

IN THE MATTER OF THE TESTATE ESTATE OF THE LATE AGUSTIN DEL VALLE. ANTONIA VENTURA, PETITIONER AND APPELLANT, VS. MAURA VENTURA, MILAGROS P. VENTURA, DEOGRACIAS P. VENTURA, AND ...

G.R. No. L-11609. September 24, 1959

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of the Court of First Instance of Tarlac, granting appellees' motion to dismiss appellant's petition for probate of the will of her deceased husband Agustin del Valle, on the ground that it amounted to an attempt to reopen Special Proceedings, No. 912, which had been finally and definitely closed, terminated and archived.

DECISION

This is an appeal from an order of the Court of first Instance of Tarlac, granting a motion to dismiss and dismissing the petition herein.

Petitioner Antonia Ventura is the widow of Agustine del Valle, who died in Paniqui, Tarlac, on May 19, 1955. Soon thereafter, or on June 7 of the same year, she instituted Special Proceedings No. 912 if said court, with a petition for the probate of a document attached thereto, as the alleged last will and testament of the deceased. On July 15, 1955, after the issuance of the corresponding notice of hearing, the publication of said notice and the service of copies thereof upon all parties concerned, petitioner filed a motion stating that the heirs instituted in the will had agreed to partition, among themselves, the estate of the deceased , in accordance with the provisions of said instrument, and praying that an order be issued "terminating and closing" the aforementioned proceedings. On the same date, the court issued an order declaring that said motion was well taken and would, accordingly, be granted, upon submission of a sighed copy of the corresponding deed of extra-judicial partition, for which petitioner was given two (2) days. Petitioner having seasonably complied with this requirement, said Special Proceedings No. 912 was "terminated, closed and archived" by an order dated June 19, 1955.

However, on May 9, 1956, said Antonia Ventura filed another partition for the probate of the probate of the aforementioned last will and testament of her deceased husband, Agustin del Valle, which petition was docketed as Special Proceedings No. 970 of the same court. On June 22, 1956, the date set for the hearing of this petition, appellees Maura, Milagros, Deogracias and Jacinta, all surnamed Ventura, moved for the dismissal of the case upon the ground that it amounted to an attempt to reopen Special Proceedings No. 912, which had already been finally and definitely closed, terminated and archived; that the present proceedings is unnecessary and superfluous; and that the provisions of the will in question had " already been carried out" in the aforementioned deed of extra-judicial partition. The lower court granted this motion upon the theory that it " no longer" had "jurisdiction to entertain" the case, "because to do so would be for the court to reopen Special Proceedings No.

912", notwithstanding the fact that it had been "definitely declared terminated, closed and archived" by an order which has already "become final and executory", no appeal having been taken therefrom. Hence, the present appeal taken by petitioner Antonia Ventura.

The aforementioned conclusion of the lower court is untenable. Although final and executory; said order of dismissal of Special Proceedings No. 912 does not bar the consideration of the petition herein. Pursuant to rule 30, Section 1, of the Rules of Court.

"An action may be dismissed by the by the plaintiff without order of court by filling a notice of dismissal at any time before service of the answer. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same action."

Although found in Part I of the Rules of Court, which refers to civil actions, this rule is applicable to Special Proceedings, for Rule 73, section 2, of said Rules provides:

"In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings."

The order issue in Special Proceedings No. 912, directing that the same be closed, terminated and archived, had filed a pleading or raised an issue, is deemed, therefore, to be "without prejudice", the contrary not being stated either in said order or in the motion that prompted its issuance. Needless to say, the aforementioned order may not be regarded as a judgment, barring a subsequent action upon the ground of "res adjudicata", said order not being an adjudication on the merits (*Almeda v. Cruz*, 47 Off. Gaz., 1178). The case of *Sandoval v. Santiago* (L-1723, May 26, 1949), cited by appellees in support of the theory that an extra-judicial partition, once approved by the Court, becomes a judicial partition, is not in point, no such judicial approval having been given to the deed of partition above referred to. In fact, the lower court and the appellees herein still refer to said instrument as a deed of "extra-judicial" partition.

Moreover, in *Guevarra v. Guevarra* (74 Phil., 479, 487-488), it was explicitly held:

"x x x If the decedent left a will and no debts and heirs and legatees desire to make an extra-judicial partition of the estate, they must first present that will to the court for probate and divide the estate in accordance with the will. They may not disregard the provisions of the will unless those provisions are contrary to law. Neither may they do away with the presentation of the will to the court for probate, because such suppression of the will is contrary to law and public policy. The law enjoins the probate of the will and public policy requires it, because unless the will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may rendered nugatory. Absent legatees and devisees, or such of them as may have no knowledge of the will, could be cheated of their inheritance thru the conclusion of some of the heirs who might agrees to the partition of the estate among themselves to the exclusion of others.

x x x x

"Even if the decedent left no debts and nobody raises any question as to the authenticity and due execution of the will none of the heirs may sue for the partition of the estate in accordance with the will without first securing its allowance or probate of the Court: first, because the law expressly provides that "no will shall pass either real or personal estate unless it is probated and allowed in the proper court's and second, because the probate of a will, which is a proceeding in rem, cannot be dispensed with and substituted by any other proceeding, judicial or extra-judicial, without offending against public policy designed to effectuate the testator's right to dispose of his property by will in accordance with law and to protect the rights of the heirs and legatees under the will thru the means provided by law, among which are the publication and the personal notices to each and all of said heirs and legatees."

Hence, in "Testate Estate of the Late Asuncion Miraflores. Desedario Miraflores, et al. vs. Soledad Mesa Magsuci, et al." (L-12166, April 29, 1959), we said:

"x x x Section 5, Rule 77 of the Rules of Court provides that 'when a will is delivered to, or a petition for the allowance of a will is filed in, the court having jurisdiction, such court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof.' Thus, in Salazar vs. The court of First Instance of Laguna (64 Phil. 785), we held that 'it is the inevitable duty of the court when a will is presented to it, to appoint hearing for its allowance and to cause notices thereof to be given by publication. The duty imposed by said section 3, Rule 77 of the Rules of Court is imperative and non-compliance therewith would be a mockery of the law and of the last will of the testator.'"

In other words, the lower court had, not only jurisdiction, but, also, the duty to entertain appellant's petition for probate of the alleged will of Agustin de Valle. The practical and legal necessity of giving due course to said petition becomes patent when we consider that on February 8, 1952, a brother and a sister of the late Agustin del Valle, namely, Ponciano del Valle and Severa Valle Vda. de Carlos, filed Civil Case No. 2060 of the Court of First Instance of Tarlac, against Antonia Ventura, for the partition of the estate of the deceased. Antonia Ventura moved for the dismissal of the complaint therein, upon the ground that it was barred by the action taken in the aforementioned Special Proceedings No. 912. This motion was denied, on April 12, 1956, upon the ground that no will shall pass either real or personal estate unless it is probated and allowed in the proper court and that the probate of such will cannot be dispensed with. Hence, Antonia Ventura felt constrained to institute the present proceedings. At any rate, under the circumstance, public policy and public interest demand a determination of the question whether Agustin de Valle died testate or intestate.

WHEREFORE, the order appealed from should be, as it is hereby, reversed, and let the record hereof be remanded to the lower court for further proceedings in consonance with this decision, with costs against appellees herein.

IT IS SO ORDERED.

Paras, Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, and Barrera, JJ., concur.
Reyes, J.B.L., and Gutierrez David, JJ., took no part

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