

CIRILO LIM, PETITIONER-APPELLANT, VS. BASILISA DIAZ-MILLAREZ, OPPOSITOR-APPELLEE.

G. R. No. L-17633. October 19, 1966

Ponente: REGALA, J.

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REGALA, J.:

On February 26, 1954 , Cirilo Lim, claiming to be a nephew of the late Jose Millarez who died intestate on October 22, 1953 , filed with the Court of First Instance of Negros Occidental a petition for his appointment as judicial administrator of the estate of the deceased. The petition alleged that the deceased left no relatives such as descendants, ascendants or surviving spouse, except collaterals.

To the said petition, Basilisa Diaz-Millarez, claiming to be a widow of the late Jose Millarez, filed an opposition on two grounds: that the petitioner has an adverse interest in the estate; and that the properties of the estate are the subject matter of a litigation between her as plaintiff and Cirilo Lim as defendant in Civil Case No. 2986.

Trial of the case was postponed several times. When the case was called for hearing on March 7, 1959 , both parties manifested the existence of a litigation between them over the properties of the estate. Hence, the trial court issued the following order:

"When this expediente was called for hearing today, Atty. Enrique Mariño for the petitioner and Atty. Amado B. Parreño, Sr. for the oppositor appeared. Both manifested that there is an ordinary civil case between the parties herein, that is Basilisa Diaz Millarez, as plaintiff and Cirilo Lim, as defendant, litigating between them on the ownership of the properties belonging to the deceased Jose Millarez, in the sense that while plaintiff Basilisa Diaz-Millarez in said civil case, now oppositor in the special proceeding alleged that she is the legitimate widow of the deceased Jose Millarez, yet defendant Cirilo Lim in said Civil case, now petitioner herein, alleged that he is contesting said allegation because she is not the legitimate spouse of the deceased; that the said civil case was already decided in favor of the defendant therein and against the plaintiff by the Second Sala of this Court and now pending appeal in the Court of Appeals.

"Under the above considerations, the present expediente is of no consequence. However, upon the final termination of said civil case, the parties concerned without prejudice can file another application for the judicial administration of the property involved in this administration. It is to be noted that this expediente was filed way back on February 26, 1954 that is more than 5 years and neither a special nor a regular administrator has been appointed so that the dismissal of the expediente would not be prejudicial to any of the parties interested in the same.

"PREMISES CONSIDERED, this expediente is ordered dismissed."

Failing in his motion for the reconsideration of this order, the petitioner, Cirilo Lim, brought the case to the Court of Appeals but that court has certified the appeal to Us for the reason that there is no question of fact involved.

Meanwhile, the civil case between the parties which was also elevated to the Court of Appeals (CA-G.R. 24561 -R.) was decided on February 18, 1965. From the body of the decision, it appears that Basilisa Diaz-Millarez

sought to recover from Cirilo Lim one-half of the total amount of P22,000 allegedly delivered to him by her and the deceased Jose Millarez on various occasions and to declare her as the owner of 1/2 of the profits and gains derived therefrom, on the ground that Jose Millarez and she used to live as husband and wife for about 23 years and as such she is entitled to 1/2 of the property held in common by them. She asserted further that since she contributed capital and labor to the tobacco business in which she and the deceased were engaged and from which they gave P22,000 in cash to Cirilo Lim, she would be entitled to 1/2 of the capital and 1/2 of the proceeds and profits derived from such capital. In answer, Cirilo Lim alleged that the money he received from Jose Millarez on various occasions was handed to one Tan Suaco for investment in the tobacco business. While the trial court, after hearing, ordered Lim to make an accounting of the P22,000 invested in the tobacco business to be submitted to court, the Court of Appeals, on the other hand, made the following conclusion:

"We agree with the court a quo that the plaintiff Basilisa is entitled to 1/2 of the estate of the late Jose because she contributed labor and capital in the form of cash to a common fund with Jose during the period from 1930 up to the date of the death of Jose in 1953.

"Accordingly, the judgment a quo is set aside and the records of this case are hereby remanded to the court a quo with instructions (1) that it appoint a qualified certified public accountant to examine with painstaking care the documentary evidence presented and to determine how much over And above the amount of P12,500 was invested by the late Jose Millarez and the plaintiff in the tobacco business together with the defendant Lim, and to assess the extent of the profits and gains derived from such investment; (2) to admit such other evidence as the court may consider material and relevant; and (3) to render judgment anew on the basis of the examination to be conducted by the qualified certified public accountant and such further evidence, if any, as shall be presented, adjudicating in favor of the plaintiff Basilisa Diaz-Millarez 1/2 of the capital and 1/2 of the profits and gains derived therefrom that properly pertain to the late Jose Millarez after the accounting shall have been accomplished. No pronouncement as to costs."

From what appears above, the claim which Basilisa has against Cirilo in the civil case supposed to be now again pending in the trial court, is based on her declared right to one-half of the estate of the deceased. It cannot, therefore, be denied that Cirilo Lim, as a relative of the deceased, has some interest adverse to that of Basilisa. Shown to have some liabilities to Basilisa and to the estate as a whole, Cirilo can not compatibly perform the duties of an administrator. In this jurisdiction, one is considered to be unsuitable for appointment as administrator when he has adverse interest of some kind or hostility to those immediately interested in the estate. (*Sioca v. Garcia*, 44 Phil. 711; *Arevalo v. Bustamante*, 69 Phil. 656)

The determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and said judgment is not to be interfered with on appeal unless the said court is clearly in error. (*Sioca v. Garcia*, *supra*)

IN VIEW HEREOF, the order appealed from is hereby affirmed, with costs against the petitioner-appellant.

Concepcion, C.J., Reyes, J. B. L., Dizon, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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