

**MARIA SOCORRO AVELINO, PETITIONER, VS. COURT OF APPEALS,
ANGELINA AVELINO, SHARON AVELINO, ANTONIO AVELINO, JR.,
TRACY AVELINO, PATRICK MICHAEL AVELINO AND MARK
ANTHONY AVELINO,...**

G.R. No. 115181. March 31, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari of the Decision of the Court of Appeals dated February 16, 1994 in CA-G.R. SP No. 31574 as well as its Resolution dated April 28, 1994 denying petitioner's Motion for Reconsideration. The assailed Decision affirmed the Order of the Regional Trial Court of Quezon City, Branch 78, in Sp. Proc. No. Q-91-10441 converting petitioner's petition for the issuance of letters of administration to an action for judicial partition.

Petitioner Maria Socorro Avelino is a daughter and compulsory heir of the late Antonio Avelino, Sr., and his first wife private respondent Angelina Avelino.

The other private respondents, Sharon, Antonio Jr., Tracy, Patrick and Mark Anthony all surnamed Avelino are likewise compulsory heirs of Avelino, Sr. Sharon, an American, is the second wife of Avelino, Sr. The other private respondents are siblings of petitioner Ma. Socorro.

The records reveal that on October 24, 1991, Ma. Socorro filed before the Regional Trial Court of Quezon City, Branch 78, docketed as SP Proc. No. Q-91-10441, a petition for the issuance of letters of administration of the estate of Antonio Avelino, Sr., who died intestate on April 10, 1989. She asked that she be appointed the administrator of the estate.

On December 3, 1992, Angelina, and the siblings filed their opposition by filing a motion to convert the said judicial proceedings to an action for judicial partition which petitioner duly opposed.

On February 16, 1993, public respondent judge issued the assailed Order which reads:

"Acting on the 'Motion to Convert Proceedings to Action for Judicial Partition', considering that the petitioner is the only heir not amenable to a simple partition, and all the other compulsory heirs manifested their desire for an expeditious settlement of the estate of the deceased Antonio Avelino, Sr., the same is granted.

"WHEREFORE, the petition is converted into judicial partition of the estate of deceased Antonio Avelino, Sr. The parties are directed to submit a complete inventory of all the real and personal properties left by the deceased. Set the hearing of the judicial partition on APRIL 13, 1993, at 8:30 o'clock in the morning. Notify all the parties and their counsel of this assignment.

"SO ORDERED."[1]

On March 17, 1993, petitioner filed a motion for reconsideration which was denied in an Order dated June 16,

1993.

On July 23, 1993, Ma. Socorro filed before the Court of Appeals, a petition for certiorari, prohibition, and mandamus alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court, in granting private respondents' motion to convert the judicial proceeding for the issuance of letters of administration to an action for judicial partition. Her petition was docketed as CA-G.R. SP No. 31574.

On February 18, 1994, the respondent appellate court rendered the assailed decision, stating that the "petition is DENIED DUE COURSE" and accordingly dismissed."^[2]

On March 1, 1994, petitioner duly moved for reconsideration, but it was denied on April 28, 1994.

Hence, this petition. Petitioner assigns the following errors:

THE COURT OF APPEALS ERRED IN UPHOLDING THE LOWER COURT'S FINDING THAT PARTITION IS PROPER UNDER THE PREMISES.

ADMINISTRATION SHOULD BE THE PROPER REMEDY PENDING THE DETERMINATION OF THE CHARACTER AND EXTENT OF THE DECEDENT'S ESTATE.^[3]

For resolution, we find that given the circumstances in this case, the sole issue here is whether respondent appellate court committed an error of law and gravely abused its discretion in upholding the trial court's finding that a partition is proper.

Petitioner submits that: First, no partition of the estate is possible in the instant case as no determination has yet been made of the character and extent of the decedent's estate. She points to the Court's ruling in *Arcilles v. Montejo*, 26 SCRA 197 (1969), where we held that when the existence of other properties of the decedent is a matter still to be reckoned with, administration proceedings are the proper mode of resolving the same.^[4] In addition, petitioner contends that the estate is in danger of being depleted for want of an administrator to manage and attend to it.

Second, petitioner insists that the Rules of Court does not provide for conversion of a motion for the issuance of letters of administration to an action for judicial partition. The conversion of the motion was, thus, procedurally inappropriate and should be struck down for lack of legal basis.

When a person dies intestate, or, if testate, failed to name an executor in his will or the executor so named is incompetent, or refuses the trust, or fails to furnish the bond required by the Rules of Court, then the decedent's estate shall be judicially administered and the competent court shall appoint a qualified administrator in the order established in Section 6 of Rule 78.^[5] The exceptions to this rule are found in Sections 1 and 2 of Rule 74^[6] which provide:

"SECTION 1. Extrajudicial settlement by agreement between heirs. - If the decedent left no will and no debts and the heirs are all of age or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition..

"SEC. 2. Summary settlement of estates of small value.- Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact if made to appear to the Regional Trial Court having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court

may direct, the court may proceed summarily, without the appointment of an executor or administrator, and without delay, to grant, if proper, allowance of the will, if any there be, to determine who are the persons legally entitled to participate in the estate and to apportion and divide it among them after the payment of such debts of the estate as the court shall then find to be due; and such persons, in their own right, if they are lawful age and legal capacity, or by their guardians or trustees legally appointed and qualified, if otherwise, shall thereupon be entitled to receive and enter into the possession of the portions of the estate so awarded to them respectively. The court shall make such order as may be just respecting the costs of the proceedings, and all orders and judgments made or rendered in the course thereof shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office."

The heirs succeed immediately to all of the rights and properties of the deceased at the moment of the latter's death.[7] Section 1, Rule 74 of the Rules of Court, allows heirs to divide the estate among themselves without need of delay and risks of being dissipated. When a person dies without leaving pending obligations, his heirs, are not required to submit the property for judicial administration, nor apply for the appointment of an administrator by the court.[8]

We note that the Court of Appeals found that in this case "the decedent left no debts and the heirs and legatees are all of age." [9] With this finding, it is our view that Section 1, Rule 74 of the Rules of Court should apply.

In a last-ditch effort to justify the need for an administrator, petitioner insists that there is nothing to partition yet, as the nature and character of the estate have yet to be determined. We find, however, that a complete inventory of the estate may be done during the partition proceedings, especially since the estate has no debts. Hence, the Court of Appeals committed no reversible error when it ruled that the lower court did not err in converting petitioner's action for letters of administration into an action for judicial partition.

Nor can we sustain petitioner's argument that the order of the trial court converting an action for letters of administration to one for judicial partition has no basis in the Rules of Court, hence procedurally infirm. The basis for the trial court's order is Section 1, Rule 74 of the Rules of Court. It provides that in cases where the heirs disagree as to the partition of the estate and no extrajudicial settlement is possible, then an ordinary action for partition may be resorted to, as in this case. We have held that where the more expeditious remedy of partition is available to the heirs, then the heirs or the majority of them may not be compelled to submit to administration proceedings.[10] The trial court appropriately converted petitioner's action for letters of administration into a suit for judicial partition, upon motion of the private respondents. No reversible error may be attributed to the Court of Appeals when it found the trial court's action procedurally in order.

WHEREFORE, the petition is DENIED for lack of merit, and the assailed decision and resolution of the Court of Appeals is CA-G.R. SP No. 31574 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 15-16.

[2] Id. at 18.

[3] Id. at 5.

[4] 26 SCRA 197, 201-202 (1969).

[5] Utulo v. Pasion vda. De Garcia, 66 Phil. 302, 305 (1938).

[6] Supra.

[7] Art. 777, Civil Code.

[8] Intestate Estate of Mercado v. Magtibay, 96 Phil. 383, 387 (1954); Utulo v. Pasion vda. De Garcia, 66 Phil. 302, 305 (1938); Fule v. Fule, 46 Phil 317, 323 (1924), Baldemor v. Malangyaon, 34 Phil. 367, 369-370 (1916); Bondad v. Bondad, 34 Phil. 232, 235-236 (1916); Malahacan v. Ignacio, 19 Phil. 434, 436 (1911); Ilustre v. Alaras Frondosa, 17 Phil. 321, 323 (1910).

[9] Rollo, p. 18.

[10] Intestate of Mercado v. Magtibay, supra.

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