

**IN RE INTESTATE ESTATE OF THE DECEASED MARCIANA ESCANO.
ANGELITA JONES, PETITIONER-APPELLANT AND APPELLEE, VS,
FELIX HORTIGUELA, AS ADMINISTRATOR, WIDOWER AND HEIR,
OPPOSITOR-AP...**

G. R. No. L-43701. March 06, 1937

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal taken from the order issued by the Court of First Instance of Cebu on March 14, 1935, in the intestate proceedings of the deceased Marciana Escano, denying thereby: (1) the motion to appoint a new administrator and (2) to set aside the order of May 9, 1932, declaring the heirs of said deceased; (3) holding it unwarranted to declare that the properties of the intestate estate are paraphernal properties of said deceased, but reserving to the parties the right to 'discuss which of said properties are paraphernal and which are conjugal; (4) setting aside the order of January 10, 1933, granting to the administrator fees in the sum of P10,000, and that of June 26, 1933, approving the project of partition and the final account; and (5) ordering the presentation of another project of partition and final account.

As Marciana Escano had died intestate, her widower Felix Hortiguella was appointed judicial administrator of her entire estate, and in an order issued on May 9, 1932, Angelita Jones, her daughter by her first marriage, and Felix Hortiguella, her Widower by her second marriage, were declared her only heirs. In a motion filed with the conformity of the guardian of the heiress Angelita Jones, Felix Hortiguella, as administrator, prayed that his fees, as such, be fixed at P10,000 which was granted by the court in its order of January 10, 1933, The administrator later presented an inventory of the properties left by said deceased Marciana Escano, a final account of his administration, and a project of partition of the intestate estate wherein he adjudicated to himself a part of the estate, in payment of his share of the conjugal properties and of his usufructuary right, and the remaining part to Angelita Jones. The latter, who was a minor, was represented in the proceedings by her guardian Paz Escano de Corominas. The project of partition and final account were approved in an order of June 26, 1933, and the properties were turned over to the respective grantees by virtue thereof.

On May 3, 1934, the heiress Angelita Jones, then married to Ernesto Lardizabal, filed a motion alleging that she was the only heir of her mother, the deceased Marciana Escano; that there never was a valid marriage between her mother and Felix Hortiguella or that had such marriage been celebrated, it was null and void; and even granting that it were valid, Felix Hortiguella was not entitled to a share in usufruct of one-third of the inheritance; that the petitioner was a minor and that during the hearing of the intestate proceedings she had not been assisted by counsel but was represented by the same attorney of Felix Hortiguella ; that during said proceedings there had been committed many errors and inaccuracies which impaired her rights and that the fees of P10,000 charged by the administrator were highly unreasonable and unconscionable. She prayed: (a) for the reopening of the proceedings; (b) that her husband be appointed special administrator without bond; (c) that her mother's alleged marriage to Felix Hortiguella be declared null and void; (d) that the partition of the properties made by

administrator Hortiguella be declared null and void and that the petitioner be declared the only universal heir of her deceased mother; and (e) that in case there was a valid marriage between Felix Hortigiela and Marciana Escano, Hortigiela be declared not entitled to the widower's usufruct; the errors in the administrator's account be corrected; the latter be granted a remuneration of only P4 a day, and a new partition of the properties be made.

After Hortigiela's answer had been filed and the evidence for both parties received, the court issued the order of March 14, 1935, the provisions of which are stated in the first paragraph of this decision. Both parties appealed therefrom.

The principal question upon the resolution of which depends that of the others, is whether or not Felix Hortigiela's alleged marriage to Marciana Escano was celebrated.

It is a fact that in December, 1914, Marciana Escano married Arthur W. Jones in the suburban catholic church of San Nicolas, Province of Cebu. On January 10, 1918, Jones secured a passport to go abroad and thereafter nothing was ever heard of him. In October, 1919, proceedings were instituted in the Court of First Instance of Maasin, Leyte, at the instance of Marciana Escano, to have her husband judicially declared an absentee. On the 25th of said month, the court issued an order declaring Arthur W. Jones an absentee from the Philippine Islands pursuant to the provisions of article 186 of the Civil Code, with the proviso that said judicial declaration of absence would not take effect until six months after its publication in the official newspapers. Said order directed the publication thereof in the Official Gazette and in the newspaper "El Ideal". Pursuant thereto, said order was published in the Official Gazette during the months of December, 1919, and January, February, March, April, May and June, 1920. On April 23, 1921, the court issued another order for the taking effect of the declaration of absence, publication thereof having been made in the Official Gazette and in "El Ideal." On May 6, 1927, Felix Hortiguella and Marciana Escano were married before the justice of the peace of Malitbog, Leyte, and they signed the certificate of marriage.

Now, Angelita Jones contends that the declaration of absence must be understood to have been made not in the order of October 25, 1919, but in that of April 23, 1921. and that from the latter date to May 6, 1927, the date of the celebration of the marriage, only 6 years and 14 days elapsed; and in accordance with section III, paragraph 2, of General Orders, No. 68, the marriage so contracted by Felix Hortiguella and Marciana Escano is null and void. This court does not believe so. For the purposes of the civil marriage law, this not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose to enable the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former spouse has been absent for seven consecutive years at the time of the second marriage, that the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage (section III, paragraph 2, General Orders, No. 68).

In accordance with the foregoing legal provision, the absence of Marciana Escano's former husband should be counted from January 10, 1918, the date on which the last news concerning Arthur W. Jones was received, and from said date to May 6, 1927, more than nine years elapsed. Said marriage is, therefore, valid and lawful.

For some unknown reason not attributable, of course, to the fault or negligence of Felix Hortigiela or Marciana Escano, the marriage contracted does not appear recorded in the marriage register of the municipality of Malitbog. Angelita Jones assigns as one of the errors of the court its having declared that failure to record said marriage does not affect the efficacy and validity thereof.

On this point, the court a quo very correctly stated as follows:

"Section VIII of General Orders, No. 68, as amended, provides that the person solemnizing the marriage must transmit the original of the marriage certificate to the municipal secretary, and failure to transmit such certificate shall be fined not less than twenty-five and not more than fifty dollars; but it does not provide that failure to transmit such certificate to the municipal secretary annuls the marriage. Interpreting this legal provision, the Supreme Court, in its decision of September 5, 1931 (*Madridejo vs. De Leon*, 55 Phil., 1), said:

" The mere fact that the parish priest who married the plaintiff's natural father and mother, while the latter was in articulo mortis, failed to send a copy of the marriage certificate to the municipal secretary, does not invalidate said marriage, since it does not appear that in the celebration thereof all requisites for its validity were not present, the forwarding of a copy of the marriage certificate not being one of said requisites."

"In another case (*U. S. vs. Be Vera*, 28 Phil., 105), the court said;

" 'Certificates issued pursuant to the provisions of section 20 of the Municipal Code by municipal secretaries, of marriages recorded in their respective registers, are not the only ones that can attest and prove such facts to such an extent that other proofs established by law may not be presented or admitted at trial, when through the omission or fault either of the municipal secretary himself or of the person who solemnized the marriage, it was not duly entered or recorded in the municipal register/ "

Furthermore, Marciana Escafio believed Arthur W. Jones to be dead when she contracted her second marriage. Her daughter Angelita Jones herself was of the same belief, since she lived with her mother after the latter had married Hortiguella, treated Hortiguella as her true stepfather, and lived and traveled with him together with her mother. She certainly would not have behaved so if she had not believed her father to be dead. Still furthermore, according to section 334, No. 24, of the Code of Civil Procedure, a person not heard from in seven years is presumed to be dead.

Inasmuch as Felix Hortiguella was lawfully married to Marciana Escafio and was not divorced from her at the time of her death, there is no doubt that he is entitled to inherit in usufruct, not only in testate but also in intestate succession, as in the present case (6 and 7 Manresa, pages 497-499 and 134-141, respectively).

Therefore, there is no reason to annul the order of May 9, 1932, declaring that the heirs of the deceased were her widower and her daughter Angelita Jones. Neither is there any reason to annul the order of June 26, 1933, approving the partition of the properties of the intestate estate.

The inaccuracies and errors attributed to the administrator Felix Hortiguella in Angelita Jones' motion and alleged therein as one of the grounds for asking for the reopening of the proceedings, have not been the subject matter of any assignment of error. It should, therefore, be considered that the petitioner has desisted from her intention relative to this alleged ground for the nullity of the proceedings.

As to the administrator's fees, the evidence shows that of the P10,000 granted by the court to Hortiguella as his own fees as such administrator, he paid to Attorney Faelnar the sum of P8,000 for the latter's professional services in this as well as in other cases affecting the estate of his deceased wife. Taking into consideration the nature of and the amount involved in this and in the other cases wherein Attorney Faelnar has rendered his services, this court is of the opinion that the sum of P8,000 paid by the administrator is a reasonable and moderate compensation, Angelita Jones' objection to the effect that she had no reason to contribute to the payment of Faelnar's fees is untenable, considering the fact that said attorney's professional services were rendered for the benefit of the administration of the estate of the deceased Escano prior to the controversy provoked by said heiress. As to the remainder of 2,000, said administrator is entitled to collect the sum of P4 for every day employed by him as such, and considering the importance of the inheritance in question and the time elapsed since the inception of the administration proceedings this court is of the opinion that the sum of 2,000 is an adequate compensation for said administrator's services.

Lastly, had the court jurisdiction to set aside, as it did, the order of January 10, 1933, approving the administrator's fees and the order of June 26, 1933, approving the partition and the final account? Had the court jurisdiction to order the presentation of another project of partition and final account? These are the questions raised by Felix Hortiguella and this court is of the opinion that said orders having become final on the ground that no appeal was ever taken therefrom, the court has lost jurisdiction over the case and it could not resume it under section 113 of the Code of Civil Procedure or under section 598 thereof because the above-cited sections refer to grounds other than those upon which Angelita Jones' motion of May 3, 1934, is based.

For all the foregoing considerations this court reverses the appealed order of March 14, 1935, in so far as it set aside the order of January 10, 1933, relative to the administrator's fees and the order of June 26, 1933, approving the final account and the project of partition, and in so far as said order of March 14, 1935, required the presentation of a new project of partition; denies the appointment of Angelita Jones' husband as administrator; affirms the order of May 9, 1932, relative to declaration of heirs; and holds it unwarranted to make a finding as to whether or not the properties of this intestate estate are paraphernal properties of the deceased Marciana Escano, reserving to the parties the right to discuss which are paraphernal and which are conjugal properties. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

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