

**TEODORA A. RIOFERIO, VERONICA O. EVANGELISTA ASSISTED BY  
HER HUSBAND ZALDY EVANGELISTA, ALBERTO ORFINADA, AND  
ROWENA O. UNGOS, ASSISTED BY HER HUSBAND BEDA UNGOS,  
PETITIONERS, V...**

*G.R. No. 129008. January 13, 2004*

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**TINGA, J.:**

Whether the heirs may bring suit to recover property of the estate pending the appointment of an administrator is the issue in this case.

This Petition for Review on Certiorari, under Rule 45 of the Rules of Court, seeks to set aside the Decision[1] of the Court of Appeals in CA-G.R. SP No. 42053 dated January 31, 1997, as well as its Resolution[2] dated March 26, 1997, denying petitioners' motion for reconsideration.

On May 13, 1995, Alfonso P. Orfinada, Jr. died without a will in Angeles City leaving several personal and real properties located in Angeles City, Dagupan City and Kalookan City.[3] He also left a widow, respondent Esperanza P. Orfinada, whom he married on July 11, 1960 and with whom he had seven children who are the herein respondents, namely: Lourdes P. Orfinada, Alfonso "Clyde" P. Orfinada, Nancy P. Orfinada-Happenden, Alfonso James P. Orfinada, Christopher P. Orfinada, Alfonso Mike P. Orfinada (deceased) and Angelo P. Orfinada.[4]

Apart from the respondents, the demise of the decedent left in mourning his paramour and their children. They are petitioner Teodora Rioferio, who became a part of his life when he entered into an extra-marital relationship with her during the subsistence of his marriage to Esperanza sometime in 1965, and co-petitioners Veronica[5], Alberto and Rowena.[6]

On November 14, 1995, respondents Alfonso James and Lourdes Orfinada discovered that on June 29, 1995, petitioner Teodora Rioferio and her children executed an Extrajudicial Settlement of Estate of a Deceased Person with Quitclaim involving the properties of the estate of the decedent located in Dagupan City and that accordingly, the Registry of Deeds in Dagupan issued Certificates of Titles Nos. 63983, 63984 and 63985 in favor of petitioners Teodora Rioferio, Veronica Orfinada-Evangelista, Alberto Orfinada and Rowena Orfinada-Ungos. Respondents also found out that petitioners were able to obtain a loan of P700,000.00 from the Rural Bank of Mangaldan Inc. by executing a Real Estate Mortgage over the properties subject of the extra-judicial settlement.[7]

On December 1, 1995, respondent Alfonso "Clyde" P. Orfinada III filed a Petition for Letters of Administration docketed as S.P. Case No. 5118 before the Regional Trial Court of Angeles City, praying that letters of administration encompassing the estate of Alfonso P. Orfinada, Jr. be issued to him.[8]

On December 4, 1995, respondents filed a Complaint for the Annulment/Rescission of Extra Judicial Settlement of Estate of a Deceased Person with Quitclaim, Real Estate Mortgage and Cancellation of Transfer Certificate of

Titles with Nos. 63983, 63985 and 63984 and Other Related Documents with Damages against petitioners, the Rural Bank of Mangaldan, Inc. and the Register of Deeds of Dagupan City before the Regional Trial Court, Branch 42, Dagupan City.[9]

On February 5, 1996, petitioners filed their Answer to the aforesaid complaint interposing the defense that the property subject of the contested deed of extra-judicial settlement pertained to the properties originally belonging to the parents of Teodora Riofero[10] and that the titles thereof were delivered to her as an advance inheritance but the decedent had managed to register them in his name.[11] Petitioners also raised the affirmative defense that respondents are not the real parties-in-interest but rather the Estate of Alfonso O. Orfinada, Jr. in view of the pendency of the administration proceedings.[12] On April 29, 1996, petitioners filed a Motion to Set Affirmative Defenses for Hearing[13] on the aforesaid ground.

The lower court denied the motion in its Order[14] dated June 27, 1996, on the ground that respondents, as heirs, are the real parties-in-interest especially in the absence of an administrator who is yet to be appointed in S.P. Case No. 5118. Petitioners moved for its reconsideration[15] but the motion was likewise denied.[16]

This prompted petitioners to file before the Court of Appeals their Petition for Certiorari under Rule 65 of the Rules of Court docketed as CA G.R. S.P. No. 42053.[17] Petitioners averred that the RTC committed grave abuse of discretion in issuing the assailed order which denied the dismissal of the case on the ground that the proper party to file the complaint for the annulment of the extrajudicial settlement of the estate of the deceased is the estate of the decedent and not the respondents.[18]

The Court of Appeals rendered the assailed Decision[19] dated January 31, 1997, stating that it discerned no grave abuse of discretion amounting to lack or excess of jurisdiction by the public respondent judge when he denied petitioners' motion to set affirmative defenses for hearing in view of its discretionary nature.

A Motion for Reconsideration was filed by petitioners but it was denied.[20] Hence, the petition before this Court.

The issue presented by the petitioners before this Court is whether the heirs have legal standing to prosecute the rights belonging to the deceased subsequent to the commencement of the administration proceedings.[21]

Petitioners vehemently fault the lower court for denying their motion to set the case for preliminary hearing on their affirmative defense that the proper party to bring the action is the estate of the decedent and not the respondents. It must be stressed that the holding of a preliminary hearing on an affirmative defense lies in the discretion of the court. This is clear from the Rules of Court, thus:

SEC. 5. Pleadings grounds as affirmative defenses.- Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed.[22] (Emphasis supplied.)

Certainly, the incorporation of the word "may" in the provision is clearly indicative of the optional character of the preliminary hearing. The word denotes discretion and cannot be construed as having a mandatory effect.[23] Subsequently, the electivity of the proceeding was firmed up beyond cavil by the 1997 Rules of Civil Procedure with the inclusion of the phrase "in the discretion of the Court", apart from the retention of the word "may" in Section 6,[24] in Rule 16 thereof.

Just as no blame of abuse of discretion can be laid on the lower court's doorstep for not hearing petitioners' affirmative defense, it cannot likewise be faulted for recognizing the legal standing of the respondents as heirs to bring the suit.

Pending the filing of administration proceedings, the heirs without doubt have legal personality to bring suit in

behalf of the estate of the decedent in accordance with the provision of Article 777 of the New Civil Code “that (t)he rights to succession are transmitted from the moment of the death of the decedent.” The provision in turn is the foundation of the principle that the property, rights and obligations to the extent and value of the inheritance of a person are transmitted through his death to another or others by his will or by operation of law.[25]

Even if administration proceedings have already been commenced, the heirs may still bring the suit if an administrator has not yet been appointed. This is the proper modality despite the total lack of advertence to the heirs in the rules on party representation, namely Section 3, Rule 3[26] and Section 2, Rule 87[27] of the Rules of Court. In fact, in the case of *Gochan v. Young*,[28] this Court recognized the legal standing of the heirs to represent the rights and properties of the decedent under administration pending the appointment of an administrator. Thus:

The above-quoted rules,[29] while permitting an executor or administrator to represent or to bring suits on behalf of the deceased, do not prohibit the heirs from representing the deceased. These rules are easily applicable to cases in which an administrator has already been appointed. But no rule categorically addresses the situation in which special proceedings for the settlement of an estate have already been instituted, yet no administrator has been appointed. In such instances, the heirs cannot be expected to wait for the appointment of an administrator; then wait further to see if the administrator appointed would care enough to file a suit to protect the rights and the interests of the deceased; and in the meantime do nothing while the rights and the properties of the decedent are violated or dissipated.

Even if there is an appointed administrator, jurisprudence recognizes two exceptions, viz: (1) if the executor or administrator is unwilling or refuses to bring suit;[30] and (2) when the administrator is alleged to have participated in the act complained of[31] and he is made a party defendant.[32] Evidently, the necessity for the heirs to seek judicial relief to recover property of the estate is as compelling when there is no appointed administrator, if not more, as where there is an appointed administrator but he is either disinclined to bring suit or is one of the guilty parties himself.

All told, therefore, the rule that the heirs have no legal standing to sue for the recovery of property of the estate during the pendency of administration proceedings has three exceptions, the third being when there is no appointed administrator such as in this case.

As the appellate court did not commit an error of law in upholding the order of the lower court, recourse to this Court is not warranted.

WHEREFORE, the petition for review is DENIED. The assailed decision and resolution of the Court of Appeals are hereby AFFIRMED. No costs.

**SO ORDERED.**

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Rollo, pp. 17-20.

[2] Id, at 21-22.

[3] Id. at 95.

[4] Ibid.

[5] The Complaint for Annulment/Rescission of the Extrajudicial Settlement of the Estate of a Deceased Person

dated December 2, 1995 contains an allegation under paragraph 9 that Veronica is not one of the illegitimate children of the decedent Alfonso P. Orfinada, Jr. by Teodora Riofero but of one Alonzo Orfinada.

[6] Rollo, p. 95.

[7] Id. at 95-96.

[8] Id. at 96.

[9] Id. at 28-37.

[10] CA Rollo, p. 38.

[11] Id. at 10.

[12] Id. at 38.

[13] Rollo, pp. 107-108.

[14] CA Rollo, pp. 113-116.

[15] Id. at 32-34.

[16] Id. at 39-40.

[17] Id. at 1-12.

[18] Id. at 7.

[19] Rollo, pp. 17-20.

[20] Id. at 21-22.

[21] Id. at 124.

[22] Rule 16 of the Rules of Court. It is Section 6, Rule 16 of the 1997 Rules of Civil Procedure which reads:

Section 6. Pleading grounds as affirmative defenses. – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer. (Emphasis supplied)

[23] Republic Planters Bank v. Agana, Sr., G.R. No. 51765, 269 SCRA 1, 12 (1997).

[24] Supra note 22.

[25] Coronel v. Court of Appeals, G.R. No. 103577, October 7, 1996, 263 SCRA 15.

[26] Section 3 of Rule 3 of the Rules of Court:

Sec. 3. Representatives as parties. - Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

[27] Section 2 of Rule 87:

Sec. 2. Executor or administrator may bring or defend actions which survive. — For the recovery or protection of the property or rights of the deceased, an executor or administrator may bring or defend, in the right of the deceased, actions for causes which survive.”

[28] G.R. No. 131889, March 12, 2001, 354 SCRA 207.

[29] Supra, note 26.

[30] Pascual v. Pascual, 73 Phil. 561 (1942).

[31] Velasquez v. George, G.R. No. L-62376, October 27, 1983, 125 SCRA 456.

[32] Borromeo v. Borromeo, 98 Phil 432 (1956).

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