

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. OLIMPIO LIMLINGAN, AS SOLE HEIR OF THE DECEASED CECILIA BAUTISTA LIMLINGAN, AND AS ADMINISTRATOR AND/OR EXECUTOR OF THE ESTATE ...

G.R. No. L-19849. May 25, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for certiorari to review and set aside two orders of the Court of First Instance of Manila in Special Proceedings No. 43516 entitled "Testate Estate of Cecilia Bautista Limlingan", Hon. Antonio Cañizares, presiding. The first order is dated February 1, 1962 and declares the testate proceedings closed "it appearing that the estate and inheritance taxes have already been paid". The second order, dated April 26, 1962, denies a motion to reconsider the order for the closing of the proceeding, on the ground that an heir is still liable for taxes even after distribution.

On March 7, 1962, about a month after the final; order declaring the proceedings closed, the Commissioner of Internal Revenue, petitioner herein, filed a "Manifestation and Motion" in the proceeding to the effect that the amounts of estate and inheritance taxes appearing in the receipts to have been paid represent only a portion of the taxes due, that the taxes due are still being verified and suggested that the proper amounts of the estate and inheritance taxes be first determined, assessed and collected before the proceeding can be closed. This manifestation and motion was denied in the second order of the court already alluded to, which order denied there consideration of the closing of the case.

On May 29, 1962 the Solicitor General, in representation of the Collector of Internal Revenue, moved to reconsider the order of closing, citing the provisions of Section 103 of the National Internal Revenue Code and Rule 91, Sec. 1 of the Rules of Court. These provisions are as follows:-

"SEC. 103. Payment before delivery by executor or administrator. - No judge shall authorize the executor or judicial administrator to deliver a distributive share to any party interested in the estate unless it shall appear that the estate tax has been paid." (National Internal Revenue Code).

"SEC. 1. When order for distribution of residue made. Testimony taken on controversy preserved. - "When the debts, funeral charges and expenses of administration, the allowances to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, a net such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing by the judge, under oath.

"No distribution shall be allowed until the payment of the obligations above-mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs." (Rule 91, Rules of Court).

In respondents answer it is alleged that the order of December 29, 1961 had the effect of closing the proceedings; that when the motions for reconsideration were presented on March 6 and 7, the estate had already been distributed and so the court no longer had Jurisdiction of the case.

We find no merit in these objections to the petition. The order closing the proceedings is dated February 1, 1962 and the motion to reconsider it was filed on March 7, 1962. Considering that the Commissioner of Internal Revenue had no knowledge of the proceedings except the payment of the taxes and had had no time to check the correctness of the amounts paid, We should consider the motion of the Commissioner of Internal Revenue as a motion for reconsideration under Rule 38 of the Rules of Court and, therefore, presentable within 60 days of the order sought to be suspended.

In view of the provisions of Rule 91 Sec. 1, of the Rules of Court and Sec. 103 of the National Internal Revenue Code,, We hold, that the court erred and committed an abuse of discretion in denying the motion for reconsideration of its order closing the proceedings.

Wherefore, the orders sought to "be reviewed are hereby set aside, and the court below is directed to proceed as herein indicated.

So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon and Makalintal. JJ., concur.

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