IN RE ESTATE OF ENGRACIO ORENSE, DECEASED. EUGENIA M. SANTOS, VIUDA DE ORENSE, PETITIONER AND APPELLANT, VS. THE ROMAN CATHOLIC BISHOP OF NUEVA CACERES, OPPONENT AND APPELLEE.

G.R. No. 21289. April 05, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

It appears from the record of this case that the appellant's husband, Engracio Orense, a resident of the municipality of Guinobatan, Province of Albay, died on October 8, 1918, leaving an estate which, according to the inventory filed by the appellant on May 19, 1919, was worth the sum of P43,382.27 over and above all debts, expenses of last illness and the funeral, as well as expenses of administration. The only claim presented to the committee on claims and approved was one for P6,720 in favor of Asuncion Fortic de Morata, which has been paid.

The deceased left a will, according to which six parcels of land were left to the Roman Catholic Church as trustee for various purposes, subject to a life estate in favor of the appellant who, in the absence of descendants, ascendants and collateral heirs of the deceased, was made his universal testamentary heir.

The will was probated on March 6, 1919, and the appellant was appointed executrix. In the meantime, on January 29, 1919, the appellant, as special administratrix of the estate, filed a motion reciting that the deceased, in his lifetime, had obtained a franchise to establish and operate an electric light plant in the town of Guinobatan and had signed a contract with the Pacific Commercial Company whereby the latter agreed to furnish him the machinery for the plant for the sum of P15,590; that the machinery had begun to arrive and that the company was urgently demanding payment of the second installment of the purchase price amounting to P6,236 and that besides the said appellant was bound to continue to pay the sum of P779.50 per month for ten months in order to completely extinguish the obligation; that she had no funds with which to meet the obligation except liberty bonds to the amount of P5,000 and that it would be necessary to borrow P10,000 from the National Bank or mortgage certain lands with Torrens titles. She therefore asked for authority to sell or mortgage the liberty bonds or obtain a loan of P10,000 from the bank. The desired authority was granted by the court two days later, on January 31, 1919.

On November 20, 1919, the appellant who had then been appointed administratrix with the will annexed, filed a motion with the court of First Instance asking that the declaration of heirs made by the testator in his will be confirmed, and that a commission be appointed to make a nominal division of the estate, the word "nominal" being used because, according to the terms of the will, all of the property was to remain in possession of the appellant in usufruct. This motion was granted by order of December 13, 1919, the court declaring the appellant the universal heir of the testator and providing that the various legatees under the will should not take possession of their respective legacies during the lifetime of the appellant or while "the debts of the deceased occasioned by

the establishment of the electric light plant in Guinobatan remained unpaid." In the same order the court also appointed a commissioner to partition the estate in accordance with the will and declared that the purpose of the partition was to secure the termination of the testamentary proceedings and have the interests of the parties recorded in the registry of deeds.

On September 1, 1920, the appellant submitted the commissioner's report of the nominal partition, in which report the six parcels of land above referred to were duly assigned to the Roman Catholic Church. In the report mention was made of the conditions of the will that the legatees cannot take possession of the legacies while the widow lived, and as a special reason why the legatees cannot take possession, it is further stated that "the deceased, and now the estate, is in debt to the Philippine National Bank in the sum of P35,000 and to the Pacific Commercial Company in the sum of P15,000, making in all P50,000." The court approved the "nominal" partition of the estate by an order dated September 4, 1920.

On April 7, 1921, the appellant filed another motion in which she alleged that the debt of the Pacific Commercial Company had been paid in full, but that the estate still owed the bank the sum of 29,500 which, with other expenses, interest, etc., would amount to a total indebtedness of P38,000 or P40,000; that the bank was demanding payment; that the estate was without funds and that, because Santos vs. Roman Catholic Bishop of Niieva Caceres of the low price of abaca, the income was not sufficient to pay the interest due the bank. After various other allegations to the same effect, the motion concluded with a prayer for authority to sell four parcels of land, three of which were devised to the Roman Catholic Church. The following indorsement appears at the bottom of the motion:

"Conforme y recibi copia de la mocion precedente hoy 9 de abril de 1921.

"Julian Ope
"Parroco de Guinobatan"

On June 30, 1921, the appellant filed another motion in which she stated that "in conformity with the bank and the legatees she had been seeking buyers for the properties included in the former motion and that offers had not reached even half of the debts which amounted to P40,000," and she therefore asked for authority to sell three more parcels of land, all of which pertained to the devise in favor of the Roman Catholic Church. This motion also contained the indorsement of Julian Ope, the parish priest of Guinobatan.

On July 6, 1921, the court dictated an order authorizing the disposal of the aforesaid parcels of land, either at public or private sale as thought best, subject to the confirmation of the court.

On July 27, 1922, the appellant reported to the court that she had sold the smallest of the parcels willed to the Roman Catholic Church for P350 and asked the approval of the court. This sale was approved by an order dated August 12, 1922.

On February 5, 1923, the appellant again filed a motion asking for authority to sell seven small parcels of rice land which had been devised to different nephews and nieces of the deceased. The motion states that these small parcels adjoin one of the large parcels of abaca land devised to the church and that a buyer has been found who was willing to pay P8,000 for the land provided these small parcels were included. Before this motion had been acted upon, the Roman Catholic Archbishop of Nueva Caceres, a corporation sole, on February 12, 1923, filed a motion asking that the order of June 16, 1920, authorizing the sale of the property willed to the Roman Catholic Church be revoked on the ground that parish priests have no control over the temporalities of the Roman Catholic Church and that, therefore, the consent given by Father Julian Ope was invalid and of no legal effect and that the

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debts to which the proceeds of the sale are to be devoted are not the debts of the deceased, but were incurred during the administration of the estate by the administratrix through the mismanagement of its property.

The appellant, through her attorney, filed a lengthy answer to this motion, in which the questions involved were extensively discussed and in which the appellant insisted that the motion having been filed one year and seven months after the issuance of the order of June 16, 1921, the order could not then be revoked. Upon argument by counsel for both parties, but without any testimony being offered or received, the court, by an order dated July 3, 1923, revoked the license to sell granted by the order of June 16, 1921, on the ground that the consent to the sale given by the parish priest at Guinobatan was of no legal effect and that the license, therefore, was improvidently granted.

The case is now before us upon appeal from said order of July 3, 1923, and the appellee argues that the order appealed from, not constituting a final determination of the rights of the parties, the appeal is premature and should be dismissed. In this we think counsel is mistaken. An order for a license to sell real estate in administration proceedings, ordinarily, is in the nature of a judgment upon the issues involved and an appeal may be taken therefrom as in the case of any other judgment.

The appellant presents one assignment of error, involving two principal propositions, neither of which is, in our opinion, tenable.

It is first argued that the motion for the revocation of the license to sell was presented out of time and after the order granting the license had become final. There might be some force in this contention if the motion were based on mere errors of procedure not affecting the jurisdiction of the court, but, from our point of view, such is not the case here.

At the time of the granting of the license, a distribution of the estate of the deceased had been made, the order of distribution had become final and the title to the estate in remainder devised to the Roman Catholic Church had become vested. As far as the title to the property was concerned, the administration proceedings were then terminated and the court had lost its jurisdiction in respect thereto. There might still be a lien on the property for the debts of the deceased and legitimate expenses of administration, but it seems obvious that the court could have no jurisdiction to foreclose this lien and order the property sold unless some sort of notice was given the holder of the title. No notice, neither actual nor constructive, was given in the present case. It does not even appear that the order of sale was recorded in the office of the registry of deeds as required by subsection 7 of section 722 of the Code of Civil Procedure. The order of sale was therefore void for want of jurisdiction in the court and could be vacated at any time before it had been acted upon and a sale made and confirmed. (24 C. J., 615.)

The appellant also maintains that the court below erred in vacating the order of sale upon an unverified motion and without the presentation of evidence. In answer, we may say that the court could properly take judicial notice of the fact that the corporation sole, the Roman Catholic Archbishop of Nueva Caceres is the administrator of the temporalities of that church in the diocese within which the land in question is situated and that the parish priests have no control thereover. (See sec. 157, Act No. 1459; Dougherty vs. Evangelista, 7 Phil., 37; Barlin vs. Ramirez and Municipality of Lagonoy, 7 Phil., 41; Alonso vs. Villamor, 16 Phil, 315; Roman Catholic Bishop of Nueva Segovia vs. Government of the Philippine Islands, 26 Phil., 300; Harty vs. Sandin, 11 Phil., 450.) As all other facts upon which the order appealed from is based appear in the record, it was unnecessary to require the presentation of other evidence.

We find no error in the order appealed from and the same is therefore affirmed, with the costs against the appellant. So ordered.

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Araullo, C. J., Johnson, Street, Avancena, Johns, and Romualdez, JJ., concur.

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