

INTESTATE ESTATE OF THE LATE FLORENCIA DIEZ. SEGUNDO DIEZ, PETITIONER AND APPELLEE, VS. TOMAS SERRA FOR HIMSELF, AND AS GUARDIAN OF THE MINORS MERCEDES, TRINIDAD, JOSE, MARCELIN...*G.R. No. 27650. December 24, 1927*

Ponente: VILLAMOR, J.

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On September 12, 1923, Segundo Diez applied to the Court of First Instance of Occidental Negros for letters of administration of the estate of the deceased Florencia Diez alleging that he is a brother of the said Florencia Diez, who died on August 21, 1921 in the municipality of Cadiz, Province of Occidental Negros, in which municipality she resided at the time of her death; that the deceased at the time of her death was a widow and left no will; that the deceased left realty consisting in a share of one-third of lots Nos. 465 and 490 of Cadiz cadastral case No. 25, more specifically described in the certificates of the office of the register of deeds of that province; that the deceased left seven children, as follows:

Years old

Tomas Serra y Diez	21
Mercedes Serra y Diez	18
Trinidad Serra y Diez	16
Jose Serra y Diez.....	14
Marcelino Serra y Diez	17
Adriano Serra y Diez	10
Felix Serra y Diez	7

That the deceased Florencia Diez's share in the above-mentioned lots is assessed at P22,970. On September 15, 1923, the court granted the application, ordering the appointment of Segundo Diez as administrator, upon his filing a bond in the sum of P5,000. The said bond was filed, and on May 7, 1924 Segundo Diez was appointed administrator. On October 7, 1924, he presented an inventory of the property under his administration.

From then on the administration functioned until July 31, 1926, when Tomas Serra for himself and as guardian of his six minor brothers and sisters, the children of the deceased Florencia Diez, put in a special appearance, contesting that court's authority to take cognizance of this intestate estate, on the ground that the deceased Florencia Diez resided in the municipality of San Joaquin, Province of Iloilo, at the time of her death, as evidenced by the death certificate, Exhibit A.

The North Negros Sugar Co., Inc., filed an intervention in this case, as creditor of the intestate estate for a mortgage loan granted to the administrator, with the authorization of the court, maintaining the validity of these proceedings, and asking for the dismissal of the special appearance of Tomas Serra et al.

The court denied the petition of the special appearance. Tomas Serra et al. appealed from this decision and their counsel in this instance assigns the following errors as committed by the court below: (a) In finding itself competent and with jurisdiction to take cognizance of and act in this proceeding for the settlement of the intestate estate of the deceased Florencia Diez; (b) in not holding that the proceedings had herein are absolutely void ab initio because no evidence has been heard or introduced anent the facts alleged in the application, and particularly anent those concerning its own jurisdiction to take cognizance of this case; (c) in finding that the question set up by the herein petitioners as to the court's jurisdiction is untimely and lacks the legal requisites for that purpose; (d) in holding that the herein appellants are now estopped from questioning the regularity and validity of its proceedings. in this intestacy; (e) in permitting the North Negros Sugar Co., Inc., to intervene in the matter of the questioning of the court's jurisdiction.

The legal questions raised by this appeal relate to the jurisdiction of the court that granted the letters of administration of the estate of the deceased Florencia Diez, and to the challenge of such jurisdiction. Section 600 of the Code of Civil Procedure provides:

"Sec. 600. Where resident's estate settled.—If an inhabitant of the Philippine Islands dies, whether a citizen or alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resided at the time of his death."

According to the allegations of the application for letters of administration, the deceased Florencia Diez lived at Cadiz, Occidental Negros at the time of her death; it is therefore clear that the court a quo had jurisdiction to grant the letters of administration applied for.

In order to render valid a grant of letters of administration the view is generally accepted that certain jurisdictional facts must exist. These facts are that the person on whose estate the letters are being granted is in fact dead, and that at the time of death he was a resident of the county wherein letters are being granted, or if not a resident that he left assets in such county. It has been said that the fact of the death of the intestate and of his residence within the county are foundation facts upon which all the subsequent proceedings in the administration of the estate rest, and that if the intestate was not an inhabitant of the state at the time of his death, and left no assets in the state, and none came into it afterwards, no jurisdiction is conferred on the court to grant letters of administration in any county. A probate court has jurisdiction to grant administration of the estate of a person who at the time of his decease was an inhabitant or resident in the county, without proof that he left an estate to be administered within the county. (11 R. C. L., par. 81.)

Section 603 of the Code of Civil Procedure provides that the jurisdiction assumed by a Court of First Instance for the settlement of an estate, so far as it depends on the place of residence of a person, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the lack of jurisdiction appears in the record. In the present case the lack of jurisdiction did not appear in the record at the time when the court a quo that appointed the administrator found itself competent, and no appeal was taken from the order decreeing said appointment.

This administration has functioned for two years, and the appellants after that period have appeared in this case, too late to avail themselves of the benefits offered by section 113 of the Code of Civil Procedure, and it would seem that the only remedy left to them is to ask for the reopening of the proceedings in the lower court that assumed jurisdiction.

Without further need to discuss the other points raised by the appellants, the decision appealed from should be, as it is hereby, affirmed, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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