

FIRST DIVISION

[G.R. No. 174975, January 20, 2009]

LUISA KHO MONTAÑER, ALEJANDRO MONTAÑER, JR., LILLIBETH MONTAÑER-BARRIOS, AND RHODORA ELEANOR MONTAÑER-DALUPAN, PETITIONERS, VS. SHARI'A DISTRICT COURT, FOURTH SHARI'A JUDICIAL DISTRICT, MARAWI CITY, LILING DISANGCOPAN, AND ALMAHLEEN LILING S. MONTAÑER, RESPONDENTS.

DECISION

PUNO, C.J.:

This Petition for *Certiorari* and Prohibition seeks to set aside the Orders of the Shari'a District Court, Fourth Shari'a Judicial District, Marawi City, dated August 22, 2006^[1] and September 21, 2006.^[2]

On August 17, 1956, petitioner Luisa Kho Montañer, a Roman Catholic, married Alejandro Montañer, Sr. at the Immaculate Conception Parish in Cubao, Quezon City.^[3] Petitioners Alejandro Montañer, Jr., Lilibeth Montañer-Barrios, and Rhodora Eleanor Montañer-Dalupan are their children.^[4] On May 26, 1995, Alejandro Montañer, Sr. died.^[5]

On August 19, 2005, private respondents Liling Disangcopan and her daughter, Almahleen Liling S. Montañer, both Muslims, filed a "Complaint" for the judicial partition of properties before the Shari'a District Court.^[6] The said complaint was entitled "Almahleen Liling S. Montañer and Liling M. Disangcopan v. the Estates and Properties of Late Alejandro Montañer, Sr., Luisa Kho Montañer, Lilibeth K. Montañer, Alejandro Kho Montañer, Jr., and Rhodora Eleanor K. Montañer," and docketed as "Special Civil Action No. 7-05."^[7] In the said complaint, private respondents made the following allegations: (1) in May 1995, Alejandro Montañer, Sr. died; (2) the late Alejandro Montañer, Sr. is a Muslim; (3) petitioners are the first family of the decedent; (4) Liling Disangcopan is the widow of the decedent; (5) Almahleen Liling S. Montañer is the daughter of the decedent; and (6) the estimated value of and a list of the properties comprising the estate of the decedent.^[8] Private respondents prayed for the Shari'a District Court to order, among others, the following: (1) the partition of the estate of the decedent; and (2) the appointment of an administrator for the estate of the decedent.^[9]

Petitioners filed an Answer with a Motion to Dismiss mainly on the following grounds: (1) the Shari'a District Court has no jurisdiction over the estate of the late Alejandro Montañer, Sr., because he was a Roman Catholic; (2) private respondents failed to pay the correct amount of docket fees; and (3) private respondents' complaint is barred by prescription, as it seeks to establish filiation between Almahleen Liling S. Montañer and the decedent, pursuant to Article 175 of the

Family Code.^[10]

On November 22, 2005, the Shari'a District Court dismissed the private respondents' complaint. The district court held that Alejandro Montañer, Sr. was not a Muslim, and its jurisdiction extends only to the settlement and distribution of the estate of deceased Muslims.^[11]

On December 12, 2005, private respondents filed a Motion for Reconsideration.^[12] On December 28, 2005, petitioners filed an Opposition to the Motion for Reconsideration, alleging that the motion for reconsideration lacked a notice of hearing.^[13] On January 17, 2006, the Shari'a District Court denied petitioners' opposition.^[14] Despite finding that the said motion for reconsideration "lacked notice of hearing," the district court held that such defect was cured as petitioners "were notified of the existence of the pleading," and it took cognizance of the said motion.^[15] The Shari'a District Court also reset the hearing for the motion for reconsideration.^[16]

In its first assailed order dated August 22, 2006, the Shari'a District Court reconsidered its order of dismissal dated November 22, 2005.^[17] The district court allowed private respondents to adduce further evidence.^[18] In its second assailed order dated September 21, 2006, the Shari'a District Court ordered the continuation of trial, trial on the merits, adducement of further evidence, and pre-trial conference.^[19]

Seeking recourse before this Court, petitioners raise the following issues:

I.

RESPONDENT SHARI'A DISTRICT COURT - MARAWI CITY LACKS JURISDICTION OVER PETITIONERS WHO ARE ROMAN CATHOLICS AND NON-MUSLIMS.

II.

RESPONDENT SHARI'A DISTRICT COURT - MARAWI CITY DID NOT ACQUIRE JURISDICTION OVER "THE ESTATES AND PROPERTIES OF THE LATE ALEJANDRO MONTAÑER, SR." WHICH IS NOT A NATURAL OR JURIDICAL PERSON WITH CAPACITY TO BE SUED.

III.

RESPONDENT SHARI'A DISTRICT COURT DID NOT ACQUIRE JURISDICTION OVER THE COMPLAINT OF PRIVATE RESPONDENTS AGAINST PETITIONERS DUE TO NON-PAYMENT OF THE FILING AND DOCKETING FEES.

IV.

RESPONDENT SHARI'A DISTRICT COURT--MARAWI CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION

WHEN IT DENIED THE OPPOSITION OF PETITIONERS AND THEN GRANTED THE MOTION FOR RECONSIDERATION OF RESPONDENTS LILING DISANGCOPAN, ET AL. WHICH WAS FATALLY DEFECTIVE FOR LACK OF A "NOTICE OF HEARING."

V.

RESPONDENT SHARI'A DISTRICT COURT--MARAWI CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT SET SPL. CIVIL ACTION 7-05 FOR TRIAL EVEN IF THE COMPLAINT PLAINLY REVEALS THAT RESPONDENT ALMAHLEEN LILING S. MONTAÑER SEEKS RECOGNITION FROM ALEJANDRO MONTAÑER, SR. WHICH CAUSE OF ACTION PRESCRIBED UPON THE DEATH OF ALEJANDRO MONTAÑER, SR. ON MAY 26, 1995.

In their Comment to the Petition for *Certiorari*, private respondents stress that the Shari'a District Court must be given the opportunity to hear and decide the question of whether the decedent is a Muslim in order to determine whether it has jurisdiction.^[20]

Jurisdiction: Settlement of the Estate of Deceased Muslims

Petitioners' first argument, regarding the Shari'a District Court's jurisdiction, is dependent on a question of fact, whether the late Alejandro Montañer, Sr. is a Muslim. Inherent in this argument is the premise that there has already been a determination resolving such a question of fact. It bears emphasis, however, that the assailed orders **did not** determine whether the decedent is a Muslim. The assailed orders did, however, set a hearing for the purpose of resolving this issue.

Article 143(b) of Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, provides that the Shari'a District Courts have exclusive original jurisdiction over the settlement of the estate of deceased Muslims:

ARTICLE 143. Original jurisdiction. -- (1) The Shari'a District Court shall have exclusive original jurisdiction over:

x x x x

(b) All cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property.

The determination of the nature of an action or proceeding is controlled by the averments and character of the relief sought in the complaint or petition.^[21] The designation given by parties to their own pleadings does not necessarily bind the courts to treat it according to the said designation. Rather than rely on "a *falsa descriptio* or defective caption," courts are "guided by the substantive averments of the pleadings."^[22]

Although private respondents designated the pleading filed before the Shari'a

District Court as a "Complaint" for judicial partition of properties, it is a petition for the issuance of letters of administration, settlement, and distribution of the estate of the decedent. It contains sufficient jurisdictional facts required for the settlement of the estate of a deceased Muslim,^[23] such as the fact of Alejandro Montañer, Sr.'s death as well as the allegation that he is a Muslim. The said petition also contains an enumeration of the names of his legal heirs, so far as known to the private respondents, and a probable list of the properties left by the decedent, which are the very properties sought to be settled before a probate court. Furthermore, the reliefs prayed for reveal that it is the intention of the private respondents to seek judicial settlement of the estate of the decedent.^[24] These include the following: (1) the prayer for the partition of the estate of the decedent; and (2) the prayer for the appointment of an administrator of the said estate.

We cannot agree with the contention of the petitioners that the district court does not have jurisdiction over the case because of an allegation in their answer with a motion to dismiss that Montañer, Sr. is not a Muslim. Jurisdiction of a court over the nature of the action and its subject matter does not depend upon the defenses set forth in an answer^[25] or a motion to dismiss.^[26] Otherwise, jurisdiction would depend almost entirely on the defendant^[27] or result in having "a case either thrown out of court or its proceedings unduly delayed by simple stratagem."^[28] Indeed, the "defense of lack of jurisdiction which is dependent on a question of fact does not render the court to lose or be deprived of its jurisdiction."^[29]

The same rationale applies to an answer with a motion to dismiss.^[30] In the case at bar, the Shari'a District Court is not deprived of jurisdiction simply because petitioners raised as a defense the allegation that the deceased is not a Muslim. The Shari'a District Court has the authority to hear and receive evidence to determine whether it has jurisdiction, which requires an *a priori* determination that the deceased is a Muslim. If after hearing, the Shari'a District Court determines that the deceased was not in fact a Muslim, the district court should dismiss the case for lack of jurisdiction.

Special Proceedings

The underlying assumption in petitioners' second argument, that the proceeding before the Shari'a District Court is an ordinary civil action against a deceased person, rests on an erroneous understanding of the proceeding before the court *a quo*. Part of the confusion may be attributed to the proceeding before the Shari'a District Court, where the parties were designated either as plaintiffs or defendants and the case was denominated as a special civil action. We reiterate that the proceedings before the court *a quo* are for the issuance of letters of administration, settlement, and distribution of the estate of the deceased, which is a special proceeding. Section 3(c) of the Rules of Court (Rules) defines a special proceeding as "a remedy by which a party seeks to establish a status, a right, or a particular fact." This Court has applied the Rules, particularly the rules on special proceedings, for the settlement of the estate of a deceased Muslim.^[31] In a petition for the issuance of letters of administration, settlement, and distribution of estate, the applicants seek to establish the fact of death of the decedent and later to be duly recognized as among the decedent's heirs, which would allow them to exercise their right to participate in the settlement and liquidation of the estate of the decedent.

[32] Here, the respondents seek to establish the fact of Alejandro Montañer, Sr.'s death and, subsequently, for private respondent Almahleen Liling S. Montañer to be recognized as among his heirs, if such is the case in fact.

Petitioners' argument, that the prohibition against a decedent or his estate from being a party defendant in a civil action^[33] applies to a special proceeding such as the settlement of the estate of the deceased, is misplaced. Unlike a civil action which has definite adverse parties, a special proceeding has no definite adverse party. The definitions of a civil action and a special proceeding, respectively, in the Rules illustrate this difference. A civil action, in which "a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong"^[34] necessarily has definite adverse parties, who are either the plaintiff or defendant. ^[35] On the other hand, a special proceeding, "by which a party seeks to establish a status, right, or a particular fact,"^[36] has one definite party, who petitions or applies for a declaration of a status, right, or particular fact, but no definite adverse party. In the case at bar, it bears emphasis that the estate of the decedent is not being sued for any cause of action. As a special proceeding, the purpose of the settlement of the estate of the decedent is to determine all the assets of the estate,^[37] pay its liabilities,^[38] and to distribute the residual to those entitled to the same.^[39]

Docket Fees

Petitioners' third argument, that jurisdiction was not validly acquired for non-payment of docket fees, is untenable. Petitioners point to private respondents' petition in the proceeding before the court *a quo*, which contains an allegation estimating the decedent's estate as the basis for the conclusion that what private respondents paid as docket fees was insufficient. Petitioners' argument essentially involves two aspects: (1) whether the clerk of court correctly assessed the docket fees; and (2) whether private respondents paid the correct assessment of the docket fees.

Filing the appropriate initiatory pleading and the payment of the prescribed docket fees vest a trial court with jurisdiction over the subject matter.^[40] If the party filing the case paid less than the correct amount for the docket fees because that was the amount assessed by the clerk of court, the responsibility of making a deficiency assessment lies with the same clerk of court.^[41] In such a case, the lower court concerned will not automatically lose jurisdiction, because of a party's reliance on the clerk of court's insufficient assessment of the docket fees.^[42] As "every citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with law," the party filing the case cannot be penalized with the clerk of court's insufficient assessment.^[43] However, the party concerned will be required to pay the deficiency.^[44]

In the case at bar, petitioners did not present the clerk of court's assessment of the docket fees. Moreover, the records do not include this assessment. There can be no determination of whether private respondents correctly paid the docket fees without the clerk of court's assessment.

Exception to Notice of Hearing