

IN THE TESTATE ESTATE OF E. M. BACHRACH, DECEASED. MARY MCDONALD BACHRACH, PETITIONER AND APPELLEE, VS. SOPHIE M. SEIFERT, ELISA ELIANOFF, AND THE HEIRS OF THE DECEASED GINDA M....

G.R. No. L-1592. September 20, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In testate proceedings, civil case No. 51955 of the Court of First Instance of Manila, the will of E. M. Bachrach, who died on September 28, 1937, provided for the distribution of the considerable property which he had left. The provisions of the will which are important in this case are contained in the sixth and eighth paragraphs which read as follows:

"Sixth: It is my will and do herewith bequeath and devise to my beloved wife Mary McDonald Bachrach for life all the fruits and usufruct of the remainder of all my estate after payment of the legacies, bequests and gifts provided for above; and she may enjoy such usufruct and use or spend such fruits as she may in any manner wish."

"Eighth: It is my wish that upon the death of my beloved wife, Mary McDonald Bachrach, all my estate, personal, real and otherwise, and all the fruits and usufruct thereof which during her life pertained to her, shall be divided as follows:

'One-half thereof shall be given to such charitable hospitals in the Philippines as she may designate; in case she fails to designate, then said sum shall be given to the Chief Executive of these Islands who shall distribute it, share and share alike to all charitable hospitals in the Philippines excluding those belonging to the governments of the Philippines or of the United States;

'One-half thereof shall be divided, share and share alike by and between my legal heirs, to the exclusion of my brothers.' "

The widow Mary McDonald Bachrach as administratrix and executrix had been administering the property left by her deceased husband and enjoying the usufruct thereof. The other heirs Sophie M. Seifert, Ginda M. Skundina, Elisa Elianoff and Annie Bachrach Levine on September 14, 1940, filed a petition, agreed to by usufructuary Mary McDonald Bachrach, and the Solicitor General representing the Government of the Philippines, asking that the administratrix "be authorized to pay your petitioners from and after July 1, 1940, and until they receive their share of the estate left by the deceased E. M. Bachrach upon the death of his widow, a monthly allowance of P500, P250, P250, and P250, respectively, and the additional sum of P3,000 to the heir Sophie M. Seifert, who is in poor health, the said allowances to be deducted from your petitioners' share of the estate of the deceased E. M. Bachrach upon the death of the widow." Acting upon the said petition, the Court of First Instance of Manila issued an order dated October 2, 1940 granting the petition in the following words:

"Petition granted; and the administratrix and usufructuary Mary McDonald Bachrach is hereby authorized and

instructed forthwith to pay to the said Sophie M. Seifert, Ginda M. Skundina, Elisa Elianoff and Annie Bachrach Levine a monthly allowance of Five Hundred (P500) Pesos; Two Hundred Fifty (P250) Pesos; Two Hundred Fifty (P250) Pesos, and Two Hundred Fifty (P250) Pesos, respectively, beginning July 1, 1940, and until the said heirs receive their share of the estate left by the deceased E. M. Bachrach upon the death of his widow, and the additional sum of Three Thousand (P3,000) Pesos to the heir Sophie M. Seifert."

From July 1, 1940 to December 31, 1941, the administratrix made the payments as ordered, having paid the total amount of P40,250. Payments during the Japanese occupation which would have amounted to P32,500, was suspended. Then payments were resumed from August, 1945 to January, 1947. Thereafter, the executrix declined to make further payments. The heirs petitioned the lower court for a writ of execution, ordering the administratrix to pay the allowances for February, 1947 and those in arrears for the period comprising from January 1, 1942 to July 31, 1945. This petition was denied and the heirs filed a petition for mandamus in the Supreme Court under G. R. No. L-1379.[1] The petition for mandamus was granted by this Court and the lower court was ordered to proceed in the execution of its order of October 2, 1940 and to issue the proper writ.

In the meantime, the administratrix Mary McDonald Bachrach, filed in the same case No. 51955 in the Court of First Instance of Manila a petition on February 19, 1947, recommending the liquidation of the assets of the estate of her deceased husband destined for charity because due to the havoc and miseries brought about by the last war, the charitable institutions to be benefited badly needed the property bequeathed to them under the will.

In another petition by the same administratrix Mary McDonald filed on February 18, 1947, she alleged that under the order of the court of October 2, 1940, she had already paid to the heirs P40,250; that besides that amount the heirs were demanding the amount of P32,500 representing the allowances that had accrued during the Japanese occupation while the estate was financially and economically prostrate; that the allowances paid to said heirs were taken from the fruits and income of the estate which belong exclusively to her as a usufructuary, that is to say, that the allowances paid to the heirs were advances from her personal funds; and that unless the heirs gave sufficient security for the protection of the administratrix, the 1/2 of the property corresponding to the heirs which consists mainly of shares of stock, when sold later, may not be sufficient to reimburse her estate after her death for the allowances made or given to the heirs from her personal funds. On the basis of said allegations, the administratrix prayed the court that she be relieved from the obligation to pay the heirs the monthly allowances ordered by the court in its order of October 2, 1940, and in the alternative, in the event that the court ordered her to continue the payments of said allowances, that she be authorized to sell as much of the assets of the 1/2 destined for the instituted heirs as may be necessary to enable her to continue the payment of said allowances.

Evidently, acting upon these two petitions, the lower court issued its order dated February 27, 1947, expressing its opinion that pending the determination of the proceedings, it would be advisable to sell the property destined for charity and also those of the instituted heirs. It authorized the administratrix to sell at the best price obtainable in the market, not only those properties destined for charities but also the one-half adjudicated to the instituted heirs, the proceeds thereof, to be distributed accordingly later on. Acting upon a motion for reconsideration filed on behalf of the heirs, the lower court denied said motion, justifying its order sought to be reconsidered with the allegation that the case had been pending for several years; that the sale of said properties included in the testate proceedings and distribution of the proceeds of the sale to the beneficiaries was one way of winding up said proceedings and the beneficiaries would be benefited in that they would receive their shares earlier. The heirs appealed from that order of February 27, 1947, and the order denying their motion for reconsideration. That appeal under G. R. No. L-1592 of this Court, is now the case under consideration.

Our first impression was that the appellants had no valid reason for objecting to the sale of the 1/2 of the estate adjudicated to them because in that way they would receive their shares earlier; furthermore, that the

administratrix was warranted in asking for the sale of said 1/2 of the property adjudicated to the heirs or as much thereof as was sufficient to reimburse for the allowances being paid by her to the heirs from her personal funds or from the fruits of the said 1/2 which, as a usufructuary, belonged to her. Upon a closer scrutiny of the record however, not only of this case (G. R. No. L-1592) but also of G. R. No. L-1379 of which we take judicial notice, for which reason, said last case was cited and referred to for purposes of background so as to give a clear understanding of the facts in this case, we find that the allowances being paid to the heirs are really not paid from the personal funds of the administratrix but from the cash corresponding to the 1/2 of the estate adjudicated to the heirs, which cash, is deposited in the bank. According to the decision of the Supreme Court in the mandamus case (G. R. No. L-1379) promulgated on December 19, 1947, the administratrix had in her possession the sum of P351,116.91 which has already been adjudicated to and belongs, although pro indiviso, to the heirs of the deceased E. M. Bachrach and that furthermore, the monthly allowances being paid to the heirs or due them should be paid from this sum and not from the personal funds of the administratrix Mary McDonald Bachrach. Furthermore, the very order of the lower court of October 2, 1940, authorizing the administratrix to pay to the heirs the monthly allowances already mentioned, stipulated in its fourth paragraph that said allowances should be taken from the properties to be turned over to the heirs of the deceased E. M. Bachrach and shall be deducted from the share of said heirs upon the death of the widow.

In the opinion of this Court, the cash in the possession of the administratrix corresponding to the 1/2 of the estate adjudicated to the heirs is sufficient for the monthly allowances being paid to the heirs and that there is no necessity for the sale of the 1/2 of the estate corresponding to them. The main objection of the heirs to the sale of 1/2 of the estate adjudicated to them, which 1/2 besides the cash already mentioned, consists mostly of shares of stock, is that said shares if sold now may not command a good price and that furthermore said heirs prefer to keep said shares intact as long as there is no real necessity for their sale. Of course, once said cash in the hands of the administratrix, corresponding to the heirs is exhausted because of the payment of the allowances made to the heirs, some other arrangements might be necessary. The administratrix would then have a right and reason to refuse the payment of said allowances from her said personal funds or from the fruits of the estate, which as a usufructuary, belong to her during her lifetime. But, until that point is reached, we see no valid reason for ordering the sale of the 1/2 of the estate belonging to the heirs over their objection.

In view of the foregoing, the order appealed from, insofar as it directs the sale of the one-half share of the estate destined and adjudicated to the instituted heirs, is hereby reversed. With costs.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Tuason, Reyes, and Torres, JJ., concur.

PADILLA, J.:

I concur in the result.

[1] 45 Off. Gaz., 2505.

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