

**ESTATE OF THE DECEASED MANUELA PEREZ. FLORA CASTILLO, OPPOSITOR AND APPELLANT, VS. MELECIO BOLANOS, AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED MANUELA PEREZ, AND JOVITA CAST...***G.R. No. 42435. December 21, 1935*

Ponente: IMPERIAL, J.

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Flora Castillo, one of the heirs of the deceased Manuela Perez, appealed from the order of the court of March 26, 1934, approving the amended project of partition presented by the attorney for the administrator on December 29, 1933.

From the month of May, 1931, at least, these testamentary proceedings have been pending settlement and distribution in court, due to incidents brought about by the only two heirs, daughters of the deceased testatrix. Various projects of partition were presented but all of them were opposed by the coheir Flora Castillo. In order to arrive at a definite solution, her sister Jovita, on November 7, 1933, filed a petition offering to pay all the lawful obligations of the estate on condition that she be awarded the parcel of land in Talahiban and two-thirds (f) of the land in Laiya, as provided in the probated will. The proposition was approved without opposition in an order of November 15, 1933, and the administrator presented a project of partition in accordance therewith. In the amended project of December 29, 1933, approved by the court, it was stated that the assets of the inheritance, consisting of said two parcels of land, amount to P10,165.46.<sup>1</sup> The liabilities, which include the indebtedness and other obligations of the estate, the redemption of 20 hectares of the land in Talahiban mortgaged to Lorenzo Sales and Gabino Tejada, and Jovita Castillo's betterments of one-third (I) and another one-fifth (f) under the seventh clause of the will, amount to ₱8,526.49, leaving a balance or difference of ₱1,638.07 which constitutes the net legitime to be prorated between the two heirs. In accordance therewith, each of them should receive properties worth ₱819.485. To carry out the distribution provided in the will and give each heir her share of the estate, adjudication was made as follows: To Flora Castillo, 16 hectares, 38 ares and 97 centares of the land in Laiya, on the eastern part thereof, from north to south, the value of which, at ₱50 a hectare, is ₱819.485; and to Jovita Castillo, 23 hectares, 61 ares and 3 centares of the land in Laiya, on the western part thereof, from north to south, the value of which, at ₱50 a hectare, is ₱1,180.515, and the entire parcel of land in Talahiban with an area of 40 hectares, 82 ares and 73 centares, the value of which, at ₱200 a hectare, is ₱8,165.46.

The appellant assigns ten alleged errors in the order appealed from. In the first and sixth assignments, she contends that the court should not have approved the amended project of partition because the debts and obligations of the estate have not yet been paid and because the court, in approving it, did not require Jovita Castillo to file a bond to secure the payment of said debts and obligations. There is no doubt that under sections 734, 735, 739 and 753 of the Code of Civil Procedure, the debts and expenses of administration should be paid by the executor or administrator, and the estate should not be distributed among the heirs until all such debts and expenses have been paid; however, there being no objection in this case, on the part of the creditors, and the

solvency of the coheir subrogated not having been questioned, we see no good reason justifying the reversal of the order appealed from, for said cause alone. The appellant, not being one of the acknowledged creditors, is not entitled to oppose the proceedings on this ground. With respect to the bond, neither is she the right party to interpose any objection, but, in all cases, the creditors who have not done so. At any rate, even after the amended project of partition is approved, and pending the delivery of the hereditary estate, the defect may be corrected if some of the acknowledged creditors appear and petition that said coheir file some security in case she were not ready to settle immediately the debts and other obligations of the estate. It follows, therefore, that the first and sixth assignments of error are unfounded.

In the second, third, fourth and fifth assignments of error, the appellant questions the inclusion of the items of ₱3,104.92, ₱2,000, ₱3,388.48 and ₱2,033.09 among the liabilities of the project. With the exception of the second item, the amounts in question have been entered in said liabilities for the purpose of determining and finding the liquid assets or net legitime to be prorated between the two heirs. Hence, the opposition is without merit and the assignments of error are untenable. As to the amount of the debts and expenses of administration, there can be no difficulty whatsoever; their existence is acknowledged by the administrator and the appellant has not questioned them. As to the item of ₱2,000, it will be remembered that Jovita Castillo offered to pay the debts and other expenses of administration on condition that she be awarded all the land in Talahiban, two-thirds (f) of that in Laiya, and that the redemption of the mortgage, through payment of ₱2,000, will be borne by the estate. The court, considering the transaction beneficial and that it would bring about a prompt settlement and distribution of the inheritance, approved the proposition and the appellant neither excepted to the order approving it nor appealed therefrom. Under these circumstances, we hold that the opposition now entered by her is out of time and that her assignment of error is unfounded. We have not lost sight of the fact that under the sixth clause of the will and the provisions of article 867, in connection with article 768, of the Civil Code, the redemption of the mortgage should be defrayed by Jovita Castillo, but inasmuch as her proposition had been approved by the court and the order had become final because the appellant had consented to it, we hold that the estate should now make payment thereof and, consequently, the item of ₱2,000 was correctly entered in the liabilities. The assessed valuation of the land seems to us reasonable and there is nothing of record justifying otherwise. In the seventh, eighth, and ninth assignments of error, the appellant questions the true value of the distributable net assets which she assesses at ₱9,357.33. This amount is erroneous. If the value stated in the project is correct and the amount of the liabilities is that appearing therein, as held by us in the preceding paragraphs, it necessarily follows that the net assets amount to only ₱1,638.97 and not to the exorbitant amount claimed by the appellant. In the computation contained in the project, the provisions of the will have been taken into consideration and the shares adjudicated to each of the heirs, with the exception of the betterments, constitute the legitime corresponding<sup>1</sup> to each of them. We likewise hold that the seventh, eighth and ninth assignments of error are unfounded.

The last assignment is a corollary of the former ones and requires no further discussion.

For the foregoing considerations, the appealed order is affirmed reserving to the creditors of the estate appearing in the amended project of partition of December 29, 1933, their right to demand immediate payment of their credits of the appellee Jovita Castillo, or that she file a sufficient bond in case she has to defer payment thereof, without special pronouncement as to costs. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Order affirmed.

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