

**TESTATE ESTATE OF THE DECEASED CARLOS GURREA Y
MONASTERIO. MARCELO PIJUAN, SPECIAL
ADMINISTRATOR-APPELLEE, VS. MANUELA RUIZ VDA. DE GURREA,
MOVANT-APPELLANT.**

G.R. No. L-21917. November 29, 1966

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an appeal, taken by Manuela Ruiz Vda. de Gurrea, from two (2) orders of the Court of First Instance of Negros Occidental.

In 1932, appellant Manuela Ruiz - hereinafter referred to as Mrs. Gurrea - and Carlos Gurrea were married in Spain, where they lived together until 1945, when he abandoned her and came, with their son Teodoro, to the Philippines. Here he lived maritally with Rizalina Perez, by whom he had two (2) children. Having been informed by her son Teodoro, years later, that his father was residing in Pontevedra, Negros Occidental, Manuela came to the Philippines, in June, 1960; but, Carlos Gurrea refused to admit her to his residence in said municipality. Hence, she stayed with their son, Teodoro, in Bacolod City.

Presently, or on July 29, 1960, she instituted, against Carlos Gurrea, Civil Case No. 5820 of the Court of First Instance of Negros Occidental, for support and the annulment of some alleged donations of conjugal property, in favor of his common-law wife, Rizalina. In due course, said court issued an order granting Mrs. Gurrea a monthly alimony, pendente lite, of P2,000.00, which, on May 17, 1961, was reduced by the Court of Appeals to P1,000.00.

Carlos Gurrea died on March 7, 1962, leaving a document, purporting to be his last will and testament, in which he named Marcelo Pijuan as executor thereof and disinherited Mrs. Gurrea and their son, Teodoro. Soon thereafter, or on April 24, 1962, Pijuan instituted Special Proceedings No. 6582 of the Court of First Instance of Negros Occidental, for the probate of said will. Thereafter, Pijuan was, upon his ex parte motion, appointed special administrator of the estate, without bond. Oppositions to the probate of the will were filed by Mrs. Gurrea, her son, Teodoro, and one Pilar Gurrea, as an alleged illegitimate daughter of the deceased.

On July 16, 1962, Mrs. Gurrea filed in said Special Proceedings No. 6582, a motion alleging that the aforementioned alimony, pendente lite, of P1,000 a month, had been suspended upon the death of Carlos Gurrea, and praying that the Special Administrator be ordered to continue paying it pending the final determination of the case. This motion having been denied in an order dated February 2, 1963, Mrs. Gurrea moved for a reconsideration thereof. Moreover, on February 27, 1963, she moved for her appointment as administratrix of the estate of the deceased. In an order dated April 20, 1963, said motion for reconsideration was denied. The lower court, likewise, denied, for the time being, the motion of Mrs. Gurrea for her appointment as administratrix, in view of the provision of the will of the deceased designating another person as executor thereof. Hence this appeal from said orders of February 2 and April 20, 1963.

Mrs. Gurrea assails as erroneous the order of the lower court denying her petition for support, as well as that denying its reconsideration. Both were predicated upon the theory that, pursuant to Article 188 of our Civil Code (Article 1430 of the Spanish Civil Code), the support of a surviving spouse constitutes, not an encumbrance upon the estate of the decedent, but merely an advance from her share of said estate, and that Mrs. Gurrea is not entitled to such advance, there being neither allegation nor proof that she had contributed any paraphernal property to said estate or that the same includes properties forming part of the conjugal partnership between her and the deceased. In support of this view, His Honor, the trial Judge cited the opinion of Manresa to the effect that

"x x x Probado que ni en concepto de capital propio, ni como gananciales corresponde haber alguno al conyuge sobreviviente o a los herederos del premuerto, no cabe la concesion de alimentos, pues estos, en efecto, con arreglo el articulo 1430, son solo un anticipo del respectivo haber de cada partcipe. "

This has, however, been misconstrued by the lower court. The foregoing view of Manresa is predicated upon the premise that it has been proven that none of the properties under administration belongs to the surviving spouse either as paraphernal property or as part of the conjugal partnership. Upon the other hand, the lower court denied support to Mrs. Gurrea because of absence of proof as regards the status, nature or character of the property now under the custody of the Special Administrator. Precisely, however, on account of such lack of proof thereon, we are bound by law^[1] to assume that the estate of the deceased consists of property belonging to the conjugal partnership,^[2] one-half of which belongs presumptively to Mrs. Gurrea,^[3] side from such part of the share of the deceased in said partnership as may belong to her as one of his compulsory heirs,^[4] if his alleged will were not allowed to probate, or, even if probated, if the provision therein disinheriting her were nullified. Inasmuch as the aforementioned estate is worth P205,397.64, according to the inventory submitted by the special administrator, it is clear to us that the continuation of the monthly alimony, pendente lite, of P1,000, authorized in said Civil Case No. 5820, is fairly justified.

It is next urged by Mrs. Gurrea that the lower court erred in denying her petition for appointment as administratrix, for, as widow of the deceased, she claims a right of preference under Section 6 of Rule 78 of the Revised Rules of Court. In the language of this provision, said preference exists "if no executor is named in the will or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate." None of these conditions obtains, however, in the case at bar. The deceased Carlos Gurrea has left a document purporting to be his will, which, seemingly, is still pending probate. So, it cannot be said, as yet, that he has died intestate. Again, said document names Marcelo Pijuan as executor thereof, and it is not claimed that he is incompetent therefor. What is more, he has not only not refused the trust, but, has, also expressly accepted it, by applying for his appointment as executor, and, upon his appointment as special administrator, has assumed the duties thereof. It may not be amiss to note that the preference accorded by the aforementioned provision of the Rules of Court to the surviving spouse refers to the appointment of a regular administrator or administratrix, not to that of a special administrator, and that the order appointing the latter lies within the discretion of the probate court,^[5] and is not appealable.^[6]

WHEREFORE, the orders appealed from are hereby modified, in the sense that Manuela Ruiz Vda. de Gurrea shall receive from the estate of the deceased a monthly allowance of P1,000.00, by way of support, from March 7, 1962, and that, in all other respects, said orders are hereby affirmed, without special pronouncement as to costs.

IT IS SO ORDERED.

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

[1] Art. 160, Civil Code of the Philippines.

[2] *Viloria v. Aquino*, 28 Phil. 258; *Sison v. Ambalada*, 30 Phil. 118; *Coingco v. Flores*, 82 Phil. 284; *Harden v. Pefla*, 87 Phil. 620; *Cruz v. de la Paz*, 47 O. G. 3419; *Laperal v. Katigbak*, L-16991, March 31, 1964; *Alfonso v. Natividad*, 6 Phil. 240; *Mariaga v. Macabuntoc*, 17 Phil. 107; *Ahem v. Julian*, 39 Phil. 607; *Flores v. Flores*, 48 Phil. 288; *Guinguing v. Abuton*, 48 Phil. 144.

[3] Article 142 of the same code.

[4] Articles 887 and 892, Civil Code of the Philippines.

[5] *Roxas v. Pecson*, 46 Off. Gaz. 2058; *Junquera v. Borromeo*, 52 Off. Gaz. 7611; *De Gala v. Gonzales*, 53 Phil. 106; *Garcia v. Flores*, L-10392, June 28, 1957; *Hon. Alcasid et al. Samson, et al.*, 54 Off. Gaz. No. 15, p. 4479.

[6] *Samson v. Barrios*, 63 Phil. 198; *Borja v. Tan*, G. R. No. L-6476, Nov. 18, 1956; *Manila Electric Co. v. Artiaga and Green*, 50 Phil. 144; *Garcia v. Hon. Flores, et al.*, 54 Off. Gaz. No. 13, p. 4049, 4052; *Hon. Alcasid et al v. Samson, et al.*, 54 Off. Gaz. No. 15, p. 4479.

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