

INTESTATE ESTATE OF THE LATE AGUSTIN MONTILLA, SR.; PEDRO L. LITONJUA, MOVANT AND APPELLANT, VS. AGUSTIN B. MONTILLA, JR., ADMINISTRATOR AND APPELLEE; CLAUDIO MONTILLA, OPPOSITO...*G.R. No. L-4170. January 31, 1952*

Ponente: PARAS, C.J.

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In Civil Case No. 868 of the Court of First Instance of Negros Occidental, Pedro L. Litonjua obtained a judgment against Claudio Montilla for the payment of the sum of P4,000 with legal interest, plus costs amounting to P39.00. In due time, a writ of execution was issued, but no property of Claudio Montilla was found which could be levied upon.

On June 12, 1950, Pedro L. Litonjua filed in Special Proceeding No. 532 of the Court of First Instance of Negros Occidental, Intestate Estate of Agustin Montilla, Sr., deceased, a motion praying that the interest, property and participation of Claudio Montilla, one of the heirs of Agustin Montilla, Sr., in the latter's intestate estate be sold and out of the proceeds the judgment debt of Claudio Montilla in favor of Pedro L. Litonjua be paid. This motion was opposed by Claudio Montilla and by Agustin Montilla, Jr., administrator of the intestate estate.

On August 7, 1950, the Court of First Instance of Negros Occidental issued an order denying the motion. From this order Pedro L. Litonjua appealed. In the case of *Ortiga Brothers & Co. vs. Enage and Yap Tico*, 18 Phil. 345, it was held that the creditor of the heirs of a deceased person is entitled to collect his claim out of the property which pertains by inheritance to said heirs, only after all the debts of the testate or intestate succession have been paid and when the net assets that are divisible among the heirs are known, because the debts of the deceased must first be paid before his heirs can inherit. It was therein also held that a person who is not a creditor of a deceased, testate or intestate, has no right to intervene either in the proceedings brought in connection with the estate or in the settlement of the succession. We quote hereunder pertinent passages of the decision:

"A person who, having a claim against a deceased person which should be considered by the committee does not, after publication of the required notice, exhibit his claim to the committee as provided by law, shall be barred from recovering such demand or from pleading the same as an offset to any action, under the provisions of section 695 of the Code of Civil Procedure, excepting the case referred to in section 701 of the same; with still less reason can one who is not a creditor of the said deceased intervene in the proceedings relative to the latter's intestate estate and to the settlement of his succession (article 1034 of the Civil Code), because such creditor has no right or interest that call for the protection of the law and the courts, except in any remainder which may be found due the heir.

"It is true that Yap Tico, as the creditor of the widow and heirs of the deceased Ildefonso, is entitled to collect what is due him out of the property left by the latter and which was inherited by such widow and heirs, but it is no less true that only after all the debts of the said estate have been paid can it be known what net remainder will be left for division among the heirs, because the debts of the deceased must be paid before his heirs can

inherit. (Arts. 659 et seq. 1026, 1027, and 1032 of the Civil Code, and secs. 734 et seq., Code of Civil Procedure.)

"An execution can, not legally be levied upon the property of an intestate succession to pay the debts of the widow and heirs of the deceased, until the credits held against the latter at the time of his death shall have been paid, and only after the debts of the estate have been paid can the remaining property that pertains to the said debtor heirs be attached (Art. 1034, *aforecited*, Civil Code.)" (pp. 350-51)

The foregoing pronouncements are perfectly applicable to the case at bar, because the appellant is not a creditor of the deceased Agustin Montilla, Sr. and he seeks to collect his claim out of the inheritance of Claudio Montilla, an heir, before the net assets of the intestate estate have been determined.

Wherefore, the appealed order is affirmed, and it is so ordered with costs against the appellant.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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