

INTESTATE ESTATE OF VICENTE TAD-Y, DECEASED. ROSARIO ESLER, VDA. DE TAD-Y, AND JOSE E. TAD-Y, THE LATTER BEING REPRESENTED BY HIS GUARDIAN AD LITEM, JUAN JAMORA, PETITIONERS AND...

G.R. No. 20902. October 09, 1923

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In the intestate proceeding instituted in the Court of First Instance of Iloilo for the settlement of the estate of the deceased Vicente Tad-Y, the Honorable Francisco Santamaria, judge, entered the following order:

"After hearing the testimony of the witness Vicente Sichon, presented as evidence by the proponent of the will of the deceased Vicente Tad-Y, the attorney for the proponent, Mr. Clemente Zulueta, withdrew his application for the probate of the document filed and attached to the record, as the will and testament of the deceased Vicente Tad-Y.

"Agreeably with this petition, the court orders this proceeding to continue for the settlement of the estate of the deceased Vicente Tad-Y, as an intestate estate.

"From the testimony presented January 27th of this year by the proponent Rosario Esler, it appears that her husband Vicente Tad-Y died on December 26, 1922, in the Mission Hospital in Iloilo leaving a will, which is the document alluded to by the witness Vicente Sichon when testifying at the trial of this case, and which document cannot be admitted to probate as a will because in its execution the solemnities required by the law were not complied with.

"On February 26, 1923, this court appointed Mr. Manuel Locsin as special administrator, he being one of the persons named by the testator Vicente Tad-Y as executors in his will attached to the record, which will cannot be probated in accordance with law.

"The administrator Mr. Manuel Locsin gave a bond in the sum of P10,000 for the faithful discharge of his office and took the oath of office on March 2d, last, letters of administration having been issued to him on the 5th of the said month of March.

"There being no ground whatever for revoking the appointment of Mr. Manuel Locsin, the court confirms said appointment and orders the bond formerly given in the sum of P10,000 to stand."

From this order an appeal was taken by Rosario Esler Vda. de Tad-Y and the guardian ad litem of Jose E. Tad-Y, and their counsel in this court alleged that the trial court erred in appointing Manuel Locsin as administrator in this proceeding without the consent of Rosario Esler Vda. de Tad-Y and the minor Jose E. Tad-Y.

After considering the reasons given in the briefs of both parties, we are of the opinion, and so hold, that the appeal is groundless. If the administrator Manuel Locsin was appointed by the court as special administrator, section 660 of the Code of Civil Procedure does not permit any appeal from the appointment of said administrator. If Manuel

Locsin was appointed by the trial court as administrator of the intestate estate in accordance with section 642 of Act No. 190, the trial court had discretion to issue the letters of administration to any of the persons mentioned in said section, and unless there has been an abuse of discretion, which does not appear to have been committed in the present case, the appointment shall not be revoked on appeal.

Wherefore the order appealed from must be, as is hereby, affirmed with the costs against the appellants. So ordered.

Araullo, C.J., Johnson, Street, Malcolm, Avanceña, and Romualdez, JJ., concur.

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