

FELIX MARTIREZ & FAUSTINO MARTIREZ (FAUSTINO MARTIREZ SUBSTITUTED BY HIS WIDOW MARIA MARTIREZ, & CHILDREN, NAPOLEON, INDEPENDENCIA, AUGUSTO, PROVIDAD, GRACIA, AURORA, GLORIA & E...

G.R. No. L-21534. April 29, 1971

Ponente: DIZON, J.

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DIZON, J.:

On July 18, 1958, Cristina Martirez, wife of Moises Iturralde, died intestate in the Province of Iloilo, Philippines, leaving properties acquired during the marriage, and survived by her spouse, her brothers and several nephews, children of her pre-deceased brother Anastacio.

No legal proceedings for the administration and settlement of her estate were instituted until about five years later.

On November 16, 1960, the herein appellants filed an action in the Court of First Instance of Iloilo against the widower, Moises Iturralde, for the liquidation of the conjugal partnership and for the partition of the estate left by his deceased wife. The defendant filed his answer to the complaint in due time with admissions and avoidance of the material averments thereof.

On September 6, 1961, the defendant filed a motion to dismiss the complaint upon the ground that the estate of the deceased Cristina Martirez was not ready for partition because it still had at that time an outstanding obligation in his favor in the amount of P22,000.00, with interests thereon. After due hearing on said motion, the trial court, in its order of October 31, 1961, dismissed the case without pronouncement as to costs, at the same time suggesting "to the parties to institute intestate proceedings." (Record on Appeal, p. 85). Hence, the present appeal interposed by plaintiffs who submitted a brief with these three assignments of error:

"I

THE COURT A QUO ERRED IN NOT ORDERING THE DEFENDANT WIDOWER ITURRALDE TO RENDER AN ACCOUNTING ON THE FRUITS OF THE ESTATE HE HOLDS IN TRUST FOR THE BENEFIT OF ALL THE HEIRS SINCE THE DEATH OF HIS WIFE.

II

THE COURT A QUO ERRED IN NOT ORDERING THE DEFENDANT WIDOWER ITURRALDE TO REDRESS THE BREACHES OF TRUST WHICH HE HAS COMMITTED SINCE THE DEATH OF HIS WIFE.

III

THE COURT A QUO ERRED IN DISMISSING THIS CASE ON THE GROUND THAT THERE IS AN INDEBTEDNESS OF P22,000.00 AGAINST THE ESTATE."

This case was originally appealed to the Court of Appeals by whose resolution of May 24, 1963 it was forwarded to this court, the questions involved being purely of law.

On December 11, 1963, counsel for Moises Iturralde informed this Court that the latter had died on the 13th of said month, giving the further information that the heirs of the deceased were "preparing to present an intestate proceeding for the spouses Moises Iturralde and Cristina Martirez, deceased." In a subsequent communication addressed to the clerk of this Court dated February 14, 1964, the same counsel for appellee informed this Court that intestate proceedings for the settlement of the estate of the deceased spouses Moises Iturralde and Cristina Martirez had already been commenced in the Court of First Instance of Iloilo and were docketed as Special Proceeding No. 1746, and that Ciceron Martirez had been appointed by said court as special administrator. A certificate issued by the Clerk of the Court of First Instance of Iloilo was attached to counsel's communication to support the statement that letters of administration had been issued to Ciceron.

In the light of the foregoing, it is the opinion of this Court that the present appeal has become moot and academic because the partition of the estate of the deceased spouses Moises Iturralde and Cristina Martirez should be made in the intestate proceedings already referred to, in the same manner that the other issues raised in appellants' brief may be determined therein as mere incidents of the settlement of the estate of said spouses.

PREMISES CONSIDERED, the present appeal is dismissed without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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