

MARIA MOLERA, ADMINISTRATRIX OF THE INTESTATE ESTATE OF SOTERA ALMARIO, PETITIONER AND APPELLEE, VS. AGAPITO MOLERA, OBJECTOR AND APPELLANT.

G.R. No. 14369, December 09, 1919

Ponente: MALCOLM, J.

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MALCOLM, J.:

Sotera Almario died a few years ago, leaving as heirs a husband and a daughter. Proceedings for the administration of the estate of the deceased were initiated by the daughter, Maria Molera. The widower, Agapito Molera, was notified of the hearing but did not appear either personally or by attorney. As a result, on April 17, 1916, Maria Molera was appointed administratrix of the estate. On June 1, 1917, the administratrix submitted to the Court of First Instance of the city of Manila an inventory of the property of the estate. The attorney for Agapito Molera later filed a petition, asking for the partition of the estate.

On November 5, 1917, a committee proposed, one member by Agapito Molera, another member by the administratrix and the third by the court, was appointed by the court to determine the rights of the interested parties. The committee submitted a report which was approved by the court under the condition that the partition of the property should not take place until the debts and expenses of the administration had been paid. This order was dated January 25, 1918. On February 2 of the same year, the attorney for Agapito Molera first manifested opposition to the proceedings on the ground that the report of the commissioners should not be approved because it included property belonging to Agapito Molera, and because the conjugal partnership had not been liquidated. Counsel for Agapito Molera, now become the oppositor, also excepted to this order but did not appeal therefrom. The court, two days later, overruled the opposition and approved the report of the commissioners on value and claims. The next step came with a motion filed by the administratrix, asking for the sale of certain property, which property, according to the inventory prepared by her, was actually in the possession of the widower, in order to pay the debts and expenses of administration. Opposition to the approval of this motion was entered by the attorney for Agapito Molera. The court, however, authorized the administratrix to make the sale of the property as requested. Thereupon, a bill of exceptions was perfected and the case elevated to this court.

Such, in synthesis, is an account of the trouble which has arisen between father and daughter relative to the estate of the wife and mother.

A minor point argued by appellee relative to the efficacy of the appeal may be quickly disposed of. The oppositor at least had the right, to appeal from the order of the Court of First Instance of March 21, 1918, and did take timely steps to perfect such an appeal. Orders in administration cases, as relate, for instance, to inventories, claims against the estate, and the sale of the property of decedent, are appealable. (See 3 C. J., 569, 570, and notes; Reyes vs. Ciria [1913], 24 Phil., 127.)

The law of the case is well settled. This court has repeatedly announced that when a conjugal partnership is dissolved by the death of the wife, the surviving husband and not the judicial administrator appointed in the

proceedings for the settlement of the estate, is entitled to the possession of the property of the conjugal partnership until he has liquidated its affairs. As a resolutive principle, it is an error to settle the affairs of the conjugal partnership, dissolved by the death of the wife, in the special proceedings for the settlement of the wife's estate. (Note especially, the cases of *In re Amancio* [1909], 13 Phil., 297; *Sochayseng vs. Trujillo* [1915], 31 Phil., 157; and *Nable Jose vs. Nable Jose* [1916], 15 Off. Gaz., 871, affirmed in *Manuel and Laxamana vs. Losano* [1918], 16 Off. Gaz., 1265.)

The prime question assumes one of two phases, namely, whether the decisions of this court which we have cited are here applicable, or whether by his own actions the father, Agapito Molera has renounced any right which he may have, to assume charge of his deceased wife's estate. On serious consideration, in which have participated members of the court who have handed down decisions on the same subject, we have arrived at the conclusion that there is no estoppel. The doctrine, familiarly known by the name of the parties in the *Nable Jose* case, still is controlling. We mean by this that while renunciation or waiver of a precedent right to administer is clearly permissible, yet, as in this jurisdiction, when a wife dies there are two separate and distinct proceedings, the action of the husband in consenting to the ordinary proceedings would have, and necessarily could have, no effect on his right, in fact his duty, of liquidating the affairs of the partnership without delay. This holding will mean that the order of the Court of First Instance authorizing the sale of certain property must be annulled and the proceedings already initiated, halted, until the husband has had an opportunity to perform the obligation imposed upon him by law.

The order of the Court of First Instance of the City of Manila dated March 21, 1918, is set aside, and the record is returned to the court of origin for further proceedings in accordance with this decision, without special finding as to costs. So ordered.

Arellano, C.J., Torres, Araullo, Street, and Avanceña, JJ., concur.

Order set aside; record remanded for further proceedings.

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