

**IN THE MATTER OF THE ESTATE OF CRESCENCIANO ABESAMIS,
DECEASED. CONCORDIA CUEVAS (ALIAS CONCORDIA ABESAMIS),
EXECUTRIX AND APPELLANT, VS. PEDRO ABESAMIS 2.” ET AL.,
OPPOSITORS A...**

G.R. No. 47431. December 19, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal from the decision of the Court of First Instance of Nueva Ecija dated May 27, 1937, the dispositive part of which reads as follows:

"Wherefore, the court sustains the opposition to the approval of the amended project of partition presented by the executrix and hereby orders the latter to present another inventory and another project of partition which shall include only the property adjudicated to the defendants in the final decision of this court in case No. 4816, consisting of only one-eighth (J) of the three parcels of land described in the will of the deceased Crescenciano Abesamis."

On February 11, 1928, Concordia Cuevas submitted for probate in the Court of First Instance of Nueva Ecija the last will and testament of her deceased natural father, Crescenciano Abesamis, which bequeathed three parcels of land, one share of stock in the "Gallera de Penaranda" of a par value of P100, and two carabaos worth P100 to Concordia Cuevas (alias Concordia Abesamis), Francisco Abesamis, Perpetua Abesamis, Isaias Abesamis and Pedro Abesamis in the manner and under the conditions stated therein.

On March 15, 1928, however, Pedro Abesamis and twenty-five others entered their opposition to the distribution of the properties described in the will, for the reason that "a que dichos bienes son de propiedad pro indiviso entre los aqui opositores y la testamentaria," and simultaneously informed the court that they had commenced an action for the partition of said properties.

On May 14, 1928, the will was admitted to probate and Concordia Cuevas was appointed executrix with a bond of P1,000. On May 13, 1928, Pedro Abesamis and the other oppositors did institute civil case No. 4816 in the Court of First Instance of Nueva Ecija against the estate of Crescenciano Abesamis, Concordia Cuevas, Francisco Abesamis and Isaias Abesamis for the partition of the properties in question, alleging that said properties belonged, in the first instance, to Anacleto Mercado, their common causante, who entrusted them to Crescenciano Abesamis with the understanding that they were not to be subdivided as long as the minor children of her other deceased son, Teodorico Abesamis, were living with Crescenciano. A demurrer interposed by the defendants on the ground that there was another pending action involving the same subject matter was sustained, after which the plaintiffs were required to amend their complaint, the amendment consisting simply in eliminating therefrom the estate of Crescenciano Abesamis and leaving as party defendants Concordia Cuevas, Francisco Abesamis and Isaias Abesamis. As these defendants failed to answer the amended complaint, they were declared in default and, on July 3, 1930, judgment was rendered adjudicating seven-eighths (7/8) of the properties in favor of the plaintiffs

and the other one-eighth (&) for the defendants. On February 7, 1931, the court ordered the commissioners of partition to declare as sole heiress Concordia Cuevas to the exclusion of Francisco, and Isaias Abesamis.

On March 3, 1931, the partition commissioners submitted their report, upon which the court declared that "no hay lugar a aprobar por ahora el informe de los comisionados partidores hasta que se haya verificado la partición en dicha testamentaria en la cual pueden las partes de esta causa hacer valer los derechos que pudieran tener sobre los terrenos en cuestión." A motion for reconsideration having been denied on September 15, 1932, plaintiffs, on February 14, 1934, moved for the approval of the project of partition filed by the commissioners. On February 26, 1934, the court ordered the suspension of the approval of the partition of the properties until the termination of the testamentary proceedings.

On January 9, 1937, Concordia Cuevas presented to the probate court a partition plan adjudicating the three lots and the two carabaos in favor of the legatees mentioned in the will. This was rejected by the court for the reason that it was not in conformity with the inventory of the estate and the decision in civil case No. 4816. On January 26, 1937, the executrix submitted an amended inventory and later another project of partition distributing the properties of the estate in accordance with the terms of the will, which were objected to by the defendants, because these included their legitimate shares under the decision in civil case No. 4816. The opposition was upheld by the court in its decision of May 27, 1937, the dispositive part of which is quoted in the beginning of this opinion.

The executrix-appellant assigns the following errors:

"1. The court erred in not holding that the decision in civil case No. 4816 of the Court of First Instance of Nueva Ecija, declaring that the estate of Crescenciano Abesamis is entitled only to one-eighth (\$) of the property described in the will, is a nullity and can not bind the estate of Crescenciano Abesamis.

"2. The court erred in not approving the amended project of partition presented by the executrix on February 8, 1937, and in not distributing the estate of the deceased Crescenciano Abesamis according to the provision of the will.

"3. The court erred in not finding¹ that it has no jurisdiction as a probate court to decide the question of ownership of the property involved in these proceedings part of which is claimed by the oppositors to be their property not by virtue of any right of inheritance from the deceased Crescenciano Abesamis but by title adverse to that of the deceased and his estate.

"4. The court erred in not holding that the oppositors have no personality to object to the project of partition presented by the executrix on February 8, 1937, which was drafted in accordance with the provision of the will of the deceased Crescenciano Abesamis."

Under the first assignment of error, appellant impugns the validity of the decision of the lower court in civil case No. 4816 declaring that the legatees here, defendants in that action, are entitled only to one-eighth of the property on the ground that the estate of Crescenciano Abesamis was not a party in said proceeding. It should be noted that all the coheirs, except Perpetua Abesamis, were defendants therein, and that by order of the court, in its instructions to the partition commissioners dated February 7, 1931, the herein executrix-appellant was pronounced the sole heiress of the deceased. As said defendants were declared in default and are, to be sure, bound by the decision in that case, we are of the opinion that the appellant cannot now be permitted to assail its virtuality nor to regard it as totally ineffectual against the testate estate. The rights to the succession of a person are transmitted from the moment of death (article 657, Civil Code), and where, as in this case, the heir is of legal age and the estate is not burdened with any debts, said heir immediately succeeds, by force of law, to the dominion, ownership, and possession of the properties of his predecessor, and consequently stands legally in the shoes of the

latter. (*Ilustre vs. Alaras Frondosa*, 17 Phil., 321; *Dais vs. Court of First Instance of Capiz*, 51 Phil., 396.) In the absence of a special proceeding for the settlement of the estate, there is no necessity of a previous declaration of status and the heir or heirs can sue and be sued in that capacity (*Arsenio de Vera et al. vs. Cleotilde Galauran*, 37 Off. Gaz., 1821). This disposes likewise of the second assignment of error.

With reference to the third assignment of error, it should be observed that the oppositors instituted a separate action (civil case No. 4816) for the partition of the properties described in the will of Crescenciano Abesamis. No question of ownership, therefore, was in fact determined in the testamentary proceedings (civil case No. 4797) by the probate court. It results that when, on February 8, 1937, the court disapproved the project of partition filed by the executrix, it did not decide adverse claims of proprietorship but only lent force and effect to the decision rendered in civil case No. 4816.

Under the fourth and last assignment of errors, it is vigorously contended that only heirs or legatees may present an opposition, and that inasmuch as the oppositors-appellees are not heirs or legatees, they have no legal personality to object to the approval of the project of partition. By virtue of the judgment in civil case No. 4816 adjudicating seven-eighths of the property in their favor, the herein oppositors had the right to oppose any project of partition which, in effect, would divest them of their right of ownership. To conclude otherwise would be to permit the executrix to enrich herself at the expense of the oppositors.

The decision appealed from is hereby affirmed, with costs against the appellant. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

Judgment affirmed.

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