

**IN RE INTESTATE ESTATE OF EPIFANIO OROZCO, DECEASED.
SERAFIN OROZCO, PETITIONER AND APPELLEE, VS. ALBINA
GARCIA, OPPONENT AND APPELLANT.**

G.R. No. 26505. March 23, 1927

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On January 16, 1926, Serafin Orozco filed a petition with the Court of First Instance of Albay, praying that he be appointed special administrator of the estate of the deceased Epifanio Orozco pending the appointment of a regular administrator, upon the ground that said Epifanio Orozco died in August, 1917, in the municipality of Guinobatan, Albay, leaving real property to the value of P15,000 more or less; that the nearest relatives of said deceased are the applicant, Serafin Orozco, Carmen, Mercedes and Arsenio Orozco, all natural children duly recognized and declared as such by the said court in civil case No. 474, and the widow of the deceased Epifanio Orozco named Albina Garcia, with whom the said deceased had no descendant; that the deceased Epifanio Orozco had not executed any will, and since his death his property has been in the possession of his widow, Albina Garcia, who refuses to deliver to the petitioner and his brothers and sisters their respective shares, and that the widow Albina Garcia and the herein petitioner and his brothers and sisters have conflicting interests.

Albina Garcia, widow of Orozco, objected to said petition and the court, by an order of February 13, 1926, appointed her administratrix of the property left by said deceased Epifanio Orozco, upon the filing of a bond in the amount of P2,000 with solvent sureties.

Such is the order appealed from.

Counsel for the appellant assigns the following alleged errors as committed by the lower court: (1) In finding that the conjugal property was acquired during the marriage of the deceased Epifanio Orozco with Albina Garcia; (2) in appointing an administrator of the intestate estate of the deceased Epifanio Orozco, that is, of the property left by him; and (3) in not requiring the petitioner to pay the fees and expenses incurred in this special proceeding.

The principal ground of the opposition is that the heirs being of legal age, and there being no proof that there is any valid and effective credit against the deceased, no legal reason exists for the court to appoint an administrator, as prayed for in the petition, citing in support of this contention the doctrine enunciated in the cases of *Ilustre vs. Alaras Frondosa* (17 Phil., 321); *Bondad vs. Bondad* (34 Phil., 232) ; *Baldemor vs. Malangyaon* (34 Phil., 367).

It is true that, under section 596 of the Code of Civil Procedure, whenever all the heirs of a person who died intestate are of lawful age and legal capacity, and there are no debts due from the estate, or all the debts have been paid, the heirs may, by agreement duly executed in writing by all of them, and not otherwise, apportion and divide the estate among themselves, as they may see fit, without court proceedings. But there is nothing in this section which prohibits said heirs from instituting special proceedings for the administration of the intestate estate if they cannot agree on the extrajudicial partition and apportionment of the same. In the case of *Castillo vs. Castillo and Quizon* (23 Phil., 364), this court said that: "It is not a principle authorized by law that heirs of legal age may not,

as alleged by the appellant, demand the division of a real property, left them by their predecessor in interest and held by a coheir, without first initiating special intestate proceedings during which a judicial administrator is to be appointed, who alone is vested with the personality to claim the property that belongs to the succession. On the contrary, such heirs are expressly authorized to do so, unless, for the reason of there being unpaid debts, judicial intervention becomes necessary, which was not alleged as a special defense in this suit."

Granted that the appellant is in possession of the property left by the deceased father of the petitioner, and there being no agreement between all the heirs of legal age for the extrajudicial partition of the estate, the objection of the appellant based upon the ground that no indebtedness exists and that more than eight years had already elapsed from the death of the deceased Epifanio S. Orozco to the filing of the petition of the appellees, is untenable.

Wherefore, the order appealed from must be, as it is hereby, affirmed, without any special finding as to costs, and the case is remanded to the court of origin for further proceedings. So ordered.

Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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