

ROSARIO DE LEON, PETITIONER AND APPELLANT, VS. BALBINA PASION, OPPOSITOR AND APPELLEE.*G. R. No. 45264. August 22, 1936*

Ponente: RECTO, J.

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This is a motion filed by the attorneys for the appellee to dismiss the appeal. The court has had it under advisement and finds no merit therein. The result is that the motion will be denied.

Pursuant to section 34 of the Rules of Courts of First Instance in relation to sections 779 and 780 of the Code of Civil Procedure, the record on appeal in special proceedings may be filed within ten (10) days from the date the appeal bond is approved, which is the date on which an appeal in said proceedings is deemed perfected (*Feliciano vs. Calimbas and Zandueta*, 60 Phil., 509). In the case at bar, the appeal bond was approved by the trial court on June 22, 1936, and the record on appeal was filed nine days before, that is, on June 13, the appellants having waived their right to use the ten-day period granted them by the said section 34 of the Rules of Courts of First Instance.

It is contended by the appellee that Rosario de Leon had died before the appeal interposed in her name was presented, and that her administratrix had not taken any step to prosecute the said appeal and that, therefore, the appellants are not the proper parties in this appeal. It appears, however, that the herein appellants are the lawful heirs of Rosario de Leon and that the intestate proceedings for the distribution of her estate, which were pending for some time in the Court of First Instance of Manila, had already been closed, the administratrix relieved of her duties as such and discharged, and said estate distributed among the lawful heirs of Rosario de Leon. The words "or other legal representative of the deceased" as used in section 32 of the Rules of Courts of First Instance may be construed to include, under the circumstances of the case, the legal heirs of Rosario de Leon.

The rights of the appellants to the succession of Rosario de Leon vested in them immediately from the time of the latter's death (art. 657, Civil Code; *Mijares vs. Nery*, 3 Phil., 195; *Suiliong & Co. vs. Chio-Taysan*, 12 Phil., 13; *Lubrico vs. Arbado*, 12 Phil., 391; *Inocencio vs. Gat-Pandan*, 14 Phil., 491; *Aliasas vs. Alcantara*, 16 Phil., 489; *Sy Joe Lieng vs. Encarnacion*, 16 Phil., 137; *Irlanda vs. Pitar-gue*, 22 Phil., 383; *Nable Jose vs. Uson*, 27 Phil., 73; *Beltran vs. Doriano*, 32 Phil., 66; *Bona vs. Briones*, 38 Phil., 276). In the absence of debts the heirs (all of age) may enter immediately upon the administration of the property of their ancestors without the intervention of an administrator. In such a case there is no reason why the estate should be burdened with the costs and expenses of an administration. (*Ilustre vs. Alaras Frondosa*, 17 Phil., 321; *Bondad vs. Bondad*, 34 Phil., 232; *Baldemor vs. Malangyaon*, 34 Phil., 367; *Buenaventura and Del Rosario vs. Ramos*, 43 Phil., 704.)

The fact that the administratrix of the estate of Rosario de Leon did not before her discharge prosecute this appeal was no legal obstacle to her lawful heirs prosecuting it. In *Del Rosario vs. Del Rosario* (2 Phil., 321), it was held that when the executor of an estate dies pending the "determination of an appeal from a judgment rendered against him and in favor of a legatee and the latter succeeding as executor dismisses the appeal, an order may be, granted

permitting any interested party to prosecute the appeal. This ruling is in conformity with the provision of section 783 of the Code of Civil Procedure to the effect that any person legally interested in any order, decree, or judgment of a Court of First Instance in the exercise of its jurisdiction in special proceedings, may appeal from such order, decree or judgment.

It is further argued by counsel for appellee that the real contention of Rosario de Leon in the lower court was that the estate left by Jose F. de Leon should be escheated to the State. This is denied by the appellants. We are of opinion that this question should be decided when the appeal is considered upon its merits, and not in the resolution of a motion to dismiss the appeal. The movant finally maintains that the appeal bond has not been properly executed. This bond was approved by the trial court apparently without any objection on the part of the appellee. Any defect in the appeal bond may be cured upon motion. It cannot be made the basis for dismissing the appeal.

The title of the case will be changed by substituting the names of the herein appellants for that of Rosario de Leon, deceased, and let the appeal follow its regular course. So ordered.

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

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