

INTESTATE ESTATE OF THE DECEASED LUIS MORALES, JOSE TORRES, PETITIONER, PEDRO DE JESUS, ADMINISTRATOR AND APPELLE, VS. HERMENEGILDA SICAT VDA. DE MORALES, OPPOSITOR AND APPELLANT.

G. R. No. L-5236. May 25, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

On August 25, 1950, Luis Morales, married to Hermenegilda Sicat, died in the municipality of Tarlac, Tarlac. Seven days later, Jose Torres alleging to be a creditor of the conjugal partnership commenced this special proceeding in the Tarlac court petitioning for the issuance of letters of administration in favor of Atty. Pedro B. de Jesus, for the purpose of settling the estate of the deceased.

Twelve days afterwards the widow voiced her opposition, and claimed preference to be appointed as administratrix. She said the only close relatives and forced heirs were her six legitimate minor children, besides herself.

The petitioner presented evidence. The oppositor submitted none. Then the trial judge, disregarding the preference established by law for the surviving widow, entered on August 16, 1951 an order appointing Atty. Pedro B. de Jesus as the administrator.

The widow appealed on time, and argued several assignments of error revolving around the principal issue whether this appointment should be upheld, ignoring the surviving widow's preferential right.

The order making the appointment is undoubtedly appealable. (Section 1, Rule 105, *Sy Hong Eng vs. Sy Lioc Suy*, 8 Phil., 594, Moran, Comments, 1952 ed., Vol. 2, p. 592.)

Under section 6, rule 79 of the Rules of Court, when a person dies intestate, administration should be granted:

"(a) To the surviving husband or wife, as the case may be, or next of kin, or both, * * *;

"(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, * * * it may be granted to one or more of the principal creditors, if competent and willing to serve;

"(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select."

"The order of preference provided in this section is founded on the assumption that the persons preferred are suitable. If they are not, the court may entirely disregard the preference thus provided. This is the reason for the rule that in the selection of an administrator courts may exercise discretion, and, as stated elsewhere, the person appearing in the order of preference may not be appointed where he appears to be unsuitable for the trust, he having an adverse interest or is hostile to the interested parties to such an extent as to make his selection

inadvisable. But, of course, the order of preference may be disregarded only when the reasons therefor are positive and clear." (Moran, Comments, 1952 ed., Vol. 2, p. 387.)

The trial judge was cognizant of this statutory preference. But he expressly stated his reason for disregarding it, saying in effect: "Apparently the amount of credits exceeds the value of the conjugal assets; therefore the interest of the creditors deserves paramount consideration. Now, inasmuch as the widow has shown hostility to the creditors by openly disputing their credits, she is therefore unsuitable, for having adverse interests." He reasoned from the above-quoted statement of principles and others, particularly *Sioca vs. Garcia*, 44 Phil., 711:

"A probate court cannot arbitrarily disregard the preferential rights of the surviving spouse to the administration of the estate of a deceased person; but if the person enjoying such preferential rights is unsuitable the court may appoint another person.

"Unsuitableness for appointment as administrator may consist in adverse interest of some kind or hostility to those immediately interested in the estate of such an extent as to render the appointment inadvisable."

"The surviving widow" the trial judge stated, "has always consistently refused to recognize the credits" and manifested her determination to "resist the claims of creditors."

In our opinion it is a sound juridical principle that the administrator should not adopt attitudes nor take steps inimical to the interests of the creditors. The administration of the intestate is undertaken for the benefit of both the heirs and the creditors. But by creditors we mean those declared to be so in appropriate proceedings. Before their credits are fully established they are not "creditors" within the purview of the above principle. So it is not improper—it is even proper—for the administrator or whoever is proposed for appointment as such, to oppose, or to require competent proof of, claims advanced against the estate. "The propriety of contesting particular claims must frequently be left largely to his discretion and no presumption of bad faith or misconduct will be made against him." (34 C. J. S., p. 259.)

At the hearing of the petition for the appointment of administrator, this widow practically did nothing more than to inform the alleged creditors, "Prove your credit before I honor it." That is not necessarily dishonest nor contrary to real creditors. And then, not having opposed all creditors, because she did not deny the estate's liability to the People's Bank, she could not strictly be considered hostile to the creditors. Had she acknowledged indebtedness to every one coming forward with a claim, regardless of its merit, she would be useless, even harmful, both to the heirs and the actual creditors.

Under the rules (Rule 87) creditors' claims may be filed, and considered, only after the regular administrator has been appointed. Hence, in selecting the administrator, the court could not yet normally accord priority treatment to the interests of those whose credits were in dispute. And counsel for herein appellant did well in opposing the presentation of evidence of the objected credits at the hearing, arguing in part,

"* * * the time has not yet arrived when this court can even entertain the presentation of those exhibits because the stage of presenting claims has not yet arrived. Consequently, this court can not even receive as evidence the said documents as evidence of indebtedness, because if those evidence will be accepted then we will be in a position to rebut them and to enter into actual trial to show that they are not really evidence of indebtedness, and in that case we will not terminate because then we will be contending as to whether those were really executed or really contracted. * * *"

On the other hand, the appealed order conceding that the evidence "showed clearly that the surviving widow is fully competent in a high degree to administer the intestate of her deceased husband", plainly indicates that except for her supposed hostility to creditors she was suitable for the trust. Consequently, having found that her attitude did not per se constitute antagonism to the creditors, we must necessarily declare and enforce her superior right to

appointment as administratrix under Rule 79.

Wherefore, the questioned order appointing Atty. Padro B. de Jesus is annulled, and one will be entered requiring the issuance by the court a quo of letters of administration to the widow appellant subject to such terms and conditions as are appropriate under the Rules. Costs against the appellee.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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