

## SECOND DIVISION

[ G.R. No. 129242, January 16, 2001 ]

**PILAR S. VDA. DE MANALO, ANTONIO S. MANALO, ORLANDO S. MANALO, AND ISABELITA MANALO, PETITIONERS, VS. HON. COURT OF APPEALS, HON. REGIONAL TRIAL COURT OF MANILA (BRANCH 35), PURITA S. JAYME, MILAGROS M. TERRE, BELEN M. ORILLANO, ROSALINA M. ACUIN, ROMEO S. MANALO, ROBERTO S. MANALO, AMALIA MANALO AND IMELDA MANALO, RESPONDENTS.**

### D E C I S I O N

**DE LEON, JR., J.:**

This is a petition for review on *certiorari* filed by petitioners Pilar S. Vda. De Manalo, et. al., seeking to annul the Resolution<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> affirming the Orders<sup>[3]</sup> of the Regional Trial Court and the Resolution<sup>[4]</sup> which denied petitioner's motion for reconsideration.

The antecedent facts<sup>[5]</sup> are as follows:

Troadio Manalo, a resident of 1966 Maria Clara Street, Sampaloc, Manila died intestate on February 14, 1992. He was survived by his wife, Pilar S. Manalo, and his eleven (11) children, namely: Purita M. Jayme, Antonio Manalo, Milagros M. Terre, Belen M. Orillano, Isabelita Manalo, Rosalina M. Acuin, Romeo Manalo, Roberto Manalo, Amalia Manalo, Orlando Manalo, and Imelda Manalo, who are all of legal age.

At the time of his death on February 14, 1992, Troadio Manalo left several real properties located in Manila and in the province of Tarlac including a business under the name and style Manalo's Machine Shop with offices at No. 19 Calavite Street, La Loma, Quezon City and at No. 45 Gen. Tinio Street, Arty Subdivision, Valenzuela, Metro Manila.

On November 26, 1992, herein respondents, who are eight (8) of the surviving children of the late Troadio Manalo, namely: Purita, Milagros, Belen, Rosalina, Romeo, Roberto, Amalia, and Imelda filed a petition<sup>[6]</sup> with the respondent Regional Trial Court of Manila<sup>[7]</sup> for the judicial settlement of the estate of their late father, Troadio Manalo, and for the appointment of their brother, Romeo Manalo, as administrator thereof.

On December 15, 1992, the trial court issued an order setting the said petition for hearing on February 11, 1993 and directing the publication of the order for three (3) consecutive weeks in a newspaper of general circulation in Metro Manila, and further directing service by registered mail of the said order upon the heirs named in the

petition at their respective addresses mentioned therein.

On February 11, 1993, the date set for hearing of the petition, the trial court issued an order "declaring the whole world in default, except the government," and set the reception of evidence of the petitioners therein on March 16, 1993. However, this order of general default was set aside by the trial court upon motion of herein petitioners (oppositors therein) namely: Pilar S. Vda. De Manalo, Antonio, Isabelita and Orlando who were granted ten (10) days within which to file their opposition to the petition.

Several pleadings were subsequently filed by herein petitioners, through counsel, culminating in the filing of an Omnibus Motion<sup>[8]</sup> on July 23, 1993 seeking: (1) to set aside and reconsider the Order of the trial court dated July 9, 1993 which denied the motion for additional extension of time to file opposition; (2) to set for preliminary hearing their affirmative defenses as grounds for dismissal of the case; (3) to declare that the trial court did not acquire jurisdiction over the persons of the oppositors; and (4) for the immediate inhibition of the presiding judge.

On July 30, 1993, the trial court issued an order<sup>[9]</sup> which resolved, thus:

- A. To admit the so-called Opposition filed by counsel for the oppositors on July 20, 1993, only for the purpose of considering the merits thereof;
- B. To deny the prayer of the oppositors for a preliminary hearing of their affirmative defenses as ground for the dismissal of this proceeding, said affirmative defenses being irrelevant and immaterial to the purpose and issue of the present proceeding;
- C. To declare that this court has acquired jurisdiction over the persons of the oppositors;
- D. To deny the motion of the oppositors for the inhibition of this Presiding Judge;
- E. To set the application of Romeo Manalo for appointment as regular administrator in the intestate estate of the deceased Troadio Manalo for hearing on September 9, 1993 at 2:00 o'clock in the afternoon.

Herein petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals, docketed as CA-G.R. SP. No. 39851, after their motion for reconsideration of the Order dated July 30, 1993 was denied by the trial court in its Order<sup>[10]</sup> dated September 15, 1993. In their petition for *certiorari* with the appellate court, they contend that: (1) the venue was improperly laid in SP. PROC. No. 92-63626; (2) the trial court did not acquire jurisdiction over their persons; (3) the share of the surviving spouse was included in the intestate proceedings; (4) there was absence of earnest efforts toward compromise among members of the same family; and (5) no certification of non-forum shopping was attached to the petition.

Finding the contentions untenable, the Court of Appeals dismissed the petition for certiorari in its Resolution<sup>[11]</sup> promulgated on September 30, 1996. On May 6, 1997

the motion for reconsideration of the said resolution was likewise dismissed.<sup>[12]</sup>

The only issue raised by herein petitioners in the instant petition for review is whether or not the respondent Court of Appeals erred in upholding the questioned orders of the respondent trial court which denied their motion for the outright dismissal of the petition for judicial settlement of estate despite the failure of the petitioners therein to aver that earnest efforts toward a compromise involving members of the same family have been made prior to the filing of the petition but that the same have failed.

Herein petitioners claim that the petition in SP. PROC No. 92-63626 is actually an ordinary civil action involving members of the same family. They point out that it contains certain averments which, according to them, are indicative of its adversarial nature, to wit:

x x x

Par. 7. One of the surviving sons, ANTONIO MANALO, since the death of his father, TROADIO MANALO, had not made any settlement, judicial or extra-judicial of the properties of the deceased father, TROADIO MANALO.

Par. 8. xxx the said surviving son continued to manage and control the properties aforementioned, without proper accounting, to his own benefit and advantage xxx.

x x x

Par. 12. That said ANTONIO MANALO is managing and controlling the estate of the deceased TROADIO MANALO to his own advantage and to the damage and prejudice of the herein petitioners and their co-heirs xxx.

x x x

Par. 14. For the protection of their rights and interests, petitioners were compelled to bring this suit and were forced to litigate and incur expenses and will continue to incur expenses of not less than, P250,000.00 and engaged the services of herein counsel committing to pay P200,000.00 as and for attorney's fees plus honorarium of P2,500.00 per appearance in court xxx.<sup>[13]</sup>

Consequently, according to herein petitioners, the same should be dismissed under Rule 16, Section 1(j) of the Revised Rules of Court which provides that a motion to dismiss a complaint may be filed on the ground that a condition precedent for filing the claim has not been complied with, that is, that the petitioners therein failed to aver in the petition in SP. PROC. No. 92-63626, that earnest efforts toward a compromise have been made involving members of the same family prior to the filing of the petition pursuant to Article 222<sup>[14]</sup> of the Civil Code of the Philippines.

The instant petition is not impressed with merit.