

RAMON MONTSERRAT, PETITIONER, VS. HON. FIDEL IBANEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF LAGUNA, CONCEPCION MONTSERRAT DE MACEDA, ISABEL MONTSERRAT, LOURDES MONTSERRAT DE AR...

G.R. No. L-3367. May 24, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

In June, 1948, Vicenta Salamanca died intestate possessing assets allegedly valued at P30,000.00, and leaving, as heirs, one son and four daughters.

On March 2, 1949, Ramon Montserrat, the son, filed in the court of first instance of Laguna a petition for his appointment as administrator of the properties of his deceased mother. His four sisters (the principal respondents) made opposition averring that the descendants were all of age; that the debts and obligations of the estate had already been paid; that they did not desire to be burdened with an administration proceeding; and that the petitioner's remedy was to sue for partition under Rule 74 of the Rules of Court.

After hearing the parties, the respondent Judge Fidel Ibañez on August 22, 1949, issued an order stating that in accordance with *Fule v. Fule*, 46 Phil., 317, the proper remedy should be an action for partition, inasmuch as all the heirs were of age and there were no debts of the estate, and requiring the Montserrat sisters to institute partition proceedings. He decreed that, meanwhile, the litigation begun by Ramon, will be held in abeyance.

In compliance with the court's directive, the respondents filed the corresponding action for partition (Civil Case No. 9300) within one week.

One month afterwards Ramon Montserrat commenced this special civil action alleging that the respondent judge had committed grave abuse of discretion in issuing his order of August 22, 1949. He prayed for judgment avoiding said order and requiring the respondent judicial officer to proceed with the hearing of his petition for administration.

We believe that *Fule v. Fule*, *supra*, was properly applied.

"When a person dies without leaving pending obligations to be paid, his heirs, whether of age or not, are not bound to submit the property to a judicial administration, which is always long and costly, or to apply for the appointment of an administrator by the court. And it has uniformly been held, in such case, that judicial administration and the appointment of an administrator are superfluous and unnecessary proceedings". (*Rule 74, Rules of Court, Vol. II, p. 269, citing cases Utulo v. Pasion Vda. de Garcia, 39 Off. Gaz. (Mo. 2), p. 159; Ilustre v. Alaras Frondosa, 17 Phil., 321; Malahacan v. Ignacio, 19 Phil., 434; Bondad v. Bondad, 34 Phil., 232; Baldemor v. Malangyaon, 34 Phil., 367; Fule v. Fule, 46 Phil., 317.*)

Petitioner, however, asserts that it is not known whether there are any debts, because these may be shown only in the administration proceedings. Judge Ibañez found, obviously from the affidavit of respondents, that there were

no debts. Now, as petitioner makes no contrary assertion under oath, error in the matter may not certainly be declared in this short-cut attempt at practical revision. Anyway, as pointed out by respondents, the creditors are protected even if, without benefit of administration, the estate is distributed in an action for partition.

Again the petitioner argues that "only when the heirs do not have any dispute as to the bulk of the hereditary estate but only in the manner of partition does section 1, Rule 74 of the Rules of Court apply", and that in this case "the parties are at loggerheads as to the corpus of the hereditary estate because" respondents "succeeded in sequestering some assets of the intestate". The argument is unconvincing, because, as the respondent judge has indicated, questions as to what property belonged to the deceased (and "therefore to the heirs) may properly be ventilated in the partition proceedings, especially where such property is in the hands of one heir.

On the other hand, it is not easy to perceive in what manner the substantial rights of petitioner have been impaired by the order complained of. He was not required to incur any extra expense in the form of court fees, because it was the adverse party who had to initiate another action. The questions he seeks to raise in the administration proceedings may equally be decided in the partition suit. He may not argue validly that in the first he could be appointed administrator, because then he would be assuming too much; the court has discretion and could, or would probably, appoint one of herein respondents as administratrix, because they all united against his appointment, and recommended the selection of one of them, Concepcion Montserrat. We make this estimate of the situation bearing in mind that respondents constitute four fifth (4/5) of the heirs, and in ordinary circumstances it is usual to permit the majority interests to select the administrator.

As to the petitioner's other contention that the administration proceedings may not be left in abeyance, it is enough to state that it will undoubtedly be dismissed soon, inasmuch as the partition suit has already been instituted, because the court has clearly intimated in its order that the administration proceeding will be suspended pending the presentation of the other suit.

Therefore, being of the opinion that petitioner has no legal nor equitable ground for relief, we hereby deny the petition, with costs against him. So ordered.

Ozaeta, Actg. C.J., Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

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