

IN THE MATTER OF THE TESTAMENTARY PROCEEDINGS OF THE DECEASED ANGELA J. SERAPIO PEREZ. MARIA SERAPIO Y VERA, CIRIACA SERAPIO Y VERA, CARMEN G. REYES, AND VICENTE GESTUYO, CLAIMA...*G.R. No. 45383. May 02, 1939*

Ponente: IMPERIAL, J.

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Maria Serapio y Vera, Ciriaca Serapio y Vera, Carmen G. Reyes and Vicente Gestuvo appealed from the order of the Court of First Instance of Bulacan, dated August 25, 1936, which denied their motion asking that the administrators pay their credits against the deceased, or if this cannot be done, that the appointment of the commissioners be renewed got the purpose of passing upon the approving their claims. They also appealed from the other order of October 10th of the same year, denying their motion for reconsideration.

In the testamentary proceedings of the deceased Angela J. Serapio Perez, special proceedings No. 4562 of the Court of First Instance of Bulacan, the commissioners on claims and appraisal filed their report and inventory on May 22, 1933, which was approved without opposition by the order of June 5th of the same year. On May 12, 1936, the appellants filed a motion alleging that they were creditors of the deceased in the total sum of P4,348.35; that they agreed with all the heirs of the deceased not to file their said claims with the commissioners for approval because the said heirs assumed and bound themselves to pay them; that to this end the heirs signed and executed in their favor the documents copies of which were attached of the motion, wherein they took charge of said claims and undertook to pay them before the properties of the deceased were distributed among and delivered to the heirs; that thereafter they learned that the aforesaid heirs acted fraudulently and availed themselves of that promise as a means to prevent them from filing their claims with the commissioners within the statutory period; that thereupon, they asked that the administrators be ordered to pay their respective claims, and if this could not be legally done, that the commissioners be reappointed so that they can file their claims for approval. The administrator-appellees objected in writing to this motion, and on August 25, 1936, the court denied it on the ground that the petition was filed after the period allowed by section 690 of the Code of Civil Procedure. The appellants filed a motion to reconsider the order, but the same was likewise denied on October 10, 1936. Finally, the appellants excepted to both orders and filed the corresponding record on appeal.

The appellants attribute to the court the following errors: (1) in holding that the petition for renewal of the commission has not been filed within the period fixed by section 690 of the Code of Civil Procedure; (2) in not ordering the administrators to pay their credits, either out of the funds of the testamentary proceedings or on account of the hereditary share of each of the co-heirs; and (3) in denying the motion for reconsideration.

The first assigned error is without merit. It appears that the report of the commissioners was submitted on May 22, 1933, and it was approved by an order dated June 5th of the same year. The motion asking for the reappointment of the commissioners was filed on May 12, 1936, that is, long after the expiration of the six-month period allowed

by section 690 of the Code of Civil Procedure, which began from the date of the termination of the period granted to the commissioners to hear and pass upon the claims against the properties of the deceased.

The last two assigned errors are, however, well-founded. The appellants alleged in the motion that all the co-heirs, including the co-administrator and appellee Juan Serapio y Perez, agreed to assume and pay their credits before the properties of the deceased were distributed among and delivered to said co-heirs, and that to this end they executed and signed the needed documents copies of which are attached to the motion. The copies of said documents in fact show that the aforesaid co-heirs agreed to pay the credits of the appellants before the estate of the deceased was distributed among and delivered to them. In the opposition to the motion, the appellees have not denied the authenticity of the alleged documents, limiting themselves to the argument that the reappointment of the commissioner was asked too late and beyond the period allowed by section 690. If the co-heirs have in fact assumed the debts of the deceased and have solemnly bound themselves, as seems to be the case, to pay the same before the distribution of the estate, it is a matter of justice that they comply with the obligations thus voluntarily contracted and that the latter be paid to the appellants before the co-heirs get the properties to them adjudicated in the will.

When all the co-heirs agree that the credits of some of them be paid by the others, and the other co-heirs in fact assume the obligations arising from said credits, and the motion for the payment of said credits of for the reappointment of the commissioners is filed after the lapse of the six-month period fixed by section 690 of the Code of Civil Procedure, the reappointment of the commissioners on claim will not lie; but the co-heirs who have assumed the obligations cannot escape the latter and the court should order the administrator or administrators to pay said obligations after paying the other credits which have been admitted and approved by the committee on claims, but before the estate of the deceased is distributed among the delivered to all the co-heirs.

In view of the foregoing, the appealed order are set aside, and the court of origin is ordered to set for trial the motion filed by the appellants on May 12, 1936, so that the latter may establish, with the documents copies of which are attached to said motion, that the co-heirs have assumed the credits which they have against the deceased, allowing the appellees to adduce such evidence as they may have in rebuttal. Should the appellants prove their credits thus recognized and accepted by the co-heirs, the court shall order the appellees, as administrators, to pay the same after paying those approved by the committee on claims, but before the estate is distributed among and delivered to all the co-heirs; without special pronouncement as to the costs in this instance. So ordered.

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

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