

INTESTATE ESTATE OF THE LATE EMILIO T. LOPEZ, SATURNINA M. VDA. DE LOPEZ, ADMINISTRATRIX-APPELLEE, VS. DAHLIA LOPEZ AND ROY LOPEZ MINORS, REPRESENTED BY THEIR MOTHER AND NATURAL...

G.R. No. L-23915. September 28, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal is directed against the order dated October 6, 1964 of the Court of First Instance of Negros Occidental denying appellants' motion to reopen the in-testate proceeding of the late Emilio Lopez.

The facts are not disputed. On October 13, 1962 Saturnina M. Vda. de Lopez, judicial administratrix of the estate of the deceased (Sp. Proc. No. 3740), filed with the lower court a project of partition adjudicating the whole estate to herself and her legitimate children with the deceased. In an order dated March 30, 1964 the lower court approved the project of partition and declared the intestate proceeding "terminated and closed for all legal purposes." Seventeen days thereafter, or on April 16, 1964, the minors Dahlia and Roy, both surnamed Lopez,[1] (represented by their mother, Lolita B. Bachar, filed a motion to reopen the proceeding, together with a petition claiming that they were illegitimate children of the deceased Emilio Lopez, born out of his extra-marital relations with Lolita B. Bachar, and asking that their rights as such be recognized and their shares in the estate given to them. The motion was opposed by the judicial administratrix on the ground that the proceeding had already been ordered terminated and closed and the estate was already in the hands of the distributees; and that the reopening of the intestate proceeding was not the proper remedy, which should be an independent action against the individual distributees.

On October 6, 1964 the trial court issued the following order:

"Taking into consideration the petition of Dahlia Lopez and Roy Lopez represented by their mother and natural guardian Lolita B. Bachar, dated April 13, 1964 and the opposition to the said motion to re-open filed by attorneys for Saturnina Vda. de Lopez dated May 6, 1964, the Court finds that the said petition to reopen is not in order. The said proceeding was already ordered closed and that the property was divided to their respective heirs. In the opinion of the Court, under the law, reopening is not the proper remedy (Tomias et al. vs. Tomias, et al., G. R. No. L-3004, May 30, 1951). In view thereof, the said petition to reopen is hereby denied for lack of merit."

The movants asked for reconsideration, which was denied, and thereupon appealed directly to this Court.

The issues posed before us for resolution are: (1) whether or not the motion to reopen the estate proceeding was filed too late; and (2) whether or not such motion was the proper remedy.

On the first issue appellee's position is that the order declaring the intestate proceeding of the late Emilio Lopez terminated and closed had the effect of finality, and thereafter the court had no more jurisdiction to reopen the

same; and that since the estate had been distributed the title thereto had become vested in the distributees.

Of vital importance is the fact that appellants' motion to reopen, as well as the petition attached there-to, is based on their claim that they are illegitimate children of the deceased. On the face of such claim they are legal heirs of the deceased and hence entitled to share in his estate. Having been omitted in the partition pre-sented by the judicial administratrix - and approved by the Court, they were not bound thereby. The following statement of this Court in *Vda. de Marbella vs. Kilayko, et al.*, 104 Phil. 41, citing *Lajom vs. Viola*, 73 Phil. 563, expresses the general governing principle:

"A judicial partition in probate proceedings (and the same thing can be said of partition in intestate proceedings) does not bind the heirs who were not parties thereto. No partition, judicial or extra-judicial, could add one iota or particle to the interest which the petitioner had during the joint possession. Partition is of the nature of a conveyance of ownership and certainly none of the co-owners may convey to the others more than his own true right. A judicial partition in probate proceedings is not final and conclusive, and not being of such definitive character to stop all means of redress for a co-heir who has been deprived of his lawful share, such co-heir may still, within the prescriptive period, bring an action for reivindicacion in the province where any of the real property of the deceased may be situated."

The motion to reopen was not too late. The court's order declaring the intestate proceeding closed did not become final immediately upon its issuance. It was no different from judgments or orders in ordinary actions. Thus, Section 2 of Rule 72 provides that "in the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in Special Proceedings." And judgments or orders in ordinary actions become final after thirty (30) days from notice to the party concerned. In this case appellants' motion to reopen was filed only seventeen (17) days from the date of the order of closure. The remedy was therefore invoked on time.

The next issue - as to whether the remedy pursued was proper, or whether it should have been an independent action against the individual distributees to annul the partition and recover appellants' shares in the estate - is not a novel one. In *Arroyo vs. Gerona*, 54 Phil. 909, this Court said:

"Taking up the question of jurisdiction of the court to entertain the appellants' motion (to annul the deed of partition and the order approving it) filed on July 9, 1929, it must be remembered that in *Benedicto vs. Javellana* (10 Phil. 197) this Court held that all demands and claims filed by any heir, legatee or party in interest to a testate or intestate succession, shall be acted upon and decided in the same special proceedings, and not in a separate action, and the judge who has jurisdiction over the administration of the inheritance, and who, when the time comes, will be called upon to divide and adjudicate it to the interested parties, shall take cognizance of all such questions.

"In our opinion the court that approved the partition and the agreement in ratification thereof may annul both whenever, as it is here alleged, the approval was obtained by deceit or fraud, and the petition must be filed in the course of the intestate proceedings, for it is generally admitted that the probate courts are authorized to vacate any decree or judgment procured by fraud, not only while the proceedings in the course of which it was issued are pending, but even, as in this case within a reasonable time thereafter." (as reiterated in *Yusay vs. Yusay Gonzales*, 106 Phil. 46).

The order of the trial court sought to be reviewed cites the case of *Tomias et al., vs. Tomias et al.*, 89 Phil. 216. That case is not here applicable, since it involved the annulment of the decision in an ordinary action for partition, which had already become final. The alleged natural child's remedy, said the court, was to file a separate action against the children to whom the estate had been adjudicated. More to the point here is the following statement of this Court in *Ramos vs. Ortuzar*, 89 Phil. 730:

"The only instance that we can think of in which a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or in advertence not imputable to negligence. Even then, the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action the effect of which, if successful, would be, as in the instant case, for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distri-buted and disposed of."

Finally, in the recent case of Uriarte vs. Uriarte, et al., G. R. No. L-21938-39, May 29, 1970, this Court, thru Justice Arsenio Dizon, pointed out that there are two alternatives for an acknowledged natural child to prove his status and interest in the estate of the de-ceased parent, to wit: (1) to intervene in the probate proceeding if it is still open; and (2) to ask for its reopening if it has already been closed.

WHEREFORE, the order appealed from is set aside and the case is remanded to the court of origin for further proceeding, with costs against appellee.

Reyes, J.B.L., Acting C.J., Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Concepcion, C.J., on leave.

[1] Dahlia was born in 1954, two years before Emilio Lopez died; Roy was born posthumously.

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