

**AURELIO ARCILIAS, PETITIONER, VS. HON. GREGORIO D. MONTEJO,
JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA
MODESTA ALFARO, GERONIMO ARCILLAS AND VICENTE ARCILLAS,
RESPONDENTS.**

G.R. No. L-21725. November 29, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Filed before the Court of First Instance of Zamboanga on November 12 and 16, 1962 respectively are two separate petitions having direct and special reference to Lot No. 276. This lot, covered by Transfer Certificate of Title No. RT-244 (2155(0-656), forms a major part of the estate of the late Eustaquio Arcillas who died intestate on March 8, 1958 in the City of Zamboanga.

In the petition dated November 12 Geronimo Arcillas, one of the heirs of the deceased, sought the cancellation of TCT No. RT-244 in the name of the deceased and prayed for the issuance of a new certificate of title in the names of the heirs in the enumerated proportions alleged in the petition. It was claimed that at various dates after the death of the deceased, several transactions affecting Lot No. 276 transpired, prominent among which were the separate sales of their respective shares and participation in Lot No. 276 executed by four (4) other children of the deceased in favor of co-heir Vicente Arcillas. Invoking section 112 of Act No. 496 (Land Registration Act), Geronimo Arcillas argued that the proportion of each heir's participation in said lot should be accurately reflected in a new certificate of title. But before any other material pleading could be filed with respect to this petition, five (5) other children of the deceased filed the November 16 petition aforementioned. This later petition, docketed as Special Proceeding No. 632, prayed for the issuance of letters of administration in favor of herein petitioner preparatory to the final settlement of the deceased's estate. Paragraphs 3 and 4 of this later petition, insofar as pertinent to this case, read:

"3. That the deceased left an estate consisting of real property in Zamboanga City with a probable value of not less than SIX THOUSAND PESOS (6,000.00), Philippine Currency;

"4 That as far as petitioners know, the deceased left no debts remaining unpaid;"

In the meantime, on November 23, 1962 herein petitioner filed his opposition to the November 12 petition on the ground that inasmuch as Lot No. 276 - the subject matter thereof - was included in the estate of the deceased for which a petition for administration had actually been filed and was awaiting resolution, that petition (the one dated November 12) should be held in abeyance until after Special Proceeding No. 632 was closed and terminated. Recognizing then the merit of petitioner's ground, respondent Judge issued an order on December 1, 1963 temporarily holding in abeyance resolution of the November 12 petition until the termination of the intestate proceedings.

Meanwhile, in his answer to the November 16 petition (Sp. Proc. No. 632) Geronimo Arcillas, this time joined by

Vicente Arcillas and the widow Modesta Alfaro, opposed the issuance of letters of administration to herein petitioner, arguing that inasmuch as Lot No. 276 was the only property left by the deceased and the deceased left no debts, the petition for administration was improper. However petitioner, in his reply on January 18, 1963, insisted that there were still other properties of the estate of the deceased besides Lot No. 276; he likewise took issue with respondents' view that administration proceedings could be dispensed with asserting, firstly, that there was no unanimity among the heirs for extrajudicial partition and, secondly, that some of the heirs had been unduly deprived of their participation in the estate.

On March 8, 1963 respondent court denied the November 16 petition for the issuance of letters of administration and at the same time gave due course to the November 12 petition. Reasoned the court: "x x x to obviate the necessity of spending uselessly which would only deplete the funds of the estate; to avoid unnecessary delay in the partition of the property involved herein, and following the doctrines established by the Honorable Supreme Court in several cases of the same nature, which is in consonance with the provisions of Section 1, Rule 74 of the Rules of Court, the court is of the opinion that the herein petition (should) be denied and (holds that) the cadastral motion of the oppositor Geronimo Arcillas covering the same property is the most expedient and proper action."

Unable to have this order reconsidered petitioner filed the instant petition for certiorari with mandamus and preliminary injunction. On December 2, 1963, upon filing by petitioner of the required bond, we issued a writ of preli-minary injunction enjoining respondent Judge from proceeding with the hearing of the "cadastral motion" dated November 12, 1962.

The issues to be determined are whether respondent Judge acted properly (1) in dismissing the administration proceedings under the authority of section 1, rule 74 of the New Rules of Court upon averments that the estate left no debts and all the heirs entitled to share in its distribution are all of age and (2) in maintaining that the "cadastral motion" brought under the provision of section 112 of the Land Registration Act was the more proper proceeding under the circumstances.

Under section 1, Rule 74 of the New Rules of Court, if the decedent left no will and no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians, the parties may without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the Register of Deeds and should they disagree, they may do so in, an ordinary action of partition. And primarily anchored on the proposition that inasmuch as in the present case the minimum requirements of the aforementioned section obtain i.e. the decedent left no will and no debts and the heirs are all of age, respondents claim that there is no necessity for the institution of special proceedings and the appointment of an administrator for the settlement of the state for the reason that it is superfluous and unnecessary. In other words, respondents apparently view section 1 of Rule 74 as mandatory upon the heirs so long as the deceased left no will nor any pending obligations to be paid and his heirs are all of age.

We cannot entirely agree with the respondents. On a similar contention in the past, we had occasion to explain in *Rodriguez, et al v. Tan, et al.*, 92 Phil. 273:

"xxx section 1 does not preclude the heirs from instituting administration pro-ceedings, even if the estate has no debts or obligation, if they do not desire to resort for good reasons to an ordinary action of partition. While section 1 al-lows the heirs to divide the estate among themselves as they may see fit, or to resort to an ordinary action of partition, it does not compel them to do so if they have good reasons to take a different course of action. Said section is not mandatory or compulsory as may be gleaned from the use made therein of the word may. If the intention were otherwise the framer of the rule would have employed the word shall as was done in other provisions that are mandatory in character. Note that the word may is used not only once but in the whole section which indicates an intention to leave the matter entirely to the discretion of the heirs."

Having decided to institute administration proceedings instead of resorting to the less expensive modes of settlement of the estate, i.e. extrajudicial settlement or ordinary action for partition, heirs may not then be rebuffed in the exercise of their discretion granted under section 1 of Rule 74 of the Rules of Court merely on the ground that the expenses usually common in administration proceedings may deplete the funds of the estate. The resultant delay and necessary expenses incurred thereafter are consequences which must be deemed to have been voluntarily assumed by the heirs themselves so that they may not in the future be heard to complain of these matters. Besides, the truth or veracity of petitioners claim as to the alleged existence of other properties of the deceased aside from the lot in question can be more adequately ascertained in administration proceedings rather than in any other action.

Understandably the allowance of the hearing of the "cadastral" motion, supposedly brought under the authority of section 112 of Act 496, cannot be sustained. While this section authorizes, among others, a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title "upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate have terminated and ceased," and apparently the November 12 petition comes within its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs (see *Puguid v. Reyes*, L-21311, August 10, 1967 and the cases cited therein). In the instant case the obvious lack of unanimity among the parties in interest, manifestly demonstrated by petitioners' express objection to the cancellation of TCT No. RT-244, sufficiently removes the November 12 petition from the scope of section 112 of Act 496. Besides, the proceedings provided in the Land Registration Act are summary in nature and hence inadequate for the litigation of issues which properly pertain to the case where the incident belongs.

In view of the foregoing, judgment is hereby rendered setting aside the appealed orders and directing respondent Judge or whoever is presiding the court below to reinstate Special Proceedings No. 632; the writ of preliminary injunction previously issued enjoining respondent Judge from proceeding with the hearing of the "cadastral" motion dated November 12, 1962 is hereby made permanent. Costs against respondents, except respondent Judge.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

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