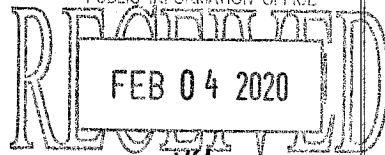




Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated November 20, 2019, which reads as follows:*

“G.R. No. 213008 (*Wilfredo H. Morales and Wilihardo H. Morales, Jr. v. Virgilio M. Villanueva*). –This is a Petition for Review on *Certiorari*<sup>1</sup> of the Decision<sup>2</sup> dated January 29, 2014 and the Resolution<sup>3</sup> dated June 16, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 131779.

Facts of the Case

On April 8, 2008, Buen M. Morales died at the age of 92 in Muntinlupa City and left an estate consisting of real properties, some situated in Muntinlupa City, and personal properties estimated to be worth ₱2,000,000.00. It was alleged that she was succeeded by Nineveth Morales-Cruz (Nineveth), her only living sibling, and the children of her brother, Wilihardo M. Morales, Sr., namely: Wilfredo H. Morales (Wilfredo) and Wilihardo H. Morales, Jr. (Wilihardo, Jr.; collectively, petitioners), Carmen Wilma H. Morales-Tenorio, and William H. Morales. After petitioners Wilfredo and Wilihardo, Jr. were appointed as administrators by Nineveth and the rest of the surviving heirs, they filed a Petition for Letters of Administration,<sup>4</sup> docketed as Special Proceeding No. 08-32 (Spec Pro No. 08-32) in the Regional Trial Court (RTC) of Muntinlupa City, Branch 203 on May 19, 2008. They were subsequently issued Letters of Administration<sup>5</sup> on February 27, 2009 after posting the Administrator/Executor’s bond.

Upon learning of Spec Pro No. 08-32, private respondent Virgilio M. Villanueva (Virgilio), representing the Villanueva Family, moved to intervene<sup>6</sup> in the case and have the case dismissed.<sup>7</sup> The Villanueva Family is composed of Antonio, Virgilio, Cynthia, Alberto, Vivian, Joel, and Audrey

<sup>1</sup> Rollo, pp. 8-26.

<sup>2</sup> Penned by Associate Justice Franchito N. Diamante with Associate Justices Mario V. Lopez (now a Member of this Court) and Zenaida T. Galapate-Laguilles, concurring; id. at 113-117.

<sup>3</sup> Id. at 132-133.

<sup>4</sup> Id. at 29-32.

<sup>5</sup> Id. at 35.

<sup>6</sup> Id. at 41.

<sup>7</sup> Id. at 48.

who are the children of the late Salvacion Morales-Villanueva, half-sister of Wilihardo Morales, Sr. and Buen M. Morales.<sup>8</sup> Virgilio prayed for the RTC to: (1) revoke the appointment of petitioners as Joint Administrators; (2) declare the intestate proceedings null and void; (3) hold petitioners guilty of forum shopping; and (4) cite them in contempt for deliberately concealing from the court the existence of the petition to probate the holographic will<sup>9</sup> of Buen M. Morales docketed as Special Proceeding No. MC-08-3581 (Spec Pro No. MC-08-3581) pending before the RTC of Mandaluyong, Branch 214. This was filed ahead of the intestate proceedings docketed as Spec Pro No. 08-32 in the RTC of Muntinlupa.<sup>10</sup>

### RTC Ruling

In an Order<sup>11</sup> dated February 1, 2013, the RTC of Muntinlupa dismissed Spec Pro No. 08-32. The RTC of Muntinlupa found that the petition to probate the holographic will of Buen M. Morales was filed on April 26, 2008 in the RTC of Mandaluyong, ahead of the filing of the petition for letters of administration on May 19, 2008 in the RTC of Muntinlupa. The RTC also concluded that venue was improperly laid in Muntinlupa because the decedent was a resident of Mandaluyong at the time of her death, in violation of Section 1, Rule 73 of the Rules of Court (Rules).<sup>12</sup>

In an Order<sup>13</sup> dated August 22, 2013, the Urgent Motion for Reconsideration<sup>14</sup> of petitioners was denied for lack of merit.<sup>15</sup> Thereafter, petitioners filed a petition for review on *certiorari* with the CA under Rule 45 of the 1997 Rules on Civil Procedure.<sup>16</sup>

### CA Ruling

In a Decision<sup>17</sup> dated January 29, 2014, the CA dismissed the petition for review on *certiorari* for being the wrong mode of appeal. The CA held that petitioners should have filed their appeal under Rule 41 of the Rules and not under Rule 45. The CA ruled that, although they filed their appeal within 15 days from receipt of notice of the judgment or final order appealed from, they failed to file a notice of appeal, which would merit the outright dismissal of the case.<sup>18</sup>

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<sup>8</sup> Id. at 40.

<sup>9</sup> Id. at 57.

<sup>10</sup> Id. at 114.

<sup>11</sup> Id. at 85-88.

<sup>12</sup> Id. at 87-88.

<sup>13</sup> Penned by Presiding Judge Myra B. Quiambao; id. at 95.

<sup>14</sup> Id. at 89-94.

<sup>15</sup> Supra note 13.

<sup>16</sup> Id. at 96-107.

<sup>17</sup> Id. at 113-116.

<sup>18</sup> Id. at 115-116.

Petitioners filed a Motion for Reconsideration,<sup>19</sup> which was denied in a Resolution<sup>20</sup> dated June 16, 2014.

### The Petition

In the present petition, petitioners insist that the CA should have considered the merits of the case instead of dismissing their petition for review on *certiorari* on mere technicalities.<sup>21</sup> They also maintain that the petition in Spec Pro No. 08-32 was properly filed in the RTC of Muntinlupa because the decedent was a resident of Muntinlupa at the time of her death as reflected in a Certification<sup>22</sup> purportedly issued by the *Punong Barangay* of Ayala Alabang, the address of the decedent appearing in TCT No. 207972, and the fact that she died while confined at the Asian Hospital and Medical Center in Muntinlupa.<sup>23</sup> They emphasize that it is only in the decedent's Death Certificate<sup>24</sup> where it is indicated that she was a resident of Mandaluyong and said information was merely supplied by Grace Morales, one of the devisees in decedent's holographic will.<sup>25</sup> They also aver that the petition filed in Spec Pro No. 08-32 in the RTC of Muntinlupa was filed in good faith on May 19, 2008 because the publication requirements under the Rules for the probate of the holographic will had not yet been met. They contend that they are not guilty of forum shopping because they could not have known of the pending case in the RTC of Mandaluyong.<sup>26</sup> They suggest that the proceedings in the RTC of Muntinlupa be allowed to proceed "as it has gone quite far" rather than let the of RTC of Mandaluyong take over where the holographic will of the decedent does not include her entire estate.<sup>27</sup>

In Virgilio's Comment,<sup>28</sup> he maintains that Wilfredo and Wilihardo, Jr. resorted to the wrong remedy in assailing the dismissal order of the RTC of Muntinlupa. Virgilio posits that their remedy was an ordinary appeal under Rule 41 of the Rules and not a petition for review on *certiorari* under Rule 45.<sup>29</sup> Virgilio also claims that the RTC of Muntinlupa correctly dismissed the petition docketed as Spec Pro No. 08-32 for being filed in an improper venue pursuant to Section 1, Rule 73 of the Rules.<sup>30</sup> Virgilio also points out that Wilfredo and Wilihardo, Jr. cannot deny having any knowledge of, and participating in the testate proceedings in the RTC of Mandaluyong. Documentary evidence showing that Wilfredo and Wilihardo, Jr. were notified of the pendency of the case in the RTC of Mandaluyong as early as May 27, 2008 and May 28, 2008, respectively, belie their claim.<sup>31</sup> Moreover,

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<sup>19</sup> Id. at 119-130.

<sup>20</sup> Id. at 132-133.

<sup>21</sup> Id. at 13-17.

<sup>22</sup> Id. at 70.

<sup>23</sup> Id. at 17-18, 71.

<sup>24</sup> Id. at 56.

<sup>25</sup> Id. at 18.

<sup>26</sup> Id. at 18-19.

<sup>27</sup> Id. at 20-22.

<sup>28</sup> Id. at 145-178.

<sup>29</sup> Id. at 167-169.

<sup>30</sup> Id. at 169-171.

<sup>31</sup> Id. at 175-176.

Virgilio submits that the fact that the holographic will of the decedent affects only a few properties of her alleged vast estate does not diminish nor affect the exclusive jurisdiction of the RTC of Mandaluyong. The testate proceedings take precedence over the intestate proceedings subsequently filed in the RTC of Muntinlupa.<sup>32</sup> Virgilio suggests that the permissible remedy is to order the consolidation of the intestate proceedings in the RTC of Muntinlupa with the testate proceedings pending before the RTC of Mandaluyong.<sup>33</sup>

### The Court's Ruling

The CA is incorrect in ruling that the proper remedy of the petitioners in assailing the dismissal order of the trial court on the ground of wrong venue is to file a petition for review under Rule 41 of the Rules. Section 1(g), Rule 41 of the Rules clearly states that no appeal may be taken from an order dismissing an action without prejudice,<sup>34</sup> such as when the ground for dismissal is improper venue.<sup>35</sup>

The proper remedy to assail the trial court's order of dismissal on the ground of improper venue was to file a petition for *certiorari* under Rule 65 of the Rules, and not a petition for review on *certiorari* under Rule 45 of the Rules.<sup>36</sup> Moreover, from the title of Rule 45 itself, it is evident that it refers to an "appeal by *certiorari* to the Supreme Court," not to the CA. However, despite the error of the CA, the consequence remains the same. The petition for review on *certiorari* filed in CA-G.R. SP No. 131779 should be denied for being an improper remedy.

This Court finds no reason to reverse the dismissal order of the RTC of Muntinlupa. Section 1, Rule 73 of the Rules provides:

Sec. 1. *Where estate of deceased persons settled.*—  
If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the **Court of First Instance (now Regional Trial Court) in the province in which he resides at the time of**

<sup>32</sup> Id. at 176.

<sup>33</sup> Id. at 177.

<sup>34</sup> RULES OF COURT, Rule 41, Section 1(g), as amended by A.M. No. 07-7-12-SC entitled, "Amendments to Rules 41, 45, 58 and 65 of the Rules of Court," provides:

Sec. 1. *Subject of appeal.* — x x x

No appeal may be taken from:

x x x x

(g) An order dismissing an action without prejudice.

x x x x

<sup>35</sup> RULES OF COURT, Rule 16, Section 1(c), provides:

Section 1. *Grounds.* Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(c) That venue is improperly laid;

x x x x

<sup>36</sup> *Development Bank of the Philippines v. Carpio*, 805 Phil. 99, 111 (2017).

**his death**, x xx The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. x x x  
(Emphasis ours)

In the present case, there is substantial proof that the decedent was a resident of Mandaluyong at the time of her death. The decedent's death certificate states that she was a resident of Mandaluyong at the time of her demise.

The Barangay Certification<sup>37</sup> presented to prove that the decedent was a resident of #201 Cuenca Street, Ayala Alabang Village, Muntinlupa City cannot be relied upon to refute the residence entry in her death certificate which is presumed to be correct by the RTC. Noticeably, the barangay certification was issued on September 4, 2012 or more than four years from the death of the decedent. The barangay certification even states that it was issued "upon the request of Ms. Buen M. Morales for legal documents purpose/s only"<sup>38</sup> when it was physically impossible for her to request for it after her death.

Moreover, it does not necessarily follow that the place where the decedent was medically treated prior to her death is her residence at the time of her demise. Neither can it be presumed that her address appearing in one of the certificates of title of one of her properties is her residence at the time of death. We cannot negate the possibility that she maintains her residence in a place different from that where her properties are located or from where she sought medical treatment. No generalizations can thus be made on the matter as this is entirely dependent upon her choices and peculiarities. These circumstances cast doubt as to the veracity of the claim of petitioners that the decedent was a resident of Muntinlupa. Thus, the death certificate prevails over the documentary evidence petitioners presented as they do not appear to pertain to residence at the time of death.

Finally, considering that a holographic will of the decedent was presented to the RTC of Mandaluyong, and that the law favors testacy over intestacy, the proceedings in the RTC of Mandaluyong must prevail. It is settled that testate proceedings for the settlement of the estate of the decedent take precedence over intestate proceedings for the same purpose.<sup>39</sup>

**WHEREFORE**, premises considered, the instant petition is **DENIED**.

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<sup>37</sup> Id. at 70.

<sup>38</sup> Id.

<sup>39</sup> *Cuenca v. Court of Appeals*, 153 Phil. 115, 129-130 (1973), citing *Uriarte v. Court of First Instance of Negros Occidental*, 144 Phil. 205 (1970).

**SO ORDERED.**” (Leonen, J., on official business; Gesmundo, J., designated as Acting Chairperson of the Third Division per Special Order No. 2737; Lazaro-Javier, J., designated as Additional Member of the Third Division per Special Order No. 2728, on official leave.)

Very truly yours,

*Misael DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*gm*  
Deputy Division Clerk of Court  
*11/20/20*

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(Spec. Proc. No. 08-032)

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