

**IN THE MATTER OF THE INTESTATE OF THE DECEASED MANUEL ABELLO. EUGENIO VERAGUTH AND BONIFACIA MONTILLA, PETITIONERS AND APPELLEES, VS. ROSARIO MONTILLA ET AL., OPPOSITORS AND APP...**

*G.R. No. 45171. April 10, 1939*

Ponente: CONCEPCION, J.

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**CONCEPCION, J.:**

This appeal raises the question of whether or not, after the extrajudicial partition of the properties of a deceased person, an administrator thereof may be appointed to represent the intestacy in a civil case wherein said deceased was one of the defendants, for damages and the possession of certain properties of a corporation, the shareholders of which are those who have applied for the administration of the properties of said deceased.

The court, after proper proceedings and upon petition by Eugenio Veraguth and Bonifacia Montilla, appointed as administratrix of the properties of the deceased Manuel Abello his widow Rosario Montilla by order of February 19, 1935. Said widow, together with her children, all heirs of the deceased Manuel Abello, filed on the 26th of March of the same year, a motion to reconsider the said order. The motion of reconsideration was heard on the 30th of March and the court ordered the petitioners to file a written answer, which the latter did, filing at the same time an amended petition. On July 12, 1935, the heirs of the deceased Manuel Abello filed their opposition to the amended petition of April 1, 1935, and on the 24th of August of the same year they submitted a memorandum in support of their opposition to the amended petition. On September 20th, the court admitted the amended petition, but the petitioners Eugenio Veraguth and Bonifacia Montilla withdrew the same "because they learned from the opposition of the heirs of the deceased Manuel Abello, dated August 23, 1935, that the said deceased is not only jointly but also severally liable in the sum of P300,000 for the inequitable and illegal increase, partition and possession of the shares of the Isabela Sugar Company, Inc., and is severally liable for the value of the 90 shares of the same corporation issued without payment, that the plaintiffs are principal stockholders and that the board of directors of the said corporation refuses to bring the corresponding action."

The heirs of the deceased Manuel Abello submitted on October 2, 1935, their opposition to the appointment of the administrator, in which is found the following paragraph:

"In a case pending before this court 'Eugenio Veraguth and Bonifacia Montilla vs. Isabela Sugar Co., Inc., et al., Civil Case No. 5862', wherein the deceased Manuel Abello was one of the defendants, the relief sought therein by the plaintiffs against the deceased does not bring any direct benefit to the defendants but to the defendant corporation Isabela Sugar Co., Inc., the latter being the supposed creditor pursuant to the complaint in said civil case No. 5862, wherefore, it is the only one authorized to commence the intestacy of the deceased if this were otherwise proper. The prayer of the complaint in the said case, with respect to the alleged claim against the deceased Manuel Abello, reads:

" 'That Emilio Montilla, Manuel Abello, Agustin Montilla (father), Rosario Montilla, Fernando Basa,

Francisco Boyero, Waldo Garcia, Juan Isasi and Magdaleno Pena, be likewise ordered, jointly and severally, to pay the aforesaid corporation, of which the plaintiffs are the shareholders, the sum of three hundred thousand pesos (P300,000), Philippine currency, by way of damages for having increased the capital of the corporation through false statements contrary to law and for having caused the inequitable and illegal partition of the shares.

"That the defendants Gil Montilla, Agustin Montilla (son), Emilio Montilla and Manuel Abello, be ordered to pay, jointly and severally, the aforesaid corporation, of which the plaintiffs are the shareholders, the par value of the ninety (90) shares or P10 each, which were issued to various persons without pay.'

"That the supposed claim of the applicants in civil case No. 5S62 is by way of indemnity for damages."

After the petitioners have filed their answers to the opposition of the heirs of the deceased Manuel Abello, dated October 2, 1935, the court issued the appealed order of October 12th, denying the motion for reconsideration and ordering the proposed administratrix Rosario Montilla to qualify as such within ten days. From this order the heirs of the deceased Manuel Abello have appealed and in their brief have made the following assignment of alleged errors

"First error.—The lower court erred in acting upon and going forward with the hearing of the petition for intestacy without giving ample opportunity to the heirs of the deceased Manuel Abello to be heard upon the said petition.

"Second error.—The lower court erred in considering as a legal ground, for the opening of the administration of the properties of the deceased Manuel Abello, the necessity that the deceased should have a representative in another civil case pending in the same Court of First Instance of Occidental Negros wherein the appellees are plaintiffs and the deceased, in life, was one of the defendants, notwithstanding the fact that the said properties have been extrajudicially distributed by and among the heirs in accordance with law.

"Third error.—The lower court erred in acting upon the petition for intestacy and in permitting the opening of the administration of the properties of the deceased Manuel Abello which have been extrajudicially distributed among the heirs according to law, the petitioners (appellees) not being creditors of said deceased and no pending indebtedness or obligation having been discovered affecting the inheritance.

"Fourth error.—The lower court erred in not dismissing this intestate proceeding."

A sufficient refutation of the first assignment of error is the fact that the petition filed by Eugenio Veraguth and Bonifacio Montilla, asking for the appointment of an administrator of the properties of the deceased Manuel Abello, was published in a local newspaper *El Tiempo*, which is a notice to all the world that such petition was filed, wherefore, the widow and heirs of Manuel Abello had ample opportunity to be heard on said petition. If they did not appear to oppose the same, this is a question which they alone can explain; but the truth is that after the issuance of the order appointing the widow of the deceased as administratrix of his properties, the said widow and her children put in a motion of reconsideration and other motions wherein they opposed the appointment of an administrator, motions adverted to in the statement of facts set out in this decision. Consequently, the alleged error that no ample opportunity was given to the heirs of the deceased Manuel Abello to be heard upon said petition is absolutely without basis.

As to the second and third errors, the fact that the properties of the deceased Manuel Abello have been extra-judicially distributed among the heirs, was not a bar to the appointment of an administrator, this being necessary to have someone to represent legally his intestacy in the civil case wherein the deceased was one of the defendants.

It is argued that those who applied for the administration of the properties of the deceased Manuel Abello.

namely, the appellees, were not creditors of the said deceased, and that no pending debt or obligation has been discovered affecting the inheritance. This is refuted by certain allegations found in the opposition of the heirs themselves, dated October 2, 1935, in which they mention the pending case in the Court of First Instance of Occidental Negros, entitled Eugenio Veraguth and Bonifacia Montilla vs. Isabela Sugar Company, Inc., et al., wherein the deceased Manuel Abello was one of the defendants and wherein it was asked that judgment be rendered against the defendants (among them Manuel Abello), ordering them to pay, jointly and solidarily, the corporation Isabela Sugar Co., Inc., the sum of P300,000 by way of damages, and likewise to pay, jointly and severally, the same corporation, of which the plaintiffs are shareholders, the par value of the 90 shares, that is, P10 each share.

The argument that the petitioners-appellees are not creditors of the deceased Manuel Abello but of the corporation Isabela Sugar Co., Inc., is devoid of merit because the action for damages was filed by the shareholders of the Isabela Sugar Co., Inc., upon the refusal of its board of directors to bring the action, and the petitioners Eugenio Veraguth and Bonifacia Montilla are among the stockholders.

Moreover, the appellants having admitted, as above stated, the existence of the complaint against the deceased Manuel Abello, who was one of the defendants, for damages and the recovery of the value of certain shares, said complaint is unquestionably a contingent claim in contemplation of sections 746 and 747 of the Code of Civil Procedure.

"\* \* \* The word 'contingent,' as used in the original English in the Code of Civil Procedure, conveys the idea of ultimate uncertainty as to the happening of the event upon which liability will arise; and it is not the precise equivalent of the Spanish word 'eventual' by which it is commonly translated. The idea involved in the word 'eventual' may be satisfied with the idea of that which is uncertain only in respect to the element of time. A thing that is certain to happen at some time or other will eventually come to pass although the exact time may be uncertain; to be contingent its happening must be wholly uncertain until the event which fixes liability occurs." (E. Gaskell & Co. vs. Tan Sit, 43 Phil., 810, 813.)

The appellants contend that whatever be the nature of the debt or obligation, this should be alleged and established by sufficient evidence; it being necessary to prove likewise that said debt or obligation may affect the estate of the deceased, before the appointment of an administrator may be granted. The appellants having admitted the existence of the complaint for damages and the recovery of shares in the Court of First Instance of Occidental Negros, as above stated, the appellees had nothing more to prove because the debt or claim itself against the deceased Abello is not to be established in these proceedings but in the civil case pending in the Court of First Instance of Occidental Negros.

Finally, if the appointment of an administrator be not necessary, because upon the death of Abello the action pending in the Court of First Instance of Occidental Negros did not survive him, or because the complaint in that case should be dismissed in order that the corresponding claim could be presented before the commissioners on claims (sections 700 and 703, Code of Civil Procedure), these are questions which have no place and need not be resolved in these proceedings but in the aforesaid civil case pending in the Court of First Instance of Occidental Negros, where a resolution can be issued dismissing said case or ordering that further proceedings therein be taken.

The appellees have contended in their brief that the appeal was taken after the statutory period, alleging that the appellants should have appealed from the order appointing the widow of Abello as administratrix and not from the order denying the motion for reconsideration filed by the widow and heirs of Abello. There is no point in this contention as they could not appeal from the aforesaid order before they were heard on the case.

The appealed order is affirmed, with the costs to the appellants. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

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