

**FORTUNATA VDA. DE RODRIGUEZ, BENJAMIN RODRIGUEZ,
MERCEDES RODRIGUEZ DE CRUZ, HERMINIA RODRIGUEZ DE
HALLARE, LUZ RODRIGUEZ DE CARLOS AND ANTONIO RODRIGUEZ,
PETITIONERS, VS. HON. ...**

G.R. No. L-6044. November 24, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to nullify the order of respondent Judge dated August 11, 1952, wherein after overruling the opposition to the institution of the intestate estate proceedings of the late Flaviano Rodriguez, he appointed Abelardo Rodriguez administrator of the estate upon filing a bond in the sum of P2,000.

It is averred in the petition that Flaviano Rodriguez died on February 8, 1944, at Paraiiaque, Rizal, leaving an estate with a value of P10,000; that the surviving heirs are the widow, Fortunata Vda. de Rodriguez, and six children who are the petitioners and respondent Abelardo Rodriguez; that after the death of Flaviano Rodriguez all the heirs, who were then already of age, entered into a verbal agreement whereby they agreed not to make a liquidation of the estate but to place it under the administration of the widow with the understanding that each of the six children would be entitled to receive a portion of the income in equal shares from year to year for the needs of their families provided that they do not exceed the participation to which they are entitled; that on March 19, 1952, or eight years after the death of Flaviano Rodriguez, respondent Abelardo Rodriguez filed a petition for administration of the intestate estate of said deceased in spite of his knowledge that the estate had no debts and all the heirs were of age; that on June 2, 1952, the other heirs, petitioners herein, objected to the petition invoking the rule that if the estate is free from obligations and the heirs are all of age, no administration proceedings shall be allowed; that on August 11, 1952, respondent Judge, after overruling the opposition, appointed Abelardo Rodriguez administrator of the estate upon filing the requisite bond.

Respondents herein, in answer to the petition, admitted the existence of a verbal agreement entered into between the heirs in 1944, wherein they agreed not to liquidate the estate and to place it under the administration of the widow in view of the unsettled conditions then prevailing at the time, but they contend that while that was the understanding the same was not carried out because in reality it was Benjamin Rodriguez, one of the petitioners herein, who took over the administration of the estate and in the discharge of his duties he failed and refuse to give to respondent Abelardo Rodriguez his share in the income which he badly needed for the support of his family, for which reason he started the intestate proceedings which gave rise to the present petition for certiorari.

The issue to be determined is whether respondent Judge acted properly in maintaining the administration proceedings and in appointing Abelardo Rodriguez as administrator of the estate notwithstanding the fact that the estate has no debts and all the heirs entitled to share in its distribution are all of age.

Under section 1, rule 74 of the Rules of Court, if the decedent left no debts and the heirs are all of age, or the minors are represented by their judicial guardians, the parties may, without securing letters of administration,

divide the estate among themselves as they see fit, and should they disagree, they may do so in an ordinary action of partition.

Construing the scope of said section 1, (formerly section 596, Act No. 190), this Court repeatedly held "that when a person dies without leaving pending obligations to be paid, his heirs, whether of age or not, are not bound to submit the property to a judicial administration, which is always long and costly, or to apply for the appointment of an administrator by the court. It has been uniformly held that in such case the judicial administration and the appointment of an administrator are superfluous and unnecessary proceedings" (*Ilustre vs. Alaras Frondosa*, 17 Phil., 321; *Malahacan vs. Ignacio*, 19 Phil., 434; *Bondad vs. Bondad*, 34 Phil., 232; *Baldemor vs. Malangyaon*, 34 Phil., 367; *Fule vs. Fule*, 46 Phil., 317; *Utulo vs. Pasion de Garcia*, 66 Phil., 302).

It, therefore, appears from said section 1, as construed by this Court, that when the estate has no pending obligations to be paid, his heirs, whether of age or not, are not bound to submit the property to a judicial administration, for the reason that it is superfluous or unnecessary, and in most cases long and costly, in which case the way left to the heirs is to divide the estate among themselves as they may see fit, and should they disagree, they may do so in an ordinary action of partition. But, is this pattern mandatory upon the heirs? Should the heirs be unable to agree on a settlement of the estate, do they have to resort necessarily to an ordinary action of partition? Can they not choose to institute administration proceedings?

Our answer is that section 1 does not preclude the heirs from instituting administration proceedings, even if the estate has no debts or obligation, if they do not desire to resort for good reasons to an ordinary action of partition. While section 1 allows the heirs to divide the estate among themselves as they may see fit, or to resort to an ordinary action of partition, it does not compel them to do so if they have good reasons to take a different course of action. Said section is not mandatory or compulsory as may be gleaned from the use made therein of the word *may*. If the intention were otherwise the framer of the rule would have employed the word *shall* as was done in other provisions that are mandatory in character. Note that the word *may* is used not only once but in the whole section which indicates an intention to leave the matter entirely to the discretion of the heirs.

The inquiry before us is not new. In a case where one of the heirs chose to institute administration proceedings in court, even if the estate had no debts, and the widow sought to dismiss the case invoking in support of her contention the doctrine enunciated in the cases already adverted to, this Court said:

"The principal ground of the opposition is that the heirs being of legal age, and there being no proof that there is any valid and effective credit against the deceased, no legal reason exists for the court to appoint an administrator, as prayed for in the petition, citing in support of this contention the doctrine enunciated in the cases of *Ilustre vs. Alaras Frondosa* (17 Phil., 321); *Bondad vs. Bondad* (34 Phil., 232); *Ealdemor vs. Malangyaon* (34 Phil., 367).

It is true that, under section 596 of the Code of Civil Procedure, whenever all the heirs of a person who died intestate are of lawful age and legal capacity, and there are no debts due from the estate, or all the debts have been paid, the heirs may, by agreement duly executed in writing by all of them, and not otherwise, apportion and divide the estate among themselves, as they may see fit, without court proceedings. But there is nothing' in this section which prohibits said heirs from instituting special proceedings for the administration of the intestate estate if they cannot agree on the extrajudicial partition and apportionment of the same." (*Orozco vs. Garcia*, 50 Phil., 149, 151.)

In this particular case, however, we find that the core of petitioners' objection is not that the heirs have erroneously instituted these administration proceedings but that the court erred in appointing Abelardo Rodriguez administrator of the estate. It is claimed that Abelardo Rodriguez was appointed administrator without the petitioners having been given an opportunity to be heard. But this claim has no basis it appearing that the parties

had been duly heard before the court issued its order now complained of. It appears that both parties had submitted the names of the persons they wanted to be appointed as administrator and, the court made its choice only after weighing the fitness and qualifications of the persons recommended. Thus, on this point, the court said:

"The petitioner in this case appears to be fully qualified to act as administrator of the estate of the deceased Flaviano Rodriguez, and does not possess any of the disqualifications. Moreover, he is one of the heirs left by the deceased. Inasmuch as none of the oppositors appear to be more qualified to act as administrator of the estate, the Court is inclined to grant the petition presented by Abelardo Rodriguez." (Annex D).

The petition is dismissed, with costs. The preliminary injunction issued is hereby dissolved.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, JJ., concur.

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