

**TESTAMENTARIA DE DON AMADEO MATUTE OLAVE, PETITIONER,
VS. PATERNO R. CANLAS, ET AL., REpondENTS.***G. R. No. 12709. February 28, 1962*

Ponente: BAUTISTA ANGELO, J.

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Amadeo Matute Olave died in the City of Manila on April 4, 1955 and forthwith testamentary proceedings were instituted before the court of first instance of said city for the probate of his will and the settlement of his estate. During his lifetime Matute was made party defendant in Civil Case No. 14208 of the same court and to defend him he engaged the services of Atty. Paterno R. Canlas. To this effect, Matute and Canlas entered into an agreement whereby the former agreed to pay the latter as attorney's fees an amount equivalent to 20% of the market value of the property in litigation payable upon the final termination of the case. After several days of trial, this case was decided the court dismissing the complaint on the ground of *res judicata*. Plaintiffs appealed the case to the Supreme Court where the case was compromised and the appeal was eventually withdrawn.

On August 4, 1953, Atty. Canlas filed in Civil Case No. 14208 of the Court of First Instance of Manila a motion praying that his claim for attorney's fees for the services he has rendered to defendant Matute be established as a charging lien, which was later supplemented by another motion, wherein he recited the services he had rendered and the amount of fees he was entitled to. And on August 22, 1953, the court granted the motion in an order stating that Atty. Canlas' claim for attorney's fees is thereby established "on the P100,000.00 balance of the deposit still with the clerk of Court of this Court and on all the other properties, real and personal, involved in this case." The court also ordered the lien to be annotated on the titles of all the real properties involved in the case.

On May 23, 1955, Atty. Canlas filed in the same Civil Case No. 14208 an urgent motion praying that the amount of P85,000.00 that remained deposited with the clerk of court be ordered delivered to him in full settlement of his attorney's fees stating therein that he almost completed rendering the professional services he agreed to render to Matute inasmuch as he had already filed the brief in his behalf in the case then pending before the Supreme Court. It was at this instance that the administrator of the estate of Matute filed an opposition to the motion contending that the court of first instance taking cognizance of Civil Case No. 14208 had no jurisdiction to act thereon because, the motion involving a money claim, the same shall be submitted to the probate court which is the one authorized by law to settle claims against estates of deceased persons.

In the meantime, the court acting in Civil Case No. 14208 granted Atty. Canlas authority to withdraw partial payments from said deposit totaling around P50,000.00. Then on April 30, 1957, it issued an order holding that it had authority to entertain Canlas claim for attorney's fees. To nullify this order, the administrator of the estate has interposed the present petition for certiorari alleging abuse of discretion on the part of the trial court.

It is not disputed that under date of August 22, 1953 respondent court in Civil Case No. 14208 issued an order creating a charging lien for the attorney's fees of Atty. Canlas not only the P100,000.00 balance of deposit remaining with the clerk of court but also on all other properties, real and personal, involved in said case. It

likewise appears that Atty. Canlas was able to secure from the court on several occasions several partial payments on account of his claim for attorney's fees which up to the time of this incident amounted to around P50,000.00. It was only when he filed an urgent motion for the payment to him of the balance of P85,000.00 remaining in possession of the clerk of court in full payment of his attorney's fees in the belief that his right to it has already been finally determined that the administrator of the estate of the late Amadeo Matute Olave filed an opposition thereto alleging lack of jurisdiction on the part of the trial court and claiming that, it involving money claim, the same should be submitted to the probate court which under the law has jurisdiction to act on claims against the estate.

The question that now arises is: Having Amadeo Matute Olave died before the attorney's fees he agreed to pay to his counsel Paterno R. Canlas had been fully paid and after the claim of the latter for attorney's fees had been established as a charging lien in the ordinary civil case, which court shall entertain the payment of the balance of said claim? Is it the court in the ordinary case or the probate court that takes cognizance of the estate of the deceased?

Our answer is simple. It is the court taking cognizance of Civil Case No. 14208 in view of the provisions of Section 7, Rule 87 and Section 1, Rule 88, of the Rules of Court, which we quote:

"SEC. 7. Mortgage debt due from estate.—A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made." (Italics supplied)

"SECTION 1. Actions which may and which may not be brought against executor or administrator.—No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him." (Italics supplied)

It is clear that a creditor holding a claim against the deceased secured by mortgage or other collateral security may foreclose his mortgage or realize upon his security by ordinary action in court making the executor or administrator a party defendant, and need not file his claim before the probate court to share in the general distribution of the assets of the estate. Under the same theory, an action to recover real or personal property from the estate, or to enforce a lien thereon, may be prosecuted by the interested person against the executor or administrator independently of the testate or intestate proceedings. And it cannot be gainsaid that a charging lien established on the property in litigation to secure the payment of the attorney's fees of Atty. Canlas partake of the nature of a collateral security or of a lien of real or personal property within the meaning of the provisions of our rules.

The reason behind the rule which exempts money claims covered by a mortgage or other collateral security or lien from the jurisdiction of probate courts appears well-stated in the American authorities as follows:

"According to the weight of authority, a creditor whose claim is secured by mortgage, pledge, or any specific lien need not present" his claim for allowance in order to preserve his right to subject the property covered by the lien to the satisfaction of his claim, for the reason that such claims cannot in any just sense be considered claims against the estate, but the right to subject specific property to the claim arises from the contract of the debtor whereby he has during life set aside certain property for its payment, and such property does not, except in so far as its value may exceed the debt, belong to the estate, and the instrument being of record or the property being in the possession of the creditor is notice to all the world of the contract." (34 C.J.S., 175-177)

Our conclusion is also supported by the principle that a probate court, being of limited jurisdiction, has no authority to enforce a lien unless conferred by a statute. The statutory jurisdiction of a probate court is exclusive (34 C.J.S. 721), and since the lien referred to in Section 1, Rule 88 is not among those mentioned in Section 5, Rule 87, it is reasonable to assume that all money claims secured with a lien are outside the jurisdiction of the probate court.

Wherefore, petition is dismissed, with costs against petitioner.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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