

**INTESTATE ESTATE OF MARTIN DE LOS REYES, DECEASED.
ANTONIA FERNANDEZ, ADMINISTRATRIX AND APPELLEE, VS.
MARCELA DE CASTRO, OPPONENT AND APPELLANT.**

G.R. No. 23982. October 08, 1925

Ponente: STREET, J.

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STREET, J.:

By this appeal the appellant, Marcela de Castro, seeks to reverse or annul various orders of the Court of First Instance of the City of Manila in the probate proceedings over the estate of Martin de los Reyes, deceased. The nature of these orders will be exhibited, so far as necessary, in the body of the opinion.

It appears that the deceased, one Martin de los Reyes, and the appellant, "Marcela de Castro, were married in the municipality of Navotas, now of the Province of Rizal, but then of the Province of Manila, on June 7, 1888. The pair lived together as man and wife for several years, with their residence in Navotas, and to the marriage was born a daughter, named Rosario, who died long ago without issue. Soon after the insurrection against Spain, or about the end of the year 1897, Marcela de Castro abandoned her husband and has had nothing to do with him since. Martin de los Reyes then moved to the City of Manila, where he passed for an unmarried man. At the end of two years he made the acquaintance of Antonia Fernandez and the two were married in the City of Manila on March 11, 1900. The pair lived together as man and wife for more than twenty-two years, until the death of Martin de los Reyes, which occurred on February 4, 1922. Several children were born to the pair, some of whom predeceased their father, but three are still living, namely, Amada, Celia and Martin. No property appears to have been accumulated by Martin de los Reyes while he lived with Marcela de Castro; but during the period of his connection with Antonia Fernandez, the two acquired valuable property.

In a decision of December 26, 1923, his Honor, Judge Anacleto Diaz, found that Antonia Fernandez had married Martin de los Reyes, believing in good faith that he had capacity to marry; and that during the whole period of their marital relations Antonia Fernandez was received on all sides by friends and relations as the legitimate wife of Martin de los Reyes.

After the death of Martin de los Reyes, Antonia Fernandez qualified as his administratrix, but before long Marcela de Castro, the first wife, made her appearance and submitted a petition to the court, praying that Antonia Fernandez be removed and that she (Marcela de Castro) be appointed administratrix instead. The court acceded to this petition, canceled the appointment of Antonia Fernandez, and made order that Marcela de Castro should be substituted as administratrix of the estate. This order was affirmed on appeal to the Supreme Court.[1]

All the debts of the estate and costs of administration having been paid, it became necessary for the court to ascertain the heirs and make order for the distribution of the residue of the estate; and in passing upon the respective rights of Marcela de Castro on the one hand and Antonia Fernandez and her children on the other, Judge Diaz made the decision of December 20, 1923, already referred to. In this decision, after having stated the conclusion that Antonia Fernandez was a wife in good faith of the deceased, the court applied the doctrine of the

case of *Sy Joc Lieng vs. Encarnacion* (16 Phil., 137), and held that the rights, of Antonia Fernandez and of her living children by the deceased were the same as if Antonia Fernandez had been in all respects the lawful wife of the deceased. Accordingly his Honor disallowed the pretension of Marcela de Castro and declared Antonia Fernandez and the children named Amada, Celia and Martin the only heirs of the deceased and adjudicated one-half of the inventoried property of the estate to Antonia Fernandez as her share in the ganancial partnership. The other half he adjudicated to the children in equal shares, subject to the right of usufruct pertaining to Antonia Fernandez as the surviving spouse. His Honor further ordered Marcela de Castro to render her final account as administratrix within the period of fifteen days, to the end that the property might be distributed and the administration closed. This decision of Judge Diaz was permitted to become final, and though a dilatory effort was made to get the case in the Supreme Court for revision, the bill of exceptions was there dismissed.

On December 4, 1924, Mr. Amzi B. Kelly, as attorney for Marcela de Castro, presented an application to the Supreme Court for the writ of certiorari, to restrain the lower court from proceeding under the decision of Judge Diaz of December 26, 1923, and seeking the annulment of said judgement on the ground that the court had lacked jurisdiction to decide the matters therein determined. (G. R. No. 23398;) This court denied the petition for the reason that no sufficient ground for the issuance of the writ of certiorari was shown.[1] On December 31, 1924, the same attorney, in representation of Marcela de Castro, filed a petition for mandamus in the Supreme Court, seeking to compel the Honorable Pedro Concepcion, as judge of the probate division of the Court of First Instance of Manila, to recognize the rights of Marcela de Castro to the office of administratrix, in conformity with the original decision in her favor. This application for mandamus was denied on the ground that the complaint did not show facts sufficient to constitute a cause of action.[2] Having been thus far unsuccessful in her attempts to be relieved from the effects of the decision of Judge Diaz of December 26, 1923, Marcela de Castro had recourse to the present proceeding by appeal; and inasmuch as said decision had long since become final, the appeal is limited to certain orders of the Court of First Instance, which are either corollaries from the main decision or designed to carry it to its logical consequences.

The orders which are the subject of appeal are as follows: An order of the Honorable Pedro Concepcion of November 12, 1924, in which he required Marcela de Castro to submit her accounts as administratrix within ten days from notification of the order; the order of December 17, 1924, in which the Honorable Pedro Concepcion refused, upon the petition of Marcela de Castro, to set aside the decision of Judge Diaz of December 26, 1923, and subsequent orders made in the course of the administration; the order of December 15, 1924, in which Judge Pedro Concepcion authorized the administratrix to mortgage the property of the deceased to pay a debt due to Florencio Gonzalez Diez; the order of December 20, 1924, in which the Honorable Pedro Concepcion overruled certain objections interposed by the attorney for Marcela de Castro to the previous resolution of the court; the order of December 20, 1924, in which Judge Concepcion required Marcela de Castro to deliver promptly to the present administratrix, Antonia Fernandez, certain papers of the deceased, including plans and certificate of transfer of title and policies of insurance pertaining to the property; the order of February 11, 1925, in which Judge Concepcion authorized the sale of a mortgaged property belonging to the estate and required Marcela de Castro and her attorney to deliver the policy of insurance which was the subject of the order.

It is assigned as error in the ninth assignment that the lower court erred in giving any consideration whatever to the decision of Judge Anacleto Diaz of December 26, 1923, and in disregarding the prior decision, dated October 20, 1922, in which the right of Marcela de Castro to act as administratrix had been first recognized.

In the brief of the appellee attention is directed to the fact that the orders which are the subject of the first, eighth and ninth errors were not made the subject of appeal in the lower court, and it is also insisted that this court has never acquired jurisdiction to review the orders which are the subject of attack in the various other assignments

owing to a failure of the appellant to give bond for the appeal. In the view we take of the case this proposition need not be passed upon, since it is evident that the source of offense to the appellant is the decision of December 26, 1923; and the only possible question for this court is to decide whether or not that decision is a nullity. If the court had jurisdiction to settle the matters which are the subject of that judgment, it cannot be ignored, much less is it subject to revision in this case, since the time for appeal from said decision has passed.

The chief point of criticism with respect to the decision referred to is its supposed inconsistency with the earlier decision by which Marcela de Castro had ousted Antonia Fernandez from the office of administratrix, and it is insisted that the decision of Judge Diaz is a nullity because it reverses the other decision. With this conclusion we are unable to agree. The subject of contention in the earlier case was the title to the office of administratrix; and although we said in that case that the marriage of Antonia Fernandez with Martin de los Reyes was void ab initio, this was said with reference to the validity of the tie (*vinculum matrimonii*) connecting the supposed spouses. Nothing was said, or intended to be decided, with respect to the property rights of the two litigants in the estate of the deceased. As to the children of Antonia Fernandez, they were not even parties to that proceeding, and of course were not affected by the issue of the controversy between the two women over the office of administratrix. The final distribution of an estate is a step that can be taken only after a determination of the persons who are entitled to share; and Judge Diaz undoubtedly had the power to pass upon the rights of Antonia Fernandez and her children, as was done in the decision of December 26, 1923. (*Ramirez vs. Gmur*, 42 Phil., 855, 869.) Whether there was error in the decision referred to is a point which we are not called upon to decide; for even supposing that there is an inconsistency between the decision of Judge Diaz and the earlier decision, or error in the later decision, yet since the court had the jurisdiction to determine heirship, as was done in the later decision, it was incumbent upon the representation of Marcela de Castro to have appealed in order to correct the error, if any had been committed, in the decision which is the subject of attack. The circumstance that a prior decision involving the same subject matter had been made and that the point in controversy was *res judicata* did not, *ipso facto*, deprive the court of the power to enter a different judgment. As is well recognized a prior decision must be pleaded and relied upon and the act of a court in ignoring such a decision makes an erroneous but not a void decree.

From what has been said it is evident that with respect to her claim to the estate of Martin de los Reyes the appellant is now without remedy, a conclusion that is not less consonant with the inherent justice of the case than with the legal principles which must control.

Under the eighth assignment of error the appellant questions the validity of various orders on the ground that the attorney for the appellant had not been served with notice, as required by No. 10 of the Rules of Courts of First Instance. If the errors attributed to the court were in fact committed there was evidently no prejudice to the appellant inasmuch as, under the Diaz decision, she had no interest left in the estate to be protected by her.

It follows that the orders appealed from should be affirmed, and it is so ordered, without costs.

Avanceña, C. J., Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

[1]*Fernandez vs. De Castro*, R. G. No. 20052, promulgated August 6, 1923, not reported.

[1]*De Castro vs. Diaz*, decided by resolution of December 6, 1924, not reported.

[2]*De Castro vs. Concepcion*, R. G. No. 23510, decided by resolution of January 29, 1925, not reported.

DISSENTING

MALCOLM AND JOHNS, JJ.:

In so far as the facts are stated in the majority opinion, they are clearly and well stated, but there is an omission of one very important fact. It is true that on the 8th of February, 1922, Antonia Fernandez was appointed as administratrix of the estate of Martin de los Reyes upon a petition in which it was alleged that she was his wife. March 6, 1922, the appellant filed a petition in the probate court, in which she alleged that she was the wife of the deceased, and that Antonia Fernandez was not his wife, and in which the petitioner asked to have Antonia Fernandez removed and to have herself appointed as administratrix of the estate of her deceased husband. Based upon that petition, a hearing was had in which the defendant here submitted proof that she was the lawful wife of the deceased husband, and the plaintiff submitted proof tending to show that the defendant was not the wife of the deceased husband, but that she was his lawful wife.

Upon such issues, the lower court rendered a decision, the material portions of which are as follows:

"By virtue of which it is declared that Marcela de Castro is the lawful wife and widow of the deceased Martin de los Reyes and as such has the legal right to administer the property of the said deceased.

"The court is of the opinion that it is unnecessary to make any findings with regard to the disposition of the property acquired during the time Martin de los Reyes was married to Antonia Fernandez, because it is satisfactorily proven that Marcela de Castro is the lawful wife of the said Martin de los Reyes.

"And the appointment of the said Antonia Fernandez is hereby cancelled and Marcela de Castro is named as administratrix of the estate of the said Reyes upon her filing a bond of P500."

From this decision an appeal to this court was taken, and on August 6, 1923, this court rendered an opinion in which, among other things, it says:

"As the facts disclose that Martin de los Reyes was married to Marcela de Castro and that this conjugal partnership existed legally without being dissolved at the time that the said Martin de los Reyes married Antonia Fernandez, this second marriage is void ab initio."

As a result of that decision, and on October 20, 1923, the defendant was appointed administratrix of the estate of her deceased husband. December 26, 1923, in the absence of the probate judge, who rendered the former opinion, from which the appeal was taken to this court, another Judge of the Court of First Instance made an order of distribution of the property of the deceased husband in which he ignored the legal and statutory rights of the appellant, and in legal effect gave all of the property of the deceased to the appellee and her children. No appeal was taken from that decision to this court, but in the case which was appealed, this court held:

"That Martin de los Reyes was married to Marcela de Castro and that this conjugal partnership existed legally without being dissolved at the time that the said Martin de los Reyes married Antonia Fernandez, this second marriage is void ab initio."

That decision established the fact which was then in litigation that the appellant was the true and lawful wife of the deceased, and, as his wife, the statute defines her property rights in her husband's estate, and there was nothing left for the lower court to do except to follow and recognize that decision in its order of distribution. Although it is true that no appeal was taken from the last decision, it is also true that, if an appeal had been taken, this court could do nothing more than to adhere to its former decision. For such reasons, as to the appellant, the decision of the probate court, in ordering the distribution of the property, was not only voidable, but it was null and void, and in legal effect overrules the decision of this court, and nullifies the statute of descent and distribution. (*Shioji vs. Harvey* [1922], 43 Phil., 333.)

For such reasons, plaintiff is entitled to relief from the force and effect of a void judgment, and upon those grounds, we dissent.

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