

IN RE INTESTATE ESTATE OF THE LATE PIO DURAN, CIPRIANO DURAN AND MIGUEL DURAN, PETITIONERS AND APPELLANTS, VS. JOSEFINA B. DURAN, MOVANT-OPPOSITOR AND APPELLEE.

G.R. No. L-23372. June 14, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Pio Duran died without testament on February 28, 1961 in Guinobatan, Albay. Among his alleged heirs are Josefina Duran, as surviving spouse; several brothers and sisters; nephews and nieces.

Subsequent to his death, on June 2, 1962, Cipriano Duran, one of the surviving brothers, executed a public instrument assigning and renouncing his hereditary rights to the decedent's estate in favor of Josefina Duran, for the consideration of P2,500.00.

A year later, on June 8, 1963, Cipriano Duran filed in the Court of First Instance of Albay a petition for intestate proceedings to settle Pio Duran's estate, further asking that he be named the administrator. An ex parte motion to be appointed special administrator was also filed by him.

Against said petition, Josefina Duran filed on August 9, 1963 an opposition, praying for its dismissal upon the ground that the petitioner is not an "interested person" in the estate, in view of the deed of transfer and renunciation afore-stated, attaching a copy of the same; in the alternative, she asked to be appointed administratrix.

Replying to this, Cipriano alleged, on September 11, 1963, in his opposition to the motion to dismiss, that Josefina Duran was not the decedent's wife. Anent the deed of assignment, he contended that the same was procured thru fraud, with gross inadequacy of price and vitiated by lesion.

Still later, another brother of the decedent, Miguel Duran, filed on September 14, 1963, a petition to be joined as co-petitioner of Cipriano. Josefina Duran moved to strike out said petition as an improper attempt to intervene in the case. She also filed a reply to Cipriano's opposition to her motion to dismiss. In turn, Miguel filed an opposition to Josefina's motion to strike out.

Acting on said motions, on June 5, 1964, the Court of First Instance issued an order dismissing the petition of Cipriano for his lack of interest in the estate. Said lack of interest was premised on the deed of transfer executed by Cipriano, regarding which the court declared itself without power to examine in said proceedings, collaterally, the alleged fraud, inadequacy of price and lesion that would render it rescissible or voidable. And with the petition's dismissal, Miguel's petition to be joined as co-petitioner was deemed without leg to stand on.

Appeal to Us directly, on questions of law, was taken by Cipriano and Miguel Duran.

The Rules of Court provides that a petition for administration and settlement of an estate must be filed by an "interested person" (Sec. 2, Rule 79). Appellants contend that the deed of assignment executed by Cipriano did

not operate to render him a person without interest in the estate. Relying on *In Re Irene Santos*, L-11848, May 31, 1962, they argue that an assignment by one heir of his share in the estate to a co-heir amounts to a partition needing approval by the settlement court to be effective; and that the assigning heir does not lose his status as a person interested in the estate, even after said assignment is approved by the court.

The situation in the *Santos* case involves an assignment between co-heirs pendente lite, during the course of settlement proceedings, properly and validly commenced. At the time of said assignment, therefore, the settlement court had already acquired jurisdiction over the properties of the estate. As a result, any assignment regarding the same had to be approved by said court. And since the approval of the court is not deemed final until the estate is closed, the assigning heir remains an interested person in the proceedings even after said approval, which can be vacated, is given.

In the present case, however, the assignment took place when no settlement proceedings was pending. The properties subject matter of the assignment were not under the jurisdiction of a settlement court. Allowing that the assignment must be deemed a partition as between the assignor and assignee, the same does not need court approval to be effective as between the parties. An extrajudicial partition is valid as between the participants even if the requisites of Sec. 1, Rule 74 for extrajudicial partition are not followed, since said requisites are for purposes of binding creditors and non-participating heirs only (*Hernandez v. Andal*, 78 Phil. 196). Should it be contended that said partition was attended with fraud, lesion or inadequacy of price, the remedy is to rescind or to annul the same in an action for that purpose. And in the meanwhile, the assigning heir cannot initiate a settlement proceedings, for until the deed of assignment is annulled or rescinded, it is deemed valid and effective against him, so that he is left without that "interest" in the estate required to petition for settlement proceedings.

Anent appellant Miguel Duran, he sought in his petition below to "join petitioner Cipriano Duran as co-petitioner in the latter's petition x x x and incorporates herein by adoption all the allegations made in said petition." (Record on Appeal, pp. 45-46). The same, therefore, amounted to a petition to intervene in the settlement proceedings. As aptly ruled by the court a quo, since there was really no settlement proceedings in the first place, the petition to intervene must be denied.

Finally, altho Josefina Duran prayed to be appointed administratrix, her doing so did not admit to ratification of the petition for settlement under the ruling in *Eusebio v. Valmores*, 97 Phil. 163, since she did so merely by way of an alternative prayer, should her motion to dismiss fail. And said motion to dismiss was properly sustained.

WHEREFORE, the dismissal order appealed from is hereby affirmed, with costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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