

IN RE GUARDIANSHIP OF LUIS RIBAYA ADELA CARBONELL VDA. DE RIBAYA, PETITIONER AND APPELLANT, VS. AGUSTINA R. VDA. DE RIBAYA, OPPOSITER AND APPELLEE.*G.R. No. 48895. July 16, 1943*

Ponente: OZAETA, J.

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Adela Carbonell Vda. de Ribaya (now Mrs. Ricardo Mirasol), the mother and judicial guardian of the minor Luis Ribaya, appeals from certain orders of the Court of First Instance of Albay (1) approving her accounts as such guardian and ordering her to deposit the balance of P1,574.30 in favor of said minor in the Legaspi branch of the Philippine National Bank, and (2) removing her as such guardian and appointing in her stead Agustina Vda. de Ribaya, paternal grandmother of said minor.

Vicente Ribaya died intestate on September 29, 1935, leaving as his only legal heirs his minor son Luis and his widow Adela Carbonell. No intestate proceeding has been instituted for the settlement of his estate. On July 21, 1936, Adela Carbonell applied for her appointment as guardian of the person and property of her minor son Luis Ribaya, stating in her application that said minor had property worth about P10,000. On July 25, 1936, the court appointed her guardian of the person and property of said minor.

On August 7, 1937, in compliance with an order of the court, the guardian presented her first annual account, which shows an income of P1,500.55 for the period from August 2, 1936, to July 12, 1937, and expenses of P1,453.11 during the same period, leaving a balance of P47.44 m favor of the minor Agusina Vda. de Ribaya, grandmother of the minor, opposed the approval of said account on the ground that various items of income which she specified, had not been included or accounted for therein. On her second annual account covering the period up to December 31, 1939, and which, including the balance of the first account, showed a total balance of P1,574.30 m favor of the minor. Agustina E. Vda. de Ribaya, in a writing entitled "Motion," manifested to the court (1) that the expenses appearing in said No. 2 account of the guardian were excessive; (2) that the said guardian had contracted a second marriage with Mr. Ricardo Mirasol, and that consequently (sic) the usufruct which she had as a widow on sixty hectares of coconut land situated in the barrios of Cullat, Pistola, Tinampo, and Allang, municipalities of Oas and Ldgao, should be considered terminated; and (3) that, it appearing from the guardian's accounts that there exists a balance of P1,574.30 in favor of the minor, the said amount should be ordered deposited in the Legaspi branch of the Philippine National Bank.

On April 5, 1940, the court passed upon the said two accounts of the guardian and resolved that, although it found some of the items of the expenses to be excessive, it approved the same with a balance of P1,574.30 in favor of the minor, and ordered the guardian to deposit said balance within ten days in the Legaspi branch of the Philippine National Bank. Regarding the motion for the extinction of the widow's usufruct on sixty hectares of coconut land, the court in the same order required her to show cause within five days why all the fruits of the said sixty hectares of land should not be credited in favor of the minor in view of the fact that she had contracted a second marriage.

Instead of complying with the said order the guardian, through her counsel, filed a motion on June 13, 1940, asking that the effectivity of said order be suspended pending negotiations for amicable settlement with the oppositor, and announcing her intention to present an amended account. On July 8, 1940, the court entered an order (a) denying the petition for suspension of the order of April 5, 1940, and (b) declaring extinguished the usufructuary right of the widow over the paraphernal properties of her deceased husband, on account of her having contracted a second marriage.

On July 22, 1940, the guardian, through her counsel filed a motion for the reconsideration of the last-mentioned order. In the meantime, and on July 17 of the same year, the oppositor Agustina R. Vda. de Ribaya had filed a motion for the removal of Adela Carbonell as guardian of the property of the minor, on the grounds that her management and administration had been wasteful and extravagant, and that she had refused to obey the order of the court of April 5, 1940, to deposit the sum of P1,574.30 with the Philippine National Bank.

On August 30, 1940, the court resolved the guardian's motion for reconsideration and the oppositor's motion for removal and substitution of said guardian by denying the first and granting the second. With respect, however, to the usufructuary right of the widow, the court declared that the same should be resolved in an intestate proceeding in accordance with articles 834-839 of the Civil Code.

From the three orders of the court above-mentioned, dated respectively April 5, July 8, and August 30, 1940, Adela Carbonell appealed but the court allowed the appeal only as to the last-mentioned order and declared that those of April 5 and July 8 had become final.

The order of the court of April 5, 1940, was notified to appellant on April 20, 1940. She did not file her motion to suspend its effectivity until June 13, 1940, that is to say, after the lapse of 54 days. The court was, therefore, right in declaring said order final and unappealable.

As to the order of July 8, 1940, where by the widow's usufruct was declared extinguished, the same was set aside by the court in its order of August 30, 1940, by declaring that the matter should be resolved in an intestate proceeding. Hence it only remains for us to review the last-mentioned order whereby the appellant was removed as guardian of the property of the minor Luis Ribaya, and Agustina Vda. de Ribaya was appointed in her stead.

We deduce from the record that the deceased Vicente Ribaya left considerable properties and assets and some debts, and that without instituting intestate proceedings his widow Adela Carbonell appears to have assigned to herself the usufruct of some sixty hectares of coconut land belonging, to the deceased, leaving the rest of the decedent's assets with all the liabilities to his only son, the minor in question. For the guidance of the parties and of the trial court, we declare such extra-judicial settlement void and of no legal effect. The widow, as legal heir of her deceased husband, could not validly enter into an agreement with herself as natural guardian of her minor son for the determination and apportionment of their respective shares in the inheritance. Moreover, the widow's usufructuary share cannot be determined until after the debts of the estate are liquidated. It is imperative that she institute intestate proceedings in court so that the debts may be aid and the net assets distributed to the heirs in accordance with law. The right of the widow is governed by the second paragraph of article 834 of the Civil Code, which reads as follows;

"If only one legitimate child or descendant survives, the widower or widow shall have the usufruct of the third available for betterment, such child or descendant to have the naked ownership until, on the death of the surviving spouse, the whole title is merged in him."

The record of this case evinces a conflict of interests between the appellant and the minor as heirs of the deceased. This fact alone, independently of the five grounds specified by the trial court in its order substituting the appellant as guardian of the property of the minor, suggests the propriety and advisability of relieving appellant as such

guardian. (Gabriel vs. Sotelo, 2 Off. Gaz., 172.)

The appellant also assigns as error the refusal of the trial court to allow her to present an additional account and a final account before her removal as guardian. We note in this connection that the two accounts she presented to the court as well as her proposed additional account consist mostly of items that should be presented to and passed upon by the court in the administration and settlement of the intestate of the deceased rather than in this guardianship proceeding. As to the final account, the trial court in the order appealed from did not refuse to allow the appellant to present it. On the contrary, it is understood that before the appellant could be relieved as guardian of the property of her ward and her bond cancelled, she has to present a final account covering the period from January 1, 1940, to the date on which she delivers the properties of the ward to the new guardian.

The order of August 30, 1940, is affirmed, with the direction made in the body of this decision regarding the institution by the appellant of intestate proceedings for the settlement and adjudication of the estate of the deceased Vicente Ribaya. Appellant shall pay the costs.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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