

## FIRST DIVISION

[ G.R. NO. 167321, July 31, 2006 ]

**EPIFANIO SAN JUAN, JR., PETITIONER, VS. JUDGE RAMON A. CRUZ, REGIONAL TRIAL COURT, BRANCH 224, QUEZON CITY AND ATTY. TEODORICO A. AQUINO, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before the Court is a Petition for Review on *Certiorari* of the Resolution<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 87458 dismissing the Petition for *Certiorari* with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction of petitioner Epifanio San Juan, Jr., as well as its Resolution<sup>[2]</sup> denying the motion for reconsideration thereof.

#### The Antecedents

Loreto Samia San Juan executed a Last Will and Testament naming Oscar Casa as one of the devisees therein. Upon Loreto's death on October 25, 1988, Atty. Teodorico A. Aquino filed a petition for the probate of the will in the Regional Trial Court (RTC) of Quezon City. The case was raffled to Branch 224 of the court and was docketed as Special Proceedings No. 98-36118.

While the petition was pending, Oscar Casa died intestate on May 24, 1999. The firm of Aquino, Galang, Lucas, Espinoza, Miranda & Associates entered their appearance as counsel of Federico Casa, Jr., who claimed to be one of the heirs of Oscar Casa and their representative.

On August 14, 2002, the probate court issued an Order denying the entry of appearance of said law firm, considering that Federico Casa, Jr. was not the executor or administrator of the estate of the devisee, hence, cannot be substituted for the deceased as his representative as required by Section 16, Rule 3 of the Rules of Court. On November 22, 2002, the court issued an order directing Aquino to secure the appointment of an administrator or executor of the estate of Oscar Casa in order that the appointee be substituted in lieu of the said deceased.

On February 26, 2003, Aquino filed a pleading entitled "Appointment of Administrator" signed by Candelaria, Jesus, Arlyn, Nestor, Edna, Benhur, Federico, Rafael and Ma. Eden, all surnamed Casa, on February 24, 2003, praying that one of them, Federico Casa, Jr., be designated as administrator of the estate of the deceased and that he be substituted for the deceased.

NOW THEREFORE, in compliance with the ORDER of the Probate Court, cited above, we, the legal heirs of the deceased OSCAR CASA, unanimously designate and appoint FEDERICO CASA, JR., as the

ADMINISTRATOR of the property to be inherited by the deceased OSCAR CASA, in the WILL of the late LORETO SAMIA SAN JUAN, considering that FEDERICO CASA, JR., is the nearest accessible heir to attend the hearing of the probate of the will and is most competent to assume the responsibilities and the duties of the ADMINISTRATOR. We authorize him to represent us the heirs of the deceased OSCAR CASA, on the hearing of the probate of the will of the testatrix and to perform such duties as might be required by the Probate Court; to take possession of the properties designated in the WILL upon distribution by the appointed ADMINISTRATOR of the Estate of LORETO SAMIA SAN JUAN. (emphasis supplied)<sup>[3]</sup>

In compliance with the order of the court, Epifanio San Juan filed a "Motion to Declare Appointment of Administrator As Inadequate or Insufficient."<sup>[4]</sup> He maintained that the heirs should present an administrator of the estate of Oscar Casa as the representative of the estate in the case.

In his reply, Aquino stated that, under Section 16, Rule 3 of the Rules of Court, the heirs of Oscar Casa may be substituted for the deceased without need for appointment of an administrator or executor of the estate. He also claimed that the court is enjoined to require the representative to appear before the court and be substituted within the prescribed period.

On December 2, 2003, the RTC issued an Order denying the motion of San Juan. Contrary to its Order dated November 22, 2002, the court held that there was, after all, no need for the appointment of an administrator or executor as substitute for the deceased devisee. It is enough, the court declared, that a representative be appointed as provided in Section 16, Rule 3 of the Rules of Court.<sup>[5]</sup>

San Juan received a copy of the December 2, 2003 Order on December 15, 2003 and filed, on December 30, 2003, a motion for reconsideration thereof. Citing the ruling of this Court in *Lawas v. Court of Appeals*,<sup>[6]</sup> he averred that, under Section 16, Rule 3 of the Rules of Court, while the court may allow the heirs of the deceased to be substituted in cases of unreasonable delay in the appointment of an executor or administrator, or where the heirs resort to an extrajudicial settlement of the estate, priority is still given to the legal representative of the deceased, that is, the executor or administrator of the estate. Moreover, in case the heirs of the deceased will be substituted, there must be a prior determination by the probate court of who the rightful heirs are. He opined that this doctrine is in line with Article 1058 of the New Civil Code, and the provisions of Section 6, Rule 78 and Section 2, Rule 79 of the Rules of Court. In this case, however, the alleged heirs of Oscar Casa did not file any petition for the appointment of an administrator of his estate; hence, Federico Casa, Jr. is not qualified to be appointed as substitute for the deceased devisee. San Juan pointed out that the December 2, 2003 Order of the probate court contravened its August 14, 2002 and November 22, 2002 Orders.<sup>[7]</sup>

The motion for reconsideration was denied on February 27, 2004 where the probate court declared that it had carefully evaluated the arguments raised by the parties and found no compelling ground or cogent reason to set aside its December 2, 2003 Order.<sup>[8]</sup> Petitioner received a copy of the Order on March 18, 2004.

On May 7, 2004, San Juan filed a Motion to Admit his second motion for reconsideration dated May 6, 2004, appending thereto the December 2, 2003 Order of the RTC.<sup>[9]</sup> He cited *Torres, Jr. v. Court of Appeals*,<sup>[10]</sup> where it was held that the purpose behind the rule on substitution of parties is the protection of the right of every party to due process, to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. The need for substitution of heirs is based on the right to due process accruing to every party in any proceeding, and the exercise of judicial power to hear and determine a cause presupposes that the trial court acquires jurisdiction over the persons of the parties.

San Juan emphasized that it is only in the absence of an executor or administrator that the heirs may be allowed by the court to substitute the deceased party. He averred that the purported heirs simply agreed among themselves to appoint a representative to be substituted for the deceased, which is contrary to the requirement of a prior hearing for the court to ascertain who the rightful heirs are. The Orders of the Court dated December 2, 2003 and February 27, 2004 may be used by purported heirs in order to "inherit" properties from estates of deceased parties, which will then allow the rules of procedure to be used as an instrument for fraud and undermining due process.<sup>[11]</sup> San Juan reiterated the rulings of this Court in *Dela Cruz v. Court of Appeals*<sup>[12]</sup> and *Lawas v. Court of Appeals*,<sup>[13]</sup> that court proceedings conducted or continued without a valid substitution of a deceased party cannot be accorded validity and binding effect. He prayed that the February 27, 2004 Order be reconsidered and a new order be issued as follows:

(a) declaring the "Appointment of Administrator" dated February 14, 2003 insufficient or inadequate compliance with the rules of procedure on substitution of a deceased party;

(b) directing petitioner to secure from the appropriate court the appointment of an administrator of the estate of the deceased Oscar Casa; and

(c) directing that further proceedings in the case be deferred until after the substitution of the deceased Oscar Casa by the court-appointed administrator or executor of his estate.

Oppositor prays for other and further reliefs which may be just and equitable.<sup>[14]</sup>

On June 11, 2004, the probate court issued an order denying the second motion for reconsideration of San Juan. It noted that the motion merely reiterated the same arguments in his first motion for reconsideration which had already been passed upon. Citing the rulings in *Montañano v. Suesa*<sup>[15]</sup> and *Riera v. Palmanori*,<sup>[16]</sup> it concluded that there was no need for the appointment of an administrator of the estate of the deceased Oscar Casa at that stage of the proceedings since a legatee is not considered either as an indispensable or necessary party in the probate of a will.<sup>[17]</sup>

When San Juan received a copy of the June 11, 2004 Order of the trial court, he filed, on July 23, 2004, a motion for reconsideration thereof. He took exception to

the probate court's reliance in the *Montañano* and *Riera* cases, as claiming that said rulings were not relevant to the issue of the validity of the appointment of Federico Casa Jr., by the alleged heirs of Oscar Casa, as administrator and substitute for the deceased devisee. He insisted that the cases dealt only with the question of whether or not the probate court can rule on the validity of the provisions of the will; they do not involve the same issue presented by the oppositor, namely, whether or not a substitution of a legatee under the will who died during the probate proceedings may be done by simply submitting an "Appointment of Administrator," or whether or not there is a need for a deceased legatee to be substituted by his/her duly appointed legal representative or administrator of his estate.

San Juan further posited that the estate court, sitting as a probate court, does not only decide on the questions of identity and testamentary capacity of the testator and the due execution of the will; it is likewise charged with the settlement of the estate of the testator after the will has been approved. Thus, the probate court must not only determine the validity of the will, but also the rightful heirs, legatees and devisees for the purpose of settling the estate of the testator.<sup>[18]</sup>

Aquino opposed the motion, contending that it was, in fact, a third motion for reconsideration, a prohibited pleading under Section 3, Rule 37 of the 1997 Rules of Civil Procedure.<sup>[19]</sup>

On September 8, 2004, the probate court issued an Order sustaining Aquino's argument and denied the motion for reconsideration of San Juan.<sup>[20]</sup>

San Juan, now petitioner, filed a petition for *certiorari* with the CA on November 22, 2004 for the nullification of the orders issued by the probate court on the following grounds:

- A. THE RESPONDENT REGIONAL TRIAL COURT OF QUEZON CITY GRAVELY ABUSED ITS DISCRETION WHICH AMOUNTS TO LACK, OR IN EXCESS, OF JURISDICTION IN RULING THAT THE "APPOINTMENT OF ADMINISTRATOR" DATED FEBRUARY 14, 2003 MADE BY PRIVATE RESPONDENT IS IN ACCORDANCE WITH THE RULES ON CIVIL PROCEDURE ON PROPER SUBSTITUTION OF PARTIES.
- B. THE RESPONDENT REGIONAL TRIAL COURT OF QUEZON CITY GRAVELY ABUSED ITS DISCRETION WHICH AMOUNTS TO LACK, OR IN EXCESS, OF JURISDICTION IN DENYING DUE COURSE TO PETITIONER'S MOTION FOR RECONSIDERATION ON THE GROUND THAT SAID MOTION IS A THIRD MOTION FOR RECONSIDERATION WHICH IS A PROHIBITED PLEADING UNDER SEC. 5, RULE 37 OF THE RULES OF COURT.<sup>[21]</sup>

On December 1, 2004, the CA dismissed the petition on the ground that it was filed beyond the 60-day period counted from notice to petitioner of the trial court's February 27, 2004 Order. The appellate court declared that the May 6, 2004 motion for reconsideration of petitioner was a *pro forma* motion because it was a second motion for reconsideration which sought the same relief as the first motion, hence, did not toll the running of the 60-day period.<sup>[22]</sup> The appellate court cited the ruling

of this Court in *University of Immaculate Concepcion v. Secretary of Labor and Employment*.<sup>[23]</sup>

Petitioner filed a motion for reconsideration of the resolution of the CA, contending that the orders sought to be reconsidered by him were interlocutory, hence, cannot be considered *pro forma* or forbidden by the Rules of Court. He cited the rulings of this Court in *Dizon v. Court of Appeals*,<sup>[24]</sup> *Philgreen Trading Construction Corporation v. Court of Appeals*,<sup>[25]</sup> and the cases cited in the latter decision.<sup>[26]</sup> However, on February 24, 2005, the CA resolved to deny the motion of petitioner.<sup>[27]</sup>

Petitioner now seeks relief from this Court, via a petition for review on *certiorari*, for the reversal of the resolutions of the appellate court. He raises the following issues:

(A)

WHETHER OR NOT THE SIXTY-DAY PERIOD FOR FILING A PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS RECKONED FROM NOTICE OF DENIAL OF THE FIRST MOTION FOR RECONSIDERATION OF AN INTERLOCUTORY ORDER EVEN THOUGH A SECOND AND THIRD MOTION FOR RECONSIDERATION (WHICH ARE NOT PROHIBITED MOTIONS) OF THE SAME INTERLOCUTORY ORDER HAD BEEN FILED AND WERE LATER DENIED.

(B)

WHETHER OR NOT A PERSON NOMINATED AS "ADMINISTRATOR" BY PURPORTED HEIRS OF A DEVISEE OR LEGATEE IN A WILL UNDER PROBATE MAY VALIDLY SUBSTITUTE FOR THAT DEVISEE OR LEGATEE IN THE PROBATE PROCEEDINGS DESPITE THE FACT THAT SUCH "ADMINISTRATOR" IS NOT THE COURT-APPOINTED ADMINISTRATOR OF THE ESTATE OF THE DECEASED DEVISEE OR LEGATEE.<sup>[28]</sup>

On the first issue, petitioner avers that the reckoning of the 60-day period for filing a petition for *certiorari* under Rule 65 of the Rules of Court from the notice of denial of the first motion for reconsideration is applicable only if the subject of the petition is a judgment, final resolution, or order. It does not apply if the subject of the petition is merely an interlocutory order. He points out that the reason for this is that only one motion for reconsideration of a judgment or final order is allowed under Section 5, Rule 37 of the Rules of Court. A second motion for reconsideration of a judgment or final order is a prohibited pleading; hence, the period for filing a petition for *certiorari* may not be reckoned from notice of denial of such second and prohibited motion for reconsideration. Petitioner asserts that a second (or even a third) motion for reconsideration of an interlocutory order is not prohibited; hence, the 60-day period for filing a petition for *certiorari* may be reckoned from notice of denial of subsequent motions for reconsideration.

Petitioner further claims that the Orders dated December 2, 2003, February 27, 2004, June 11, 2004 and September 8, 2004 issued by the RTC are only interlocutory orders. They deal solely with the issue concerning the proper substitution of the deceased Oscar Casa who is one of the devisees and legatees named in the purported will of the testatrix, Loreto San Juan, which is the subject matter of the probate proceedings pending with the respondent court. Said orders