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Special Proceedings pc1 Normal JOJO 4 62 2002-01-14T07:06:00Z 2002-01-14T07:09:00Z 4 1646 9383 sc 78 18 11522 9.2720 110

SPECIAL PROCEEDINGS

1. INTRODUCTION

1. Definition of terms:

1. Special proceeding: A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.¹

2. Probate: Probate is a special proceeding to establish the validity of a will. No will passes property unless it is probated by a court. Probate is mandatory. It is in rem. Hence, the court is also called a probate court. But a probate court also includes a court that presides over probate proceedings which can generally refer to the settlement of the estate of a deceased person with or without a will.

3. Reprobate: Reprobate is a special proceeding to establish the validity of a will proved in a foreign country.

4. Legacy: A legacy is a bequest of personal property in a will to a person called the legatee.²

5. Devise: A devise is a bequest of real property in a will to a person called the devisee.³

6. Testate Estate: Testate estate refers to an estate of a deceased person which is settled or to be settled with the last will and testament of that deceased person called the testator.⁴

7. Intestate Estate: Intestate estate refers to the estate of a deceased person without a will. The estate is settled by the laws of intestacy provided in the Civil Code.

8. Executor: An executor is the person named in the will who is entrusted to implement its provisions. But the executor needs to be issued letters testamentary after the court determines his or her qualifications. A female executor is called executrix.⁵

9. Administrator: An administrator is the person entrusted with the care, custody and management of the estate of a deceased person until the estate is partitioned and distributed to the heirs, legatees and devisees, if any. A female administrator is called administratrix.⁶

9.1 The court issues letters of administration to a person after s/he qualifies in the sound discretion of the court.

9.2 It is possible that a will can be probated without a testator or with a testator who is disqualified to enter upon the trust. Hence, the court can issue letters of administration with the will annexed.

10. Escheat: Escheat, a term of French or Norman derivation meaning chance or accident, is the reversion of property to the State when the title thereto fails from defect of an heir. It is the falling of a decedent's estate into the general property of the State.

11. Guardians: A guardianship is a trust relation in which one person acts for another whom the law regards as incapable of managing his own affairs. The person who acts is called the guardian and the incompetent is called the ward.

12. Trustee: A trustee is a person appointed by a court to carry out the provisions of a will, as provided in Rule 98. As generally understood, a trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property. The beneficiary of the trust is known as the cestui que trust or the cestui que trustent (the plural form).

13. Fideicommissary substitution: Fideicommissary substitution takes place where the testator designates a person as an heir charging him to deliver to another the whole or part of the inheritance under circumstances provided in Art. 863 of the Civil Code, formerly Art. 781 of the Spanish Civil Code. In the civil-law jurisdiction, this is the nearest equivalent of the concept of trust in the common-law jurisdiction.

14. Habeas corpus: The Latin term habeas corpus which literally means 'you have the body,' is a high prerogative writ, of ancient common-law origin, the great object of which is the liberalization of those who may be imprisoned without sufficient cause. Basically, it is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his capture and detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf.⁷

15. Adoption: Adoption is a juridical act which creates between two persons a relationship similar to that which results from legitimate paternity and filiation.⁸

16. Change of Name: Change of name is a judicial proceeding in rem, requiring publication, and may be ordered by the court if proper and reasonable cause exists to justify it.

17. Family Home: The Family Home is the dwelling house where a husband and wife, or an unmarried head of a family resides, and the land on which it is situated, which is now deemed constituted from the time it is occupied as a family residence, and is exempt from execution, forced sale or attachment except as provided by law and to the extent of the value allowed by law.⁹

Note: Rule 106, which provides for the judicial constitution of a Family Home, is already extinct going by the Family Code which does not require a judicial constitution of the Family Home.

18. Absentees: An absentee is a person whose whereabouts and existence are not known in the sense of the law allowing a subsequent marriage and for purposes of administration of the estate of the absentee and of succession.

19. Civil Registry: The civil registry is the public record where acts, events and judicial decrees concerning the civil status of persons are entered.¹⁰

20. Multiple Appeals: Multiple appeals are appeals in special proceedings, as first provided in the Interim Rules of Court, where a number of appeals may be taken separately or simultaneously by different parties for different purposes. A record on appeal is necessary in order not to prejudice the proceedings that will have to continue and that may have to stop or be suspended if the entire record of the proceedings is elevated.

2. Rules That Govern Special Proceedings

1. The 1997 Rules of Civil Procedure shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.¹¹

2. In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.¹²

2.1 Rules regarding the preparation, filing and service of applications, motions and other papers, are the same in civil actions and in special proceedings. Provisions regarding the omnibus motion rule, subpoena, computation of time, motion for new trial, discovery, and trial before commissioners also apply in special proceedings. The procedure of appeal is generally the same in civil actions as in special proceedings.¹³

2.2 The rule on demurrer to evidence in civil cases, by virtue of which the defendant does not lose the right to offer evidence in the event that his motion is denied, is applicable in special proceedings.¹⁴

3. The Special Proceedings Provided In The Rules Of Court

1. Settlement of estate of deceased persons (Rules 73 to 90);

2. Escheat (Rule 91);

3. Guardianship and custody of children (Rules 92-97);

4. Trustees (Rule 98);

5. Adoption (Rule 99);

6. Rescission and revocation of adoption (Rule 100);

7. Hospitalization of insane persons (Rule 101);

8. Habeas corpus (Rule 102);

9. Change of name (Rule 103);

10. Voluntary dissolution of corporations (Rule 104) which under Presidential Decree No. 902-A, should be filed with the Securities and Exchange Commission and governed by specific rules;

11. Judicial approval of voluntary recognition of minor natural children (Rule 105);

12. Constitution of the Family Home (Rule 106), rendered in-existent by the Family Code which provides for an automatic constitution of the family home;

13. Declaration of absence and death (Rule 107); and

14. Cancellation or correction of entries in the civil registry (Rule 108).

D. Special Proceedings Under Various Laws

1. Summary Proceedings under the Family Code

2. Actions mentioned in the Family Courts Act of 1997 (Rep. Act No. 8369)

2.1 Petitions on foster care and temporary custody

2.2 Declaration of nullity of marriage under Article 36, Family Code

2.3 Cases of domestic violence against women and children (special provisional remedies and temporary custody of children and support pendente lite)

3. Proceedings under the Child and Youth Welfare Code (Pres. Decree No. 1083), the Child Abuse Act (Rep. Act No. 7610) and the Child Employment Act (Rep. Act No. 7658)

3.1 Declaration of status as abandoned, dependent or neglected children

3.2 Voluntary or involuntary commitment of children

3.3 Suspension, termination, or restoration of parental authority

4. Inter-country adoption under Republic Act No. 8043

5. Jurisdiction of Family Courts

The newly constituted Family Courts shall have exclusive original jurisdiction over the following cases:

1. Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or where one or more of the victims is a minor at the time of the commission of the offense; Provided, that if the minor is found guilty, the court shall promulgate the sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the 'Child and Youth Welfare Code;'

2. Petitions for guardianship, custody of children, habeas corpus in relation to the latter;

3. Petitions for adoption of children and the revocation thereof;

4. Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements and petitions for dissolution of conjugal partnership of gains;

5. Petitions for support and/or acknowledgment;

6. Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the 'Family Code of the Philippines;'

7. Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under Presidential Decree No. 603, Executive Order No. 56, (Series of 1986), and other related laws;

8. Petitions for the constitution of the family home (Note: This is no longer necessary);

9. Cases against minors cognizable under the Dangerous Drugs Act, as amended;

10. Violations of Republic Act No. 7610, otherwise known as the 'Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,' as amended by Republic Act No. 7658; and

11. Cases of domestic violence against:

11.1 Women --- which are acts of gender-based violence that result, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom of movement; and

11.2 Children --- which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused or batterer shall be subject to criminal proceedings and the

corresponding penalties.

If any question involving any of the above matters should arise as an incident to any case pending in the regular courts, said incident shall be determined in that court.

1 Rules of Court, Rule 1, Sec. 3 (c).

2 Civil Code, Art. 782, par. 2.

3 Ibid.

4 Civil Code, Art. 775.

5 Rules of Court, Rule 78.

6 . Ibid

7 . Paynaga v. Wolfe, 2 Phil. 146 [1903].

8 Prasnik v. Republic 98 Phil. 665 [1956].

9 Civil Code, Arts. 152 and 153.

10 Civil Code, Art. 407.

11 [. Rules of Court, Rule 1, Sec. 3; Suntay v. Cojuangco-Suntay, G. R. No. 132524, December 29, 1998, 300 SCRA 760]

12 [Rules of Court, Rule 72, Sec. 2]

13 [Fernandez v. Maravilla, No. L-18799, March 31, 1964, 10 SCRA 589.]

14 [Matute v. Court of Appeals, No. L-26751, January 3, 1969, 26 SCRA 768.]

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