

ESTATE OF THE DECEASED ALFREDO PARDO DE TAVERA. CARMEN PARDO DE TAVERA Y CEMBRANO, PETITIONER AND APPELLANT, VS. PAZ LOPEZ MANZANO VIUDA DE PARDO DE TAVERA, OPPOSITOR AND APPELLEE.

G.R. No. 36602. September 22, 1933

Ponente: MALCOLM, J.

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MALCOLM, J.:

From the findings made by the trial judge in the order entered by him in this case, which must be here accepted as conclusive since no motion for a new trial based on the insufficiency of the evidence was presented, there are taken the following facts:

Alfredo Pardo de Tavera died in the City of Manila on August 21, 1928. In due course the widow of the deceased was named administratrix of the estate, the estate was divided between her and the minor child of the deceased and the administratrix, and on July 31, 1930, the case was definitely archived. Carmen Pardo de Tavera y Cembrano, the sister of the deceased, had personal knowledge of the pendency of the proceedings above-mentioned, but saw fit not to present the will of the deceased for probate. It was only on September 10, 1931, that the sister offered the will for legalization, and asked that all previous action taken in the administration be declared null and void. It is our understanding that by the terms of the will, the sister was named the executrix, but was not made a legatee, the entire estate of the deceased, with the exception of a gold watch, being left to the minor child.

When the petition of the sister was filed, it met with the opposition of the widow. After hearing, Judge Albert sustained the views of the latter and accordingly dismissed the petition. The legal question raised by the sole assignment of error of the losing party is addressed to the action of the trial court in denying the probate of the will left by the deceased Alfredo Pardo de Tavera.

Sections 657, 658, and 659 of the Code of Civil Procedure were manifestly designed to fit the case of the discovery of a will during the pendency of intestate proceedings. The jurisprudence of Vermont from which the above cited sections were copied is silent on the question at issue. However, the Code of Civil Procedure, in section 306, further provides that the effect of a judgment or final order in an action or special proceeding before a court having jurisdiction to pronounce the judgment or order, may be, in respect to the administration of the estate of a deceased person, conclusive upon the administration. This provision is derived from California, and there a decree of distribution is considered essentially a proceeding in the nature of one in rem. There is no law in this jurisdiction indicating what should be done on the presentation of a will after the intestate proceedings have been closed, or fixing the time within which a will may be probated. The principles of the common law which permit the probate of a valid will produced even following the distribution of the estate as intestate property at any time no matter how great after the death of the testator, are not perforce controlling. There are present sound practical considerations which will serve to guide us to a right conclusion. The sister has no material interest in the estate of

her deceased brother. Aside from the fact that she failed to act as executrix, probably through her own negligence, she has no claim against the estate. She, therefore, lacks standing to offer the will for probate at this late date. Further, it is self-evident that should the will be probated, the estate would be distributed between the surviving widow and the only child exactly as it has been distributed in the regular administration proceedings. Why then permit the doing of a totally inconsequential act at the behest of one not primarily interested? We think the trial judge was right in denying the probate of the will.

To repeat, the case before us is one where the statute is silent as to what action should be taken when a will is presented for probate after the distribution of the estate of a deceased person, but where the statute generally makes the judgment or order in respect to the administration of the estate of a deceased person conclusive, and where the petitioner has no claim against the estate of the deceased, but on the contrary with knowledge of the pendency of intestate proceedings, has preferred to remain silent—in such case we hold that the petitioner is without legal right to insist on the probate of the will. Out of excessive caution, let it be understood that this ruling does not have to do with a case where a will is proved during the pendency of intestate proceedings, and does not relate to the case of one with an interest in an estate who offers a will for probate even after the administration has been closed and of whom an unconscionable advantage may have been taken through fraud, accident, or mistake. These possible cases will be left for decision as they arise. (Re Estate of William Walker [1911], 36 L. R. A. [N. S.], 89.)

Fully convinced of the untenability of appellant's position, the result will be to affirm the order from which the appeal has been taken, with the costs of this instance against the appellant.

Avanceña, C. J., Hull, Vickers, and Imperial, JJ., concur.

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