

**ESTATE OF THE DECEASED JULIANA MEJIA. MAGDALENA
MERCADO DE YARED, HEIRESS AND APPELLANT, VS. JOSE M.
MERCADO, ADMINISTRATOR AND APPELLEE.**

G.R. No. 44052. May 24, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present appeal was taken by Magdalena Mercado de Yared, as testamentary heiress of the deceased Julian Mejia, from the order of the Court of First Instance of Cebu of May 11, 1935, approving the project of partition I, as amended in the motion of March 15, 1935, notwithstanding the opposition of the appellant.

The only question to be decided in this appeal is whether or not the Court of First Instance of Cebu, which tries the testate proceedings of the deceased Juliana Mejia, can approve the project of partition I, notwithstanding the opposition of the testamentary heiress Magdalena Mercado de Yared based on the ground that the properties adjudicated to her do not belong to the testatrix but to her, and without giving the said heiress an opportunity to present her evidence in support of her opposition.

In the case of *Montañano vs. Suesa* (14 Phil., 676), this court laid down the following rule:

Wills; Probate; Distribution of Estate.—The admission of a will to probate is conclusive as to its due execution, but it does not determine the validity of the provisions thereof. It does not follow, however, that the provisions of the will are not valid and effective, provided they are not called into question. When testamentary provisions are not contested, the distribution of the estate is governed by the wishes of the testator as expressed in his will."

In the case before us the testatrix in her will assigned to the appellant a portion of certain real properties and a piano. This assignment carries the presumption that the testatrix is the owner of said properties; but as the heiress and appellant Magdalena Mercado de Yared had impugned the ownership of the same, the efficacy of the presumption was suspended and will not be restored until the impugner shall have failed in her attempt to prove the contrary; and to this end it is necessary that the heiress and appellant be given opportunity to prove the facts on which her opposition is based, which has not been done, with the result that, by such omission, the court a quo committed an error in procedure.

Consequently, the appealed order is set aside and it is ordered that the record be returned to the court of origin for further proceedings, without special pronouncement as to costs. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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