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Special Proceedings MIS Office Normal RND GROUP 3 169 2002-01-14T03:29:00Z 2002-01-17T12:36:00Z 7 2755 15704 Supreme Court of the Philippines 130 31 19285 9.2720 110

2. SETTLEMENT OF ESTATE OF DECEASED PERSONS

1. In General

1. Jurisdiction and Venue

1.1 The settlement of the estate of deceased persons shall be in the court of the place of residence of the deceased at the time of his death, whether he is a citizen or an alien.

1.2 If the deceased is an inhabitant of a foreign country, then the settlement shall be in the court of any place in which he had estate.

Note: Sec. 1, Rule 73, Rules of Court which substantially contains the foregoing rules still remain unamended after the passage of Batas Blg. 129. Said Sec. 1 still speaks of 'Court of First Instance,' instead of 'Regional Trial Court' and 'province' which in other parts of the Rules had been changed to 'place.' But under Batas Blg. 129, the jurisdiction over settlement proceedings is not limited to Regional Trial Courts but include Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, where the value of the estate does not exceed Php 200,000 outside or in Metro Manila, Php 200,000.15 Outside Metro Manila, the amount was at first fixed at Php 100,000 but this was increased to Php 200,000. After another five years, the jurisdictional amount will be Php 300,000 outside Metro Manila where the amount will become Php 400,000.16

1.3 The jurisdiction of a probate court is determined by the place of residence of the deceased person or of the location of his estate, but the matter really constitutes venue.17

1.4 Important rule

The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.18 This is to preclude different courts from assuming jurisdiction.19

1.5 The term 'resides' refers to 'actual residence' as distinguished from 'legal residence' or domicile.20

1.6 The liquidation of the conjugal or community property of a deceased husband or wife shall be made in his or her estate proceedings, but if both spouses are deceased, then in the estate proceeding of either.21

1.7 Shari'a Courts have exclusive original jurisdiction in matters of settlement of the estate of deceased Muslims.22

2. Kinds of settlement

On the basis of the form of settlement, there are three kinds:

2.1 Extrajudicial settlement;

2.2 Summary settlement of estates of small value; and

2.3 Judicial settlement through letters testamentary or letters of administration with or without the will annexed.

3. Extrajudicial settlement

An extrajudicial settlement may be made by the heirs of a deceased person without having to secure letters of administration.²³

3.1 The following requisites must be present or followed:

3.1.1 The decedent left no will and no debts.

Note: It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.²⁴

3.1.2 A bond equivalent to the value of the personal property of the estate is posted with the Register of Deeds.

Note: The value must be certified to under oath by the parties concerned and the bond must be conditioned upon the payment of any just claim that may be filed.²⁵

3.1.3 The fact of settlement is published in a newspaper of general circulation once a week for three (3) consecutive weeks.

Note: No extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.²⁶

3.2 The extrajudicial settlement may follow any one of three (3) ways:

3.2.1 Public instrument.- A public instrument is executed by all the heirs to be filed with the Registry of Deeds.

3.2.2 Action for Partition.- If the heirs cannot agree on the division of the estate, an ordinary action for partition may be filed.

3.2.3 Affidavit of self-adjudication.- If there is only one heir, then the heir may execute an affidavit adjudicating to himself or herself the entire estate, which affidavit shall be filed with the register of deeds.²⁷

3.3 Minor heirs

If there are minor heirs, they may be represented by their "judicial or legal representatives duly authorized for the purpose."²⁸

4. Summary settlement of estates of small value

4.1 When the gross value of the estate of a deceased person does not exceed Php 10,000.00,²⁹ upon a proper petition, the court having jurisdiction,³⁰ may proceed summarily to settle the estate, without the appointment of an executor or administrator, and without delay.

4.2 The petition may be filed by an interested person which should make such value appear to the court.

4.3 The hearing on the petition shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of the notice.

4.4 The notice shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. Notice shall also be given to all interested persons as the court may direct.

4.5 After hearing, the court may grant, if proper, allowance of the will, if any there be, determine the persons legally entitled to participate in the estate, and apportion and divide it among them after payment of the debts of the estate.

4.6 Those who are entitled to the estate, if they are of age and with legal capacity, or by their guardians and trustees legally appointed and qualified, shall be entitled to receive their share of the estate.

4.7 The court may issue an order respecting the costs of the proceedings.

4.8 All orders and judgments shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office.

No longer the Court of First Instance as provided in Sec. 2, Rule 74 but a Metropolitan or Municipal Court because the value of the property does not exceed Php 200,000 for both Metro Manila and outside Metro Manila (B.P. Blg. 129, Sec. 33[1]; R.A. No. 7691, Sec. 5.).

5. Judicial settlement with letters testamentary or with letters of administration

Settlement shall otherwise be in court in special proceedings through a full-blown procedure with either a testator or an executor managing the estate of the deceased until partition and distribution after the payment of debts, legacies and devises.

2. Probate of Wills

1. Will, explained

A will is an act whereby a person is permitted with all the formalities prescribed by law to control to a certain degree the disposition of his estate, to take effect after his death.³¹ It is otherwise called a 'last will and testament.'

1.1 It may be a notarial will with certain important requisites.

1.1.1 Every will must be in writing and executed in a language or dialect known to the testator.³²

1.1.2 Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three (3) or more credible witnesses in the presence of the testator and of one another.³³

1.1.3 The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.³⁴

1.1.4 Every will must be acknowledged before a notary public by the testator and the witnesses.³⁵

1.1.5 If the will is not contested, only one (1) subscribing witness needs to testify;³⁶ if the will is contested, all subscribing witnesses and the notary must testify.³⁷

1.2 It may be a holographic will if it is in the handwriting of the testator, but it must be entirely written, dated and signed by him.

1.2.1 It is subject to no other form, may be made in or out of the Philippines, and needs no witnesses.³⁸

1.2.2 At least one witness should testify that the will and the signature thereon are in the handwriting of the testator.³⁹ If the holographic will is contested, at least three (3) witnesses who know the handwriting of the testator must testify but in the absence of any competent witness, if the court deems it necessary, expert testimony

may be resorted to.⁴⁰

2. Time to submit to the court

2.1 Reglementary periods

2.1.1 Within twenty (20) days from knowledge of the death of the testator, the custodian of a will shall deliver it to the court having jurisdiction or to the executor named in the will.⁴¹

2.1.2 On the other hand, the executor has twenty (20) days from knowledge of the death of the testator or knowledge of the fact that he is named executor to submit the will to the court unless the will has reached the court already. Within the same period, he shall signify to the court in writing whether he accepts or refuses the trust.⁴²

2.2 Penalties

2.2.1 A person who neglects to comply with the foregoing two provisions, without excuse satisfactory to the court, shall be fined not exceeding Php 2,000.00.

2.2.2 The custodian who refuses to comply with the order of the court to deliver the will, when he is ordered to do so, may be committed to prison until he delivers the will.

3. Procedure In The Probate of A Will

3.1 The contents of a petition for the allowance of a will are:

3.1.1 The jurisdictional facts;

3.1.2 The names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;

3.1.3 The probable value and character of the property of the estate;

3.1.4 The name of the person for whom letters are prayed;

3.1.5 If the will has not been delivered to the court, the name of the person having custody of it.

Note: But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed.⁴³

3.2 Time for proving the will

The court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof.⁴⁴

Note: However, the court need not go through the probate of a will that preterited a compulsory heir since preterition invalidates the will.⁴⁵

3.3 Publication of notice

The court shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.⁴⁶

Note: Where the petition for probate has been filed by the testator himself, no newspaper publication shall be made.⁴⁷

3.4 Persons entitled to notice⁴⁸3.4.1 Heirs, devisees, legatees, and executors should be notified by mail or personally.

3.4.2 The mail should be deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if the places of residence be known.

3.4.3 Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing.

3.4.4 If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs.

3.5 Proof at hearing⁴⁹

At the hearing, compliance with the provisions on notice and its publication must be shown before the introduction of testimony in support of the will. All testimony shall be taken under oath and reduced to writing.

3.6 Lost or destroyed will⁵⁰

No will shall be proved as a lost or destroyed will unless:

3.6.1 the execution and validity of the same be established; and

3.6.2 the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed during the lifetime of the testator without his knowledge; nor

3.6.3 unless its provisions are clearly and distinctly proved by at least two (2) credible witnesses.

3.7 Deposition⁵¹

If none of the subscribing witnesses resides in the province, the court may, on motion, direct a deposition to be taken, and may authorize a photographic copy of the will to be made and to be presented to the witness on his examination.

3.8 Unavailable witnesses⁵²

If the subscribing witnesses are dead or insane, or none of them resides in the Philippines, the court may admit the testimony of other witnesses to prove the sanity of the testator; the due execution of the will; and proof of the handwriting of the testator and of the subscribing witnesses, or of any of them.

3.9 Contesting a will⁵³

Anyone appearing to contest the will must state in writing his grounds for opposing its allowance, and serve a copy thereof on the petitioner and other parties interested in the estate.

3.10 Grounds for disallowing a will⁵⁴

The will shall be disallowed in any of the following cases:

3.10.1 If not executed and attested as required by law;

3.10.2 If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;

3.10.3 If it was executed under duress, or the influence of fear, or threats;

3.10.4 If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;

3.10.5 If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.

3. Executors and Administrators

1. Requirements For The Issuance Of Letters Testamentary And Of Letters Of Administration⁵⁵

Probate proceedings may be opened by a petition for the allowance of a will and the issuance of letters testamentary, as previously discussed or letters of administration.

1.1 The petition may be opposed and a petition may at the same time be filed for letters of administration with the will annexed.⁵⁶

1.2 The contents of a petition for letters of administration are:

1.2.1 The jurisdictional facts;

1.2.2 The names, ages, and residences of the heirs, and the names and residences of the creditors, of the decedent;

1.2.3 The probable value and character of the property of the estate; and

1.2.4 The name of the person for whom letters of administration are prayed;

Note: But no defect in the petition shall render void the issuance of letters of administration.⁵⁷

1.3 No person is competent to serve as executor or administrator who is (a) a minor; (b) not a resident of the Philippines; and (c) in the opinion of the court, unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.⁵⁸

2. Appointment of Executors (who may become executors)⁵⁹

2.1 After a will is proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust, and gives bond as required by the rules. It is clear that an executor is one who is named in a will.

2.2 There may be several executors named in the will. Letters testamentary may issue to such of them as are competent, accept and give bond. If no executor named qualifies, then an administrator is appointed.⁶⁰

3. Appointment Of Administrators; Priorities⁶¹

Administration may be granted:

3.1 To the surviving spouse, or next of kin, or both, or to such person as such surviving spouse or next of kin, requests to be appointed, if competent and willing to serve.

3.2 To one or more of the principal creditors, if competent and willing to serve, in default of the foregoing or if the surviving spouse or next of kin neglects for thirty (30) days after the death of the deceased to file a petition for administration or the request that administration be granted to some other person.

3.3 To such other person as the court may select, in default of the foregoing.

Note: The court may disregard the preference above enumerated in its sound discretion and its decision will not be interfered with on appeal unless it appears that it is in error.⁶²

4. Appointment Of Special Administrators

A special administrator may be appointed '(w)hen there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will."⁶³ The special

administrator shall take possession and charge of the estate of the deceased until questions causing the delay are decided and executors or administrators appointed.

4.1 While the qualifications of a special administrator are not spelled out in the rules, the appointment should be within the sound discretion of the court and such discretion should not be a whimsical one. There is no reason why the same fundamental and legal principles governing the choice of a regular administrator should not be taken into account in the appointment of a special administrator.⁶⁴ However, the court is not bound to follow the order of preference set up for the appointment of a general administrator.⁶⁵

4.2 Only one special administrator at a time may be appointed, since the appointment is merely temporary.⁶⁶

4.3 Powers and duties

The special administrator shall take possession and preserve the goods, chattels, rights, credits, and estate of the deceased and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. He is not liable to pay any debts of the deceased unless so ordered by the court.⁶⁷

4.4 The court has no power to order a special administrator to sell real property of the estate pending resolution of the issue of the appointment of the regular administrator.⁶⁸

4.5 A special administrator does not have the power to close the estate because he normally does not pay the debts of the deceased. However, he can be sued. There is no express prohibition; otherwise, prescription may set in if the appointment of the regular administrator is delayed.⁶⁹

4.6 Termination

The special administrator may be removed on grounds other than those mentioned in Rule 82.⁷⁰ When an executor or administrator is appointed, the powers of the special administrator cease. He shall immediately deliver the estate to the executor or administrator who may prosecute to final judgment suits commenced by the special administrator.⁷¹

5. Bond of Administrator or Executor ⁷²

5.1 Before an executor or administrator enters upon the execution of his trust, he shall give a bond, in such sum as the court directs, conditioned as follows:

5.1.1 To make and return within three (3) months, a true and complete inventory;

5.1.2 To administer the estate and pay and discharge all debts, legacies, and charges on the same, or dividends thereon;

5.1.3 To render a true and just account within one (1) year, and at any other time when required by the court; and

5.1.4 To perform all orders of the court.

5.2 Further bond

The executor may serve without bond if the testator so directs, or with only his individual bond, conditioned only to pay the debts of the testator; but the court may require a further bond in case of a change in his circumstances, or for other sufficient cause.⁷³

15 B. P. Blg. 129, Secs 19 (4) and 33 (1), as amended.

16 Rep. Act No. 7651, Sec. 5.

17 Garcia Fule v. Court of Appeals, No. L-40502, November 29, 1976, 74 SCRA 189.

18 Rules of Court, Rule 73, Sec. 1, last sentence.

19 Cuenco v. Court of Appeals, No. L-24742, October 26, 1973, 53 SCRA 360.

20 Pilipinas Shell Petroleum Corporation v. Dumlao, G. R. No. 44888, February 7, 1992, 206 SCRA 40.

21 Rules of Court, Rule 73, Sec. 2.

22 Presidential Decree No. 1083, Art. 143.

23 Rules of Court, Rule 74, Sec. 1.

24 Ibid.

25 Ibid.

26 Rules of Court, Rule 74, Sec. 1.

27 Ibid.

28 Ibid.

29 Rules of Court, Rule 74, Sec. 2.

30 No longer the Court of First Instance as provided in Sec. 2, Rule 74 but a Metropolitan or Municipal Court because the value of the property does not exceed Php 200,000 for both Metro Manila and outside Metro Manila (B.P. Blg. 129, Sec. 33[1]; R.A. No. 7691, Sec. 5.).

31 Civil Code, Art. 783.

32 Civil Code, Art. 804.

33 Ibid, Art. 805, first paragraph.

34 Ibid, Art. 805, third paragraph.

35 Ibid, Art. 806.

36 Rules of Court, Rule 76, Sec. 5.

37 Ibid, Sec. 11.

38 Civil Code, Art. 810.

39 Ibid, Article 811; Rules of Court, Rule 76, Sec. 5.

40 Rules of Court, Rule 76, Sec. 11, second paragraph.

41 . Ibid, Rule 75, Sec. 2.

- 42 Ibid, Sec. 3.
- 43 . Rules of Court, Rule 76, Sec. 2.
- 44 Rules of Court, Rule 76, Sec. 3.
- 45 Nuguid v. Nuguid, G. R. No. L-23445, June 23, 1966, 17 SCRA 449
- 46 Rules of Court, Rule 76, Sec. 3.
- 47 Ibid.
- 48 Rules of Court, Rule 76, Sec. 4.
- 49 Ibid, Sec. 5.
- 50 Ibid, Sec. 6.
- 51 Rules of Court, Rule 76, Sec. 7.
- 52 Ibid, Sec. 8.
- 53 Ibid, Sec. 10.
- 54 Ibid, Sec. 9.
- 55 Rules of Court, Rules 78 and 79.
- 56 Ibid, Rule 79, Sec. 1.
- 57 Rules of Court, Rule 79, Sec. 2.
- 58 Ibid, Rule 78, Sec. 1.
- 59 Ibid, Sec. 4
- 60 Rules of Court, Rule 78, Section. 5.
- 61 Rules of Court, Rule 78, Sec. 6.
- 62 Silverio, Sr. v. Court of Appeals, G. R. No. 109979, March 11, 1999, 304 SCRA 541.
- 63 Rules of Court, Rule 80, Sec. 1.
- 64 Ozaeta v. Pecson, 93 Phil. 416 [1953].
- 65 Ocejo v. Consul General of Spain, 67 Phil. 475 [1939].
- 66 Ozaeta v. Pecson, supra, note 64; Fernandez v. Maravilla, supra, note 13.
- 67 Rules of Court, Rule 80, Sec. 2.
- 68 Silverio, Sr. v. Court of Appeals, supra, note 62.
- 69 Anderson v. Perkins, No. L-15388, January 31, 1961, 1 SCRA 387.
- 70 De Gala v. Gonzales, 53 Phil. 104 [1929]; Roxas v. Pecson, 82 Phil. 407 [1948].
- 71 Rules of Court, Rule 80, Sec. 3.
72. Rules of Court, Rule 81.

73 Rules of Court, Rule 81, Sec. 2.

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