

ESTATE OF THE DECEASED ROSENDO HERNAEZ. RAFAEL R. ALUNAN, ADMINISTRATOR AND APPELLEE, VS. ELEUTERIA CH. VELOSO, OPPONENT AND APPELLANT.*G.R. No. 29158. December 29, 1928*

Ponente: AVANCEÑA, J.

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This case deals with an account filed in these intestate proceedings for the settlement of the estate of the deceased Rosendo Hernaez by his judicial administrator, Rafael Alunan, and approved by the court below. Jose Hernaez, one of the heirs interested in this proceeding, assigned the whole of his portion to Eleuteria Ch. Veloso, and the latter objects to some of the items of the account filed, assigning four errors to the resolution of the court below.

In the first place, it is alleged that the lower court erred in imposing a preferred lien of P12,683.83 upon the Panaogao Hacienda, adjudicated to the appellant Eleuteria Ch. Veloso. Before the partition, Jose Hernaez leased said Panaogao Hacienda for two harvests the stipulated rent being 12 per cent of all the sugar to be produced thereon, provided, however, that he should pay at least 12 per cent of 8,000, even if the production should fall below this amount. During the two years Jose Hernaez produced less than 8,000 piculs, and only 12 per cent of what he did produce was collected from him as rent, thus leaving him indebted in an amount equal to the difference between 12 per cent of the sugar he produced, and 12 per cent of 8,000 piculs which he had to pay at the least. The P12,683.83 to which the first error refers is the value of this difference and is therefore a legal debt of Jose Hernaez's transmitted to the appellant, and affecting her participation in the intestate estate. According to an agreement previously entered into by and between the heirs, the share belonging or which may belong to each heir shall be liable and subject to a lien in favor of all the heirs for any account or debt pending which the heir may owe to the intestate estate.

This first error then is not well grounded.

As to the second error, which is made to consist in the lower court having held that the sum of P20,000 is another lien upon the said Panaogao Hacienda, in favor of the administrator Rafael Alunan, should the latter be ordered to pay that sum in civil case No. 6391 of the Court of First Instance of Iloilo, Mr. Alunan is agreeable that this holding be eliminated from the judgment appealed from.

The third error refers to the sum of P24,991.42 as attorney's fees and compensation of the administrators who took part in this proceeding. This amount, it is alleged, is excessive. It appears that a great part of these fees were paid to Jose Hernaez himself, the appellant's predecessor in interest, and most of these fees, as well as of the attorney's fees, have already been approved by the court below. At all events, since it has been found necessary to employ several lawyers and more than one administrator in this proceeding, and taking into account the unusual amount of the interests involved, we find no merit in the objection to this item of the account.

The fourth error is made to consist in the lower court having admitted the partition proposed by the administrator in his account. According to this account, the total amount to be partitioned among the heirs is P8,979.08, which

the administrator distributed equally among all the heirs, including the widow, each one receiving P11,122.38.

This partition is objected to with respect to the widow. It is alleged that the distributable amount is in money, and since the widow's right is only a usufruct, and as there can be no usufruct of money, since it is a fungible thing, the adjudication made to the widow was erroneous. It is incorrect to say that there can be no usufruct of money, because it is a fungible thing (art. 482, Civil Code).

It is likewise alleged, that, at any rate, this amount which should go to the widow should be offset by the P55,000 which she has already received as a pension. Neither do we find any ground for this error, since, according to the agreement of the heirs already referred to, the amount of the widow's pension is not to be charged to her portion in the inheritance either wholly or in part.

Lastly, it is alleged, that the portion given to the widow is not in accordance with law. We find the objection with respect to this point to be correct. The widow, according to the law, only has a right to a portion of the estate equal to that of the legitime of each of the children without betterment. In the instant case none of the children received a betterment. Consequently, the widow should receive a portion equal to the share of each in the two-thirds of the distributable amount making up the legitime, to be taken from the one-third forming the betterment. Then, the other free third, which the decedent failed to dispose of, must be partitioned among the heirs to the exclusion of the widow, as an addition to their legitime. Working out the computations on this basis, the widow should receive only P8,474.19.

Therefore, it being understood that there be eliminated from the decision the holding that the Panaogao Hacienda, which was adjudged to the appellant, should answer for the amount of P20,000 as a lien in favor of Rafael Alunan should the latter be ordered to pay it in civil case No. 6391 of the Court of First Instance of Iloilo, and it being further understood that the widow's portion is only P8,474.19, the remainder of the P88,979.08 which is distributable, pertaining to the heirs, share and share alike, excluding the widow, the judgment appealed from is affirmed, without special pronouncement as to costs. So ordered.

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

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