

**INTESTATE PROCEEDINGS OF THE DECEASED PEDRO ROYO.
AMPARO M. VDA. DE ROYO, ADMINISTRATRIX OF THE ESTATE OF
PEDRO ROYO AND PEDRO ROYO, JR., MOVANTS AND APPELLANTS,
VS. N. T. DEEN ...**

G. R. No. L-48922. October 30, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a reconstituted case, originating in the Court of First Instance of Cebu as Special Proceeding No. 850 of said court, entitled Intestate of Pedro Royo, Amparo Vda. de Royo, Administratrix and Pedro Royo, Jr., Movants versus N. T. Deen and Tomas Delgado, Oppositors, wherein oppositors' bond in favor of the administrator of the estate of Pedro Royo, Pantaleon del Rosario, is sought to respond for the sum of P17,610.00 which said administrator allegedly failed to account for in his capacity as administrator of the estate. Motion was filed on November 6, 1940. In a decision dated May 17, 1941 Justice Felix Martinez, then presiding judge of the Court of First Instance of Cebu, denied the motion holding:

"Se pide la ejecucion de una fianza por valor de P25,000.00 otorgada por Tomas Delgado y N. T. Deen, para que pueda hacerse efectiva contra la misma la cantidad de P17,610.00, por la cual, segun las alegaciones, en responsable el finado Pantaleon E. del Rosario como administrador de los bienes relictos del finado Pedro Royo. Delgado y Deen son fiadores para responder de cualesquier obligaciones resultantes de las gestiones de Pantaleon E. del Rosario como administrador del intestado de Pedro Royo.

"No se discute que Pantaleon E. del Rosario fue nombrado administrador de los bienes del finado Pedro Royo el dia 11 de Octubre de 1924, en sustitucion de Jose Vano; asi como de que, como tal, paso a sus manos la suma de P43,500.00 procedente del importe de venta de dos casas de materiales fuertes y planchas de zinc de la propiedad del intestado de que es administrador. De dicha suma, del Rosario desembolso, mediante comprobantes, la cantidad de P24,890.00, en pago de las reclamaciones contra la administracion, quedando, por tanto, un saldo de P17,610.00. No hay informacion en el record que uso se hizo de este saldo por el administrador. Este se limito a hacer ultimamente una manifestacion, de fecha 8 de Septiembre de 1928, * *

*".

* * * * *

"2.—Que a consecuencia de ciertos arreglos que los herederos del finado Pedro Royo habian hecho con ciertos acreedores suyos, los primeros han dispuesto de bastantes fondos que pertenecian a la administracion, por ser ya mayores de edad, y se han reservado solamente en poder del Administrador aquellas cantidades que se han creido necesarias para el pago de las deudas del difunto; pero en la computacion de estos pagos no se han tenido en cuenta varios gastos y obligaciones de la administracion, que no se han podido considerar cuando dichos herederos hicieron uso de los fondos que se creian que iban a corresponderles, habiendo resultado, al verificarse la venta ordenada por el Juzgado el 7 de Enero de 1928 de las fincas del finado, que habia un deficit de unos P600.00 para la administracion que no se podrian cubrir, en razon de que todas las deudas ya habian sido pagadas, y los herederos tomaron para si todo el remanente de la administracion."

* * * * *

"Con todo, se ve claramente que Del Rosario, desde el año 1928, hizo constar que la administracion a su cargo ya no poseia bienes. Por otra parte, los herederos de Pedro Royo, que eran ya de edad legal desde el año 1924, nunca han impugnado la manifestacion citada, como tampoco han dado paso alguno para averiguar si existian o no todavia bienes en la administracion. Esto constituye, naturalmente, una tacita admision de lo manifestado por Del Rosario en su escrito ya aludido.

"Esto, a un lado, y, por otro, Del Rosario murio el 25 de Noviembre de 1930, y se instituyo despues un expediente de administracion de los bienes dejado por el mismo. No hay informacion en el record del expediente de administracion de los bienes de Pedro Royo, ni se ha aportado prueba alguna en el juicio de la mocion bajo consideracion, que los herederos de dicho Pedro Royo han presentado reclamacion alguna en la administracion de los bienes de Pantaleon E. del Rosario por cualesquier obligaciones en que este haya incurrido o por la cantidad de P17,610.00. De modo que, el escrito de constancia y mocion de fecha 6 de noviembre de 1940 se presento muy tarde. * * *".

* * * * *

"* * * el articulo 6 de la Regla No. 87 del nuevoCodigo de Procedimiento Civil, como sigue:

"Cuando la obligacion del difunto fuere solidaria y de mancomun con otro deudor la reclamacion debera presentarse contra el difunto como si este fuera el unico deudor, sin perjuicio del derecho de la testamentaria o del intestado a recobrar del otro deudor la parte que a este le correspondiere en dicha obligacion."

"No se ha presentado reclamacion por la obligacion de que son responsables mancomunada y solidariamente Pantaleon E. del Rosario, Tomas Delgado y N. T. Deen, en el expediente del intestado del primero (Pantaleon E. del Rosario). Ello, dado el tiempo transcurrido, constituye impedimento para exigir cualesquier responsabilidad en que haya podido incurrir Del Rosario, en vida, en relacion con sus gestiones en la administracion de los bienes del finado Pedro Royo, por prescripcion o, tan siquiera, por 'estoppel by laches'. El articulo 1148 del Codigo Civil dice lo siguiente:

" 'El deudor solidario podra utilizar contra las reclamaciones del acreedor, todas las excepciones que se deriven de la naturaleza de la obligacion y las que le sean personales.'"

"y. por tanto, la prescripcion o 'estoppel by laches' puede ser invocado por Delgado y Deen."

On appeal to the Court of Appeals by movants, this Court endorsed the case to Us for the reason that all the issues raised in movants' brief involve questions of law.

The assignment of errors in appellants' brief are as follows:

FIRST ERROR

THE COURT A QUO ERRED IN DENYING THE MOVANTS-APPELLANTS' MOTION DATED NOVEMBER 6, 1940, AND, CONSEQUENTLY, IN NOT ORDERING THE EXECUTION OF THE ADMINISTRATOR'S BOND FOR THE SUM OF P17,610.00 WHEREBY THE BONDSMEN N. T. DEEN AND TOMAS DELGADO (OPPOSITORS-APPELLEES) ARE JOINTLY AND SOLIDARILY LIABLE.

SECOND ERROR

THE COURT A QUO ERRED IN HOLDING THAT THE PRINCIPLE OR DOCTRINE OF PRESCRIPTION AND ESTOPPEL BY LACHES ARE APPLICABLE IN THE PRESENT CASE.

THIRD ERROR

THE COURT A QUO ERRED IN GIVING FULL FAITH AND CREDIT TO THE PLEADING ENTITLED "MANIFESTACION" FILED BY THE FORMER ADMINISTRATOR PANTALEON E. DEL ROSARIO DATED SEPTEMBER 8, 1928. (APPEARING IN THE RECORD PAGE 1164—PIEZA SEXTA)

FOURTH ERROR

THE COURT A QUO ERRED IN ORDERING THE CLOSURE OF THE PRESENT CASE.

The last assignment of error attacks as error on the part of the trial judge that of having considered the "Manifestaciones" of the administrator dated September 8, 1928 as true and valid notwithstanding the fact that said manifestations were not sworn to as intended by the signer (the administrator).

The material statements contained in the "Manifestaciones" of the administrator are as follows:

"2.—Que a consecuencia de ciertos arreglos que los herederos del finado Pedro Royo habian hecho con ciertos acreedores suyos, los primeros han dispuesto de bastantes fondos que pertenecian a la administracion, por ser ya mayores de edad, y se han reservado solamente en poder del Administrador aquellas cantddades que se han creido necesarias para el pago de las deudas del difunto; pero en la computation de estos pagos no se han tenido en cuenta varios gastos y obligaciones de la administracion, que no se han podido considerar cuando dichos herederos hicieron uso de los fondos que se creian que iban a corresponderles, habiendo resultado, al verificarse la venta ordenada por el Juzgado el 7 de Enero de 1928 de las fincas del finado, que habia un deficit de unos P600.00 para la administracion que no se podrian cubrir, en razon de que todas las deudas ya habian sido pagadas, y los herederos tomaron para si todo el remanente de la administracion."

Appellants argue that the "Manifestaciones" is not to and is irregular and the parties or heirs were not furnished copies thereof. It should be borne in mind that an administrator, before assuming his duties as such, must furnish a bond wherein he undertakes to faithfully perform his duties. (Sec. 1, Rule 82). Having been previously sworn to faithfully perform his duties, no further swearing is necessary as to the reports that he submits in the course of administration.

It does not appear that any opposition to the above-quoted report of the administrator was ever filed by the heirs. Section 9 of Rule 86 provides that if examined on his accounts, the examination shall be under oath. No opposition having been filed examination under oath was not necessary. (Ibid) In the report it is stated (1) that the administrator was ordered to retain only P2,900 to respond for the claim of the Lyric Films; (2) that the heirs of the estate, being already of age, have disposed of a great portion of the funds of the estate, the administrator retaining only sums necessary to pay debts; (3) that the court had ordered the sale of properties of the estate on January 1928 because the debts had all been paid. From these statements, which do not appear controverted in the record of the proceedings, it can clearly be deduced that the P17,600, subject to the present suit had already been used up either to pay debts or taken by the heirs themselves who have already reached the age of majority.

The above statements do not appear to have ever been contradicted by the heirs of the estate, nor have objections thereto ever been filed by the heirs, according to the record of the proceedings, otherwise the judge below would have noted said objections, and the plaintiff would have indicated where and when the objections were made. Note that the report (Manifestaciones) is dated September 8, 1928, whereas the present action was filed on November 6, 1940, or twelve years and two months thereafter.

The complaint alleges that the deceased administrator never presented an account of his administration, especially after the sale of properties was authorized. We declare in reply that the "Manifestaciones" is virtually the report on the state of his accounts. The absence of any opposition thereto on the part of the heirs in the administration

proceedings shows that they acquiesced therein, and in all that is alleged therein. Any action to contest the correctness of said report or its contents should have been presented promptly by the heirs. Their continued silence—no action until now has been brought by the heirs of the estate—can only mean their conformity therein or acquiescence thereto. Such silence or acquiescence is a patent denial of the existence of any malfeasance on the part of the administrator Del Rosario in his administration and is competent proof that he did not retain the sum claimed but had actually used it in the payment of debts, or had delivered it to the heirs.

In its decision the court below found that notwithstanding the fact that the report of Del Rosario is dated September 8, 1928 and he died on November 25, 1930, and administration proceedings for the settlement of his estate were instituted, it does not appear that the heirs of Pedro Royo had ever presented a claim for any liability that he may have contracted as administrator, especially with respect to the amount of P17,610, subject of the present suit. No such claim was ever presented either against Del Rosario singly or jointly with his bondsmen Deen and Delgado. Under these circumstances, the court below held, the heirs of Pedro Royo or their administratrix are prevented by estoppel or laches from instituting the present action. We find these conclusions of fact and law to be well-founded.

For the foregoing considerations the judgment appealed from is hereby affirmed with costs against the movants-appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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