

TESTATE ESTATE OF SAMUEL MURRAY. MARGARET STEWART MITCHELL MCMASTER, PETITIONER AND APPELLEE, VS. HENRY REISSMANN & COMPANY, OPPOSITOR AND APPELLANT.

G.R. No. 45842. May 23, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for the reopening of the testamentary proceedings of the deceased Samuel Murray for the purpose of claiming the residue of the estate of the deceased James Mitchell which the latter disposed of by will duly executed and probated in favor of the former as legacy although, according to the petitioner, it constituted a trust in favor of the applicant-appellee Margaret Stewart Mitchell McMaster. Said properties were afterwards disposed of as a legacy by the said Samuel Murray by will duly executed and probated in favor of the oppositor-appellant, Henry Reissmann & Co., this company having been declared by a decree of the Court of First Instance of Manila, dated January 20, 1926, as the sole "legatee" of the said deceased Samuel Murray.

Section 782 of the Code of Civil Procedure provides: "If there shall be a controversy before the Court of First Instance as to who the lawful heirs of the deceased person are, or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing by the judge, under oath, and signed by the witnesses. Any party in interest whose distributive share is affected by the determination of such controversy, may appeal from the judgment of the Court of First Instance determining such controversy, to the Supreme Court, within the time and in the manner provided in the last preceding section, and it shall thereupon be the duty of the clerk of the Court of First Instance forthwith to transmit to the Supreme Court a certified copy of all the testimony, taken upon that issue, and of the judgment of the court thereon."

Section 781 of the Code of Civil Procedure, as amended by section 2 of Act No. 3403, referred to in section 782 of the same Code provides: "Any person interested in the allowance or disallowance of a will by a Court of First Instance, may appeal to the Supreme Court from such allowance or disallowance, by filing with the Court of First Instance an application for an appeal, within twenty-five days after the date on which he was notified of the judgment allowing or disallowing the will, and by the execution and filing of a bond such as is provided in the preceding section. * * *"

As already stated in the foregoing statement of facts, the decree allowing the will of the deceased Samuel Murray, and declaring Henry Reissmann & Company, London merchants, as the sole "legatees" of the said deceased in accordance with the terms of his will, was issued on January 20, 1926. It does not appear that the applicant and appellee, Margaret Stewart Mitchell McMaster, was personally notified of said decree, or on what date the notice was served, if she was notified thereof. Whether she was notified or not of said decree is of no consequence, however, for the purpose of determining whether or not she knew of the issuance of said decree. The testate or intestate proceedings of a deceased person partake of the nature of proceedings in rem and, as such, the publication in the newspapers of the filing of the corresponding application and of the date set for the hearing of

the same, in the manner prescribed by law, is a notice to the whole world of the existence of the proceedings and of the hearing on the date and time indicated in the publication. (Section 630, Act No. 190; *Manalo vs. Paredes and Philippine Food Co.*, 47 Phil., 938.) Therefore, by reason of the publication of the testamentary proceedings of the deceased James Mitchell, as well as those of the deceased Samuel Murray, the applicant-appellee is presumed to have knowledge of the respective proceedings in said cases, as well as of all the orders and decrees issued therein, including that on January 20, 1926, allowing the will of Samuel Murray to probate and declaring Henry Reissmann & Company as his sole "legatee", and, according to section 781 of the Code of Civil Procedure, as amended by section 2 of Act No. 3403, if she did not concur in said decree, she should have appealed therefrom within the period of twenty-five days, that is, on February 14, 1926. Inasmuch as she failed to do so, said decree automatically became final and conclusive and the probate court that heard the case lost all jurisdiction to continue hearing the same.

Section 113 of said Code of Civil Procedure equitably provides: "Upon such terms as may be just the court may relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect: Provided, That application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken." In the case of *Pecson vs. Coronel* (43 Phil., 358), this court held that an order allowing a will to probate can be reversed even after the lapse of the period fixed by law for taking an appeal therefrom, when application therefor is made under the provisions of section 113 of the Code of Civil Procedure, prescribing an equitable remedy, which the Courts of First Instance with general jurisdiction have the power to grant. The application filed by the applicant-appellee Margaret Stewart Mitchell McMaster, asking for the reopening of the testamentary proceedings of Samuel Murray, and impliedly for the reversal of the decree allowing the latter's will to probate and declaring the oppositor-appellant Henry Reissmann & Company, as the sole "legatee", was filed more than one year and six months after the issuance of said decree, which is dated January 20, 1926, and the application, dated August 6, 1927, that is outside the fatal period of six months prescribed by section 113 of the Code of Civil Procedure for such cases. When the Court of First Instance of Manila granted the application for the reopening of the proceedings and appointed the Philippine Trust Company special administrator of said estate, on October 12, 1927, it had no more jurisdiction, so that the order issued to that effect was illegal and void.

But it is not this alone which transpired in this case. On December 6, 1929, the Court of First Instance of Manila, upon petition of the Philippine Trust Company which was appointed special administrator, issued an order relieving it of its duty and ordering the definitive closing and filing of the record of the testamentary proceedings of Samuel Murray, on the ground that more than one year had already elapsed and the applicant Margaret Stewart Mitchell McMaster had taken no steps tending to substantiate her claim. Undoubtedly, the applicant-appellee, awakened by this decree ordering the definitive closing and filing of the record of the testamentary proceedings of Samuel Murray, on March 2, 1931, that is after the lapse of approximately one (1) year and three (3) months, filed a now application couched in the same language as the previous one. This new application was granted by the Court of First Instance of Manila which, on March 17, 1931, issued an order reopening said testamentary proceedings of the deceased Samuel Murray and reinstating the Philippine Trust Company in its function. On August 30, 1937, or more than six (6) years thereafter, the court rendered the decision appealed from, after the presentation of evidence.

It appears, therefore, that the said testamentary proceedings of Samuel Murray, were twice closed: the first time by operation of the law, for lack of an appeal from the decree of January 20, 1926, allowing the will to probate and declaring the "legatee" and for failure to file, within six (6) months from said date, a motion to set aside said decree in accordance with the provisions of section 113 of Act No. 190; and the second time when, by reason of abandonment on the part of the applicant-appellee Margaret Stewart Mitchell McMaster for more than one (1)

year, the Court of First Instance of Manila, on December 6, 1929, ordered the definitive closing and filing of the record of said testamentary proceedings of the deceased Samuel Murray. It will be seen that the Court of First Instance of Manila twice acted without jurisdiction when it first granted the former application to reopen the proceedings, after the lapse of more than one (1) year from the date of the issuance of the decree of January 20, 1926, allowing the will to probate and declaring the "legatee", and later after the lapse of also more than one (1) year from December 6, 1929, when the definitive closing and filing of the record was ordered, thereby violating the doctrine; laid down, by this court in the case of Yango vs. Millan (57 Phil., 761) that "public policy demands that a+ the risk of occasional errors judgments shall become final at some definite date fixed by law."

Having arrived at the conclusion that the Court of First Instance exceeded its jurisdiction in granting the petition to reopen the testamentary proceedings of the deceased Samuel Murray by its order of March 17, 1931, and in hearing and deciding it on its merits by its decision of August 30, 1937, this court deems it unnecessary to pass upon the other assignments of alleged errors.

Wherefore, this court is of the opinion and so holds: that after the lapse of twenty-five days from the date of issuance of a decree allowing a will to probate and declaring a "legatee", if no appeal is taken from said decree, the same becomes final and conclusive, and it may be set aside by the court issuing it only if within six months from the date it was issued application therefor is made in accordance with section 113 of the Code of Civil Procedure, and the court granting an application for the reopening of said proceedings, filed after the lapse of said periods, exceeds its jurisdiction and the order or judgment rendered by it is null and void and without any legal effect.

Wherefore, the judgment is reversed, with costs to the appellee.

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

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