

**DOLORES B. GUICO, ET AL., PLAINTIFFS AND APPELLANTS VS.
PABLO G. BAUTISTA, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-14921. December 31, 1960*

Ponente: REYES, J.B.L., J.

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This is an action for liquidation and partition of the estate left by the spouses Mariano Bautista and Gertrudes Garcia, filed on October 20, 1956 by plaintiffs Dolores B. Guico, et al., against defendants Pablo G. Bautista, et al., legitimate grand-children and children, respectively, of, said deceased spouses.

The complaint alleged inter alia that Mariano G. Bautista died intestate on December 5, 1947 and that his properties had already been extrajudicially partitioned among his heirs; that Gertrudes Garcia likewise died intestate on August 31, 1956 leaving as her legitimate heirs plaintiffs and defendants; that said Gertrudes Garcia, during her lifetime, made several deeds of donation of some of her properties in favor of all the defendants, but did not donate any properties to her grandchildren, the plaintiffs, with the exception of Dolores B. Guico; that the deeds of donation aforesaid did not provide that the properties donated would not be subject to collation, so that the donees are legally bound to bring into the mass of the estate by way of collation the value of the properties received by them in order that the net hereditary estate may be divided equally among the heirs; and that the deceased Gertrudes Garcia left outstanding obligations to the Rehabilitation Finance Corporation and the G. A. Machineries, Inc.

On a motion to dismiss filed by defendants alleging, among other things, that the action was premature because it is admitted in the complaint that the deceased left certain debts, the lower court dismissed the complaint on that ground without prejudice and without costs. From the order of dismissal, plaintiffs appealed to this Court, urging that their action for partition and liquidation may be maintained, notwithstanding that there are pending obligations of the estate, subject to the taking of adequate measures either for the payment or the security of its creditors.

We are inclined to hold with the lower court that until all the debts of the estate in question are paid, appellants' action for partition and liquidation is premature.

There is no question that the law allows the partition of the estate of a deceased person by the heirs, extrajudicially or through an ordinary action for partition, without the filing of a special proceeding and the appointment of an administrator for the purpose of the settlement of said estate, but this they may do only "if the decedent left no debts and the heirs and legatees are all of age or the minors are represented by their judicial guardians" (sec. 1, Rule 74). The reason is that where the deceased dies without pending obligations, there is no necessity for the appointment of an administrator to administer the estate for them and to deprive the real owners of their possession to which they are immediately entitled (*Bondad vs. Bondad*, 34 Phil., 232; *Fule vs. Fule*, 46 Phil., 317; *Macalinao vs. Valdez, et al.*, 95 Phil., 318; 50 Off. Gaz., 3041; *Intestate Estate of Rufina Mercado vs. Magtibay, et al.*, 96 Phil., 383).

The situation is different, however, where the deceased left pending obligations. In such cases, such obligations must be first paid or compounded with the creditors¹ before the estate can be divided among the heirs; and unless they reach an amicable settlement as to how such obligations should be settled, the estate would inevitably be submitted to administration for the payment of such debts. As compared to ordinary partition, the regular estate proceedings offer the advantage of requiring all creditors of the deceased to disclose themselves and submit their respective claims within a comparatively short period (12 months under Rule 87, unless claims are contingent), otherwise, they are forever barred; while in ordinary judicial partitions the creditors' claims are only extinguished by the expiration of the period of extinctive prescription. An heir, therefore, may have an interest in making sure that the share allocated to him will be freed from invisible claims, so that creditors may not later appear and initiate the very estate proceedings sought to be avoided, and he may properly object to an action for partition on this ground. Unless, therefore, all the heirs are agreeable to assuming personal liability for all the decedent's obligations, those known as well as those undisclosed, regular estate proceedings can not be avoided.

It is no argument that under regular administration, the estate will incur greater expenses. As a matter of fact, plaintiffs-appellants include in their complaint a prayer for the appointment of an administrator during the pendency of this case, in view of the existence of debts of the estate and the lack of agreement among the heirs as to how said debts would be paid.

Appellants claim that there is nothing that would prevent the trial court from directing and ordering that the pending obligations of the estate be paid first, or that they should constitute as liens on the respective shares to be received by the heirs. In other words, appellants propose that the administration of the estate for the purpose of paying off its debts be accomplished right in this partition suit, with either the Court performing the duties of the administrator, or an administrator appointed to take care of such debts, as prayed for in their complaint. Obviously, an ordinary action for partition can not be converted into a proceeding for the settlement of the estate of a deceased, without compliance with the procedure outlined by Rules 79-90 of the Rules of Court, especially the provisions on publication and notice to creditors.

As we see it, appellants' major objective in filing this action for partition is to have an early determination of the question whether or not the donation inter vivos received by the defendants from the deceased are subject to collation. But there is no reason why this question can not be determined just as expeditiously in a special proceeding, because even before the known debts of the estate are settled and paid and pending the expiration of the period for the filing of other claims, the issue can, upon motion of the heirs, be set for hearing, tried, and definitely settled.

Wherefore, the order appealed from is affirmed, with costs against appellants.

Paras, C.J., Bengzon, Padilla, Labrador, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Order affirmed.

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