

ERNESTO M. GUEVARA, PETITIONER AND APPELLANT, VS. ROSARIO GUEVARA AND HER HUSBAND PEDRO BUISON, RESPONDENTS AND APPELLEES.*G.R. No. 48840, December 29, 1943*

Ponente: OZAETA, J.

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Ernesto M. Guevara and Rosario Guevara, legitimate son and natural daughter, respectively, of the deceased Victorino L. Guevara, are litigating here over their inheritance from the latter. The action was commenced on November 12, 1937, by Rosario Guevara to recover from Ernesto Guevara what she claims to be her strict legitime as an acknowledged natural daughter of the deceased—to wit, a portion of 423,492 square meters of a large parcel of land described in original certificate of title No. 51691 of the province of Pangasinan, issued in the name of Ernesto M. Guevara— and to order the latter to pay her P6,000 plus P2,000 a year as damages for withholding such legitime from her. The defendant answered the complaint contending that whatever right or rights the plaintiff might have had, had been barred by the operation of law.

It appears that on August 26, 1931, Victorino L. Guevara executed a will (exhibit A), apparently with all the formalities of the law, wherein he made the following bequests: To his stepdaughter Candida Guevara, a pair of earrings worth M.50 and a gold chain worth P40; to his son Ernesto M. Guevara, a gold ring worth P180 and all the furniture, pictures, statues, and other religious objects found in the residence of the testator in Poblacion Sur, Bayambang, Pangasinan; "a mi hija Rosario Guevara," a pair of earrings worth P120; to his stepson Pio Guevara, a ring worth P120; and to his wife by second marriage, Angustia Posadas, various pieces of jewelry worth P1,020.

He also made the following devises: "A mis hijos Rosario Guevara y Ernesto M. Guevara y a mis hijastros, Vivencio, Eduviges, Dionisia, Candida y Pio, apellidados Guevara," a residential lot with its improvements situate in the town of Bayambang, Pangasinan, having an area of 960 square meters and assessed at P540; to his wife Angustia Posadas he confirmed the donation propter nuptias theretofore made by him to her of a portion of 25 hectares of the large parcel of land of 259-odd hectares described in plan Psu-66618. He also devised to her a portion of 5 hectares of the same parcel of land by way of complete settlement of her usufructuary right.

He set aside 100 hectares of the same parcel of land to be disposed of either by him during his lifetime or by his attorney-in-fact Ernesto M. Guevara in order to pay all his pending debts and to defray his expenses and those of his family up to the time of his death.

The remainder of said parcel of land he disposed of in the following manner:

"(d).—Toda la porcion restante de mi terreno arriba descrito, de la extension superficialaproximada de ciento veintinueve (129) hectareas setenta (70) areas, y veinticinco (25) centiareas, con todas sus mejoras existentes en la misma, dejo y distribuyo, pro-indiviso, a mis siguientes herederos como sigue:

"A mi hijo legitimo, Ernesto M. Guevara, ciento ocho (108) hectareas, ocho (8) areas y cincuenta y cuatro (54)

centiareas, hacia la parte que colinda al Oeste de las cien (100) hectareas referidas en el inciso (a) de este parrafo del testamento, como su propiedad absoluta y exclusiva, en la cual extension superficial estan ineluidas cuarenta y tres (43) hectareas, veintitres (23) areas y cuarenta y dos (42) centiareas que le doy en concepto de mejora.

"A mi hija natural reconocida, Rosario Guevara, veintiun (21) hectareas, sesenta y un (61) areas y setenta y un (71) centiareas, que es la parte restante.

"Duodecimo.—Nombro por la presente como Albacea Testamentario a mi hijo Ernesto M. Guevara, con relevacion de fianza. Y una vez legalizado este testamento, y en cuanto sea posible, es mi deseo, que los herederos y legatarios aqui nombrados se repartan extrajudicialmente mis bienes de conformidad con mis disposiciones arriba consignadas."

Subsequently, and on July 12, 1933, Victorino L. Guevara executed a deed of sale (exhibit 2) in favor of Ernesto M. Guevara whereby he conveyed to him the southern half of the large parcel of land of which he had theretofore disposed by the will above mentioned, in consideration of the sum of Pi and other valuable considerations, among which were the payment of all his debts and obligations amounting to not less than P16,500, his maintenance up to his death, and the expenses of his last illness and funeral expenses. As to the northern half of the same parcel of land, he declared : "Hago constar tambien que reconozco a mi referido hijo Ernesto M. Guevara como dueno de la mitad norte de la totalidad y con junto de los referidos terrenos por haberlos compradg de su propio peculio del Sr. Rafael T. Puzon a quien habia vendido con anterioridad."

On September 27, 1933, final decree of registration was issued in land registration case No. 15174 of the Court of First Instance of Pangasinan, and pursuant thereto original certificate of title No. 51691 of the same province was issued on October 12 of the same year in favor of Ernesto M. Guevara over the whole parcel of land described in the deed of sale above referred to. The registration proceeding had been commenced on November 1, 1932, by Victorino L. Guevara and Ernesto M. Guevara as applicants, with Rosario, among others, as oppositor; but before the trial of the case Victorino L. Guevara withdrew as applicant and Rosario Guevara and her co-oppositors also withdrew their opposition, thereby facilitating the issuance of the title in the name of Ernesto M. Guevara alone.

On September 27, 1933, Victorino L. Guevara died. His last will and testament, however, was never presented to the court for probate, nor has any administration proceeding ever been instituted for the settlement of his estate. Whether the various legatees mentioned in the will have received their respective legacies or have even been given due notice of the execution of said will and of the dispositions therein made in their favor, does not affirmatively appear from the record of this case. Ever since the death of Victorino L. Guevara, his only legitimate son Ernesto M. Guevara appears to have possessed the land adjudicated to him in the registration proceeding and to have disposed of various portions thereof for the purpose of paying the debts left by his father.

In the meantime Rosario Guevara, who appears to have had her father's last will and testament in her custody, did nothing judicially to invoke the testamentary dispositions made therein in her favor, whereby the testator acknowledged her as his natural daughter and, aside from certain legacies and bequests, devised to her a portion of 21.6171 hectares of the large parcel of land described in the will. But a little over four years after the testator's demise, she (assisted by her husband) commenced the present action against Ernesto M. Guevara alone for the purpose hereinbefore indicated; and it was only during the trial of this case that she presented the will to the court, not for the purpose of having it probated but only to prove that the deceased Victorino L. Guevara had acknowledged her as his natural daughter. Upon that proof of acknowledgment she claimed her share of the inheritance from him, but on the theory or assumption that he died intestate, because the will had not been probated, for which reason, she asserted, the betterment therein made by the testator in favor of his legitimate son Ernesto M. Guevara should be disregarded. Both the trial court and the Court of Appeals sustained that theory.

Two principal questions are before us for determination: (1) the legality of the procedure adopted by the plaintiff (respondent herein) Rosario Guevara; and (2) the efficacy of the deed of sale exhibit 2 and the effect of the certificate of title issued to the defendant (petitioner herein) Ernesto M. Guevara.

I

We cannot sanction the procedure adopted by the respondent Rosario Guevara, it being in our opinion in violation of procedural law and an attempt to circumvent and disregard the last will and testament of the decedent. The Code of Civil Procedure, which was in force up to the time this case was decided by the trial court, contains the following pertinent provisions:

"Sec. 625. Allowance Necessary, and Conclusive as to Execution.—No will shall pass either the real or personal estate, unless it is proved and allowed in the Court of First Instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution.

"Sec. 626. Custodian of Will to Deliver.—The person who has the custody of a will shall, within thirty days after he knows of the death of the testator, deliver the will into the court which has jurisdiction, or to the executor named in the will.

"Sec. 627. Executor to Present Will and Accept or Refuse Trust.—A person named as executor in a will, shall within thirty days after he knows of the death of the testator, or within thirty days after he knows that he is named executor, if he obtained such knowledge after knowing of the death of the testator, present such will to the court which has jurisdiction, unless the will has been otherwise returned to said court, and shall, within such period, signify to the court his acceptance of the trust, or make known in writing his refusal to accept it.

"Sec. 628. Penalty.—A person who neglects any of the duties required in the two preceding sections, unless he gives a satisfactory excuse to the court shall be subject to a fine not exceeding one thousand dollars.

"Sec. 629. Person Retaining Will may be Committed.—If a person having custody of a will after the death of the testator neglects without reasonable cause to deliver the same to the court having jurisdiction, after notice by the court so to do, he may be committed to the prison of the province by a warrant issued by the court, and there kept in close confinement until he delivers the will."

The foregoing provisions are now embodied in Rule 76 of the new Rules of Court, which took effect on July 1, 1940.

The proceeding for the probate of a will is one in rem, with notice by publication to the whole world and with personal notice to each of the known heirs, legatees, and devisees of the testator (section 630, C. C. P., and sections 3 and 4, Rule 77). Altho not contested (section 5, Rule 77), the due execution of the will and the fact that the testator at the time of its execution was of sound and disposing mind and not acting under duress, menace, and undue influence or fraud, must be proved to the satisfaction of the court, and only then may the will be legalized and given effect by means of a certificate of its allowance, signed by the judge and attested by the seal of the court; and when the will devises real property, attested copies thereof and of the certificate of allowance must be recorded in the register of deeds of the province in which the land lies. (Section 12, Rule 77, and section 624, C. C. P.)

It will readily be seen from the above provisions of the law that the presentation of a will to the court for probate is mandatory and its allowance by the court is essential and indispensable to its efficacy. To assure and compel the probate of a will, the law punishes a person who neglects his duty to present it to the court with a fine not exceeding P2,000, and if he should persist in not presenting it, he may be committed to prison and kept there until he delivers the will.

The Court of Appeals took express notice of these requirements of the law and held that a will, unless probated, is ineffective. Nevertheless it sanctioned the procedure adopted by the respondent for the following reasons:

"The majority of the Court is of the opinion that if this case is dismissed ordering the filing of testate proceedings, it would cause injustice, inconvenience, delay, and much expense to the parties, and that therefore, it is preferable to leave them in the very status which they themselves have chosen, and to decide their controversy once and for all, since, in a similar case, the Supreme Court applied that same criterion (*Leano vs. Leaño*, supra), which is now sanctioned by section 1 of Rule 74 of the Rules of Court. Besides, section 6 of Rule 124 provides that, if the procedure which the court ought to follow in the exercise of its jurisdiction is not specifically pointed out by the Rules of Court, any suitable process or mode of procedure may be adopted which appears most consistent to the spirit of the said Rules. Hence, we declare the action instituted by the plaintiff to be in accordance with law."

Let us look into the validity of these considerations. Section 1 of Rule 74 provides as follows:

"Section 1. Extra judicial settlement by agreement between heirs.—If the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir or one legatee, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two years after the death of the decedent."

That is a modification of section 596 of the Code of Civil Procedure, which reads as follows:

"Sec. 596. Settlement of Certain Intestates Without Legal Proceedings.—Whenever all the heirs of a person who died intestate are of lawful age and legal capacity and there are no debts due from the estate, or all the debts have been paid the heirs may, by agreement duly executed in writing by all of them, and not otherwise, apportion and divide the estate among themselves, as they may see fit, without proceedings in court."

The implication is that by the omission of the word "intestate" and the use of the word "legatees" in section 1 of Rule 74, a summary extrajudicial settlement of a deceased person's estate, whether he died testate or intestate, may be made under the conditions specified. Even if we give retroactive effect to section 1 of Rule 74 and apply it here, as the Court of Appeals did, we do not believe it sanctions the nonpresentation of a will for probate and much less the nullification of such will thru the failure of its custodian to present it to the court for probate; for such a result is precisely what Rule 76 sedulously provides against. Section 1 of Rule 74 merely authorizes the extrajudicial or judicial partition of the estate of a decedent "without securing letters of administration." It does not say that in case the decedent left a will the heirs and legatees may divide the estate among themselves without the necessity of presenting the will to the court for probate. The petition to probate a will and the petition to issue letters of administration are two different things, altho both may be made in the same case. The allowance of a will precedes the issuance of letters testamentary or of administration (section 4, Rule 78). One can have a will probated without necessarily securing letters testamentary or of administration. We hold that under section 1 of Rule 74, in relation to Rule 76, if the decedent left a will and no debts and the heirs and legatees desire to make an extrajudicial partition of the estate, they must first present that will to the court for probate and divide the estate in accordance with the will. They may not disregard the provisions of the will unless those provisions are contrary to law. Neither may they do away with the presentation of the will to the court for probate, because such suppression of the will is contrary to law and public policy. The law enjoins the probate of the will and public policy requires it, because unless the will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may be rendered nugatory, as is attempted to be done in the instant case. Absent legatees

and devisees, or such of them as may have no knowledge of the will, could be cheated of their inheritance thru the collusion of some of the heirs who might agree to the partition of the estate among themselves to the exclusion of others.

In the instant case there is no showing that the various legatees other than the present litigants had received their respective legacies or that they had knowledge of the existence and of the provisions of the will. Their right under the will cannot be disregarded, nor may those rights be obliterated on account of the failure or refusal of the custodian of the will to present it to the court for probate.

Even if the decedent left no debts and nobody raises any question as to the authenticity and due execution of the will, none of the heirs may sue for the partition of the estate in accordance with that will without first securing its allowance of probate by the court, first, because the law expressly provides that "no will shall pass either real or personal estate unless it is proved and allowed in the proper court"; and, second, because the probate of a will, which is a proceeding in rem, cannot be dispensed with and substituted by any other proceeding, judicial or extrajudicial, without offending against public policy designed to effectuate the testator's right to dispose of his property by will in accordance with law and to protect the rights of the heirs and legatees under the will thru the means provided by law, among which are the publication and the personal notices to each and all of said heirs and legatees. Nor may the court approve and allow the will presented in evidence in such an action for partition, which is one in personam, any more than it could decree the registration under the Torrens system of the land involved in an ordinary action for reivindicacion or partition.

We therefore believe and so hold that section 1 of Rule 74, relied upon by the Court of Appeals, does not sanction the procedure adopted by the respondent.

The case of *Leaño vs. Leaño* (25 Phil., 180), cited by the Court of Appeals, like section 1 of Rule 74, sanctions the extrajudicial partition by the heirs of the properties left by a decedent, but not the nonpresentation of a will for probate. In that case one Paulina Ver executed a will on October 11, 1902, and died on November 1, 1902. Her will was presented for probate on November 10, 1902, and was approved and allowed by the Court on August 16, 1904. In the meantime, and on November 10, 1902, the heirs went ahead and divided the properties among themselves and some of them subsequently sold and disposed of their shares to third persons. It does not affirmatively appear in the decision in that case that the partition made by the heirs was not in accordance with the will or that they in any way disregarded the will. In closing the case by its order dated September 1, 1911, the trial court validated the partition, and one of the heirs, Cunegunda Leaño, appealed. In deciding the appeal this Court said:

"The principal assignment of error is that the lower court committed an error in deciding that the heirs and legatees of the estate of Dna. Paulina Ver had voluntarily divided the estate among themselves."

In resolving that question this Court said:

"In view of the positive finding of the judge of the lower court that there had been a voluntary partition of the estate among the heirs and legatees, and in the absence of positive proof to the contrary, we must conclude that the lower court had some evidence to support its conclusion."

Thus it will be seen that as a matter of fact no question of law was raised and decided in that case. That decision cannot be relied upon as an authority for the unprecedented and unheard of procedure adopted by the respondent whereby she seeks to prove her status as an acknowledged natural child of the decedent by his will and attempts to nullify and circumvent the testamentary dispositions made by him by not presenting the will to the court for probate and by claiming her legitime as an acknowledged natural child on the basis of intestacy; and that in the face of express mandatory provisions of the law requiring her to present the will to the court for probate.

In the subsequent case of *Riosa vs. Rocha* (1926), 48 Phil. 737, this Court departed from the procedure sanctioned by the trial court and impliedly approved by this Court in the *Leaño* case, by holding that an extra judicial partition is not proper in testate succession. In the *Riosa* case the Court, speaking thru Chief Justice Avanceña, held:

"1. EXTRAJUDICIAL PARTITION; NOT PROPER IN TESTATE SUCCESSION.—Section 596 of the Code of Civil Procedure, authorizing the heirs of a person who died intestate to make extrajudicial partition of the property of the deceased, without going into any court of justice, makes express reference to intestate succession, and therefore excludes testate succession.

"2. ID.; EFFECTS OF; TESTATE SUCCESSION.—In the instant case, which is a testate succession, the heirs made an extrajudicial partition of the estate and at the same time instituted proceeding for the probate of the will and the administration of the estate. When the time came for making the partition, they submitted to the court the extrajudicial partition previously made by them, which the court approved, Held: That for the purposes of the reservation and the rights and obligations created thereby, in connection with the relatives benefited, the property must not be deemed transmitted to the heirs from the time the extrajudicial partition was made, but from the time said partition was approved by the court." (Syllabus.)

The Court of Appeals also cites section 6 of Rule 124, which provides that if the procedure which the court ought to follow in the exercise of its jurisdiction is not specifically pointed out by the Rules of Court, any suitable process or mode of proceeding may be adopted which appears most conformable to the spirit of the said Rules. That provision is not applicable here for the simple reason that the procedure which the court ought to follow in the exercise of its jurisdiction is specifically pointed out and prescribed in detail by Rules 74, 76, and 77 of the Rules of Court.

The Court of Appeals also said "that if this case is dismissed, ordering the filing of testate proceedings, it would cause injustice, inconvenience, delay, and much expense to the parties." We see no injustice in requiring the plaintiff not to violate but to comply with the law. On the contrary, an injustice might be committed against the other heirs and legatees mentioned in the will if the attempt of the plaintiff to nullify said will by not presenting it to the court for probate should be sanctioned. As to the inconvenience, delay, and expense, the plaintiff herself is to blame because she was the custodian of the will and she violated the duty imposed upon her by sections 2, 4, and 5 of Rule 76, which command her to deliver said will to the court on pain of a fine not exceeding P2,000 and of imprisonment for contempt of court. As for the defendant, he is not complaining of inconvenience, delay, and expense, but on the contrary he is insisting that the procedure prescribed by law be followed by the plaintiff.

Our conclusion is that the Court of Appeals erred in declaring the action instituted by the plaintiff to be in accordance with law. It also erred in awarding relief to the plaintiff in this action on the basis of intestacy of the decedent notwithstanding the proven existence of a will left by him and solely because said will has not been probated due to the failure of the plaintiff as custodian thereof to comply with the duty imposed upon her by the law.

It is apparent that the defendant Ernesto M. Guevara, who was named executor in said will, did not take any step to have it presented to the court for probate and did not signify his acceptance of the trust or refusal to accept it as required by section 3 of Rule 76 (formerly section 627 of the Code of Civil Procedure), because his contention is that said will, insofar as the large parcel of land in litigation is concerned, has been superseded by the deed of sale exhibit 2 and by the subsequent issuance of the Torrens certificate of title in his favor.

II

This brings us to the consideration of the second question, referring to the efficacy of the deed of sale exhibit 2 and the effect of the certificate of title issued to the defendant Ernesto M. Guevara. So that the parties may not have litigated here in vain insofar as that question is concerned, we deem it proper to decide it now and obviate the necessity of a new action.

The deed of sale exhibit 2 executed by and between Victorino L. Guevara and Ernesto M. Guevara before a notary public on July 12, 1933, may be divided into two parts: (a) insofar as it disposes of and conveys to Ernesto M. Guevara the southern half of Victorino L. Guevara's hacienda of 259-odd hectares in consideration of P1 and other valuable considerations therein mentioned; and (b) insofar as it declares that Ernesto M. Guevara became the owner of the northern half of the same hacienda by repurchasing it with his own money from Rafael T. Puzon.

A. As to the conveyance of the southern half of the hacienda to Ernesto M. Guevara in consideration of the latter's assumption of the obligation to pay all the debts of the deceased, the Court of Appeals found it to be valid and efficacious because: " (a) it has not been proven that the charges imposed as a condition is [are] less than the value of the property; and (b) neither has it been proven that the defendant did not comply with the conditions imposed upon him in the deed of transfer." As a matter of fact the Court of Appeals found: "It appears that the defendant has been paying the debts left by his father. To accomplish this, he had to alienate considerable portions of the above-mentioned land. And we cannot brand such alienation as anomalous unless it is proven that they have exceeded the value of what he has acquired by virtue of the deed of July 12, 1933, and that of his corresponding share in the inheritance." The finding of the Court of Appeals on this aspect of the case is final and conclusive upon the respondent, who did not appeal therefrom.

B. With regard to the northern half of the hacienda, the findings of fact and of law made by the Court of Appeals are as follows:

"The defendant has tried to prove that with his own money, he bought from Rafael Puzon one-half of the land in question, but the Court a quo, after considering the evidence, found it not proven; we hold that such conclusion is well founded. The acknowledgment by the deceased, Victorino L. Guevara, of the said transactions, which was inserted incidentally in the document of July 12, 1933, is clearly belied by the fact that the money paid to Rafael Puzon came from Silvestre P. Coquia, to whom Victorino L. Guevara had sold a parcel of land with the right of repurchase. The defendant, acting for his father, received the money and delivered it to Rafael Puzon to redeem the land in question, and instead of executing a deed of redemption in favor of Victorino L. Guevara, the latter executed a deed of sale in favor of the defendant.

"The plaintiff avers that she withdrew her opposition to the registration of the land in the name of the defendant, because of the latter's promise that after paying all the debts of their father, he would deliver to her and to the widow their corresponding shares. As their father then was still alive, there was no reason to require the delivery of her share and that was why she did not insist on her opposition, trusting on the reliability and sincerity of her brother's promise. The evidence shows that such promise was really made. The registration of land under the Torrens system does not have the effect of altering the laws of succession, or the rights of partition between coparceners, joint tenants, and other cotenants nor does it change or affect in any other way any other rights and liabilities created by law and applicable to unregistered land (sec. 70, Land Registration Law). The plaintiff is not, then, in estoppel, nor can the doctrine of res judicata be invoked against her claim. Under these circumstances, she has the right to compel the defendant to deliver her corresponding share in the estate left by the deceased, Victorino L. Guevara."

In his tenth to fourteenth assignments of error the petitioner assails the foregoing findings of the Court of Appeals.

But the findings of fact made by said court are final and not reviewable by us on certiorari. The Court of Appeals

found that the money with which the petitioner repurchased the northern half of the land in question from Rafael Puzon was not his own but his father's, it being the proceeds of the sale of a parcel of land made by the latter to Silvestre P. Coquia. Said court also found that the respondent withdrew her opposition to the registration of the land in the name of the petitioner upon the latter's promise that after paying all the debts of their father he would deliver to her and to the widow their corresponding shares. From these facts, it results that the interested parties consented to the registration of the land in question in the name of Ernesto M. Guevara alone subject to the implied trust on account of which he is under obligation to deliver and convey to them their corresponding shares after all the debts of the original owner of said land had been paid. Such finding does not constitute a reversal of the decision and decree of registration, which merely confirmed the petitioner's title; and in the absence of any intervening innocent third party, the petitioner may be compelled to fulfil the promise by virtue of which he acquired his title. That is authorized by section 70 of the Land Registration Act, cited by the Court of Appeals, and by the decision of this Court in *Severino vs. Severino*, 44 Phil., 343, and the cases therein cited.

Upon this phase of the litigation, we affirm the finding of the Court of Appeals that the northern half of the land described in the will exhibit A and in original certificate of title No. 51691 still belongs to the estate of the deceased Victorino L. Guevara. In the event the petitioner Ernesto M. Guevara has alienated any portion thereof, he is under obligation to compensate the estate with an equivalent portion from the southern half of said land that has not yet been sold. In other words, to the estate of Victorino L. Guevara still belongs one half of the total area of the land described in said original certificate of title, to be taken from such portions as have not yet been sold by the petitioner, the other half having been lawfully acquired by the latter in consideration of his assuming the obligation to pay all the debts of the deceased.

Wherefore, that part of the decision of the Court of Appeals which declares in effect that notwithstanding exhibit 2 and the issuance of original certificate of title No. 51691 in the name of Ernesto M. Guevara, one half of the land described in said certificate of title belongs to the estate of Victorino L. Guevara and the other half to Ernesto M. Guevara in consideration of the latter's assumption of the obligation to pay all the debts of the deceased, is hereby affirmed; but the judgment of said court insofar as it awards any relief to the respondent Rosario Guevara in this action is hereby reversed and set aside, and the parties herein are hereby ordered to present the document exhibit A to the proper court for probate in accordance with law, without prejudice to such action as the provincial fiscal of Pangasinan may take against the responsible party or parties under section 4 of Rule 76. After the said document is approved and allowed by the court as the last will and testament of the deceased Victorino L. Guevara, the heirs and legatees therein named may take such action, judicial or extrajudicial, as may be necessary to partition the estate of the testator, taking into consideration the pronouncements made in part II of this opinion. No finding as to costs in any of the three instances.

Yulo, C. J., and Hontiveros,[1] J., concur.

[1] Justice Hontiveros of the Court of Appeals took part in this case by special designation.

CONCURRING

BOCOBOO, J.,

I concur in the result. Extrajudicial settlement by agreement among the heirs is authorized by section 1 of Rule 74 only "if the decedent left no debts." In this case, according to the findings of the Court of Appeals, Ernesto M. Guevara "has been paying the debts left by his father." It is true that said Ernesto M. Guevara, in consideration of

the conveyance to him of the southern half of the hacienda, assumed all the debts of the deceased, but this agreement is binding only upon the parties to the contract but not upon the creditors who did not consent thereto. (Art. 1205, Civil Code.) There being debts when the father died, section 1 of Rule 74 is not applicable.

CONCURRING IN PART AND DISSENTING IN PART

MORAN, J.,

I would be agreeable to the majority decision but for a statement therein made which in my view repeals by an erroneous interpretation the provisions of Rule 74, section 1, of the Rules of Court, which reads as follows:

"EXTRAJUDICIAL SETTLEMENT BY AGREEMENT BETWEEN HEIRS.—If the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir or one legatee, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two years after the death of the decedent."

The majority holds that under this provision, the heirs and legatees, even if all of them are of age, and there are no debts to be paid, cannot make an extrajudicial settlement of the estate left by the decedent without first submitting in court for probate the will left by the testator. This erroneous interpretation clearly overlooks not only the letter and the spirit but more specially the whole background of the provision.

It is admitted that the provision has been taken from section 596 of Act No. 190 but with a modification consisting in that it is made to apply in testate succession. Said section 596 reads:

"SETTLEMENT OF CERTAIN INTESTATE ESTATES WITHOUT LEGAL PROCEEDINGS.—Whenever all the heirs of a person who died intestate are of lawful age and legal capacity, and there are no debts due from the estate, or all the debts have been paid the heirs may, by agreement duly executed in writing by all of them, and not otherwise, apportion and divide the estate among themselves, as they may see fit, without proceedings in court."

It must be observed that the procedure contemplated in this legal provision is completely extrajudicial and the same procedure intended in section 1 of Rule 74 above quoted which is captioned "Extrajudicial Settlement by Agreement * * *". Justice Laurel, who was one of the members of this Court when the new Rules were promulgated, in commenting upon Rule 74, said:

"RULE 74. SUMMARY SETTLEMENT OF E STATES.—The corresponding provisions in the Code of Civil Procedure are sections 596-598. There is substantial analogy between the provisions of the Code of Civil Procedure and those of Rule 74, save that: (1) Under section 1 of Rule 74, there may be extrajudicial settlement whether a person died testate or intestate, while under section 596 of the Code of Civil Procedure extrajudicial settlement can be had only when a person died intestate. (2) Under Rule 74, section 1, extrajudicial settlement may take place 'if the decedent left no debts while under section 596 of the Code of Civil Procedure it may take place 'when there are no debts due from the estate, or all the debts have been paid.' (3) Under section 596 of the Code of Civil Procedure, extrajudicial settlement may take place when all the heirs are of lawful age and legal capacity, while under section 1 of Rule 74 it may take place when 'the heirs and legatees are all of legal age, or the minors are represented by their judicial guardians'. (4) Unlike the Code of Civil Procedure, section 596, section 1 of Rule 74 requires the extrajudicial agreement to be filed in the

office of the register of deeds; provides that should the heirs disagree, 'they may do so in an ordinary action of partition', and that 'if there is only one heir or one legatee, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds', and that 'it shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two years after the death of the decedent.' " [(Italics mine) ; Laurel, *Procedural Reform in the Philippines*, pp. 137-138],

The phrase "extrajudicial settlement" unquestionably means liquidation and distribution of the estate without judicial proceeding. In other words, even in cases of testate succession, the heirs and legatees, when they are all of age or are represented by their judicial guardians, and there are no debts to be paid, are allowed by section 1 of Rule 74 of the Rules of Court to liquidate and distribute among themselves the estate left by the decedent and need not go to court even for the probate of the will. Unless legal terms mean nothing, this is clearly what is meant in said provision by the words "extrajudicial settlement" and by the clause "* * * the parties may, without securing letters of administration, divide the estate among themselves as they see fit" * * * When judicial administration is made unnecessary by the provision, the inevitable implication is that the probate of the will is also unnecessary, the probate having no other object than administration for purposes of distribution according to the provisions of the will. That is why section 4 of Rule 78 provides:

"ESTATE, HOW ADMINISTERED.—When a will is thus allowed, the court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration shall extend to all the estate of the testator in the Philippines. Such estate, after the payment of just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue, if any, shall be disposed of as is provided by law in cases of estates in the Philippines belonging to persons who are inhabitants of another state or country."

If judicial administration and distribution is made unnecessary by section 1 of Rule 74, then, I repeat, the probate of the will being purposeless, becomes unnecessary. If the parties have already divided the estate in accordance with the will, the probate of the will is a useless ceremony. If they have divided the estate in a different manner, the probate of the will is worse than useless; it is ridiculous. The following words of this Court in a previous case may well be here reiterated:

"These sections provide for the voluntary division of the whole property of the decedent without proceedings in court. The provisions which they contain are extremely important. The wisdom which underlies them is apparent. It is the undisputed policy of every people which maintains the principle of private ownership of property that he who owns a thing shall not be deprived of its possession or use except for the most urgent and imperative reasons and then only so long as is necessary to make the rights which underlie those reasons effective. It is a principle of universal acceptance which declares that one has the instant right to occupy and use that which he owns, and it is only in the presence of reasons of the strongest and most urgent nature that that principle is prevented from accomplishing the purpose which underlies it. The force which gave birth to this stern and imperious principle is the same force which destroyed the feudal despotism and created the democracy of private owners.

"These provisions should, therefore, be given the most liberal construction so that the intent of the framers may be fully carried out. They should not be straitened or narrowed but should rather be given that wideness and fullness of application without which they cannot produce their most beneficial effects.

"* * * The purpose which underlies them, as we have already intimated, is to put into one's hands the property which belongs to him not only at the earliest possible moment but also with the least possible expense. By permitting the partition and division without proceedings in court no time is lost and substantially all expense and waste are saved. This is as it should be. The State fails wretchedly in its duty to its citizens if the machinery furnished by it for the division and distribution of the property of a decedent is so cumbersome, unwieldy and expensive that a considerable portion of the estate is absorbed in the process of such division." *

* * (McMicking vs. Sy Conbieng, 21 Phil., 211; 219-220).

Indeed, there can be no valid reason why the probate of a will may not be dispensed with by agreement of all the parties interested and the estate left by the decedent settled extrajudicially among all the heirs and legatees, as is now provided in section 1 of Rule 74. It is well recognized that the allowance of a will gives collusiveness merely to its due execution, but not to the intrinsic validity of its provisions which are governed by the substantive law regarding descent and distribution. If so, why cannot all the parties interested agree, without going to court, that the will of the decedent is in form valid (this being the only point to be litigated in a probate proceeding), and that they will divide the inheritance in the manner acceptable to them? The procedure would not be against public policy or the law placing in the hands of the courts the probate of wills, because what the courts are enjoined to do for the benefit of the parties, the latter have already done. As long as the extrajudicial partition of the estate does not affect the rights of third parties and is not rendered invalid by any provision of the substantive law, no possible objection can be raised thereto. On practical considerations, it would be useless to force the parties, at their expense, to go thru the formality of probating a will and dividing the estate in accordance therewith, because as soon as the routine is over, they are of course free to make such transfers to one another as will be necessary to effect a partition which they would have made if they were allowed to settle the estate extrajudicially. It is true that there are provisions in the Rules of Court compelling the delivery of a will to the competent court and punishing omissions to do so, but said provisions are calculated to protect the interests of the persons entitled to share in the inheritance. The latter may waive such benefit. This waiver cannot be said to be a withdrawal or diminution of the jurisdiction of the court, since it only implies a desire of the parties not to litigate. The fear that "absent legatees and devisees, or such of them as may have no knowledge of the will, could be cheated of their inheritance thru the collusion of some of the heirs who might agree to the partition of the estate among themselves to the exclusion of others", is wisely provided against in the requirement of the Rule that all the parties interested and all the beneficiaries under the will should be parties to the extrajudicial settlement. The participation of all the interested parties excludes the probability of fraud or collusion and, even in that eventuality, the aggrieved beneficiaries are not without adequate remedy for the avoidance of the partition under the Civil Code.

And this is in accordance with the weight of authority in this and other jurisdictions. In *Leano vs. Leano* (25 Phil., 180), all the heirs and legatees have made an extrajudicial partition of the estate left by the decedent and then filed the will in court which was probated. Nine years of costly probate proceedings have followed after which the extrajudicial partition was made known to court. Such extrajudicial partition was objected to by one party upon the ground that it was not in conformity with the provisions of the will. But the trial Court held:

"Naturally the partition made by the heirs voluntarily and spontaneously must produce and has produced a legal status, which cannot be annulled merely for the caprice of one person. And it cannot be said that, because the partition was not made in accordance with the will, if such be the case, the latter has to be annulled, for by voluntarily and spontaneously concurring therein they implicitly renounced the effects of said will, of which they were aware." (See p. 183).

On appeal, this Court affirmed the ruling with the following pronouncement:

"In view of the positive finding of the judge of the lower court that there had been a voluntary partition of the estate among the heirs and legatees and in the absence of positive proof to the contrary, we must conclude that the lower court had some evidence to support his conclusion. If the heirs and legatees had voluntarily divided the estate among themselves, then their division is conclusive, unless and until it is shown that there were debts existing against the estate which had not been paid. No claim is made whatever by third parties nor objections of any character are made by others than the heirs against said partition. We see no reason why the heirs and legatees should not be bound by their voluntary acts." (Pages 183-184).

This case furnishes precisely a valuable experience as to the practical wisdom underlying the procedure established in section 1 of Rule 74. After the will was probated and after nine years of costly administration proceedings, nothing—absolutely nothing—was accomplished by the court except to make the belated pronouncement that the extrajudicial partition made by the parties prior to the institution of the proceedings was proper and binding upon them. Thus, the whole proceedings for nine years have proved no more than a futile chronicle of wasted time and money for the parties and the court. This disgraceful experience could not and did not pass unnoticed to the members of this Court who drafted the new Rules of Court. The solemn admonition made by this Court in a previous case (*McMicking vs. Sy Conbieng*, *supra*) when it said that "the State fails wretchedly in its duty to its citizens if the machinery furnished by it for the division and distribution of the property of a decedent is so cumbersome, unwieldy and expensive that a considerable portion of the estate is absorbed in the process of such division", rang with re-echoing insistence and was heeded to when the new Rules of Court was drafted and promulgated. The fundamental policy pervading the whole system of procedure adopted in said Rules is speed, economy and justice. Thus, features of procedure were done away with when, without them, the same purpose may be achieved. The result is brevity and simplicity of procedure with, such guarantees as are necessary to assure due process. And to remedy such evil as is disclosed in the *Leafio* case, a completely extrajudicial settlement is allowed even in testate succession with the probate of the will dispensed with, when the heirs and legatees who are all of age or represented by their judicial guardians, so agree, and there are no debts to be paid. Thus, the scope of section 596 of Act No. 190 was amplified and with it the ruling of this Court in *Riosa vs. Rocha* (48 Phil. 737). The procedure is in consonance with the almost unanimous weight of authority in other jurisdictions:

"The complaint, to which a demurrer was sustained, shows that all the persons interested in a decedent's estate, as widow, heirs, distributees, legatees, or devisees, including the person appointed executrix by the will, and the husbands of femes covert, (all being adults), by agreement divided among themselves all the property of the estate according to the direction of the will, paid off all debts against the estate, and delivered the note described to the plaintiff, as a part of her share; and all this was done without probate of the will, or administration of the estate. The effect of such a division was to invest the plaintiff with an equitable title to the note. In the absence of the will, the decisions of this court, heretofore made, would meet every argument in favor of an opposite conclusion. (*Anderson vs. Anderson*, 37 AJa., 683; *Marshall vs. Crow*, 29 Ala., 278; *Vanderveer vs. Alston*, 16 Ala., 494; *Miller vs. Eatman*, 11 Ala., 609). Does the presence of an unprobated will, as a feature of this case, take it out of the principle of those decisions? We can perceive no sufficient reason why it should. All the parties interested, or to be affected, may as well by agreement divide property, where there is a will, without employing the agency of courts, as in case of intestacy. Parties, competent to act, ought to do that, without the agency of courts, which the courts would ultimately accomplish. To deny them the privilege of so doing, would manifest a judicial abhorrence of harmony. By the probate of the will, the claims of heirs and distributees, and of the widow, would have been subordinated to the directions of the will. This has been accomplished by agreement. There being no debts, the executrix would have had no other duty to perform, than to divide the property according to the will. This, too, has been done by agreement of competent parties. All the ends and objects of judicial proceedings have been accomplished, by agreement of the parties; and that agreement must be effective." (*Carter vs. Owens*, 41 Ala., 215; 216-217).

"The absence of sound objection on this ground, to a contract having for its sole purpose the disposition of property in a manner different from that proposed by a testator, even where the contract contemplates the rejection of the will when offered for probate or its setting aside when admitted to probate, when it is entirely free from fraud, and is made by all the parties in interest, may be freely conceded. As has often been substantially said, the public generally has no interest in the matter of the probate of a will; and only those interested in the estate under the will or otherwise are affected by such a contract. If they all agree upon some course to be followed, and their contract is otherwise free from contemplated fraud or violation of any law, no one else has any such interest as warrants complaint. Such was the character of contract involved in

Spangenberg vs. Spangenberg (App.), 126 Pac, 379, especially relied on by plaintiff here, where the contract purported to affect only such property of the deceased as should in fact be received by the parties thereto. In Estate of Garcelon, 104 CaL, 570; 38 Pac, 414; 32 L. R. A., 595; 43 Am. St. Rep., 134, another case much relied on by plaintiff, a contract by an heir to refrain from contesting a will was involved. It was said that the contract was one that concerned the parties alone, and one that did not appear to be against public policy." (Gugolz vs. Gehrken, 130 Pac. Rep., 8, 10; 164 CaL, 596).

"The question of public policy is introduced. The disposition of one's property after death is controlled by statute. One of the next of kin has no vested interest in such property. In cases of intestacy, a next of kin has such interest as the statute declares. In case there is a will, he has an interest which gives him a standing and right to contest the will. This right is his alone; in it the public has no interest; he may refrain from exercising it, or he may dispose of it as he wishes, by release or assignment or settlement, and the law of public policy is not offended." (In re Cook's Will, 217 N. Y. S., 176, 180-181).

"Agreement.—'It has been definitely decided by the courts of this state, and of many other states, that the beneficiaries under a will have a right to agree among themselves upon any distribution they see proper of the property bequeathed to them. * * * That holding is based upon the proposition that the property is theirs. No one else is interested in its disposition, and they may, with propriety, make any distribution of it that suits them, so long as they do not invade the rights of other parties or infringe some rule of public policy'." (Fore vs. McFadden, 276 N. W., 327; 329).

"The first assignment of error presented by appellants complains of the action of the court in sustaining exceptions to averments asking the enforcement of the agreement that the will should not be probated, and that the estate should be divided among the parties as they would be entitled as heirs at law of the deceased, the proponent of the will surrendering thereby his rights as principal legatee. This assignment must be sustained. It cannot be seen that the agreement is contrary to public policy. Parties may make any contract with reference to their property rights that is not illegal, may adjust by compromise their differences and disputes concerning the same and, as they bind themselves, so shall they be bound. It is difficult to understand why this cannot be effected by an agreement not to probate a will, or how it interferes with public policy. The power to litigate and to establish a right by appeal to the courts is as much the subject of contract as any other right in property. Such adjustments by contract are favored by the law and the courts, and are not deemed to be an unwarranted interference with the jurisdiction of the courts, or against public policy. On the contrary, public policy favors them.

"Appellants have cited a case in point,—the case of Phillips v. Phillips, 8 Watts, 197, in which it is held competent for devisees and legatees to bind themselves by a written or parol agreement to destroy a will before probate' and that a party to the agreement would be estopped from claiming any interest under the will. The court says: 'It cannot admit of doubt that before probate the parties in interest under a will would have the right to set aside a will, and such an act would be favored, when the object was to avert a family controversy'. The agreement that the will should not be probated, and that the parties would take the property as heirs at law of the deceased, destroyed the legal effect of the will; and it could not thereafter have legal existence in conferring rights upon the legatees." (Stringfellow vs. Early, 40 SW. 871, 873-874; 15 Tex. Civ. App., 597).

"The contention that the complaint does not state a cause of action, because the contract sued on is against public policy, and therefore void, is made here for the first time. It is to the interest of the public generally that the right to make contract should not be unduly restricted, and no agreement will be pronounced void, as being against public policy, unless it clearly contravenes that which has been declared by statutory enactment or by judicial decisions to be public policy, or unless the agreement manifestly tends in some way to injure the public. Whether or not a contract in any given case is contrary to public policy is a question of law, to be determined from the circumstances of each particular case. Smith vs. Du Bose, 78 Ga., 413; 3 SE., 309-316; 6 Am. St. Rep., 260; Weber vs. Shay, 56 Ohio St., 116; 46 NE., 377; 37 L. R. A., 230; 60 Am. St. Rep., 743; Pierce vs. Randolph, 12 Tex., 290; Printing Numerical Registering Co. vs. Sampson, 19 L. R. Eq. Cas., 465.

"The contract in controversy is in effect but an agreement whereby the parties thereto, 'because of their love and affection for one another' and 'being desirous of avoiding litigation over the estate' of their father 'in case of his death,' agreed to ignore his will in the event that he made one, and then share his estate equally as if he had died intestate. In other words, the contract was but an agreement of heirs apparent not to contest the will of an ancestor. There is nothing to be found in our code or statutory law prohibiting the making and enforcement of such a contract, and it has been held in this state that a contract, made after the death of the deceased, not to contest his will, is purely personal to the parties making it, that it is not against public policy, and that, when fairly made, it will be enforced." (*Spangenberg vs. Spangenberg*, 126 Pac. Rep., 379, 382; 19 Cal. App., 439).

"Probate Dispensed With.—Probate of a will may be dispensed with by an agreement between the persons interested; or it may be dispensed with where the testator, before his death, conveyed to the devisees all the property which he had devised to them, or where the will makes no other disposition of the testator's property than the law would have done had he died intestate, and the rights sought to be established are admitted by all concerned. But where the language of the will expressly invokes the jurisdiction of the probate court the fact that no administration is necessary does not affect the power of the court to probate the will." (68 C. J., pp. 87,7-878).

"Agreement between Persons Interested: a. Requisites and Validity. (1) In General.—It has been held that, since the nature of a probate proceeding is one in rem, the parties cannot submit a controversy arising therein to arbitration. The law, however, favors the settlement, in good faith, of will contests, by a so-called 'family settlement', although it changes the mode of disposition of the estate; and, therefore, subject to the limitation that a contestant cannot compromise anything beyond his own personal interest in the contest, persons, such as devisees, legatee, heirs, or next of kin, having interests in the will or estate, sufficient to entitle them to oppose probate or contest the will, may enter into an agreement which, in the absence of fraud or misrepresentation, is valid and binding on all the parties thereto, whereby they waive probate of the will and bind themselves to abide by its provisions, or whereby they agree that the will is not to be probated or is to be superseded or destroyed; or whereby any controversy relative to the probate or contest of the will is compromised or settled, and a contest is avoided, whether or not there were, in fact, valid grounds for the contest. Such an agreement, in order to be valid, must not exclude anyone entitled under the will, must be entered into by all the persons affected thereby, and all the parties thereto must be competent to make the agreement, and either they or their representative must fully execute it, and, under some statutes, it must be properly approved by the court." ([Italics supplied] 68 C. J., pp. 909-910).

"As to Probate.—The operation and effect of the agreement may be not to supersede the provisions of the will, but to carry out its provisions without a probate, and under such an agreement the parties are precluded from denying the probate, or insisting on the invalidating of the will for want of probate. So, also, a person who agrees not to contest the will is precluded from opposing probate; or the probate of a will may be dispensed with, and the persons interested in the estate under the will given at least an equitable interest in the property, where they, being under no disability, divide the estate, pursuant to an agreement among themselves. Where the effect of the agreement of all interested parties is to repudiate or renounce the will, it will not be probated, especially where the agreement expressly so provides; but it has been held that, where the executor, defending a torn will, agrees, for a consideration, not to probate it, the court should not refuse probate without notifying other beneficiaries and requiring testimony as to the tearing of the will by the testator. Probate, however, is not prevented by an agreement executed by a part only of the beneficiaries, and the parties to such agreement are not prevented thereby from taking under the will which is probated by another interested person." ([Italics supplied] 68 C. J., pp 914-915).

"Thus, where the parties, being in doubt as to the instrument being construed as a will, and for the purpose of saving a family controversy and for the purpose of dividing the estate, enter into a compromise and settlement agreement, under the terms of which the entire estate is to be, and has in part been, divided, and agree that the instrument shall not be offered for probate, it is sufficient to prevent a probate." (*Brown vs. Burk*, 26 NW [2d

ed.], 415).

"Validity of Agreements to Dispense with Probate or to Modify, or Set Aside Will.—Though in some jurisdictions an agreement to dispense with the probate of a will has been declared to be against public policy and void, in a majority of the decisions on the point it has been held that all the persons interested in a decedent's estate may by agreement divide the estate among themselves, without probating such decedent's will or administering the estate, and the validity of a contract having for its sole purpose the disposition of property in a manner different from that proposed by a testator, even where the contract contemplates the rejection of the will when offered for probate or its setting aside when admitted to probate, when it is entirely free from fraud, and is made by all the parties in interest, would seem to be freely conceded. Thus it has been held that all the parties in interest may agree to eliminate from a will a clause providing for survivorship among them. But an agreement to resist the probate of a will and procure it to be set aside so as to cut off the interest of one who is not a party to such agreement is against public policy. Nor does the right of all the parties in interest to set aside or disregard a will extend to the case of an active trust, for a definite term, created by a testator as he deems proper for the protection of his beneficiaries. A contract between the next of kin of a decedent, that they will each have a certain portion of the estate, does not amount to an agreement to divide the estate without probating the will." (28 R. C. L., pp. 357-358).

The minority decision pointed out in the last quotation from the Ruling Case Law (Vol. 28, pp. 357-358) is from the Supreme Court of only one State—that of Wisconsin, in *re Will of Dardis* (135 Wis., 457; 115 NW., 332). All the other States held the contrary doctrine that is now embodied in section 1 of Rule 74. Commenting upon the Wisconsin rule, the Editor of the L. R. A. says the following:

"No case has been found other than *Re Dardis* wherein any court passed upon the validity of a stipulation to secure the denial to probate of a will theretofore offered for probate, on the ground that the testator was mentally incompetent to make a will at the time of its execution. The decision of the court is based upon the doctrine therein enunciated, that proceedings to probate a will are proceedings in rem, which public interest demands should be pursued to a final adjudication, regardless of the wishes of the interested parties. In this connection and with reference to this broader question, it is of interest to note that courts of other jurisdictions, although generally recognizing that proceedings to probate a will are proceedings in rem, hold that the proceeding is inter partes to the extent that all the parties in interest may control the probate proceedings, even to the extent of doing away with the probate." (23 L. R. A. [N.S.], p. 783).

For the sake of fixity in judicial policy, this Court in the exercise of its constitutional powers, has solemnly given a form of a rule—section 1, Rule 74—to what was merely the consensus of judicial opinion. We cannot now repudiate the procedure outlined in said provision unless we amend it by another rule.

The majority, however, expresses fear that abuses may easily be committed under the Rules. Such fears have always been the bugbear set up against all task of procedural reforms. To be sure, there has never been any provision of law that is not liable to abuses. If by a mere possibility of abuse we are to disregard clear provisions of a procedural law, the result would be not only the abrogation of all laws but also the abolition of all courts. When a procedural law is calculated to remedy an evil under a specific situation therein contemplated, it must be deemed good even if other situations may be simulated or falsified and placed within its purview. And when that law is duly enacted, it is no concern of the courts to pass upon its wisdom, their duty being to apply its provisions in a manner which shall not defeat the intention underlying it. Laws are promulgated to be obeyed and when they are abused there are the courts to check up the abuse. Courts must deal with the specific circumstances of each case and construe the provisions in such a manner as to make it impregnable if possible to further abuses. This is constructive, not destructive, jurisprudence. This explains why laws are more often worded so broadly as to lay merely general principles—a skeleton—the flesh to be supplied with judicial decisions. Judicial statemanship requires that courts in deciding judicial controversies should be careful not to advance opinions which are not

necessary to a proper disposition of the case. Judicial experience has shown that such advanced opinions may not infrequently place the court in an embarrassing position when a proper case with the proper factual environment is properly presented with all its angles before the court. Jurisprudence must be carefully progressive and not impetuously aggressive. For instance, the majority, impressed by the awful circumstances of the present case, has found it dangerous to hold that the probate of the will may be dispensed with. While this conclusion is constructive under the peculiar facts of the case, to generalize it is to make destructive. If a proper case is presented to the court wherein all the heirs and legatees who are all of age have agreed to dispense with the probate of a will and have actually made an extrajudicial partition, and if it appears further that each of the recipients is in peaceful enjoyment of his share in the estate, I am sure that the majority, with the practical wisdom they have shown in other cases, would not dare disturb the peace enjoyed by such heirs and legatees and compel them to go into court and litigate.

The majority, without the necessity of holding whether the probate of a will may or may not be dispensed with under Rule 74, section 1, could have decided this case by stating that said provision is not applicable, its requirements not being present. And I would be wholly agreeable to this conclusion because the beneficiaries under the will do not appear to have made an extra judicial settlement of the estate left by the deceased Victorino L. Guevara, nor the action brought by the natural daughter, Rosario Guevara, is one for partition against all such beneficiaries founded either on an extra judicial settlement or on the provisions of the will as accepted by all parties to be valid and binding. Upon the contrary, Rosario Guevara appears to be wishing to take advantage of the will in so far as it is favorable to her, and repudiate it in so far as it is favorable to others. Apparently, Rosario Guevara was in possession of the will and the other heirs and legatees were not aware of its contents. The situation not being the one contemplated by section 1 of Rule 74, plaintiff may not invoke its provisions.

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