

**IN THE MATTER OF THE INTESTATE OF PROCESO DE GUZMAN.
NICOLASA DE GUZMAN, APPLICANT AND APPELLEE, VS. ANGELA
LIMCOLIOC, OPPOSITOR AND APPELLANT.**

G.R. No. 46134. April 18, 1939

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Proceso de Guzman died on January 1, 1937, without leaving a will. The deceased was first married to Agatona Santos, with whom he had four children, named Nicolasa, Apolinario, Ana and Tomasa. After Agatona's death, the deceased contracted a second marriage with Angela Limcolioc, with whom he did not have any child.

On the 7th of the same month of January, 1937, the Court of First Instance of Rizal appointed Nicolasa de Guzman judicial administratrix of the properties of the deceased Proceso de Guzman. On the 8th of the same month of January, 1937, Angela Limcolioc, widow of the deceased, asked that this appointment be set aside and that she be named administratrix instead, on the ground of her preference as the widow. The court denied this petition and sustained the appointment of Nicolasa. From these resolutions, Angela appealed.

In this instance the appellant contends that the trial court erred in not appointing her administratrix of the estate of the deceased Proceso de Guzman and in appointing Nicolasa de Guzman as such administratrix without first setting the case for hearing.

The principal consideration reckoned with in the appointment of the administrator of the estate of a deceased person is the interest in said estate of the one to be appointed as such administrator. This is the same consideration which the law takes into account in establishing the preference of the widow to administer the estate of her husband, upon the latter's death, because she is supposed to have an interest therein as a partner in the conjugal partnership. But this preference established by law is not absolute, if there are other reasons justifying the appointment of an administrator other than the surviving spouse. If the interest in the estate is what principally determines the preference in the appointment of an administrator of the estate of a deceased person, and if, under the circumstances of each case, it develops that there is another who has more interest therein than the surviving spouse, the preference established in the latter's favor becomes untenable.

The application filed by Nicolasa de Guzman for her appointment alleges that during the marital life of the deceased with his first wife Agatona Santos, both, through their mutual labor, acquired all the properties left by the deceased, not having acquired any property during his second marriage with Angela Lamcolioc. The court bore these allegations in mind. It is true that the case was not heard for the purpose of establishing these allegations, but when Angela asked for the reconsideration of the appointment of Nicolasa, she did not deny these allegations and merely stated that they do not justify her appointment as administratrix. For failure of Angela to deny these allegations, thus taking them for granted, the court was justified in considering them when it denied the reconsideration of its resolution and when it sustained the appointment of Nicolasa.

If the properties left by the deceased Proceso de Guzman were acquired during his marriage with Agatona Santos,

his children, among them Nicolasa, have more interest therein than his now widow, Angela Limcolioc, who would only be entitled, by way of usufruct, to a portion equal to that corresponding to one of the children who has received no betterment.

The appealed decision is affirmed, with the costs to the appellant. So ordered.

Villa-Real Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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