SURVEY OF SPECIAL PROCEEDINGS

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Scope and Meaning of Special Proceedings

Rule 73, section 1 of the Rules of Court enumerates the subject matter of special proceedings as follows:

(a) Settlement of estate of deceased persons;
(b) Escheat;
(c) Guardianship and custody of children;
(d) Trustees;
(e) Adoption;
(f) Hospitalization of insanes;
(g) Habeas corpus;
(h) Change of name;
(i) Voluntary dissolution of corporations.

Special proceedings is defined by the Rules of Court through the use of the exclusion method by first defining what is an action and then making an over-embracing statement: "Every other remedy is a special proceeding."[1]

Applicability of General Rules

In the absence of special provisions, the rules provided for ordinary actions shall be, as far as practicable, applicable in special proceedings.[2] Rules regarding preparation, filing and service of applications, motions and other papers, are the same in civil actions as in special proceedings. The provisions regarding omnibus motion, subpoena, computation of time, motion for new trial, discovery, trial before commissioners also apply in special proceedings. The procedure of appeal is the same in civil actions as in special proceedings.[3] The applicability of Section 2, Rule 35 on entry of judgments, and Section 3, Rule 38 when the petition for relief from judgments should be filed, to special proceedings was reiterated in the recent case of *Emilio Soriano v. Antonio Asi.*[4]

I. Settlement of Estate of Deceased Persons

Policy of Administration Proceedings. The policy of administration proceedings is to procure a speedy settlement of the decedent's money obligations and the early distribution of his liquid assets among his heirs.[5] It is in the public interest that estates

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[1] Rules of Court, Rule 2, section e.
[2] Rules of Court, Rule 73, section 2.
[3] MORAN, COMMENTS ON THE RULES OF COURT 326 (1957).
[4] G. R. No. L-9633, January 29, 1957.
[5] Re Estate of Tiangco, 39 Phil. 967 (1919).

be administered with the utmost reasonable dispatch.[6] In the case of *Intestate Estate of the Deceased Teodoro Alcaraz, Paciencia Magsumbol v. Pagbilao Lumber Co., Inc.*, et al.,[7] it appears that Teodoro Alcaraz had been a treasurer of the Pagbilao Lumber Co. during his lifetime. Upon his death, claims were filed against his estate, among them that of the Pagbilao Lumber Co. The administratrix resisted payment to the officers of the said company on the ground that they have no authority to represent the corporation. The Supreme Court held that even granting that the contentions are true and correct, still the anomalous situation of the directorship of the corporation cannot be rectified within the intestate proceedings. The final setlement and closing of the administration proceedings should not be delayed by injecting therein issues that do not properly lie within the cognizance of the estate court.

This policy was also applied in the case of *Conchita Vda. de Legarda v. Hon. Julio Villamor* et al. wherein the court denied the urgent motion of the heirs for an extension of 45 days within which to exercise the options granted them to purchase the property of the estate. As early as November 21, 1951, the probate court had already authorized the sale of the property. Bids came only after a lapse of 6 years and the bids were not satisfactory. During all this time, any of the heirs, including the petitioners, who were given preferential option could have taken part in the bid or looked for a buyer who could offer a satisfactory price but they failed to do so and only in the last minute did they make a hasty move for additional time in a frantic effort to improve the bids.

Appointment and Removal of Special Administrator.

The appointment and removal of a special administrator are interlocutory proceeding incidental to the main case and lie in the sound discretion of the court.[8] The statutory provisions for the appointment as well as the statutory provisions as to causes for removal of an executor or administrator under section 2, Rule 83 of the Rules of Court do not apply to the selection or removal of special administrator.[9] The law does not say who shall be appointed as special administrator and their qualifications. The court has the sound discretion in the selection of the person to be appointed.

The recent case of *Aurea Matias v. Hon. Gonzales* et al. is for the principle that it is legally possible for the court to appoint two or more special administrators for one special administration. Matias as the heir to the entire estate of her deceased aunt and likewise appointed as executrix in the alleged will, initiaed a special proceeding for the probate of the said will. Basilia Salud, a cousin of the deceased, opposed probate. She also moved for the dismissal of Rodriguez, as special administrator. Rodriguez was removed without proper notice and the judge appointed Basilia Salud as special administratrix thereof to be assisted and advised by her

[6] Chua Kay and Co. v. Heirs of Oh Tiong Keng, 62 Phil. 883 (1936).

[7] G. R. No. L-8915, Sept. 23, 1957.

[8] Roxas V. Pecson 46 O. G. 2058; Junquera v. Borromeo 52 O. G. 7611; (1956) Garcia v. Flores, G. R. No. L-10392, June 28, 1957.

[9] Hon. Mateo Alcasid v. Amadeo Samson, et al. G. R. No. L-11435 December 27, 1957.

niece, Victorina Salud, who shall always act as aid, interpreter and adviser of Basilia Salud. Said order likewise provided that Basilia Salud shall be helped by one Plata as co-administrator. Respondent judge in effect appointed three special administrators. On appeal the Supreme Court made this observation and then handed down its verdict: the record shows that there are at least two (2) factions among the heirs of the deceased, namely, one, represented by Matias, and another by Salud. Inasmuch as the lower court has deemed it best to appoint more than one special administrator, justice and equity demands that both factions be represented in the management of the estate of the deceased.

The rule laid down in *Roxas v. Pecson*[10] to the effect that only one special administrator may be appointed to administer temporarily the estate of the deceased must be considered in the light of the facts obtaining in said case. The lower court appointed therein one special administrator for some properties forming part of said estate and a special administratrix for other properties thereof. Thus, there are two (2) separate and independent special administrators. In the case at bar, there is only one (1) special administration, the powers of which shall be exercised jointly by two (2) special co-administrators. In short, the Roxas case, is not squarely in point. Moreover, there are authorities in support of the power of the courts to appoint several special co-administrators.[11]

In *Carlos Sison v. Narcisa de Teodoro,*[12] the court said that where the estate is large, it is an admitted practice to appoint two or more administrators to represent and satisfy different interests and to have such representatives work in harmony, for the best interests of the estate.

Compensation of Administrator: Section 7, Rule 86 fixes the compensation for administrators at ₱4.00 per day, or a commission on the amounts passing through their hands. "But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed." The court felt justified in making use of the exception and fixed the compensation of the administrator at ₱10,000 in the case of *In re Testate Estate of Late Margarita David. Carlos Sison v. Narcisa de Teodoro.*[13]

Premium on Bond Not an Expense in the Setlement of the Estate. In a subsequent case[14] involving Carlos Sison again, the only issue to be determined is whether a judicial administrator, serving without compensation is entitled to charge as an expense of administration the premiums paid on his bond as administrator. The court

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[10] 46 O. G. 2058 (1948).

[11] Lewis v. Loban, 87 A.750 (1913); Harrison v. Clark, 52 A.514 (1902). In re Wilson's Estate, 61 NGS 2d. 49; ( ) Davenport v. Davenport, 60 A.379 (1904).

[12] G. R. No. L-8039, January 28, 1957.

[13] G. R. No. L-8039, January 28, 1957.

[14] In the Matter of the Testate Estate of the Late Da. David, G. R. No. L-9271, March 29, 1957.

citing the case of *Sulit v. Santos*,[15] disposed of the question in the negative. The position of an administrator or executor is one of trust. It is but proper for the law to safeguard the estates of deceased persons by requiring the administrator to file a bond. The ability to give a bond is in the nature of a qualification for the office. If an individual does not desire to assume the position, he may refuse. It would therefore be far-fetched to deduce that the giving of the bond is a necessary expense in the care, management and settlement of the estate for these are expenses incurred after the executor or administrator has met the requirements of the law and has entered upon the performance of his duties. The appellant having waived compensation, he cannot now be heard to complain of the expenses incident to his qualification.

Expenses of Administration. An executor or administrator shall be allowed the necessary expenses in the care, management and settlement of the estate.[16] Necessary expenses of administration are such expenses as are entailed for the preservation and productivity of the estate and for its management for purposes of liquidation, payment of debts and distribution of the residue among the persons entitled thereto.[17]

In the case of Testate Estate of Palanca v. Palanca del Rio, et al.[18] the court was confronted with the problem of whether the services rendered to the special administrator named in the will, previous to his actual appointment as such and at his instance, are chargeable against the estate? The services rendered were in taking inventory of the assets, tax consultations and preparations of the income tax returns. There is no question that the services were for the benefit of the estate. The Rules of Court requires that the administrator should submit an inventory of the properties of the estate within three months from his appointment.[19] As Mr. Ozaeta expected to be appointed administrator of the estate immediately, in view of his designation as executor of the will of the decedent, it was proper, necessary and expedient for him, even before his actual appointment, to employ the services of accountants in order that they can prepare the accounts or inventory in due time. The general rule is that act done by an executor in the interest of his trust, prior to his qualification redounded to the estate's benefit and therefore the expenses incurred were chargeable against it.

Contingent Claim. Rule 89, section 4 of the Rules of Court provides: "If the court is satisfied that a contingent claim duly filed is valid, it may order the executor or administrator to retain in his hands sufficient estate to pay such contingent claim, when the same becomes absolute, or if the estate is insolvent ,sufficient to pay a portion equal to the dividend of the other creditors."

The real nature of a contingent claim was explained in *Intestate Estate of the Late Florencio Buan and Rizalina Buan. Buan and*

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[15] 56 Phil. 626 (1932).
[16] Rule 86, sec. 7, Rules of Court.
[17] Lizarraga Hermanos v. Abada, 40 Phil. 124 (1919).
[18] G. R. No. L-9776 and 9851, July 31, 1957.
[19] Rule 84, sec. 1, Rules of Court.

Paras v. Laya.[20] Juan Laya, predecessor of the petitioners, died in an accident when a Philippine Rabbit Bus owned and operated by the deceased Buan couple collided with the car where Laya was riding. An ordinary action was brought to recover damages. The heirs of Laya filed a contingent claim against the intestate estate of the deceased spouses. In a motion for reconsideration filed by the administrator the probate court set aside its order admitting the claim. On appeal the Supreme Court held that the dismissal of the contingent claim is erroneous. A contingent claim is one which by its nature, is necessarily dependent upon an uncertain event for its existence or validity. It may or it may not develop into a valid enforceable claim and its validity and enforceability depends upon an uncertain event.[21] Whether or not the heirs of Laya would succeed in the action brought against the administrator is the contingency upon which the validity of the claim presented in the administration proceeding depends and while that uncertainty has not yet been determined, the contingent claim may not be dismissed. A contingent claim is to be presented in the same manner as any ordinary claim and that when the contingency arises which converts the contingent claim into a valid claim, the court should then be informed that the claim had already matured.[22]

Choice of Remedies in Claims against the Estate. The mere fact that one of the parties is an executor or administrator of a certain estate does not give exclusive jurisdiction to the probate court, wherein the estate is being settled, of questions arising between such executor or administrator and third persons as to the ownership of specific property.[23] Contested claims of an administrator that certain rights of possession and ownership are the property of the estate which he represents, must be determined in a separate action and not in the course of the administration proceedings.[24] In the case of *Gacila* et al. *v. Martin* et al., the plaintiff alleging co-ownership over a parcel of land in the administrator's possession sued in the municipal court to recover their share of its produce for 1946-1952. Plaintiff has a transfer certificate of title. A strong presumption exists that such title had been regularly issued and is valid. Such presumption is not overcome, it is not even affected by the lot's previous inclusion in the inventory submitted in the special proceeding, such inclusion not being obviously competent proof of ownership at that time and plaintiff's not being shown to be parties thereto. When the parties stipulated that from September 1946, Martin had been administering the property as judicial administrator, that is no more than an admission of Martin's factual possession under claim of administration. It is not an admission that defendant's possession was legally that of an administratrix. Questioning in effect, the validity of plaintiff's title, defendants may not insist that the controversy be passed upon in the testate

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[20] G. R. No. L-9128, March 19, 1957

[21] Garkell Co. v. Tan Sit, 43 Phil. 810 (1922).

[22] Rules 87, secs. 5, 9, Rules of Court.

[23] Bauermann v. Casas, et al. 19 Phil. 386 (1911); Lunrad v. Ortega, 46 Phil. 664 (1911).

[24] Dulsa v. Arbes 13 Phil. 273 (1909).

proceedings. It could be and should be ventilated in an action like this.

In the case of the *Philippine Bank of Commerce v. Apolinar Santos*,[25] the appellant and Clara Palanca, jointly and severally secured from the Philippine National Bank a loan. When appellant's wife died, he was appointed administrator of her estate. Subsequently, the bank brought an action to recover from the appellant the unpaid balance of the loan, attorney's fees and costs. As a defense he contended that the indebtedness was chargeable to the conjugal partnership and therefore the bank should file its claim in the special proceedings then pending for the settlement of the estate of his deceased wife and for the liquidation of the conjugal partnership.

The court held the above contention untenable and pointed out that section 2, Rule 75[26] of the Rules of Court has no application to the case because the loan was secured by the appellant himself. It matters not that the proceeds of the loan were spent for the conjugal partnership. It's true the debt may be chargeable to the conjugal partnership but as far as the appellee bank is concerned it may enforce its collection against the appellant who personally secured the loan or may file its claim for collection in the proceedings for the settlement of the estate of the deceased spouse. A contrary rule would make it difficult to grant loans to persons because of possible demise of their spouses. Besides, it would compel creditors to sever the collection of loans in case of joint and several obligations—a claim for the collection of the loan in the special proceedings for the settlement of the estate of the deceased spouse of one of the obligors and an action for the collection of the loan from the other co-obligor or co-obligors.

Limited Jurisdiction of Probate Court. In taking cognizance of a probate case, the court is clothed with a limited jurisdiction which cannot expand to collateral matters not arising out of or in any way related to the settlement and adjudication of the properties of the deceased, for it is a settled rule that the jurisdiction of a probate court is limited and special.[27] Although there is a tendency now to relax this rule and extend the jurisdiction of the probate court in respect to matters incidental and collateral to the exercise of its recognized powers,[28] this should be understood to comprehend only cases related to those powers specifically allowed by the statutes.

A special proceeding[29] was in the Court of First Instance of Rizal for the purpose of settling the intestate estate of Marcelo de

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[25] G. R. No. L-8315 March 18, 1957.

[26] Rule 75, sec. 2 of the Rules of Court provides: *Where estate settled upon dissolution by marriage.*—When the marriage is dissolved by the death of the husband or the wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or in testate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or in testate proceedings of either.

[27] Guzman v. Anag, 37 Phil. 361 (1918).

[28] 14 AMERICAN JURISPRUDENCE 251-252 (1938).

[29] Inestate Estate of the Deceased Marcelo de Borja, G. R. No. L-06622, July 31, 1957.

Borja. In the course of the trial one of the issues raised is whether a claim for moral damages may be entertained in a proceeding for the settlement of an estate. It was in acknowledgment of its limited jurisdiction that the lower court dismissed the administrator's counterclaim for moral damages against the oppositors.

Collateral Fraud Annuls Probate Decree. In the petition for the allowance of a will, among the facts to be stated are the names, ages and residences of the heirs, legatees and devisees of the decedent[30] so that proper notice can be given to them.[31] The requirement as to noice is essential to the validity of the proceedings in order that no person may be deprived of his right to property without due process of law.

However in the case of *Emilio Soriano v. Antonio Asi,*[32] the administrator in his petition for the probate of the will of the deceased intenionally omitted the name of a nephew, one of the intestate heirs. As a result the nephew was not given notice of the pendency of the petition for probate nor of the date of the hearing set by the probate court. It is unquestionable that the fraud practiced upon the nephew was collateral or extrinsic: it was not on a matter raised, controverted or decided in the probate order. It was entirely foreign to the issue raised in the probate proceedings which was the due execution of the will. Fraud that prevents a party from having a trial has been ruled to be extrinsic.[33]

Appeal by Administrator. In the case of *Elizalde in his capacity as Judicial Administrator of the Estate of Elizalde v. The Hon. Teodoro* et al.,[34] the records show that on May 14, 1932, the commissioner on claims approved the claim of Levy Hermanos, Inc. against the estate with interest from February 1, 1923. No payment of said claim appears to have been made for more than twenty years. On June 14, 1954 the creditor filed a motion in court praying for the payment of said claim. The administrator opposed it and the court having decided in favor of the creditor, the former appealed. Levy Hermanos Inc. opposed the approval of the appeal on the ground that the order merely directed payment of a claim that had long been approved. The Supreme Court, however, mandamused the lower court to give due course to the appeal. Assuming the existence of the claim in question and its alleged approval in 1932, there is the additional question of whether or not after such claim had been approved, it had been paid by the former administrator, or whether or not the creditor not having asked for payment for more than twenty years, his right to demand for payment has already prescribed or has become barred by laches. Either of these circumstances, if true, would have the effect of extinguishing the creditor's right to enforce its final and executory claim. Hence the administrator should be given a chance to bring this appeal.

II. Guardianship

Investment of Funds of Ward. The court may authorize and

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[30] Rules of Court, Rule 77, sec. 2.
[31] Rules of Court, Rule 77, sec. 4.
[32] G. R. No. L-9633, January 29, 1957.
[33] Varela v. Villanueva, 50 O. G. 4242 (1954).
[34] G. R. No. L-1592, May 20, 1957.

require the guardian to invest the proceeds of sales or encumbrance and any other of his ward's money in his hands, in real estate or otherwise, as shall be for the interest of all concerned and may make such other orders for the management, investment and disposition of the estate and effects as circumstances may require.[35]

In the case of *Guardianship of James E. Stegner* et al., the issue is whether the lack of authorization contemplated by the foregoing provision could be cured by subsequent ratification. The Philippine Trust Co. has been appointed guardian of the properties of the minors. The trustee invested the funds of the wards without securing the previous authorization of the court. The Supreme Court held that although the authority contemplated by the rules may not have been secured prior to the investment of the properties or funds of the ward, yet the approval by the court of the annual inventories and accounts submitted by the guardian, with the conformity and for acquiescence of the United States Veterans Administration and the mother of the minors, wherein the questioned investment was inventoried and accounted for, amounts to a satisfaction of the acts of the guardian and compliance with section 5 Rude 96 aforesaid.

Jurisdiction of the United States Veteran's Administrator. In re Guardianship of the Minor Roy R. Lelina[36] Viloria was appointed guardian of the person and estate of the minor Lelina, beneficiary of arrears in pay, insurance and other benefits from the United States Veterans Administration due to the death of his father supposedly a member of the U.S. forces during the war. The court authorized the guardian to withdraw from the estate certain amounts. Subsequently it appears that the father of the minor had no guerrilla or other service records in the U.S. armed forces, so the U.S. Veterans Administrator prayed the court to order the stoppage of further payments to the minor. He also opposed other motions of the guardian for authority to withdraw certain amounts from the estate, involving in support thereof the provisions of the United States Code annotated which provides (Title 38, sec. 808) that decisions of the Administrator "shall be final and conclusive on all questions of law or fact and no other official of the United States except a judge or judges of the United States courts, shall have jurisdiction to review any such decisions. "In the same motion the Administrator prayed for the setting aside of the court's order denuing the refund of the money in the hands of the minor's guardian on the ground of "lack of jurisdiction."

Held: The provisions of the United States Code invoked by the Administrator make the decisions of the United States Veterans Administrator final and conclusive when made on claims properly submitted to him for resolution; but they are not applicable to the present case, where the Administrator is not acting as a judge but as a litigant. There is a great difference between actions against the Administrator (which must be filed strictly in accordance with the conditions that are imposed by the Veterans' Act, including the

[35] Rules of Court, Rule 95, sec. 5.
[36] G. R. No. L-9620, June 28, 1957.

exclusive review by the United States courts) and those actions where the Administrator seeks remedy from our courts and submits to their jurisdiction by filing the action therein. Our attention has not been called to any law or treaty that would make the findings of the Veterans' Administrator in actions where he is a party, conclusive in our courts. That in effect, would deprive our tribunals of judicial discretion and render them subordinate instrumentalities of the Veterans' Administrator. The Philippine courts' determination of the question is as binding upon him as upon any other litigant.

Change of Name

A Privilege. In the case of *Ong Peng Oan v. Republic of the Philippines*,[37] Ong Peng Oan appeals from a decision denying his application to change his name to Vicente Bon Lay, by which he allegedly is and has been known in social and business circles since 1946. The reasons for the denial stated in the decision appealed from are that he was twice previously convicted for gambling in the record of which it appeared that his name is Ong Pin Can in one case and Ong Pen Oan alias Vicente Chan in another case. This belies the pretension that he has been using ever since his arrival in the Philippines, the name of Vicente Chan Bon Lay, because, if it were true, the conclusion would be that he changes his name to Ong Pin Can or Ong Peng Oan whenever it suits his convenience. This fact coupled with his criminal record will make it hard for the authorities to trace his real identity in the future. The Supreme Court affirmed the decision appealed from, saying: in an attempt to obliterate his unsavory record, a person with a criminal record will naturally be interested in using a name other than his own. The mere fact that the applicant has been using a different name and has become known by it does not *per se* alone constitute "proper and reasonable cause" for changing a name legally. It is not shown he will be prejudiced by the continued use of his name. It is the court's duty to consider carefully the consequences of change of one's name where prior convictions exist. The State has an interest in the names borne by individuals and entities for purposes of identification. A change of name is not a matter of right but more of a privilege.

[37] G. R. No. L-8035, November 29, 1957.

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