

EMILIO ESCUIN Y BATAAC, PLAINTIFF AND APPELLEE, O. FRANCISCO ESCUIN ET AL., DEFENDANTS.—JULIA BATAAC, APPELLANT.

G.R. No. 4359. September 24, 1908

Ponente: TORRES, J.

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TORRES, J.:

On the 19th of January, 1899, Emilio Antonio Escuin de los Santos executed a will before a notary public of Sevilla, Spain, stating therein that he was a native of Cavite, the son of Francisco Escuin and Eugenia de los Santos, the latter being deceased; that he was married about six months previously to Maria Teresa Ponce de Leon, and that he had no lawful descendants; the testator, however, stated in clause three of his will, that in case he had a duly registered successor, his child would be his sole and universal heir; but that if, as Avould probably be the case, there should be no such heir, then in clause four he named his said father Francisco Escuin, and his wife Maria Teresa Ponce de Leon his universal heirs, they to divide the estate in equal shares between them.

The testator died on the 20th of January, 1899, as certified to by the municipal court of Magdalena, Sevilla, on the 20th Of March, 1900.

Upon the will having been admitted to probate, commissioners were appointed to consider claims against the estate, and, according to a report presented to the Court of First Instance on the 20th of June, 1907, one claim was allowed amounting to 3,696.50 pesetas.

On the 10th and 12th of July, 1907, the attorney for the widow, Ponce de Leon, and the attorneys who represented the guardian of the minor, Emilio Escuin y Bataac, appealed to the Court of First Instance from the findings of the aforesaid commissioners.

Matters stood thus, and without there appearing any decision of the court as to the appeals, the attorney for the administrator, by a writing¹ dated the 3d of September, following, moved for the approval of the proposed partition of the estate provided for by the court; by the first additional request (otrosi) he asked that the remuneration for the services of the administrator of the estate be fixed, and that he be authorized to draw such amount from the funds of the estate; and by a second additional request he asked that the accounts made up on the 31st of August, previous, be approved.

It appears in the proposed partition of the 3d September, 1906, that, according to the opinion of the administrator by whom it was signed and the result of the proceedings, the property left by the testator, in accordance with the accounts passed upon by the court, amounted to.....

8,268.02

From said sum the following must be deducted:

The credit above alluded to admitted by the commissioners.....

1,321.40

10 per cent remuneration due to the administrator.....

826.80

All legal expenses paid and approved.....

1,105.01

3,253.21

Deducting this amount from the funds
of the estate, there remains a balance
of

5,014.81

That the said credit of P1,321.40, equivalent to 3,696.50 pesetas, allowed by the commissioners, is the only claim presented within the legal term against the estate; that Francisco Escuin, the father of the testator, his wife or widow, Teresa Ponce de Leon, and his natural child, the minor Emilio Escuin y Batac, represented by his mother and guardian Julia Batac, are entitled to the succession; that, by setting aside one-third of the estate in favor of the natural son, recognized in accordance with article 842 of the Civil Code, there only remains the question as to how the remaining two-thirds of the inheritance shall be bestowed, taking into account the directions of the testator in his will; that the same does not disclose that he had left any child by his wife; that the latter, as the Widow of the testator, besides being a designated heir entitled to one-half of the hereditary funds, is entitled to the usufruct of the portion fixed by the law, and that the funds to be apportioned are composed wholly of cash or ready money.

On these grounds the partition and adjudication was proceeded with of the sum of P5,014.81 into three shares of P1,671.60 to each one of the parties in interest, that is, the natural son, Emilio Escuin y Batac, in full control as general heir; the widow, Teresa Ponce de Leon, as legatee of one-half of the two-thirds of the funds of free disposition; and the said widow the usufruct of the other half of the aforesaid two-thirds of free disposition, the bare ownership of the last third held in usufruct by the widow being adjudicated to Francisco Escuin, as legatee taking into account the provisions of article 817 of the Civil Code upon making the division.

On the 12th of September, 1906, the representative of the minor natural child of the testator objected in writing to the partition proposed by the administrator, and for the reasons he set forth asked that the same be disapproved, and that in lieu thereof the entire estate be adjudicated to Emilio Escuin y Batac, the said minor.

Upon a hearing for the approval of the said proposed partition," the representative of the minor presented as evidence a certified copy of the complaint, the answer, and the final judgment rendered in civil case No. 3240 of the Court of First Instance.

It appears from the said certified proceedings that the representative of the minor, as plaintiff therein, asked on.

the 12th of January, 1905, that an allowance be granted to him for subsistence for account of the estate of the late testator, Emilio Escuin de los Santos, and that the same be paid him monthly in advance; that judgment be entered declaring that the minor, Emilio Escuin y Batac, is a natural child of the testator; that the said minor, as the only natural son of the same is his general heir; that it be held that the said testator had died without either lawful ascendants or descendants; that the designation of heirs made under his above-mentioned will be declared null and void; and that the defendants be sentenced to pay the costs in case they did not conform to the complaint, with any further remedy that the court might consider just and equitable.

The administrator, Ricardo Summers, in answer to the complaint denied all and every one of the facts alleged in all and every one of its paragraphs.

On the 30th of September, 1905, the court below found that Emilio Escuin y Batac was the recognized natural child of the late Emilio Escuin de los Santos, had by Julia Batac; that the testator was also the natural son of the defendant Francisco Escuin and Eugenia de los Santos, and was recognized by his father; and that the plaintiff minor, Emilio Escuin y Batac, is one of the heirs of the late testator.

By an order of the lower court dated the 30th of October, 1906, in view of the accounts and proposal of partition presented by the administrator of the estate, the judge below expressed an opinion that a natural child is only entitled to one-fourth of the hereditary property, the clause in the will being annulled only in so far as the amount to be divided should be reduced, taking into account the share due to the natural son and the right of the father and the widow of the testator, each to one-half of the remainder of the property of the estate. The court approved the account presented, but disapproved the project of partition of the hereditary property that was objected to by one of the parties in interest. Counsel for the minor Emilio Escuin y Batac excepted to the above resolution; a copy of the proceedings was submitted to this court together with the appeal that was interposed.

On the 10th of July, 1907, the representatives of the administrator, and of the minor, Emilio Escuin y Batac, respectively, stated in writing to the lower court that, in view of the fact that the order of October 30, 1906, did not constitute a final judgment of partition (since the said proposal having been rejected, another partition should be effected by commissioners) the court was requested to appoint commissioners to present a new project of partition in substitution for the one presented by the administrator, the new proposal to be submitted to the court for approval.

On the 22d of August, the attorney for the administrator filed a written request for the appointment of said commissioners as stated above, and further requested that the remuneration of the petitioner for his services as administrator be fixed by the court, and that he be authorized to draw from the funds of the estate such sum as might thus be assigned to him.

On the 24th day of the said month of August, the court below issued an order with respect to the foregoing requests and held that, for the reasons stated in the order, the appointment of commissioners for the mere purpose of determining what each one of the heirs should receive in accordance with the order of the 30th of October, 1906, was not necessary, inasmuch as the property of the estate consisted of ready money, and the administrator was thereby authorized to distribute the funds among the heirs in the amount stated in the said order. From this decision the representative of the minor Emilio Escuin y Batac took exception, and to this effect presented a bill of errors together with a copy of the proceedings for review on appeal.

While the appeals interposed against the report and resolution of the commissioners were still pending in the lower court, the partition of the hereditary funds could not be ordered, notwithstanding the fact that the same consisted of ready money, because the amount of the estate subject to division had not yet been determined in order to comply with the law and the will of the testator.

Until all the known creditors and the legatees have been paid, it shall be understood that the estate is under administration, says article 1026 of the Civil Code, and in conformity with this legal provision the supreme tribunal has established the doctrine that "only after payment of all the obligations of the estate can the net amount divisible among the heirs be known." (Decision of March 2, 1896.)

Section 753 of the Code of Civil Procedure confirms the provision of the Civil Code and the legal doctrine mentioned above, inasmuch as it provides that, after payment of the debts, funeral charges, and expenses of administration, and the allowances for the expense of maintenance of the family of the deceased, the court shall assign the residue of the estate to the persons entitled to the same, naming the persons and proportions or parts to which each is entitled, etc.

As to the aforesaid appeals from the resolution of the commissioners, section 776 of the Code of Civil Procedure provides that:

"Upon the lodging of such appeal with the clerk, the disputed claim shall stand for trial in the same manner as any other action in the Court of First Instance, the creditor being deemed to be the plaintiff, and the estate the defendant, and pleadings as in other actions shall be filed."

So that by reason of the claims made by the creditor of the estate of Emilio Escuin de los Santos and by her natural son, duly recognized by his father, an ordinary action should have been brought before the Court of First Instance, from whose judgment appeal may be taken to this court by means of the corresponding bill of exceptions under the provisions of section 777 of the Code of Civil Procedure; and while the ultimate decision in the matter of the said claims against the resolution of the commissioners has not become final, and until all the obligations of the estate have been paid, there can really be no inheritance, nor can it be distributed among the persons interested therein according to the will of the testator, or under the provisions of the law.

The foregoing refers to the first error assigned in the certified copy of the proceedings and in the brief of the representative of the minor Escuin y Batac, and also to the questions of the form of procedure.

With respect to the questions which form the basis of this litigation and refer to the second assignment of errors, it should be noted that the late testator did not leave any legitimate descendants or ascendants, but did leave a recognized natural child, the, appellant minor, and a widow; that the said minor, Emilio Escuin y Batac, is the general heir of his natural father, the said testator, who recognized him while living (art. 807, Civil Code), and in the present case is entitled to one-third of "his estate, which amount constitutes the legal portion of a natural child (art. 842 of the said code); and for the reason that the minor was ignored by his natural father in his will, the designation of heirs made therein was, as a matter of fact annulled by force of law, in so far as the legal portion of the said minor was thereby impaired. Legacies and betterments shall be valid, in so far as they are not illegal, for the reason that a testator can not deprive the heirs of their legal portions, except in the cases expressly indicated by law. (Arts. 763, 813, 814, Civil Code.)

As has been seen, the testator wished to dispose of his property in his will, designating as heirs his natural father, Francisco Escuin, and his wife, Maria Teresa Ponce de Leon, altogether ignoring his recognized natural child who is his general heir. In view thereof, and for the reason that he exceeded his rights, the said designation of heirs became void in so far as it impaired the right of his general heir and deprived him of his legal portion; the will, however, is valid with respect to the two-thirds of the property which the testator could freely dispose of. (Arts. 763, 764, 806, 813, 842, Civil Code.)

Notwithstanding the fact that the designation of heirs is annulled and that the law recognizes the title of the minor, Escuin y Batac, to one-third of the property of his natural father, as his lawful and general heir, it is not proper to assert that the late Emilio Escuin de los Santos died intestate in order to establish the conclusion that his said

natural recognized child is entitled to succeed to the entire estate under the provisions of article 939 of the Civil Code, inasmuch as in accordance with the law a citizen may die partly testate and partly intestate (art. 764, Civil Code). It is clear and unquestionable that it was the wish of the testator to favor his natural father and his wife with certain portions of his property which, under the law, he had a right to dispose of by will, as he has done, provided the legal portion of his general heir was not thereby impaired, the two former persons being considered as legatees under the will.

The above-mentioned will is neither null, void, nor illegal in so far as the testator leaves two-thirds of his property to his father and wife; testamentary provisions impairing the legal portion of a general heir shall be reduced in so far as they are illegal or excessive. (Art. 817, Civil Code.) The partition of the property of the said testator shall be proceeded with in accordance with the foregoing legal bases.

The record does not show that the decision of the commissioners became final or was consented to by the parties in interest, or that this point was alleged and discussed in the first instance; therefore, such circumstance as alleged by the appellee can not now be considered.

By virtue of the foregoing considerations it is our opinion that the orders of the court below, of October 30, 1906, and August 24, 1907, should be reversed, and upon receipt of a certified copy of this decision the court below shall take action in accordance with the law and the terms herein contained with respect to the claims and appeals from the resolutions of the commissioners pending judicial decision. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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