

ROSARIO OÑAS, PETITIONER AND APPELLEE, VS. CONSOLACION JAVILLO ET AL., OPPOSITORS AND APPELLANTS.

G. R. No. 31962. March 15, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

Crispulo Javillo died in May, 1927, leaving a widow, Rosario Onas, and nine children, named Consolacion, Mercedes, Caridad, Soledad, Jose, Joaquin, Ana, Bernarda, and Furillana Javillo. The first five were had with his first wife; the other children are minors and were born in the second marriage.

Probate proceedings of the estate of the deceased were instituted on July 25, 1927, and in September of the same year one Santiago Andrada was appointed administrator of the estate, and a committee of claims and appraisals was also duly appointed.

On May 24, 1928, the administrator presented a project for the distribution of the estate. The children of the first marriage as well as the widow of the deceased, expressed their conformity with the proposed distribution, and on May 26, 1928, Judge Opisso, then presiding in the Court of First Instance of Capiz, approved the project presented. Two months later, the widow, Rosario Onas, filed a motion in which she alleged that she had been deceived and misled into giving her conformity to the project of distribution mentioned, and that if such distribution was carried out, she as well as the minor children, would be defrauded of their rights inasmuch as the portions adjudged to them were much smaller than the portions adjudicated to the children of the first marriage. She therefore prayed that the order of May 26, 1928, approving the proposed distribution, be set aside and that said distribution be declared null and void; that a new guardian ad litem be appointed to protect the interests of the minor children and that a new distribution be made in conformity with the law of succession. The motion was set down for hearing on August 1, 1928, and on the following day, Judge Garduno, then presiding, revoked the order in question without receiving evidence from the son and daughters of the first marriage of the deceased. They therefore filed a motion for reconsideration of said order, and Judge Garduno thereupon commissioned the clerk of the court to take the evidence offered by the protesting parties, and on February 2, 1929, he confirmed the order of August 2d, and ordered the administrator to present a new inventory and to include therein certain other items not mentioned in the original inventory. The court further ordered that a new project of partition be prepared according to law. As a result, the children of the deceased, represented by Attorney Santiago Abella Vito, appealed to this court.

The principal contention of the appellants is that the court below had no authority to set aside the order of August 2, 1928. In our opinion, this contention cannot be sustained. In probate proceedings considerable latitude is allowed a Court of First Instance in modifying or revoking its own orders as long as the proceedings are pending in the same court and timely applications or motions for such modifications or revocations are made by the interested parties. In the present case no final settlement of the estate of the deceased appears to have been made, and the case is consequently still within the jurisdiction of the court. The order of August 2d was issued on the petition of the appellee only two months after the approval of the project of distribution presented by the

administrator, and we cannot hold that said petition was not timely presented and that the court erred in revoking its own order. Moreover, the petition for the revocation was, in effect, an application for relief under section 113 of the Code of Civil Procedure, and this court has held that the provisions of said section may be applied to probate proceedings (*In re Estate of Johnson*, 39 Phil., 156). From this point of view, it is unnecessary to herein discuss the other points raised by the appellants, and it is evident that the appeal taken is premature.

Said appeal is therefore dismissed without prejudice to the appellants' right to appeal when the new distribution of the estate has been approved and adjudged by the court below. The appellants will pay the costs of this instance. So ordered.

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

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