

FIRST DIVISION

[G.R. No. 128314, May 29, 2002]

**RODOLFO V. JAO, PETITIONER, VS. COURT OF APPEALS AND
PERICO V. JAO, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

Rodolfo and Perico Jao were the only sons of the spouses Ignacio Jao Tayag and Andrea V. Jao, who died intestate in 1988 and 1989, respectively. The decedents left real estate, cash, shares of stock and other personal properties.

On April 17, 1991, Perico instituted a petition for issuance of letters of administration before the Regional Trial Court of Quezon City, Branch 99, over the estate of his parents, docketed as Special Proceedings No. Q-91-8507.^[1] Pending the appointment of a regular administrator, Perico moved that he be appointed as special administrator. He alleged that his brother, Rodolfo, was gradually dissipating the assets of the estate. More particularly, Rodolfo was receiving rentals from real properties without rendering any accounting, and forcibly opening vaults belonging to their deceased parents and disposing of the cash and valuables therein.

Rodolfo moved for the dismissal of the petition on the ground of improper venue.^[2] He argued that the deceased spouses did not reside in Quezon City either during their lifetime or at the time of their deaths. The decedent's actual residence was in Angeles City, Pampanga, where his late mother used to run and operate a bakery. As the health of his parents deteriorated due to old age, they stayed in Rodolfo's residence at 61 Scout Gandia Street, Quezon City, solely for the purpose of obtaining medical treatment and hospitalization. Rodolfo submitted documentary evidence previously executed by the decedents, consisting of income tax returns, voter's affidavits, statements of assets and liabilities, real estate tax payments, motor vehicle registration and passports, all indicating that their permanent residence was in Angeles City, Pampanga.

In his opposition,^[3] Perico countered that their deceased parents actually resided in Rodolfo's house in Quezon City at the time of their deaths. As a matter of fact, it was conclusively declared in their death certificates that their last residence before they died was at 61 Scout Gandia Street, Quezon City.^[4] Rodolfo himself even supplied the entry appearing on the death certificate of their mother, Andrea, and affixed his own signature on the said document.

Rodolfo filed a rejoinder, stating that he gave the information regarding the decedents' residence on the death certificates in good faith and through honest mistake. He gave his residence only as reference, considering that their parents were treated in their late years at the Medical City General Hospital in Mandaluyong, Metro Manila. Their stay in his house was merely transitory, in the same way that

they were taken at different times for the same purpose to Perico's residence at Legaspi Towers in Roxas Boulevard. The death certificates could not, therefore, be deemed conclusive evidence of the decedents' residence in light of the other documents showing otherwise.^[5]

The court required the parties to submit their respective nominees for the position.^[6] Both failed to comply, whereupon the trial court ordered that the petition be archived.^[7]

Subsequently, Perico moved that the intestate proceedings be revived.^[8] After the parties submitted the names of their respective nominees, the trial court designated Justice Carlos L. Sundiam as special administrator of the estate of Ignacio Jao Tayag and Andrea Jao.^[9]

On April 6, 1994, the motion to dismiss filed by petitioner Rodolfo was denied, to wit:

A mere perusal of the death certificates of the spouses issued separately in 1988 and 1989, respectively, confirm the fact that Quezon City was the last place of residence of the decedents. Surprisingly, the entries appearing on the death certificate of Andrea V. Jao were supplied by movant, Rodolfo V. Jao, whose signature appears in said document. Movant, therefore, cannot disown his own representation by taking an inconsistent position other than his own admission. xxx xxx xxx.

WHEREFORE, in view of the foregoing consideration, this court DENIES for lack of merit movant's motion to dismiss.

SO ORDERED.^[10]

Rodolfo filed a petition for certiorari with the Court of Appeals, which was docketed as CA-G.R. SP No. 35908. On December 11, 1996, the Court of Appeals rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, no error, much less any grave abuse of discretion of the court a quo having been shown, the petition for certiorari is hereby DISMISSED. The questioned order of the respondent Judge is affirmed *in toto*.

SO ORDERED.^[11]

Rodolfo's motion for reconsideration was denied by the Court of Appeals in the assailed resolution dated February 17, 1997.^[12] Hence, this petition for review, anchored on the following grounds:

I

RESPONDENT COURT HAD DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LAW AND IS DIRECTLY CONTRADICTORY TO THE APPLICABLE DECISION ALREADY RENDERED BY THIS HONORABLE COURT.

II

RESPONDENT COURT ERRED IN DISREGARDING THE RULING OF THIS HONORABLE COURT IN THE CASE OF EUSEBIO VS. EUSEBIO, 100 PHILS. 593, WHICH CLEARLY INTERPRETED WHAT IS MEANT BY RESIDENCE IN SEC. 1 OF RULE 73 OF THE RULES OF COURT.

III

RESPONDENT COURT ERRED IN HOLDING THAT PHYSICAL PRESENCE IN A PLACE AT THE TIME OF DEATH IS DETERMINATIVE OF DECEDENT'S RESIDENCE RATHER THAN THE INTENTION OF THE DECEDENTS TO ESTABLISH THEIR PERMANENT RESIDENCE IN ANOTHER PLACE.

IV

RESPONDENT COURT ERRED IN APPLYING BY ANALOGY THE RESIDENCE CONTEMPLATED IN SEC. 2 OF RULE 4 FOR THE PURPOSE OF SERVING SUMMONS TO A DEFENDANT IN A PERSONAL ACTION TO THE RESIDENCE CONTEMPLATED IN SEC. 1 OF RULE 73 FOR THE PURPOSE OF DETERMINING VENUE IN THE SETTLEMENT OF THE ESTATE OF A DECEASED.

V

RESPONDENT COURT ERRED IN GIVING MORE WEIGHT TO THE ENTRY OF PETITIONER AND PRIVATE RESPONDENT IN THE RESPECTIVE DEATH CERTIFICATES OF THE DECEDENTS RATHER THAN THE OVERWHELMING EVIDENCE SHOWING THE CLEAR INTENTION OF THE DECEDENTS TO ESTABLISH THEIR PERMANENT RESIDENCE IN ANGELES CITY.

VI

RESPONDENT COURT ERRED IN APPLYING THE PRINCIPLE OF ESTOPPEL AS AGAINST PETITIONER WHICH CAN NOT BE MORE PERSUASIVE THAN THE CLEAR INTENTION OF THE DECEDENTS THEMSELVES TO ESTABLISH PERMANENT RESIDENCE IN ANGELES CITY.

VII

RESPONDENT COURT ERRED IN DISMISSING THE PETITION FOR CERTIORARI DESPITE THE CLEAR ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT IN INSISTING TO TAKE COGNIZANCE OF SP. PROCEEDING NO. Q-91-8507.^[13]

The main issue before us is: where should the settlement proceedings be had --- in Pampanga, where the decedents had their permanent residence, or in Quezon City, where they actually stayed before their demise?

Rule 73, Section 1 of the Rules of Court states: