

**ROSARIO M. PONCE ENRILE, PLAINTIFF AND APPELLANT, VS.
ALFONSO PONCE ENRILE (DECEASED), DEFENDANT AND APPELLEE,
IN THE MATTER OF THE INTESTATE ESTATE OF ALFONSO PONCE
ENRILE, DEC...**

G.R. Nos. 26502 & 28160. June 30, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

These two cases, the plaintiff in the first and the petitioner in the second being Rosario M. Ponce Enrile, may be disposed of in a single resolution.

L-26502 is an action for support filed on June 26, 1964 with the Quezon City Court of First Instance, plaintiff Rosario M. Ponce Enrile alleging that she and defendant Alfonso Ponce Enrile, who subsequently died during the pendency of the suit, were married on March 2, 1911 and lived as husband and wife until he abandoned the conjugal dwelling without justifiable cause in 1925. In the answer filed on July 28, 1964, one of the special defenses raised was that such a marriage was lawfully dissolved in 1944 "by a second and valid decree of divorce duly rendered by the Court of First Instance of Manila." [1] There was a preliminary hearing on such affirmative defenses, and thereafter, in a partial decision dated April 28, 1966, the then Judge, now Associate Justice of the Court of Appeals, Lourdes P. San Diego, it was ruled: "[Wherefore], in so far as concerns the special defense of divorce set up by defendant Alfonso Ponce Enrile, judgment is hereby partially rendered declaring that there was a petition for divorce filed by defendant in the Court of First Instance of Manila which, having acquired jurisdiction over the persons of the parties litigants, issued a valid decree in favor of Alfonso Ponce Enrile on March 28, 1944." [2] The appeal, allowable under the then Judiciary Act, was direct to this Court. The principal error assigned, as was to be expected, was the holding that there was a valid and final decree of divorce. In the brief for defendant-appellee, there was a lengthy refutation of such a contention. The case was thereafter deemed submitted with appellant's reply brief.

L-28160, with the petitioner being the plaintiff in the previous case, is an intestacy proceeding, the principal allegation being that Alfonso Ponce Enrile died without leaving any will on July 3, 1967. In addition to petitioner, the children and grandchildren of the deceased were enumerated as his surviving heirs. She prayed that letters of administration of his estate be issued to her and that in the meanwhile she be named- special administratrix. There was a motion to dismiss filed by Attorney Leonardo Siguion Reyna denying the assertion that there was no will left by the decedent and alleging that his last will and testament was "delivered" [3] to the Rizal Court of First Instance on July 20, 1967, with the movant being named as one of the executors. Subsequently, in that capacity, he filed his petition for the probate of such will of the deceased. After proceedings duly had, the appealed order was issued on September 4, 1967, granting the motion to dismiss and further declaring: "Since the intestate proceedings will only take place, in this case, after the alleged will shall have been declared by our court of justice as void, let this case, 'In the Matter of the Intestate Estates of Alfonso Ponce Enrile, Special Proceedings No. 5444,' be dismissed without prejudice, and . . . be revived only if and when the alleged will of Alfonso Ponce

Enrile be finally declared by our court of justice as null and void." [4] The appeal, again, was direct to this Court. Thereafter, the parties filed their respective briefs; thus was the case deemed submitted for decision.

It was at this stage that on April 28, 1975, in L-26502, a motion to dismiss was filed by Rosario Martinez vda. de Ponce Enrile. It is worded thus: "[Appellant], assisted by the undersigned attorneys, respectfully submits that having arrived at an amicable settlement of the estate of the late Don Alfonso Ponce Enrile with all the heirs of said decedent and, to foster peace and tranquility among all, she has no desire to pursue further her appeal in the above-entitled case. [Wherefore], it, is respectfully prayed that appellant's appeal be dismissed without pronouncements as to costs." [5] Similarly, on May 15, 1975, in L-28160, there was a motion to dismiss likewise filed by appellant Rosario Martinez vda. de Ponce Enrile. Thus: "[Appellant], assisted by the undersigned attorneys, respectfully submits that having arrived at an amicable settlement of the estate of the late Don Alfonso Enrile with all the heirs of said decedent and to foster peace and tranquility among all, she has no desire to pursue further her appeal in the above-entitled case. [Wherefore], it is respectfully prayed that appellant's appeal be dismissed without pronouncements as to costs." [6]

WHEREFORE, as prayed for, the aforesaid motions to dismiss in cases nos. L-26502 and L-28160 are hereby granted. No costs.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Answer of Defendant Alfonso Ponce Enrile, par. 10 in Record on Appeal, 9.

[2] Partial Decision, Record on Appeal, 39.

[3] Motion to Dismiss, par. 2, Record on Appeal, 12.

[4] Order of September 4, 1967, Record on Appeal, 50.

[5] Motion to Dismiss dated April 28, 1975.

[6] Motion to Dismiss dated April 28, 1975.

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