

**IN THE MATTER OF THE INTESTATE ESTATE OF MALIGNAD,
DECEASED. THE NON-CHRISTIAN GUINABLAY, PETITIONER AND
APPELLANT, VS. THE NON-CHRISTIAN BRIGIDA, RESPONDENT AND
APPELLEE.**

G.R. No. 4477. August 27, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

One Malignad died apparently intestate in the year 1902, in the rancheria (settlement) of Mambug, within the municipality of Santa Maria, Ilocos Sur.

Two children survived him—one named Immin, a 7-year-old girl had with his first wife named Cadaegan, and who was left in the care of the petitioner herein, the aunt of the deceased; and Juana, a 3-year-old girl, had with the deceased's second wife, named Brigida, in whose care she remains.

By means of letters of administration issued on the 18th of September, 1905, the petitioner was appointed by the Court of First Instance of Ilocos Sur the judicial administratrix of the intestate estate of the deceased Malignad, under bond in the sum of P3,000 as security for the property which was valued at more than P2,500.

On the 19th of September, 1907, Brigida, the mother of the second child of the deceased, requested the partition of the estate, but Guinablay, the judicial administratrix, opposed the petition on the ground that, although Malignad had not left any debts of any sort, yet his second child, Juana, had not attained the age of four years, and she stated that she would agree to give the latter her portion of the inheritance when she was older. The court disregarded the proposal of the administratrix, and ordered the division of the estate as petitioned by Brigida in halves of P1,618.12½, each heir to receive one portion, and allowed both parties a period of five days in which to agree upon the adjudication thereof; in case they failed to do so, the court would appoint a committee to distribute the estate as decreed by the court. This order was issued on the 20th of April, 1907.

The committee above referred to was "appointed by an order issued on the 25th of the same month and year; and on the 29th following the commissioners submitted their report together with a scheme for the distribution of the estate, and stated that:

"(1) After being nominated, and before proceeding to the performance of their duties as such commissioners, they had complied with the provisions of the law and acted jointly in the performance of all their duties; (2) after much consideration, they had divided the property set forth in the inventory, in two parts almost mathematically equal, there being a difference of only P2.25, which resulted from the nature of the property belonging to the estate; (3) the partition effected, as appeared on the accompanying documents, was thought to be the most equitable one, lots having been cast for the assignment of the share corresponding to each heir; (4) the property shown in the document appearing as Exhibit A was adjudicated to the minor Juana; (5) the property set out in the document Exhibit B was allotted to the minor Immin; (6) that the commissioners have acted with the greatest impartiality and now submit their report and pray that it be approved by the court. —

(Bgd.) Soterb Serranor—(Sgd.) V. Singson Encarnacion."

On the 30th of April, 1907, the Court of First Instance issued the following order:

"Señores Vicente Singson Encarnacion and Sotero Serrano having been, on April 25, 1907, appointed commissioners to distribute the estate of the late non-Christian Malignad, and it appearing:

"That, before proceeding to the partition ordered by the court, said commissioners have complied with the formalities prescribed by law;

"That, on April 29 of the same year, the said commissioners submitted to this court their report upon the distribution of the estate, after having effected said partition ;

"That the non-Christian Brigida has filed an additional bond with sufficient sureties to the satisfaction of this court;

"Whereas, the partition made by the commissioners is considered equitable, the difference in amount of the properties adjudicated to each of the minors, Juana and Immin, being very slight;

"Therefore, the partition made by the commissioners, in the manner appearing on the document accompanying the report submitted by them, is hereby approved and ratified, and the administratrix, the non-Christian Guinablay, is directed to deliver to Brigida, the guardian of the minor Juana, the property belonging to the latter.

"Let copies of this order be furnished to the parties to the action, for inscription in the registry of property of the province wherein the properties are situated.

"It is so ordered.

"(Sgd.) DIONISIO CHANCO,
"Judge of First Instance."

On the 22d of the month of May following, Brigida applied for the execution of and compliance with the provisions of the above order. On the 17th of June of the same year, Guinablay prayed the court that the former partition be annulled, that another one be ordered, and that other commissioners be named to investigate the condition, extent and other circumstances of the lands belonging to the estate, and to this end she presented an itemized statement of the difference between the two shares in order to show that, while the share adjudicated to Juana amounted to P1,364 that allotted to Immin was only P1,275.

Upon the hearing of said petitions, the court, by a decree dated the 7th of October, 1907, sustained its former order of April 30, 1907.

Guinablay appealed from the order of October 7, 1907, and submitted the following assignment of errors:

- (1) The court erred in stating in its order of April 30, 1907, that, before proceeding to the partition, the commissioners had complied with the formalities provided by the law.
- (2) The court erred in considering that the partition made by the commissioners is just and equitable. (The order already quoted.)
- (3) The court erred in approving and ratifying the partition made by the commissioners. (Referring to the same order.)
- (4) The court erred in denying the petition of the appellant Guinablay, praying for the revocation of the order of the 30th of April.

The first error assigned can not be sustained, because, the commissioners having asserted in their report that all the formalities required by the law had been complied with before proceeding with the partition, and no proof to the contrary having been offered in the lower court, with the exception of a mere allegation that the partition was prejudicial to the rights of one of the heirs, the presumption mentioned in subdivision 31 of section 334 of the Code of Civil Procedure must be taken for granted.

Nor can the second error be sustained since, with but a slight difference of P2.25, which could be paid in cash, the shares are equal. If any injustice results, it is not to the prejudice of the children of the deceased, but to his widow, Brigida, to whom the petitioner herein, by her first petition for the granting of letters of administration of the estate, conceded the right to a portion of the inheritance, which has not been satisfied by the partition made. By her writing of July 6, 1905, the petitioner stated "that the nearest relations and in consequence the heirs of the deceased are Brigida, his widow, a resident of the rancheria (settlement) of Brandrell, and the two mentioned children, Immin and Juana." (P. 2 of brief.)

Neither has the court committed the third error assigned by the appellant, for it must not be overlooked that no objection was made in the court below, nor proof offered in support of the allegation, presented for the first time in this appeal, that the appellant was not duly summoned nor heard in the court below. No allegation in regard to this was set up in the writing of Guinablay dated June 17, 1907, and no objection of this tenor was discussed at the trial.

The fourth error, in that the court denied the motion of the appellant Guinablay for the annulment of the order of April 30, 1907, can not be sustained either as to its form or the grounds on which it is based. Not as regards its form, because the order of April 30, 1907, was issued to approve the partition, and, according to section 782 of the Code of Civil Procedure was appealable within twenty days; and not as regards the ground of said error assigned, for there appears no proof offered during the trial of the case to show the difference between the two shares of the estate, a difference between the two amounts of P1,364 and P1,275, consisting of P89, according to the itemized statement submitted by the counsel for appellant.

The only proof presented at the trial in support of this question is a document in the Ilocano dialect, subscribed and sworn to by Roman Abayon, one of the commissioners appointed to appraise the estate, who stated therein that he can neither read nor write beyond writing his own name; that the other commissioner set down the amounts, but that he could not say whether or not the amounts given by him were put down; and that the value of the lands of the estate was calculated from the maps alone as they did not make a personal inspection of said lands. This document was signed by Abayon on the 17th, the date of the trial.

Inasmuch as no proof in regard to this matter has been offered, other than said document, the court in denying the motion for the annulment of the order of April 30, 1907, acted within the law.

We hereby affirm the order appealed from of October 7, 1907, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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