44 Phil. 711

[G.R. No. 20080. March 27, 1923]

INTESTATE ESTATE OF THE DECEASED GERONIMA UY COQUE. JUAN NAVAS L. SIOCA, PETITIONER AND APPELLANT, VS. JOSE GARCIA, ADMINISTRATOR AND APPELLEE.

D E C I S I O N

OSTRAND, J.:

This is an appeal from an order of the Court of First Instance of Samar, dated November 11, 1922, and appointing Jose Garcia, administrator of the estate of the deceased Geronima Uy Coque.

The appellant is the surviving spouse of the deceased and maintains that the court erred in not appointing him administrator instead of Jose Garcia. As the refusal to appoint the appellant appears in an order of the court below dated September 30, 1922, from which no appeal has been taken, we might well consider the question raised upon this appeal *res adjudicata*. For the satisfaction of counsel, we shall, however, briefly state another reason why the appeal must fail.

It is well settled that a probate court cannot arbitrarily and without sufficient reason disregard the preferential rights of the surviving spouse to the administration of the estate of the deceased spouse. But, if the person enjoying such preferential rights is unsuitable, the court may appoint another person. (Paragraph 2 of sec. 642 of the Code of Civil Procedure.) The determination of a person's suitability for the office of administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and such judgment will not be interfered with on appeal unless it appears affirmatively that the court below was in error.

In the present case the court based its ruling on the fact that it appeared

from the record in Civil Case No. 1041 of the same court, that the appellant had adverse interests in the estate of such a character as to render him unsuitable as administrator. Unsuitableness may consist in adverse interest of some kind or hostility to those immediately interested in the estate. (18 Cyc., 93, 94.) The court below therefore stated facts which may constitute sufficient grounds for setting aside the appellant's preferential rights and which, in the absence of proof to the contrary, must be presumed sufficient. Whether they are in fact sufficient, we are not in position to determine as we have not before us the record in the aforesaid case No. 1041; it being a record of the court below, that court could properly take judicial notice thereof, but we cannot.

The order appealed from is affirmed, with the costs against the appellant. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, and *Johns, JJ.,* concur.

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