

**IN THE MATTER OF THE INTESTATE ESTATE OF THE DECEASED
RAFAEL LITAM. GREGORIO DY TAM, PETITIONER AND APPELLANT,
VS. REMEDIOS ESPIRITU, AS GUARDIAN OF THE INCOMPETENT
MARCOSA RIVE...**

G.R. No. L-7846. January 31, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

On 21 May 1952 Gregorio Dy Tam filed in the Court of First Instance of Rizal a petition dated 24 April 1952 for the administration and settlement of the estate of Rafael Litam who died intestate in Manila on 10 January 1951 (special proceedings No. 1537), claiming that he and four brothers and three sisters are the children of the decedent had with Sia Khin, now deceased, by a marriage celebrated in China sometime in 1911; that after the death of their father the petitioner and his brothers and sisters came to know that their father had contracted in 1922 in the Philippines, during the subsistence of his previous marriage with Sia Khin, another marriage with Marcosa Rivera out of which marriage here is no issue; and that the deceased acquired properties during his lifetime and marital union with Marcosa Rivera one-half of which valued at P65,000 belonged to their father.

On 12 July 1952 Marcosa Rivera filed a counter-petition denying the alleged marriage of the deceased to Sia Khin and the filiation of the petition and his brothers and sisters; asserting that the properties claimed by the petitioners and his brothers and sisters to have been acquired by their father are her parapherna; and praying that Arminio Rivera be appointed administrator of the estate of the deceased. As prayed for, on 29 August 1952 letters of administration were issued to Arminio Rivera who upon the filing of a bond took the oath and entered upon the performance of his duties. On 8 September 1952 the Court entered an order notifying all persons having claims for money against the decedent to file their claims with the clerk of court within the statutory period.

On 10 March 1953 Remedios R. Espiritu, guardian of the incompetent Marcosa Rivera (special proceedings No. 1709 of the same Court), filed a claim against the estate of the deceased Rafael Litam, alleging that the decedent was indebted to her ward in the sum of P252, 658.33, as evidenced by a public instrument dated 24 February 1946 and a private document dated 28 November 1950, and praying that the administrator of the estate of the late Rafael Litam be ordered to pay her in her capacity as guardian the aforesaid sum together with the stipulated interest at 10 % per annum on P62,000 and legal interest on P190,658.33 from the date of the filing of the claim until fully paid. On 14 March 1953 the administrator filed an answer admitting that the claim of Remedios R. Espiritu in her capacity as guardian of the incompetent Marcosa Rivera is "genuine and bona fide"

On 4 January 1954 the Court, "finding the claim to be genuine, valid and legal," ordered the administrator—

* * * to pay, in due course of administration, to the claimant, Remedios R. Espiritu, as judicial guardian of the incompetent Marcosa Rivera, the above-mentioned sum of P252,658.33, together with the stipulated interest at the rate of 10% per annum on the sum of 762,000.00 and the legal interest on the sum of P190,658.33 from the date of the filing of said claim until full payment thereof is made.

The petitioner has appealed assailing the regularity and legality of the aforesaid order.

The question raised in this appeal—whether or not the Court erred in approving the claim of Marcosa Rivera—has become moot, in view of the holding of this Court in the case of Henry Litam et al. vs. Remedios Espiritu et al., supra, p. 364, wherein the appellant Gregorio Dy Tam was also a party, to the effect that when Rafael Litam contracted marriage with Marcosa Rivera, he was not married to Sia Khin, the alleged mother of the appellant and his four brothers and three sisters; and that they are not the children of the late Rafael Litam. By this pronouncement, the basis upon which the appellants and his brothers and sisters could claim any interest and share in the estate of the deceased Rafael Litam has disappeared. Hence they have no legal standing to object to the claim of Marcosa Rivera.

The appeal is dismissed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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