

INTESTATE OF THE DECEASED BENITA LAMBENGCO. AMBROSIO SANTIESTEBAN, ADMINISTRATOR, ROSA SANTIESTEBAN AND THE HEIRS OF PERFECTO SANTIESTEBAN, APPELLEES, VS. GUADALUPE SANTIESTEBAN...

G.R. No. 45217. June 30, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The present appeal has been taken by Guadalupe Santiesteban and Clara Santiesteban from the order of the Court of First Instance of Rizal, dated December 11, 1935, which sustained the motion for reconsideration filed by Rosa Santiesteban and the heirs of Perfecto Santiesteban, set aside the orders of November 12, 1934 and October 1, 1935, and kept afoot the order of November 29, 1932 definitely closing the case and ordering that it be filed away.

On February 3, 1932, there was commenced in the Court of First Instance of Rizal the intestate of the deceased Benita Lambengco who died on January 29th of the same year. On May 3d, Ambrosio Santiesteban, surviving spouse of the deceased, was named judicial administrator. As the deceased left no unpaid debts or other obligations, her heirs Ambrosio Santiesteban, husband of the deceased, Perfecto, Guadalupe, Rosa and Clara, surnamed Santiesteban, who are her children, executed an extra judicial partition on September 13 and 14, 1932, which was approved by the court on October 18th of the same year. The properties having been delivered to the heirs, and the latter having¹ paid the inheritance tax, the court, on November 29, 1932, ordered the final closure of the intestate. In the deed of partition, the widower received the best portion of the inheritance, including therein eight parcels of land which the spouses, in life, had acquired by purchase from' the spouses Baltazar Raymundo and Agapita San Juan. On the date the intestate was closed, Ambrosio Santiesteban conveyed the eight parcels of land to his daughter, Guadalupe, and the latter, in turn, applied for the registration thereof under Act No. 496; which application, however, was opposed by Macondray & Co., Inc., on the allegation that it was the owner of the lands by virtue of an action for the foreclosure of a mortgage executed by the original owners thereof. On February 27, 1935, the court adjudicated the lands in the registration case to the oppositor Macondray & Co., Inc.

On September 10, 1934, more than two years after the closure of the intestate, Ambrosio Santiesteban filed a motion in the intestate asking that the same be reopened. The motion was denied by the court on the 22d of the same month. On motion for reconsideration, the court reopened the case and required Ambrosio Santiesteban to propose the name of a new administrator. Ambrosio Santiesteban did not propose any new administrator for about a year, whereupon, the court, in another order of September 20, 1935, required the heirs to appear and show cause, if any, why the intestate should not again be definitely closed. On September 27, 1935, Guadalupe Santiesteban filed a motion alleging that her father Ambrosio Santiesteban had died on December 17, 1934, that she had suffered damages for the loss of the eight parcels of land sold to her by her father and adjudicated to Macondray & Co., Inc., and that it was necessary to reopen the intestate and to appoint a new administrator, to which position she proposed Mariano de la Paz. The petition was vigorously opposed by Rosa Santiesteban and the heirs of the deceased Perfecto Santiesteban. On October 1, 1935 the court granted the motion, reopened the

intestate and named Mariano de la Paz judicial administrator. A motion for reconsideration was filed, and on December 11, 1935, the court granted the motion and issued the appealed order above-mentioned.

The appellants contend in their first assigned error that the court exceeded its jurisdiction in issuing the order of December 11, 1935 which set aside the other order of November 12, 1934, reopening the intestate and requiring that the name of a new administrator be proposed. They argue that this last order, having become final, was not subject to modification or reversal. We find no merit in the assignment of error because the order of November 12, 1934 did not finally determine the action and was interlocutory in nature (section 123, Code of Civil Procedure). By said order the court did not determine or adjudicate any right or controversy and it had no other object than to open the way for the hearing and resolution of the rights to alleged damages which one of the parties claimed to have suffered. The orders irregularly issued by the court were those which reopened the intestate and appointed a new administrator, because the order closing the intestate, dated November 29, 1932, put an end thereto and relieved the administrator from his duties. Under section 753 of the Code of Civil Procedure, what brings an intestate proceeding to a close is the order of distribution directing the delivery of the residue to the persons entitled thereto after paying the indebtedness, if any, left by the deceased. This order was issued in the intestate since October 18, 1932 when the court approved the partition executed and submitted by all the heirs.

In the appealed order the court, in considering the ground alleged by the appellants, said that the conduct observed by Ambrosio Santiesteban and his children Guadalupe and Clara, in connection with the eight parcels of land and the application for registration which the latter subsequently filed, was suspicious. In their second assigned error, the appellants contend that this conclusion of the court is gratuitous and unfounded because not supported by any evidence and because they were not given an opportunity to be heard. The error assigned is without merit because it does not constitute a ground to modify or reverse the appealed order. The conclusion assailed, if erroneous, does not affect any rights of the appellants which should be considered and resolved in this appeal. In truth, the pronouncement neither affects nor controls the resolution of the alleged damages suffered by the appellants in connection with the eight parcels of land which their deceased father conveyed to his daughter Guadalupe.

The third and last assignment of error, being a mere corollary of the preceding ones, need not be discussed.

The appealed order being in accordance with law, the same is affirmed, with the costs of this instance to the appellants. So ordered.

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

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