

IN THE MATTER OF THE ADMINISTRATION OF THE ESTATE OF TAN PO PIC, DECEASED. MARTA TORRES, PETITIONER AND APPELLANT, VS. JUAN L. JAVIER, AS ADMINISTRATOR OF THE ESTATE OF TAN PO P...*G.R. No. 10560. March 24, 1916*

Ponente: MORELAND, J.

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This is an appeal in a proceeding to appoint an administrator of the estate of Tan Po Pic, deceased. The trial court refused to appoint Marta Torres who claimed to be the lawful wife of the deceased, and, instead, appointed Juan L. Javier administrator. The appeal is taken by Marta Torres from that order of appointment.

It appears that two women are claiming to be the legal wife of Tan Po Pic, deceased, Marta Torres and a Chinese woman named Yu Teng New. Marta Torres objected to the appointment of any one except herself, while Juan Cailles Tan Poo, on behalf of the Chinese woman, opposed the appointment of Marta Torres. The probate court being unable to determine who, if either, was the lawful wife of the deceased, appointed a disinterested third person to act as administrator.

We are of the opinion that the decision of the probate court is so far correct that it must be affirmed. Section 642 of the Code of Civil Procedure requires that letters of administration should be granted, first, to the surviving husband or wife; second, to other relatives in the order named; third, in case the surviving wife or next of kin or person selected by them be unsuitable, the administration may be granted to some other person, such as one of the principal creditors; and fourth, if there is no such creditor competent and willing to serve, the administration may go to such person as the court may appoint.

The first error assigned is that the court erred in allowing Tan Y. Soc to appear in the proceeding. It appears that Tan Y. Soc was appointed administrator of the said Tan Po Pic, deceased, by the Court of First Instance of Manila under the misapprehension that Tan Po Pic was a resident of the city of Manila at the time of his death. After it had been ascertained that the deceased was a resident of the Province of Rizal, the Court of First Instance of Manila transferred the case to the Court of First Instance of Rizal. In that court, as we have already seen, the appointment by the Court of First Instance of Manila was disregarded and proceedings were begun for the appointment of an administrator by the Court of First Instance of Rizal. Tan Y. Soc and Juan Cailles Tan Poo appeared in those proceedings, apparently representing the interests of Yu Teng New, the alleged Chinese wife of the deceased. Messrs. Crossfield & O'Brien, attorneys for the appellee in this case, appeared for the alleged Chinese wife and acted in conjunction with Tan Y. Soc and Juan Cailles Tan Poo in protecting her interests.

The second error assigned is that the court erred in taking into consideration the claim that Tan Po Pic, deceased, had a Chinese wife in China. It must be remembered that the probate court did not find as a fact that there was a wife in China; nor does his appointment of a third person determine the fact of the existence of another wife in China. The court considered the facts and circumstances as they were presented in the proceedings and upon the

whole believed it for the best interest of all concerned to appoint as administrator a disinterested third person, particularly in view of the fact that there was likely to be litigation between Marta Torres and the Chinese wife as to which is in fact his legal wife and entitled to an interest in the estate of the deceased Tan Po Pic. We do not find the errors assigned sufficient to warrant any action on the part of this court.

The third error assigned is to the effect that the trial court erred in not finding that Marta Torres was the lawful wife of the deceased Tan Po Pic. We do not believe the court erred in this respect. The court had a right in view of the controversy between the women to name a disinterested third person as administrator and leave the controversy between them to be settled in the administration proceedings at the proper time.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Johnson, J., concurs in the result.

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