

IN THE MATTER OF THE INTESTATE OF THE DECEASED VALENTIN GUIDOTE Y DE LEON. VICENTA C. VDA. DE GUIDOTE, ADMINISTRATRIX AND APPELLANT, VS. THE BANK OF THE PHILIPPINE ISLANDS, OPPO...

G.R. No. 45803. April 18, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

In compliance with an order of the Court of First Instance of Manila, before which the above-entitled intestate proceedings are pending, the judicial administratrix thereof filed a project of partition suggesting that the properties to be partitioned be adjudicated to the heirs of the deceased Valentin Guidote named Mauricio, Eugenia, Anita, Concepcion, Raymunda, Catalina, Pacita, Josefina, Caridad, and Jose, all surnamed Guidote, in the proportions indicated in said project, but declaring them subject to the mortgage which the said deceased had executed in favor of Vicente A. Rufino, Mercedes P. Vda. de Rufino, and Ernesto D. Runno, with the exception of the land situated in Ibayo-Tanag of the municipality of Antipolo, Province of Rizal, which is unaffected by any lien.

One month after filing the said project of partition, that is on August 12, 1937, the Bank of the Philippine Islands appeared in the case to oppose the approval thereof on the ground that it has an unpaid credit amounting to P20,000. Ruling upon the petition of the judicial administratrix that the project of partition filed by her be approved and upon the opposition of the Bank of the Philippine Islands, the lower court held that it would approve the project should the Bank's credit for P20,000 be paid in one of two ways: by selling the unencumbered land situated in Ibayo-Tanag, Antipolo, Rizal, for an amount sufficient to pay said credit, or by conveying the said land to the bank, should it so desire, in partial payment of its credit. But it also held that should these arrangements be not made within thirty days, it would approve the project of partition as presented, on condition that the properties of the intestate would be subject to the mortgage of the Rufinos and to the bank's credit.

Not agreeable to the order of the lower court containing the holding and suggestion aforesaid, the judicial administratrix appealed therefrom, attributing to said court the following errors set out in her brief:

"1. The lower court erred in ordering the sale of all the mortgaged properties of the intestate, notwithstanding the fact that the mortgagees did not ask or apply for said sale, and

"2. The lower court erred in not approving the project of partition submitted by the administratrix as thus filed, notwithstanding the fact that the conditions thereof are in accordance with the order of said court."

The parties admit that the credits of the Rufinos and of the Bank of the Philippine Islands are unpaid, that of the former being P130,000, plus stipulated interest, secured by a mortgage on all the properties of the intestate save the land situated in Ibayo-Tanag, municipality of Antipolo, Rizal; and that of the latter being P20,000. While these credits, and possibly other indebtedness and obligations of the intestate, have not been paid, the project of

partition filed by the administratrix cannot be approved, and still less can the properties to be partitioned be delivered to the heirs, unless the latter give the security required by section 754 of Act No. 190 which reads as follows:

"SEC. 754. Parties interested may have order.—Such order may be made on the application of the executor or administrator, or of a person interested in the estate; but the heirs, devisees, or legatees, shall not be entitled to an order for their share, until the payment of the debts and allowances mentioned in the preceding section, and the several expenses there mentioned have been made or provided for, unless they give a bond with such surety or sureties as the court directs, to secure the payment of such debts, expenses, or allowances, or any part thereof as remain unpaid or unprovided for, and to indemnify the executor or administrator against the same."

From this it follows that the lower court did not err in holding that if the bank's credit is not paid within thirty days, it would approve the project of partition, the properties to be adjudicated to the heirs of the deceased being subject, however, to the mortgage of the Rufinos and to the credit of the bank.

Wherefore, the appealed order is affirmed, with the costs to the appellant. So ordered.

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

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