

**IN THE MATTER OF THE ESTATE OF J. H. ANKROM, DECEASED.
HEIRS OF RAFAEL GREGOIRE, CLAIMANTS AND APPELLANTS, VS.
ALBERT L. BAKER, ADMINISTRATOR AND APPELLEE.**

G.R. No. L-27486. November 18, 1927

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to set aside an order entered on March 5, 1926, by Hon. Pedro J. Rich, Judge of the Court of, First Instance of Davao, authorizing the administrator of J. H. Ankrom, deceased, to exclude a large tract of land, with improvements, from the inventory of assets of the decedent.

It appears that J. H. Ankrom, resident of the Province of Davao, died on September 18, 1922; and on September 25, thereafter, the appellee, A. L. Baker, qualified as his administrator. On December 13 of the same year the administrator filed his inventory of the assets pertaining to the estate of his decedent, in which inventory was included a tract of land covered by Torrens certificate of title and containing an area of more than 930 hectares. In this inventory, said tract of land, with the improvements thereon, was estimated at nearly P60,000. On September 24, 1924, the heirs of Rafael Gregoire, appellants herein, filed a claim against the estate of Ankrom for the sum of \$35,438.78, U. S. currency, or P70,877.56, based upon a judgment rendered in the Supreme Court of the Republic of Panama. This claim was allowed by the commissioners in the estate of Ankrom, and no appeal was at any time taken against the order so allowing it. It appears that the total recognized claims against the estate amounted originally to P76,645.13, but four of the creditors, having claims in the amount of P1,639.82, have been paid in full, leaving a balance owing by the estate of P75,005.31, the greater part of which is comprised of the claim of the appellants.

As the affairs of the estate stood upon the original inventory, there appeared to be sufficient assets to pay all claimants; but while these intestate proceedings were being conducted the administrator discovered that on April 22, 1920, or about a year and a half before his death, Ankrom had executed a mortgage on the property here in question in favor of the Philippine Trust Company to secure that company from liability on a note in the amount of P20,000, of the same date, upon which it had made itself contingently liable. Two days after this mortgage had been executed Ankrom appears to have made an assignment of all his interest in the mortgaged property to one J. G. Jung, of Cincinnati, Ohio, for a purported consideration of the sum of P1 and other good and valuable considerations. In view of these conveyances by his intestate, the administrator presented an amended inventory, omitting therefrom the tract of 930 hectares, with its improvements thereon, the same being the land covered by the transfers above mentioned. The court, however, having its attention called to the fact that the omission of this property from the inventory would leave the estate insolvent, made an order on October 7, 1925, directing the administrator to restore said item to his inventory. Nevertheless, upon a later motion of the administrator accompanied by authenticated copies of the documents of transfer, the court made a new order, dated March 5, 1926, approving of the omission by the administrator of said property from the inventory; and it is from this order that the present appeal is here being prosecuted.

From the foregoing statement it will be collected that the appellants have an undeniable credit in a large amount against the estate of the decedent, and that upon the showing of the last approved inventory the estate is insolvent. In view of these facts the appellants, assuming apparently that the assignment to Jung by Ankrom of the equity of redemption of the latter in the tract of land above mentioned was effected in fraud of creditors, are desirous of reaching and subjecting this interest to the payment of the appellants' claim. The appellants also insist that it was the duty of the administrator to retain the possession of this tract of land and thereby place upon Jung, or persons claiming under him, the burden of instituting any action that may be necessary to maintain the rights of the transferee under said assignment. The administrator, on the other hand, supposes the assignment to be valid and apparently does not desire to enter into a contest over the question of its validity with the person or persons claiming under it.

The precise remedy open to the appellants in the predicament above described is clearly pointed out in section 713 of our Code of Civil Procedure, which reads as follows:

"When there is a deficiency of assets in the hands of an executor or administrator to pay debts and expenses, and when the deceased person made in his life-time such fraudulent conveyance of such real or personal estate or of a right or interest therein, as is stated in the preceding section, any creditor of the estate may, by license of the court, if the executor or administrator has not commenced such action, commence and prosecute to final judgment, in the name of the executor or administrator, an action for the recovery of the same, and may recover for the benefit of the creditors, such real or personal estate, or interest therein so conveyed. But such action shall not be commenced until the creditor files in court a bond with sufficient surety, to be approved by the judge, conditioned to indemnify the executor or administrator against the costs of such action. Such creditor shall have a lien upon the judgment by him so recovered for the costs incurred and such other expenses as the court deems equitable."

The remedy of the appellants is, therefore, to indemnify the administrator against costs and, by leave of court, to institute an action in the name of the administrator to set aside the assignment or other conveyance believed to have been made in fraud of creditors.

For the appellants it is contended that, inasmuch as no appeal was taken from the order of October 7, 1925, directing the administrator to include the land in question in the inventory, said order became final, with the result that the appealed order of March 5, 1926, authorizing the exclusion of said property from the inventory, should be considered beyond the competence of the court. This contention is untenable. Orders made by a court with reference to the inclusion of items of property in the inventory or the exclusion of items therefrom are manifestly of a purely discretionary, provisional, and interlocutory nature and are subject to modification or change at any time during the course of the administration proceedings. Such orders are not conclusive of the rights of any one, and the order in question not final in the sense necessary to make it appealable. In fact we note that the appealed order was expressly made without prejudice to the rights of the creditors to proceed in the manner indicated in the provision above quoted from the Code of Civil Procedure.

The order appealed from not being of an appealable nature, it results that this appeal must be dismissed, and it is so ordered, with costs against the appellants.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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