

95 Phil. 666

**[ G.R. No. L-6297. August 26, 1954 ]**

**IN THE MATTER OF THE INTESTATE ESTATE OF RAFAEL LITAM. GREGORIO DY TAM, PETITIONER AND APPELLANT, VS. REMEDIOS ESPIRITU, IN SUBSTITUTION OF MARCOSA RIVERA, COUNTER-PETITIONER AND APPELLEE.**

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

**LABRADOR, J.:**

This is an appeal against an order of the Court of First Instance of Rizal appointing Arminio Rivera administrator of the estate of the deceased Rafael Litam or Dy Tarn.

The record discloses that Rafael Litam died on January 10, 1951, while a resident of Hulong Duhat, Malabon, Rizal. At the time of his death he and Marcosa Rivera lived as husband and wife, they having been married on June 10, 1922, before the justice of the peace of Caloocan (Exhibit D). When the marriage was celebrated, Litam or Dy Tam professed to be single and unmarried (Ibid.). The petition which initiated these proceedings for the settlement of his estate is filed by Gregorio Dy Tam, who alleges that he and the others named therein are children of the deceased Rafael Dy Tam by a Chinese wife named Sia Khin, with whom he was married in 1911 in China, but who is now dead. It is also claimed, that the deceased contracted his marriage to Marcosa Rivera while his previous marriage with Sia Khin was subsisting. In this petition, it is prayed that Marcosa Rivera be named administratrix.

Marcosa Rivera filed a reply and counter-petition denying knowledge of the supposed prior marriage of the deceased to Sia Khin or of their alleged children, and alleging that the properties mentioned in the petition as belonging to the deceased are her own; that instead of leaving the properties mentioned in the petition, the deceased left indebtedness to her amounting to P248,266. In the counter-petition she alleges that the deceased left properties worth P300,000 in Casiguran, Sorsogon, consisting of the stocks, properties, assets, and business interests of a private corporation named Li Tarn & Co., Inc. She claims interest in one-half of the above as her share in the conjugal partnership property, and proposes that

her nephew Arminio Rivera be named administrator.

The petitioner opposed the above proposal on the ground that Arminio Rivera represents an interest adverse to that of the estate; that Marcosa Rivera is suffering from senility and, therefore, disqualified to propose an administrator; and that as her marriage to the deceased is of doubtful validity, she is not entitled to the preference granted in section 6, paragraph (a), of Rule 79. Suggestion is made in this opposition that a banking institution be appointed administrator.

When the petition and the counter-petition were heard, petitioner did not introduce evidence of the alleged previous marriage of the deceased to Sia Khin in China in the year 1911, or of their alleged children. When counsel for petitioner cross-examined Arminio Rivera, he limited himself to asking if it is not true that because of the previous marriage the conjugal partnership property should not belong to the other spouse, which question the trial court over-ruled upon objection of adverse counsel. After satisfying itself that the administrator proposed by Marcosa Rivera has the necessary qualifications, the court made the appointment, which is now the subject of this appeal.

Petitioner-appellant's contention is that Marcosa Rivera's nominee is hostile and has an interest adverse to the parties interested, because Marcosa Rivera, who proposed him, has a claim against the estate amounting to P197,000; that the trial court erred in not permitting the cross-examination of Arminio Rivera to show his hostility to the interests of the parties; and that the preference that Marcosa Rivera is entitled to under the rules has been lost by her failure to ask for an administrator within thirty days after the death of the intestate.

We find that the court committed no error in appointing Marcosa Rivera's nominee; on the contrary, it seems to be justified by the circumstances. The trial court had the duty to presume that the intestate's marriage to Marcosa Rivera is valid, no evidence of his supposed prior marriage to Sia Khin having been submitted or offered. Petitioner-appellant's contention that Marcosa Rivera's nominee is hostile to the interests of the parties in interest is predicated on the existence of the alleged previous marriage and the consequence resulting therefrom that the petitioner-appellant and his brother and sisters are children of the intestate. But the supposed marriage has not been proved, and neither is the claim that petitioner-appellant and his brothers and sisters are children and heirs of the deceased, and while these are not shown or proved in the manner provided for by law, the court can not assume that the marriage with Marcosa Rivera is null and void. It is dangerous to consider petitioner-appellant as a party in interest on the basis of his

allegation alone, especially as the supposed marriage is contrary to the intestate's own conduct at the time of the marriage with Rivera and thereafter. Under this state of things, petitioner-appellant and his brothers and sisters must be considered for the present as mere claimants, and the principal and immediate concern of the administrator would be to contest their right (of these claimants) to the estate. It can not be said, therefore, that the nominee is hostile to the interests of the estate, for it will be his duty to protect it against these pretended heirs. The contention of petitioner-appellant that Marcosa Rivera waived her right to be appointed for her failure to file a petition for administration merits scant consideration, as petitioner-appellant himself had asked for her appointment.

The appeal is, therefore, hereby dismissed, with costs.

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

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