

LI SENG GIAP & CO., INC., AND DY UY, PETITIONERS, VS. JUAN G. LESACA ET AL., RESPONDENTS.*G.R. No. 46608. November 14, 1939*

Ponente: IMPERIAL, J.

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In special proceedings No. 5851 of the Court of First Instance of Albay, entitled "Intestate of Dona Irene Jaucian de Del Rosario", the committee on claims approved the claim of Li Seng Giap & Co., Inc., in the sum of P1,233.52, with legal interest at 6 per cent per annum from August 27, 1937, and the claim of Dy Uy in the sum of P1,813.80, with legal interest at 6 per cent per annum from September 24, 1937. The commissioners filed their written report with the court on January 26, 1938, wherein they stated that the claims filed by Li Seng Giap & Co., Inc., and Dy Uy in the aforesaid amounts had been approved; the report was dated the day before, January 25th. The report was set for trial on February 12, 1938, for approval, by the clerk of court who notified all the interested parties, including the judicial administrator, of said trial by ordinary mail. As no objection was presented to the report, the court by order of February 18, 1938 approved the same and further ordered that the administrator pay the two claims admitted with funds of the intestate. The said order became final because it was neither excepted to nor appealed from by the parties. Nevertheless, on May 12, 1938, the new judicial administrator, Prudencio Papa, filed with the court an appeal from the report submitted by the committee. On August 15, 1938, the court entered an order admitting the appeal taken by the new administrator from the report of the commissioners, notwithstanding the fact that the period to perfect said appeal had long expired. On December 9, 1938, the administrator put in a motion asking that the claims of Li Seng Giap & Co., Inc., and Dy Uy be declared abandoned on the ground that the latter have not commenced the actions required by law within the period therefor. On January 5, 1939 the administrator filed another motion asking for authority to sell in a private or public sale the share of the intestate in two parcels of land, situated in the Province of Camarines Sur, because it was so agreed upon by the heirs of the deceased and it was to their best interest. On January 23, 1939, the trial court issued an order granting the authority and empowering the administrator to sell in a private or public sale said share in the lands, on condition that the proceeds of the sale be deposited with the clerk of court and that the sale be subject to the court's approval. On January 30, 1939, the claimants Li Seng Giap & Co., Inc., and Dy Uy filed a motion to reconsider the order authorizing the sale of the share ' in the lands situated in Camarines Sur. And on February 14, 1939, the court issued another order which, ruling upon the motion of the administrator to have the claims declared abandoned and dismissed, held that the same were in fact abandoned and dismissed and, further, denied the claimants' motion for reconsideration wherein they asked for the setting aside of the order authorizing the sale of the share of the intestate in the lands.

To maintain the status quo, this court, at the instance of the petitioners, issued a writ of preliminary injunction requiring the respondents to abstain, until further order, from enforcing and executing the order issued by the court authorizing the administrator to sell the share of the intestate in the parcels of land situated in Camarines Sur.

The petitioners ask in their petition that the orders of January 23 and February 14, 1939, be set aside on the ground that they were issued by the court without or in excess of its jurisdiction. The first order is that which authorized the administrator to sell the share of the intestate in certain lands, and the second is that which declared the claims of the petitioners abandoned and dismissed and denied the motion for reconsideration of the order of January 23, 1939.

The only ground of the court in authorizing the sale of the share of the intestate in the lands was the allegation of the administrator that it had been so agreed upon by the heirs and that the sale was for their best interest.

Section 714 of the Code of Civil Procedure provides that real property of the deceased may be sold to pay his indebtedness if his personal estate is insufficient; and section 718 provides that the court may authorize the sale of the real property of the deceased if the heirs so agree in writing and if the administration has sufficient funds to pay the debts left by the deceased. In the present case the court authorized the sale of the share in the lands while the claims of the petitioners were pending payment and without satisfactory evidence before it that the intestate had sufficient funds to pay the claims. Neither does it appear that all the heirs had agreed in writing to sell the aforesaid share. For these reasons, we hold that the order of January 23, 1939 is illegal because it was issued by the trial court in excess of its discretionary power.

The trial court held that the claims of the petitioners were abandoned, and dismissed them because the petitioners did not file their complaints within 30 days under section 776 of the Code of Civil Procedure, as amended by section 1 of Act No. 4229. And it came to this conclusion because in its opinion the report of the committee on claims was still appealable in view of the fact that the commissioners had not notified the administrator of the filing thereof in court. We hold that these legal conclusions of the trial court are erroneous. There is no provision of the Code of Civil Procedure which requires the commissioners on claims to notify the administrator of the filing of the report in court. What section 694 requires is that the committee notify the claimants whose claims had been disapproved in the amount of P40 or more of the date of the filing of its report. And there is no reason to notify the administrator because section 691 requires his presence in all the sessions of the committee on claims, and the law presumes that it is his duty to inform himself of the filing of the report wherein the committee has to state if any claim has been admitted against the administration and the amount thereof. The notice to the administrator being unnecessary, and the latter having interposed the appeal outside of time, the resolutions of the committee approving the claims of the petitioners became final, wherefore, the trial court acted without jurisdiction in issuing the order of February 14, 1939 declaring the claims abandoned and dismissed. Moreover, in the order of February 18, 1938, the court did not merely approve the report of the committee, which approval was unnecessary (*Concepcion vs. Tambunting*, 46 Phil., 457; *Testamentary Proceedings of Mamerto Portillo, Jesusa Portillo-Rivera vs. Strachan*, G. R. No. 46026, April 29, 1939), but also ordered the administrator to pay the claims allowed. This order to pay which was issued pursuant to section 739 of the Code of Civil Procedure, also became final and executory because it was not appealed by any of the interested parties.

The remedy prayed for is granted, and the orders of January 23 and February 14, 1939, are set aside, with the costs to the respondent judicial administrator. The writ of injunction issued is kept in force, provided that the court, upon motion of an interested party and in the cases allowed by law, may order the sale of the real property of the intestate, or a part thereof, for the satisfaction of the admitted claims of the petitioners. So ordered.

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

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