

IN THE MATTER OF THE INTESTATE ESTATE OF PAZ E. SIGUION TORRES, DECEASED, ALBERTO S. TORRES, PETITIONER AND APPELLANT VS. CONCHITA TORRES AND ANGEL S. TORRES, OPPOSITORS AND APP...

G.R. No. L-19064. January 31, 1964

Ponente: BARRERA, J.

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BARRERA, J.:

In a petition filed in the Court of First Instance of Rizal (Pasay branch) on January 4, 1961, Alberto S. Torres, claiming to be one of the four legitimate children of Paz E. Siguion Torres who died intestate on December 18, 1959, prayed for the issuance in his favor of letters of administration in connection with the properties left by the decedent, with an aggregate value of about P300,000.00. It was also alleged therein that petitioner was unaware of any existing debt or obligation contracted by the deceased or by her estate, from any of the heirs or from third persons.

This petition was opposed by Conchita Torres, one of the heirs, on the ground that the appointment of an administrator is unnecessary in view of the fact that on January 27, 1960, the heirs of the deceased (including petitioner) had already entered into an extrajudicial partition and settlement of the estate, pursuant to Section 1 of Rule 74 of the Rules of Court. This was answered by petitioner who, while admitting that such extrajudicial partition was signed by the heirs, contended that attempts at the actual designation of their respective shares had failed thus needing the court's intervention. It was also claimed that some properties of considerable value were not included in said extrajudicial partition. In a supplemental answer to the opposition, subsequently filed, petitioner likewise alleged that the estate has an existing debt of P50,000.00 from third persons, a fact which he claimed was not incorporated in the petition, through oversight. Petitioner, however, offered to amend the petition before presentation of evidence, with leave of court. On July 21, 1961, the court, finding that an extrajudicial settlement had already been entered into by the heirs, dismissed the petition. Hence, the institution of the present appeal.

Petitioner-appellant does not controvert the execution of an extrajudicial deed of partition of the estate, which, according to appellee, contains the following provisions:

"1. That they (Alberto, Angel, Eduardo and Conchita, all surnamed Torres) are the only legitimate children who survive the deceased Paz Siguion Vda. de Torres;

* * * * *

"3. That the said decedent died without leaving any will and her only surviving heirs are the aforementioned parties who are her legitimate children;

"4. That the deceased left no debts;

* * * * *

"6. That pursuant to Section 1, Rule 74 of the Rules of Court and in view of the difficulty of making a physical division of the above properties, the parties have agreed to settle the aforementioned estate by continuing the co-ownership on all the above properties in the following proportion:

Alberto Torres— $\frac{1}{4}$ undivided interest

Ansel Torres— $\frac{1}{4}$ undivided interest

Eduardo Torres— $\frac{1}{4}$ undivided interest

Conchita Torres— $\frac{1}{4}$ undivided interest" (*Italic supplied.*)

It appears from the pleadings filed herein that the petition to place the estate under administration was predicated mainly on the alleged inability of the heirs to agree on a physical division of the properties. The alleged existence of an indebtedness and non-inclusion in the list incorporated in the deed of extrajudicial partition, of certain properties that form part of the estate, seemed to be merely an afterthought as the reference to them was made only in the answer to the opposition and motion for dismissal of the petition, and is not made under oath. There is also no allegation as to the particulars of the debt and the omitted properties sufficient to identify them. In the circumstances, we agree with the lower court that a special proceeding for the settlement of the estate of the deceased is not here necessary.

Section 1, Rule 74 of the Rules of Court, provides:

"SECTION 1. Extra-judicial settlement by agreement between heirs.—If the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians, the parties may without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the Register of Deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir or one legatee, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the Register of Deeds. It shall be presumed that the decedent left no debt if no creditor files a petition for letters of administration within two years after the death of the decedent."

Thus, where the decedent left no debts and heirs or legatees are all of age, as in this case, there is no necessity for the institution of special proceedings and the appointment of an administrator for the settlement of the estate, because the same can be effected either extrajudicially or through an ordinary action for partition. (*Guico, et al. vs. Bautista, et al.*, (110 Phil., 584). If there is an actual necessity for court intervention, as contended by appellant, in view of the heirs' failure to reach an agreement as to how the estate would be divided physically, the latter, under the aforequoted Rule, have still the remedy of an ordinary action for partitions

This is not to overlook the allegation that the estate has an outstanding obligation of P50,000.00. It is to be noted, however, that appellant, as heretofore observed, did not specify from whom and in what manner the said debt was contracted. Indeed, the bare allegation that, "the estate has an existing debt of P50,000.00 from third persons" cannot be considered a concise statement to constitute a cause of action. It must be for this reason that the lower court, notwithstanding the existence of such averment in appellant's supplemental answer to the opposition, dismissed the petition filed by said appellant.

Nor does the unverified statement that there are other properties, not included in the deed of extrajudicial partition in the possession of one of the heirs, justify the institution of an administration proceeding because the same questions that may arise as to them, viz. the title thereto, and their partition, if proven to belong to the intestate, can be properly and expeditiously litigated in an ordinary action of partition.

Wherefore, finding no error in the order appealed from, the same is hereby affirmed, with cost against the appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala and

Makalintal, JJ., concur.

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