

FELISA NEPOMUCENO, PLAINTIFF AND APPELLEE, VS. CIBILO A. CARLOS, DEFENDANT AND APPELLANT.*G.R. No. 3516. November 16, 1907*

Ponente: WILLARD, J.

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This is one of the special proceedings included in Part II of the Code of Civil Procedure. It invoked the exercise of the jurisdiction conferred upon Courts of First Instance by section 599 of that code, which jurisdiction is there called "probate jurisdiction." Felisa Nepomuceno, the appellee, commenced the proceeding on the 4th day of October, 1901, three days after the said code took effect, by filing a petition which stated that Agaton Almeda Carlos died in the pueblo of Bifian in 1875; that he left a will in which he appointed the appellant, Cirilo A. Carlos, his executor; that a certificate of his appointment as such executor was issued by the Court of First Instance of said province on the 9th day of July, 1875; that since that time the appellant had been administering the property left by his father, and that the petitioner was the widow of Sixto Almeda Carlos, son and heir of Agaton Almeda Carlos. The prayer of the petition was that the appellant be required to present to the court an exact report of the property left by the testator and that he present a detailed report of his administration of such property. The court ordered the appellant to file an account; such account was filed by him, a commissioner was appointed to receive evidence thereon, the commissioner made a report, which report was set aside by the court, and on the 6th day of March, 1906, an order was entered rejecting and disapproving the accounts presented by the defendant, removing him from the office of executor, ordering the parties to appear before the court for the purpose of the appointment of a new administrator, and directing the appellant to file further accounts. From this order the defendant appealed.

The court below proceeded upon the theory that there was pending in that court a judicial proceeding for the settlement of the estate of Agaton Almeda Carlos, and the order appealed from indicates that it is the intention of the court to proceed with such settlement. The appellant claimed in the court below, and insists here, that there was, in 1901, no judicial proceeding of any kind then pending for the settlement of the said estate; that if any such judicial proceeding ever were pending, it was by agreement of the parties abandoned at the end of 1883, and that since that time, at least, the appellant has been administering the property in question, not as the executor of his father's will but as an agent appointed by the persons interested in the property for that purpose. This was the view taken of the matter by the commissioner in his report to the court below, and after an examination of the record we are satisfied that it is the correct one, that the theory of the court below can not be sustained, and that its order must be reversed.

In order that a Court of First Instance may exercise its probate jurisdiction there must be pending in court some judicial proceeding for the settlement of the estate of a deceased person. By the provisions of section 64 of Act No. 136 all actions and proceedings pending in the former Courts of First Instance were transferred to the present Courts of First Instance. In order to sustain the jurisdiction of the court below in this case it is necessary to prove that when the petition of the appellee was filed on the 4th day of October 1901, there was then pending in that

court some proceeding for the settlement of the estate of Agaton. Almeda Carlos. There is in the case a letter written by Sixto Carlos to his brother, the appellant, in which he speaks of receiving a certificate of the appointment of the appellant as executor. The appellant, as executor, made an inventory of some of the property left by his father and he frequently styled himself "executor." There is no other evidence in the case to show that during the twenty-six years elapsing between 1875 and 1901 the Court of First Instance of the Province of La Laguna ever had anything to do with the settlement of the estate.

According to the law in force prior to the Ley de Enjuiciamiento Civil, it seems that the issuance by a court of a certificate of the appointment of an executor did not necessarily indicate the existence of a judicial proceeding. As to the inventory, this was made by the appellant before a notary public and without the intervention of the court. The correspondence between the brothers Sixto and Carlos Cirilo shows that there was some controversy in May, 1877, between the appellant and his sisters, Doila Rufina and Doña Melecia, in regard to the estate, and this fact may have led to the making of the inventory which was signed not only by the appellant but also by the two sisters. Considering the great lapse of time between 1875 and 1901, we do not think that these two acts, namely, the appointment of the executor and the making, extra-judicially, of an inventory of a part of the estate, are sufficient to show that any proceeding for the settlement of this estate was ever commenced in the then Court of First Instance of the Province of La Laguna. That no such proceeding was necessary in this case is well settled. (*Mendiola vs. Mendiola*, 7 Phil. Rep., 71-75.)

There is, moreover, evidence to show that, if any such proceeding were commenced, it was terminated at the close of the year 1883, and from that time the appellant, in administering the property, was acting not as executor but as the agent of his brother Sixto and of his sister Rufina. At the end of the year 1883 all of the four heirs interested in this estate agreed that the net value thereof was 97,698.13 pesos, and that the fourth part, which belonged to Doña Melecia, was 24,424.53 pesos, and that she should then withdraw from the estate her interest therein. On the 29th of December she was paid 15,000 pesos in cash on account thereof and the balance was paid from time to time until the 7th day of April, 1890, when she was paid in full. That this contract of partition was agreed to by all the heirs is proved, as to Carlos, the appellant, and Doña Melecia and her husband, by the fact that in 1890 they signed a public document to that effect. As to Doña Rufina, it is proved by her own testimony at the trial of this case, in which she stated that she agreed to this settlement and accepted it. As to Sixto, who died in 1900, it is proved by the oral testimony in the case that the contracts of 1890 were made in his house, that he examined the books and made the liquidation, and that the private documents are in his handwriting. The husband of Doña Melecia also testified positively that Sixto agreed to the contract.

The effect of this contract was to partition the estate and to terminate the executorship. It is true that one-fourth of the property belonging to the estate was not set off to Doña Melecia in kind, and it is also true that the other three heirs did not then divide among themselves the property remaining after Doña Melecia had received her part, but that does not make it any the less a termination of the executorship. Doña Melecia having been paid her share in cash, the other three heirs became the joint owners of the property.

It seems to be asserted in the brief of the appellee in this case that the claim of the appellant is that the share of Sixto Carlos would now be only 24,000 pesos and that the appellant could satisfy that by paying that amount. We find nothing in the case to show that the appellant has ever made any such contention. The three heirs are now the owners in common of all the property of the estate. In the case of *Mendiola vs. Mendiola*, above cited, there was an agreement between the persons, interested in the estate by virtue of which the widow paid to the mother, one of the heirs, 2,400 pesos, and to one of the legatees 1,200 pesos, they receiving these sums in full satisfaction of all claims they had against the estate. It was held that this was a partition of the property that terminated the judicial proceeding then pending for the settlement of the estate.

The court below likens the transaction here in question to a sale by one of the heirs of his interest to a third person, but in our view of the case it can not be so considered. In such a case the property of the estate remains intact and has not been in any way decreased, but in this case one-fourth of the property of the estate has actually been taken from it and there remains only three-fourths. In support of the view of the court below, that there was a judicial proceeding pending in 1901, reference is made in the opinion to the manner in which the papers presented in this case were entitled and to the fact that in the answers first filed by the appellant he seemed to recognize the existence of a judicial proceeding, but these facts can not, in our opinion, have any controlling effect. The question is one of the jurisdiction of the court over the subject-matter. Such jurisdiction can not be conferred by consent of parties. If, as a matter of law, there was, in 1901, no judicial proceeding pending in court for the settlement of this estate, then the parties could not, even by their express consent, confer such jurisdiction. Our conclusion is that the rights of the appellee can be made available only by an ordinary action and that the court below, in exercising its probate jurisdiction in this case, was in error. The order appealed from is reversed, without costs to either party in this court, and the case is remanded with directions to the court below to dismiss the proceeding for want of jurisdiction, with costs against the petitioner, and without prejudice to the right of the petitioner to maintain such ordinary actions in court for the protection of her interests as she may be advised. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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