INTESTATE ESTATE OF THE DECEASED OH TIONG KENG (ALIAS OH TIONG KING, ALIAS O TIONG KENG). M. CHUA KAY & COMPANY, PETITIONER AND APPELLANT, VS. WIDOW AND HEIRS OF OH TIONG KENG, ...

G. R. No. 43357. January 16, 1936

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from an order of the Court of First Instance of Manila denying the petition of the appellant to reopen the intestate proceedings of the estate of Oh Tiong Keng, deceased, and to appoint a new commission on claims and appraisal to pass upon a claim of the appellant against the said estate.

Oh Tiong Keng died in Sorsogon on November 9, 1932. On March 4, 1933, his widow presented a petition in the Court of First Instance of Manila for the administration of his estate. She was duly appointed and commissioners on claims and appraisal were likewise appointed on due notice and performed their duties in accordance with law. On July 26, 1934, the estate was ordered closed, the property thereof having been distributed to the heirs and the bond of the administratrix having been cancelled. On October 31, 1934, the appellant filed in said cause the petition which is involved on this appeal.

The petitioner alleged in substance that it is one of the creditors of the deceased Oh Tiong Keng in the sum of P20,249.85; that the petitioner was expecting that the administration of the estate of Oh Tiong Keng would be filed in the Court of First Instance of Sorsogon inasmuch as it was the province of his residence at the time of his death; that having learned on September 26,1934, that no such proceeding was filed in the Court of First Instance of Sorsogon, the petitioner, as one of the creditors of the deceased, filed such a petition in the Court of First Instance of Sorsogon; that thereafter it discovered that the Court of First Instance of Manila as aforesaid had taken jurisdiction of the administration of the said estate and the petitioner had no opportunity to present its claim before the commissioners on claims and appraisal appointed by the latter court; that the petitioner was deprived of its opportunity to present its claim by reason of the fraudulent machinations of the widow and heirs of the deceased Oh Tiong: Keng; wherefore the petitioner prayed that the proceedings be reopened, that the widow be renoxninated as administratrix or if she declines then some other person, and that commissioners be appointed to hear and decide the claim of the petitioner.

The substance of the appellant's arguments on this appeal is that the Court of First Instance ot Manila had no jurisdiction to administer the estate of Oh Tiong Keng because at the time of his death he resided in Sorsogon and not in Manila. (Code of Civ. Proc., section 600.) The trial court found that although Oh Tiong Keng died in Sorsogon his residence at the time of his death was in fact Manila. The evidence on this issue of fact is conflicting but in the view which we take of the case we do not think it is necessary to determine this issue of fact. The record on appeal before us fails to show that any issue of jurisdiction was raised or decided by the trial court. It shows furthermore that the petitioner-appellant voluntarily submitted itself to the jurisdiction of the trial court when it

filed its petition in this cause praying for the re-appointment of the widow as administratrix and the re-appointment of commissioners on claims and appraisal. Nor do we deem it proper to go into the question of jurisdiction for the first time on appeal in this case in view of the circumstances that the estate has been finally closed for more than a year and a half and that no action in the Court of First Instance of Sorsogon was taken by the petitioner as a creditor until nearly two years after the death of Oh Tiong Keng.

The fact that the petitioner relied on the personal promise of the widow that she would pay the petitioner's claim in small installments and that she failed to comply with that promise is, in our opinion, no sufficient excuse for the delay of the petitioner as creditor in making application for the appointment of an administrator in Sorsogon. Section 642, paragraph 2, of the Code of Civil Procedure is as follows:

> * * * * * * *"2. If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be unsuitable, or if the husband or widow, or next of kin neglect for thirty days after the death of the person to apply for administration, or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve."
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It is to be noted that the petitioner, if the residence of the deceased was in fact in the Province of Sorsogon, had the right to present a petition for the appointment of an administrator at any time after thirty days after the death of Oh Tiong Keng which occurred on November 9, 1932. Apparently, instead of acting promptly it preferred to rely on the promise of payment made by the widow and slept on its rights. It is in the public interest that 'estates should be administered with the utmost reasonable despatch and we see no warrant under the circumstances of this case for reversing the order appealed from.

The judgment is affirmed with costs against the appellant.

Malcolm, Villa-Real, and Imperial, JJ., concur.

Goddard, J.: I concur in the result.

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