

IN RE ESTATE OF THE DECEASED DOMINGO FLORENTINO. JOSE VILLANUEVA, EXECUTOR, PETITIONER AND APPELLANT, VS. ROBERTA DE LEON, OPPONENT AND APPELLEE.

G.R. No. 23726. August 27, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

The salient points of this case are these:

Domingo Florentino died at Vigan, Ilocos Sur, on January 16, 1924, leaving a considerable estate. Shortly thereafter, the will of the late Florentino was admitted to probate and Jose Villanueva named executor. Villanueva qualified as executor by filing the necessary bond in the amount of P20,000. He was granted the usual letters of administration.

In the meantime, one Roberta de Leon had presented a motion in which she prayed in effect that the court allow her to intervene in the proceedings. She alleged that she and the deceased Florentino had been living together as husband and wife since 1888; that in that year they formed & partnership to which each contributed P1,000 for the purpose of engaging in business; and that the partnership was dissolved by the death of Florentino without there having been any liquidation. This motion was denied by Judge Quintero as improper, inasmuch as the movant could present her claims to the commissioners or institute an independent action to confirm her rights in the estate. In accordance with the suggestion of the court, Roberta de Leon did in fact bring suit against Jose Villanueva, executor, in which she asked that she be declared the owner of one-half of the property left by Domingo Florentino.

Later, Roberta de Leon filed another motion duly sworn to in which she alleged that the executor had made it appear that the property of the deceased was worth only P50,000, whereas the same was valued at over P300,000. Specific mention was made by her of jewelry and tobacco leaf. Accordingly, movant prayed the court to order the executor to correct the inventory to the end that the true amount should appear in the same.

On October 31, 1924, Judge Mariano issued an order commanding the executor within three days to give reasons under oath why the jewels referred to in one of Roberta de Leon's motions, should not be included in the inventory, and to explain what had been done with the tobacco leaf. In the same order, the court ruled that Roberta de Leon had the right to intervene in the settlement of the accounts. The contents of this order were objected to by counsel for the executor and steps taken to perfect an appeal. In turn, counsel for Roberta de Leon entered opposition on the ground that the executor had no right of appeal. The court admitted the appeal in so far as it related to the right of Roberta de Leon to intervene, but denied the appeal in so far as it related to the order to the executor to state under oath why the jewels in question should not be included in the inventory and also to explain what had been done with the consignments of tobacco leaf.

In this court, three errors are assigned by the executor as appellant. The second and third errors need not be discussed since they relate to matters as to which the lower court denied appeal. Had appellant desired to contest

the correctness of the action taken by the trial judge in not certifying the bill of exceptions as to one question, he had his remedy pursuant to section 499 of the Code of Civil Procedure. Not having taken advantage of this provision of the law, the appellate court is powerless to interfere on questions which are not properly before it. (Code of Civil Procedure, sec. 499; *Somes vs. Crossfield and Molina* [1907], 8 Phil., 283; *Lituaña and Calica vs. Oliveros* [1918], 38 Phil., 628.) The single question is whether or not an alleged partner of a deceased person has such interest in the estate of the deceased as to allow her to take part in the approval of the accounts.

It is the duty of the probate court to scrutinize carefully the accounts of executors and administrators and to correct all errors founded in law or fact. It is the right of all the creditors and distributees of the estate to be present and, if so disposed, to contest the account of the executor or administrator. Only a prima facie right at the time of filing the petition is sufficient to entitle the applicant to intervene in the accounts of the executor or administrator. It is for the trial court to determine whether the person seeking to participate in the proceedings is a person interested within the meaning of the law, or is merely an intruder who should be excluded from any further participation. The determination of this question must necessarily be largely discretionary in the trial court. Any doubt as to the interest of the petitioner ought, however, to be resolved in favor of the petitioner, and any doubt arising in the appellate court ought to be resolved in favor of the action taken by the trial judge. Administrators and executors instead of opposing the intervention of interested parties should welcome the participation of the same for their own protection. (See *Garwood vs. Garwood* [1866], 29 Cal., 514, cited by appellant; *Estate of Willey* [1903], 140 Cal., 238.)

On the supposition that that part of the order of the trial court which relates to the right of Roberta de Leon, the alleged partner of the deceased, to intervene in the testate proceedings is appealable, we entertain the view that the action taken by the trial judge was correct. Accordingly, it results that the order is affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, and Johns, JJ., concur.

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