria filed a motion requiring administrator Yu Tiong's appearance—to answer questions specified therein.

The attorneys for said administrator as of April 6, 1956, filed a motion to dismiss the foregoing motion on the grounds:

1. That this present action was barred by the Court's order of 1948;
2. That the movant is guilty of laches;
3. That movant's present cause of action has already prescribed;
4. Unreasonable delay of movant in presenting this action, etc.

Without delving into the merits of Motion filed by Attorneys Binamira and Barria, except that portion which seeks the reopening of this proceeding, the Court is of the opinion and so holds that this proceeding is still open.

WHEREFORE, the Court hereby orders the administrator Yu Tiong as well as the "curador ad litem" to appear before this Court on August 18, 1956 to inform said Court on his compliance or non-compliance of (with) the Court's order dated March 19, 1938.

SO ORDERED.

On 10 August 1956 the counsel for the administrator and guardian ad litem filed a motion for reconsideration of the preceding order. On 11 August 1956 the probate court, without acting on the motion for reconsideration, entered the following—

ORDER

To enable respondent administrator and his attorneys to prove alleged compliance of (with) the Court's order of March 19, 1938, as well as the Court's order of December 13, 1935, without objection, hearing is hereby

transferred for September 1, 1956.

Motion for reconsideration dated August 9, 1956, filed by the administrator thru counsel, shall be passed upon that very date.

The Court, hereby orders the administrator Yu Tiong, to appear on said date, September 1, 1956.

SO ORDERED.

On 4 September 1956 the administrator Yu Tiong and the guardian ad litem Yu Sun filed in this Court a petition for a writ of certiorari and prohibition with preliminary injunction which was dismissed for lack of merit on 10 September 1956 (G. R. No. L-11161).

On 13 October 1956 the probate court entered the following—

ORDER

The Court is well posted on the situation particularly as to the respective rights of claimants and those belonging to the group of Yu Tiong. However, there is the procedural requirement in attending to the rights of movants, and the court would like to reiterate its position since the beginning that if ever it orders for the reopening of this case, this was to be limited to the inquiry into the compliance of (with) the order of the Court of March 19, 1938, that is, whether or not the Herrera mortgage-credit in favor of the estate had been satisfied and the proceeds thereof delivered to the estate. In the affirmative, that order of the Court had been complied with, and the proceedings was again automatically dosed.

But the attorneys for movants argued that impliedly other matters although not specifically included in that Court's order of March 19, 1938, need to be inquired into as matters concomitant and thus proper to be passed upon in said reopening. Said attorneys refer to a motion filed by the administrator and guardian dated December 11, 1935.

After hearing the arguments of the attorneys for both parties, the Court would need a little more time to dig deeper into this somewhat complicated set of questions and would hereby require as it requires the attorneys for Yu Tiong (as administrator and guardian) to file a written memorandum within 15 days from today, focusing their arguments on the compliance of (with) this court's order of March 19, 1938, and furnish copy thereof to attorneys Binamira and Jayme for the claimants who shall file their written answers to same—if f they so desire also within fifteen (15) days after receipt thereof.

The question, therefore, whether or not the movants shall be allowed to further cross-examine Yu Tiong and consequently inquire into other matters not specified in the Court's order of March 19, 1938, shall be passed upon eventually.

SO ORDERED.

In an order entered on 13 August 1958 the probate court required the parties to appear on 20 August 1958 so that all the pending incidents in Special Proceedings No. 1854-O and No. 189-R may be determined and these proceedings terminated and closed.

As already stated, on 12 January 1959 the probate court entered an order in Special Proceedings No. 1854-O and No. 189-R holding that both special proceedings are still open and in course and in full force. A motion for reconsideration having been denied, the administrators Yu Tiong and Yu Entong have appealed.

In G. R. No. L-15756 the appellant assigns four errors claimed to have been committed by the probate court, to wit:

I. That the lower court erred in holding that Special Proceedings No. 1854-O is still "open and in full force.

II. That the lower court erred in holding that Special Proceedings No. 1854-O was reopened by Judge Martinez' order of March 19, 1938, inasmuch as

1. The order of March 19, 1938 of Judge Martinez did not leave Special Proceedings No. 1854-O, "open and in full force,"

2. That the order of, March 19, 1938 is null and void as the court had lost jurisdiction.

III. That the lower court erred in holding that the motion of February 25, 1939, stated that a foreclosure suit in favor of the estate will be filed and the administrator required to report on that asset and adjudicate it among the heirs.

IV. That the lower court erred in not applying the principles of laches, prescription and rules of procedure in denying movants appellees the right to consider that Special Proceedings No. 1854-O, is still open and in course.

After the succinct recital of the proceedings little is left for comment thereon. Whether these proceedings have or have not been terminated or closed by the order entered by the probate court on 2 February 1935 or 13 December 1935, the fact is that the probate court reopened it by its order of 19 March 1938, upon petition filed on 7 March 1938 by the administrator himself. True, it was reopened for the purpose of including in the inventory of the estate a mortgage in favor of the estate executed by Gabriel Herrera of Cantilan, Surigao. But by motion the other children of the deceased spouses, who were minors at the time the administration proceedings were begun and on the dates of the orders of the probate court closing the proceedings, charged the administrator and guardian ad litem with conniving and confabulating to deprive them of their legitimate shares in the estate of their deceased parents. Furthermore, an examination of the order entered by the probate court on 19 March 1938 discloses that the closure of the proceedings was conditioned upon compliance by the appellant administrator with what he had proposed to do in his motion of 7 March 1938. The record does not show that the administrator had complied with it. The probate court in its order entered on 12 January 1959, declaring the proceedings open and in full force, stated:

Even on the assumption, however, that the aforesaid "Como Se Pide" Order of December 13, 1935 did have the effect of closing this proceedings, the same was reopened by Judge Martinez in his Order of March 19, 1938, on motion of the administrator himself, dated March 7, 1938, when he represented to the Court that after the lapse of a period of more than two years and 3 months from the closure of the proceedings, he discovered that he failed to include in the inventory of this estate a certain mortgage credit against one Gabriel Herrera. And as late as February 25, 1939 he informed this Court that a foreclosure suit would be filed to enforce that credit in favor of the estate. What did he do afterwards in this proceedings? Did he report, on that asset of this estate? Did he cause this Court to adjudicate it among the heirs?

* * * * *

What is, however, most important to bear in mind in this incident is the fact that this proceedings was not reopened at the instance of the heirs-movants, but at the instance of the administrator himself. Insofar as the heirs-movants are concerned, they found this proceedings "still open" when they filed their Motion, dated April 2, 1956, because it was already reopened by the administrator on March 7, 1938, and he neglected to close it anew.

* * * * *

In its order entered on 6 August 1956 the probate court directed specifically the administrator Yu Tiong as well as the guardian ad litem Yu Sun to inform said court on the compliance or non-compliance with its order of 19 March 1938. The dispositive part of the order of 6 August 1956 is as follows:

WHEREFORE, the Court hereby orders the administrator Yu Tiong as well as the "curador ad litem" to appear

before this Court on August 18, 1956 to inform said Court on his compliance or non-compliance of (with) the Court's order dated March 19, 1938.

It follows from what has been stated that the lower court did not commit any error in considering and holding that Special Proceedings No. 1354-O is open and in full force.

The statute of limitations or prescription and the principle of laches cannot be invoked by the appellant because of the fiduciary or trust relation that exists between him and the appellees.

For the same reasons, the appeal by the administrator Yu Entong in G. R. No. L-15818 must be decided against him.

The point raised by the appellants, the appellees in the two preceding cases G. R. No. L-15756 and G. R. No. L-15818, in G. R. No. L-16200 and G. R. No. L-16201, to wit: that the order appealed from cannot be appealed, because it is interlocutory, has no legal foundation, for if the administrators are of the belief that the special proceedings were definitely terminated and closed, an adverse or contrary order by the probate court is final on that point and appealable.

The order appealed from is affirmed, with costs against the appellants in G. R. No. L-15756 and G. R. No. L-15818 and without pronouncement as to costs in G. R. No. L-16200 and G. R. No. L-16201.

Bautista Angelo, Labrador, Conception, Reyes, J.B.L., Bartera, Paredes and Makalintal, JJ., concur.

Order affirmed with costs in L-15756 and L-15818 and without costs in L-16200 and 16201.

[1] Special Proceedings No. 189-R is for the administration and settlement of the estate of the late Yu Eng Long alia Timoteo Yu, one of the children of the late spouses Yu Tiam and Yap Siam.

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