

G.R. No. L-6760

**[ G.R. No. L-6760. August 22, 1954 ]**

**INTESTATE ESTATE OF MARTIN RIVERA, DECEASED. FRANCISCA GARCIA, APPLICANT AND APPELLANT, VS. RODOLFO RIVERA, OPPOSITOR AND APPELLEE.**

**D E C I S I O N**

**MONTEMAYOR, J.:**

In Intestate Proceedings, Civil Case No. 55505 of the Court of First Instance of Manila, Francisca Garcia, widow of the deceased Martin Rivera, and as administratrix of his estate, on July 25, 1953, filed a petition in the Manila court stating that the decision of said Court of December 4, 1940, was affirmed by the Court of Appeals on June 30, 1943, with the exception of the indebtedness of the estate which was reduced from P825.95 to P636.46; that the attorney's fees of Atty. Felix D. Agcaoli who had rendered professional services for the administration should be fixed by the court; and that inasmuch as the administration did not have funds with which to pay said indebtedness, it was necessary to sell the lot of the estate described in Transfer Certificate of Title No. 29888.

Acting upon said petition, the trial court by its order of August 14, 1943, fixed the fees of Atty. Agcaoli at P90.00 and ordered the administratrix to pay the same. It also authorized the administratrix to look for buyers of the lot and to report to the court within seven (7) days the highest offer made for said parcel.

In a petition dated August 25, 1953, administratrix Francisca Garcia reported to the court that she had received various offers of purchase for the 150 sq. m. lot of the estate, the highest being P975.00, and she asked that as a remembrance of her husband, she be all allowed to

buy the lot for the same amount of P975.00.

Presumably not approving of the administratrix buying the property under her administration, or perhaps believing that better offers could be had for the purchase of the land, under an order dated September 6, 1943, the trial court gave the parties until September 16, 1943, within which to submit sealed bids for the purchase of the lot, each bid to be accompanied by a deposit equivalent to 10% thereof, the bids to be opened in open court on said date.

In an order dated September 16, 1943, the court stated that upon opening the sealed bids it found that Rodolfo Rivera's bid was P1,400.00 while that of the administratrix was P1,200.00, and so it declared Rodolfo Rivera the highest bidder and ordered the administratrix to execute in his favor the corresponding deed of sale within five (5) days. In a petition dated September 20, 1943, the administratrix through her counsel Atty. Agcaoili prayed the court to suspend its order of September 16th pending her negotiations to purchase the lot for P1,450.00 which according to her would be more favorable to the estate.

Apparently disapproving the above petition, the court in its order of October 3, 1943, gave the administratrix forty eight (48) hours within which to sign the deed of sale in favor of Rodolfo Rivera, with the understanding that if she failed to do so, she would be relieved as administratrix.

In a petition dated November 2, 1943, administratrix Francisca Garcia questioned the regularity of the procedure followed by the trial court in selling the lot in question by means of sealed bids, alleging that according to law, the property should have been sold at public auction in order to obtain the highest price; that by the sale of the property to Rodolfo Rivera and the other children of the deceased Martin Rivera by his first marriage, her rights of usufruct as widow would disappear; that on grounds of equity her usufructuary rights should be respected, and that for this purpose she should be allowed to buy the lot specially since she was offering P1,450 which was higher

than the offer of P1,400 by Rodolfo Rivera. This petition was denied by the trial court by an order dated November 18, 1943. In another order of the same date, the trial court after making a resume of the proceedings had in that case, which reads thus—

“It appears from the records of these proceedings that on July 29, 1943, the Administratrix, thru counsel, filed a petition praying among other things that she be authorized to sell the real property described in T. C. T. No. 29888 of the land records of the City of Manila. Said petition was set for hearing on the 31st day of that month. By agreement of the parties, however, said hearing was postponed to August 7, 1943;

“When the records of these proceedings were received back from the Court of Appeals on August 14, 1943, the Court, in an order of even date authorized said Administratrix to look for buyers of the above mentioned property and report to it, within seven days from that date, the highest offer for the same. On August 26, 1943, she filed a petition stating that the highest offer made was P975.00 and praying that said property be sold to her for that amount. In view of the fact that when said petition was heard on the 28th of that month the other heirs offered a greater amount for said property, the Court gave the interested parties until 11:00 o’clock a.m. of September 16, 1943, within which to submit sealed bids for the purchase thereof.

“Upon the opening of the sealed bids at the time fixed, the Court found that the offer of Rodolfo Rivera was P1,400.00 while that of the Administratrix was only P1,200.00. Consequently, it ordered the latter to execute the corresponding deed of sale in favor of the former within a period of five days thereafter. On September 21, 1943, she filed a petition praying for the suspension of the aforementioned order, but it was denied and her counsel was notified of the order of denial of October 4, 1943.

“On October 30, 1943, upon motion of counsel for heir Rodolfo Rivera, the Court ordered her in open court to sign the deed of sale in favor of said heir within a period of forty-eight (48) hours thereafter, under pain of being removed from her trust. (She filed a petition on November 4, 1943, praying among other things sealed bids of the above-mentioned property, which petition has been denied by the Court in another order dated today.) This last order of the Court has not been complied with up to this date.” and because of the failure of the administratrix to obey the order of the court she was removed from the administration and the heirs were given a period of five days within which to propose a person suitable to fill the vacancy.

On November 24, 1943, the heirs proposed Jose M. Layug for appointment.

In a motion for reconsideration dated November 29, 1943, Francisca renewed her attack on the procedure adopted by the court in the sale of the lot and insisted that her offer of P1,450.00 be accepted and the lot sold to her so; that she may not lose her rights of usufruct upon the property. This was denied by the trial court on December 9, 1943.

Thereafter, Jose M. Layug was appointed administrator and he qualified.

It would appear that Francisca appealed the case to the Court of Appeals. However, the records thereof were lost or destroyed during the war. They were reconstituted by order of the Court of Appeals, under the supervision of one of its Deputy Clerk. After the reconstitution the Court of Appeals finding that only questions of law were involved, certified the case to this Court by its resolution of December 29, 1952.

Appellant Francisca Garcia makes the following assignment of errors:

I

“The trial court erred in declaring appellee Rodolfo Rivera as the highest bidder because the procedure followed was not in accordance with the law and therefore null and void.

II

“The trial court erred in not granting the petition dated September 20, 1943 filed by appellant Francisca Garcia to suspend its order of September 16, 1943.

III

“The trial court erred in not denying the petition dated November 20, 1943 filed by appellant Francisca Garcia to declare null and void and of no force and effect all actuations relative to the sale of the property through sealed bids.”

Appellant should be the last person to question the sale of the lot in question and the regularity of the procedure followed in said sale. When as administratrix she asked for a court authority to sell the lot she made it appear that the property belonged to the estate of her deceased husband. In fact, she referred to the lot as “of the estate”. It was only later after she failed to buy the same that for the first time she made the claim that it was conjugal property. In her brief she states that the court itself declared the property as conjugal and to support her statement she refers us to certain annexes. We took pains to examine said annexes and we found that instead of being orders or declarations of the court, they were her own petitions in the lower court. Besides, it is very doubtful whether appellant ss administratrix could validly buy the lot. It would seem that her trust relations with the estate would prevent her from doing so. Article 1459 of the old Civil Code provides that executors cannot take by purchase even at a public or judicial auction, either in person or through the mediation of another, the property entrusted to their care; and Article 1491 of the new Civil Code has a similar provision.

As to the regularity of the sale, Rule 90, Sec. 7, par. (d) of the Rules of Court provides that the court may authorize the executor or administrator to sell property of the estate in a public or

private sale, as would be most beneficial to all parties concerned. On this matter the court is given ample discretion. If the court can order the property sold at a private sale it could also order that sealed bids be submitted, this, in order to obtain the highest offer.

Appellant did not object to this procedure. In fact, she approved of it and even took part in the bidding and submitted her own sealed bid. It was only after she failed to buy the property because her bid was lower that she thought of annulling the sale and even then she did not take formal steps in this direction but only asked the court to suspend the order for the sale in order to give her an opportunity to enter into negotiations for that purpose, presumably to persuade the buyer or buyers, Rodolfo and his brothers to allow her to buy the property from them, either for the same price of P1,400.00 or with a little increase. We believe that she is now estopped from questioning the regularity of the sale. This apart from the fact that she herself could not have bought the lot because she was disqualified by law.

As to her alleged usufructuary rights, those have nothing to do with the regularity of the sale because if those rights of usufruct really existed, they could well be settled and provided for in the distribution of the proceeds of the sale. Besides, it was she herself who petitioned the court for the sale of the lot. She may not now be heard to say that the lot should not have been sold because by so doing she would lose her usufructuary rights.

In view of the foregoing, the order or orders appealed from are hereby affirmed, with costs.

*Paras, C. J., Pablo, Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.*

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