

## SECOND DIVISION

[ G.R. No. 117417, September 21, 2000 ]

**MILAGROS A. CORTES, PETITIONER, VS. COURT OF APPEALS  
AND MENANDRO A. RESELVA, RESPONDENTS.**

### D E C I S I O N

**BUENA, J.:**

This is a petition for review on *certiorari* seeking a reversal of the decision dated September 9, 1994 of the Court of Appeals<sup>[1]</sup> in C.A.-G.R. SP. No. 33826;

"IN VIEW OF THE FOREGOING, the petition is GIVEN DUE COURSE and the assailed order of October 18, 1993, issued by the respondent court in Special Proceeding No. 90-54955 is hereby SET ASIDE and declared NULL and VOID. With costs against the private respondent."<sup>[2]</sup>

and the reinstatement of the order of the probate court, thus:

"WHEREFORE, Menandro Reselva and all those acting for or through him, is/are ordered to vacate forthwith the house and lot of the estate situated in 173 Ilaw St., Balut, Tondo, Manila, and to deliver to the executrix Milagros R. Cortes the possession thereof as well as the owner's duplicate certificate of the title thereof."<sup>[3]</sup>

The following facts, as found by the Court of Appeals, are undisputed:

"Herein petitioner Menandro A. Reselva, private respondent (petitioner in this petition) Milagros R. Cortes, and Florante Reselva are brothers and sister and children - heirs of the late spouses Teodoro T. Reselva and Lucrecia Aguirre Reselva, who died on April 11, 1989 and May 13, 1987, respectively. During their lifetime, they acquired a property particularly a house and lot consisting of 100 square meters, more or less, with address at 173 Ilaw St., Balut, Tondo, Manila. As can be gleaned from the records, Lucrecia Aguirre Reselva died ahead of Teodoro T. Reselva. The latter executed a holographic will which was probated in this case on July 31, 1991, with Milagros R. Cortes, as the appointed Executrix. After having been appointed and qualified as Executrix, she filed a motion before respondent probate court praying that Menandro A. Reselva, the occupant of the property, be ordered to vacate the property at No. 173 Ilaw St., Balut, Tondo, Manila and turn over to said Executrix the possession thereof (Annex 'D'). This is the motion which the respondent court granted in the assailed order of October 18, 1993."<sup>[4]</sup>

In the Appellate Court, the Regional Trial Court's order was set aside for having been issued beyond the latter's limited jurisdiction as a probate court.<sup>[5]</sup>