

TESTAMENTARY ESTATE OF THE DECEASED FERNANDO C. TOLEDO. MARIA JINGCO, PETITIONER AND APPELLEE, VS. DOROTEA DALUZ, ADMINISTRATRIX AND APPELLANT.

G.R. No. L-5107. April 24, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

By resolution dated January 9, 1950, the court of first instance of Pampanga approved the second amended project of partition submitted by the administratrix, Dorotea Daluz, in Sp. Prec. No. 62, Testamentary Estate of the deceased Fernando C. Toledo. That project awarded to his widow, Maria Jingco "one half (½) of all war-damage payments received or to be received from the United States-Philippines War Damage Commission payable to the estate of the deceased either it be the widow or the administratrix who already received or shall receive said payments."

On August 23, 1950 Maria Jingco filed, in the case, a motion alleging that on July 19, 1950 the War-Damage Commission had handed to Dorotea Daluz for the Estate of Fernando Toledo a partial payment in the amount of P10,057.78, and that the administratrix had failed to give unto her one half of such payment in accordance with the project of partition already approved by the court.

After hearing the parties and perusing various pleadings opposing or supporting the widow's petition, the court issued the following order:

"De los escritos presentados por la administradora se desprende que existen aun reclamaciones de los terratenientes de Fernando C. Toledo que, segun dicna adminstradora tienen derecho a recibir parte de la mancionada "war damage claim" que la administracion podria recibir del "U. S.- Philippine War Damage Commission." En vista de que dichas reclamaciones de los terratenientes no se han presentado debidamente hasta la fecha a este juzgado, si realmante las mismas tienen algun merito, el Juzgado ordena a la administradora que deposite en este Juzgado la suma de P10,057.78 que ella habia recibido del "U. S.- Philippine War Damage Commission" a nombre de la administracion; y, una vez depositada dicha cantidad, se autoriza al abogado Filemon Cajator para que cabre el cinco por ciento sobre la misma que, segun ley, deberia pertenecerla por haber confaccionado los papeles de reclamacion al "War Damage Commission"; y que la mitad del remanente, despues de deducidos los honorarios del citado abogado Cajator, se reparte en dos partes iguales, debiendo la administradora Dorotea Daluz entragar una parte a la viuda Maria Jingco, y la otra a los herederos del cifunto Fernando C. Toledo; entendiendose que la cantidad remanente no se tocara por las partes hasta que se decidan las reclamaciones de los terratenientes."

Her motion for reconsideration having been denied, the administratrix brought the matter directly to this Court.

In her first assignment of error, she maintains no evidence was presented to show that she had actually received P10,057.78 from the War-Damage Commission as administratrix of the Estate.

This assignment has no merit, as the letter of the Philippine War-Damage Commission, Annex A, reveals. And,

what is conclusive, she never denied the truth of Maria Jingco's allegations particularly,

"3. That by a letter dated August 15, 1950, the Philippine War Damage Commission informed the herein petitioner that the war damage claim of the "Estate of the Deceased Fernando Toledo" has been approved in the amount of P31,192.66, and a partial payment in the amount of P10,057.78 was made to Dorotea Daluz on July 19, 1950, as administratrix of the Testate Estate of Fernando Toledo, deceased."

Next, the appellant argues in her second assignment, that inasmuch as the project of partition had not adjudicated to the widow any specific sum of money, the court possessed no authority to direct payment to her. The reply is that the partition had awarded to Maria Jingco one half of "all war-damage payments received or to be received", and the P10,057.78 was received subsequently to the partition as war-damage payment. Under the terms of that partition Maria Jingco was entitled to her half of such war-damage compensation.

This brings up the appellant's third argument, which is founded on the proposition that the probate court lost all jurisdiction after its approval, in January 1950, of the second amended project of partition. The argument we believe, was correctly answered by the Hon. Froilan Bayona, Judge, as follows:

"As to the lack of jurisdiction of this Court to issue the aforementioned order of October 19, 1950 after the approval by this Court of the second project of partition of January 9, 1950, this Court has deemed it appropriate to cite hereunder the last paragraph of the said resolution of this Court of January 9, 1950 approving the second project of partition submitted by the parties in this case, to wit:

x x x x x

"It is clear from the above-quoted portion of the resolution of the Court of January 9, 1950 that his testate proceedings shall be considered closed as soon as the administratrix Dorotea Daluz shall have filed before this Court evidence showing delivery by her of the shares of the properties of the late Fernando C. Toledo to his heirs as well as the payment of all inheritance taxes on the estate as required by law. And as part of the was damage payment, evidenced by the letter of the Secretary of the Philippine War Damage Commission of August 15, 1950, Annex "A", to the losses on the property of the deceased Fernando C. Toledo, specially the one-half ($\frac{1}{2}$) pertaining to his widow Maria Jingco, as prescribed in the said second project of partition, and the inheritance and estate taxes on the properties to the government have as yet been effected by the administratrix as no proof thereof has been submitted to this court, this Court is of the opinion that this testate proceedings has not as yet been terminated and consequently this Court has not as yet lost jurisdiction over the same."

There is no mere that superficial cleverness in appellant's contention that the widow's share under the partition was only a chose in action, i.e., the right to sue and recover one half of the war-damage, and that the partition awarded her no specific moneys, of which the court could compel delivery. The undeniable fact is that Clause 4 of the approved project (hereinabove quoted) expressly gave her a moiety of whatever moneys have been or shall be received from the War-Damage Commission. As money was subsequently received, the court did right in requiring delivery of her share, the administratrix being constantly and completely under the jurisdiction and control of the probate court, and the Rules permitting the heirs to "demand and recover their respective shares from the executor or administrator" (Rule 91, Sec. 1) in the same testamentary proceedings, a separate civil action for that purpose being obviously unnecessary (*De Jesus v. Daza* 43 Off. Gaz. 2055).

WHEREFORE, no prejudicial error showing, the appealed order is affirmed with costs.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.
Labrador, J., no part.

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