

RAFAEL REYES, EXECUTOR OF THE ESTATE OF LUZ CIRIA DE REYES, PLAINTIFF AND APPELLANT, VS. MANUEL CIRIA Y VINANT, DEFENDANT AND APPELLEE.*G.R. No. 8447. January 22, 1913*

Ponente: TORRES, J.

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Various documents and certified portions of the record from the proceedings in the Court of First Instance of this city in the probate of the will of the deceased Mrs. Luz Ciria Reyes have been forwarded here in connection with the appeal from the decision of October 2, 1912, filed by counsel for Rafael Reyes; also, the written assignment of errors on appeal, and therein it is requested that in printing the evidence all the proofs submitted in the probate proceedings be included with the transcript of the stenographic notes in the case. But in view thereof counsel for Manuel Ciria, appellee, objects to the printing of all the proofs presented at the trial, consisting of public documents, letters, post cards, accounts, and stenographic notes, as appellant requests in paragraph 8 of his petition, on the ground that such is not according to the rules.

In another petition counsel for the same Manuel Ciria asks that the court disallow said appeal, because it has been raised at an improper time, and even had it been, the judgment appealed from is not final, for it contains no statement of the hereditary property nor of the proportional part, expressed in number and amount, belonging to Manuel Ciria. Hence, to shorten the proceedings and avoid a new appeal that may be taken as a result of the division of the property, the procedure in the Court of First Instance should be terminated by compelling the testamentary executor to submit the itemized inventory of the property of the inheritance, appraisal thereof by commissioners and indication of the amount that would appear for the heir Manuel Ciria. Therefore the appeal is improper until final judgment of partition has been rendered, which has not yet been done.

It is to be noted that by the order appealed from of October 2, 1912, Manuel Ciria y Vinant is declared to be heir by force of law of the deceased Luz Ciria, with right to share in her property to the extent the law authorizes and, by a supplementary order of the 28th of the same month and year, the share to which the said heir is declared to be entitled is one-sixth of the property of the conjugal partnership between said deceased and the appellant Reyes.

The only question for the court to decide now is whether the judgment of October 2, 1912, supplemented by the order of the 28th of the same month and year, is in itself final and therefore susceptible of appeal, or whether it is not, as appellee contends.

Said judgment of October 2 with its supplement determines two important points of law essentially affecting the interest of the litigants, to wit: (1) The declaration that Manuel Ciria y Vinant is heir by force of law of the deceased Luz Ciria; and (2) the declaration that the claimant as such heir is entitled to one-sixth of the property of the conjugal partnership between said deceased and the appellant Rafael Reyes.

If in due time this judgment should become final, there can be no question that the controversy between the parties would be finally settled, as it would also be finally decided by reversal on this pending appeal, should final

decision be handed down in the case that the said Manuel Ciria y Vinant is not entitled to the inheritance from the deceased Luz Ciria.

Section 782 of the Code of Civil Procedure prescribes the following:

"Appeal from decree of distribution.—If there shall be a controversy before the Court of First Instance as to who the lawful heirs of the deceased person are, or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing by the judge, under oath, and signed by the witnesses. Any party in interest whose distributive share is affected by the determination of such controversy may appeal from the judgment of the Court of First Instance determining such controversy to the Supreme Court, within the time and in the manner provided in the last preceding section, and it shall thereupon be the duty of the clerk of the Court of First Instance forthwith to transmit to the Supreme Court a certified copy of all the testimony taken upon that issue, and of the judgment of the court thereon,"

Manuel Ciria's claim regarding his right to inherit from the deceased Luz Ciria to the extent fixed by law is dealt with in the probate proceedings on her account. The testamentary heir appealed from the decision of the judge recognizing such right, and this appeal of his, duly interposed, must be admitted and heard in accordance with the provisions of the foregoing section of the law of procedure, perfectly applicable to the case, for the testamentary inheritance of the appellant Reyes is substantially affected by the judgment; and in granting the right to appeal from said judgment to this court, within the time and in the manner provided by the next preceding section 781, said section directs that the clerk of the Court of First Instance shall immediately transmit to the clerk of this court a certified copy of all the testimony taken upon that issue and of the judgment of the court.

The decision of the court, therefore, declaring Manuel Ciria heir of the testatrix with right to one-sixth of the conjugal partnership property belonging to her is final as a declaration of heirship, and as such is susceptible of exception and the consequent appeal. Nor should this appeal be postponed or hearing thereon suspended but it should be carried forward at once without delay or hindrance, as provided in the section cited from the law of procedure.

It is neither rational nor just that final partition of the property in litigation should await settlement of the controversy pending over a right to inherit, when this partition really depends upon the determination of who are the heirs that are entitled to the hereditary property. Appellee's right to inherit from the testatrix depends upon affirmation of the judgment appealed from, for otherwise partition of the property of the inheritance in litigation would be unnecessary.

In view of these facts, we hold that there is no ground for disallowing the appeal interposed by Rafael Reyes as requested by counsel for Manuel Ciria, and for the carrying forward of said appeal it is proper to print the will, documents, record, and testimony to which appellant's petition refers along with the statement of errors it assigns, with exception of the documents, letters, and post cards mentioned in appellee's petition of December 9 last.

Arellano, C. J., and Mapa, J., concur.

CONCURRING

MORELAND, J.,

I base my concurrence upon the provisions of section 782 of the Code of Civil Procedure. They are clear, specific, and mandatory and conclusive of the question. Moreover, this court has, on several occasions, tacitly held proper the appeal here in question. (*Conde vs. Abaya*, 13 Phil. Rep. 249; *In the matter of the intestate estate of Malignad*,

11 Phil. Rep., 158; *Moreno vs. Gruet*, 1 Phil. Rep., 217; *Thunga Chui vs. Que Bentec*, 1 Phil. Rep., 356; *Domingo vs. Warden of Bilibid*, 1 Phil. Rep., 542; *Alemanys vs. Sweeney*, 2 Phil. Rep., 654.) Although in these cases the question was not discussed, still the court must have held that the orders were appealable or it would have had no jurisdiction to decide the case on the merits. The decisions in *Montemayor vs. Cunanan* (14 Phil. Rep., 454); *Toribio vs. Toribio* (7 Phil. Rep., 526); *Ron vs. Mojica* (8 Phil. Rep., 328); *Insular Government vs. Bishop of Nueva Segovia* (17 Phil. Rep., 487), and other cases of the same nature, are not in conflict with this decision, as they refer to appeals in ordinary actions taken under other sections of the Code of Civil Procedure, which expressly prohibit appeals in such cases, and do not refer to appeals on special proceedings such as is the one at bar.

DISSENTING

TRENT, J., with whom concurs JOHNSON, J.:

I dissent.

In the testate estate of Mrs. Luz Ciria Reyes, Manuel Ciria was declared by the court to be an heir and to be entitled to one-sixth of the property. From this order, Reyes, the surviving spouse, appealed. At the time this appeal was entered an actual division of the property between Ciria and Reyes had not been made and this question of division is still pending in the court below. Ciria, the appellee, now asks this court to dismiss the appeal for the reason that the order appealed from is not final in that it does not finally dispose of the case nor the rights of either party.

Section 782, relied upon by the majority of the court, reads:

"SEC. 782. Appeal from decree of distribution.—If there shall be a controversy before the Court of First Instance as to who the lawful heirs of the deceased person are, or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing by the judge, under oath, and signed by the witnesses. Any party in interest whose distributive share is affected by the determination of such controversy, may appeal from the judgment of the Court of First Instance determining such controversy, to the Supreme Court, within the time and in the manner provided in the last preceding section, and it shall thereupon be the duty of the clerk of the Court of First Instance forthwith to transmit to the Supreme Court a certified copy of all the testimony taken upon that issue, and of the judgment of the court thereon."

The judgment or order in question purports to be a decree of distribution. Such is the view of the majority of the court. At least so it would appear, since it has been decided that the said order is in substantial compliance with section 782, which deals exclusively with appeals from such orders.

A decree of distribution is intended to be the final order of the court in regard to the estate. Such at least is its function as I understand the matter. The order or decree of distribution is defined in chapter 40 of the Code, entitled "Distribution of the Estate," sections 753 et seq. Section 753 reads:

"SEC. 753. Order of distribution.—After the payment of the debts, funeral charges, and expenses of administration, and the allowances, if any, made for the expense of maintenance of the family of the deceased, the court shall assign the residue of the estate to the persons entitled to the same, and in its order the court shall name the persons and proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession: Provided, however, That nothing in this act contained shall be construed to alter the existing Spanish law as to the restriction of the right of a testator to disinherit his children or other relatives."

This section prescribes that this order shall issue after payment of debts, funeral charges, expenses of administration, and the allowance, if any, made for the expense of maintenance of the family. Section 754 provides that none of the heirs or others interested in the distribution of the estate shall be entitled to this order until the items mentioned in the preceding section have been paid, unless their payment be properly secured by bond. After all these items chargeable against the estate are paid, what remains to be done except distribute the estate to the rightful heirs? The answer is, Nothing. The location in the Code of this chapter on distribution itself shows that it is the last matter to be taken up in the administration of estates. It is the last chapter upon the administration of estates; save only chapter 42, which is devoted to "Appeals in Special Proceedings."

In the present case, it is presumed, at least, that the administration of the estate has reached the point where an order of distribution is proper. If, therefore, there be anything lacking in the order of distribution essential to the distribution of the estate, the order is fatally deficient. If any further order or decree is required, it is not final.

Section 753 provides that the order of distribution "shall name the persons and proportions or parts to which each is entitled." Does the order or decree of the court in the present case comply with these directions? That it has decided who the lawful heirs of the deceased are is not questioned. It has, therefore, complied with the law to that extent. But the order is also required to designate the proportions or parts to which each person is entitled. The order sets out that Ciria is entitled to one-sixth of the conjugal property. This cannot by any means be considered as distributing the estate. To say to Reyes that he is entitled to five-sixths of the estate, and to Ciria that he is entitled to one-sixth of the estate is merely affording a basis, a rule of division, and not the division itself. It leaves the estate where it is found. It divides nothing. It no more complies with the law than would an order decreeing that all children of the deceased were entitled to equal shares in the estate without naming them.

Section 762 provides in part:

"Upon the filing of the petition the court or judge shall appoint a committee to make the partition and the proceedings of such committee, and of the court in its action upon the report of the committee, shall be in all respects the same as those in this Code provided for partition of real estate by action."

This directs that the proceedings of the committee and the action of the court upon its report shall be the same as is provided for partition of real estate by action. Sections 181 et seq. regulate the partition of real estate. Section 194 requires:

"The record of the final judgment in such action shall state definitely by metes and bounds and adequate description, the particular portion of the estate that is assigned to each party to the action, if partition is made; if the whole estate is assigned to one of the parties upon his paying to the other party the sum ordered by the court, the record shall state the fact of such payment, and of the assignment of the estate to the party making such payment. If the estate is sold, and the sale is confirmed by the court, the record shall state the name of the purchaser or purchasers and a definite description of the parcels of the estate sold to each purchaser."

In short, the code specifically requires that an order of distribution shall distribute; that it shall set forth exactly those facts which the petitioner claims are lacking from the order or decree in the present case; that is, a statement of the hereditary property and of the proportional part, expressed in number and amount, belonging to each heir. Whatever else the order contains which satisfies the court of its finality, it certainly does not contain those facts which are required of it by the code. Nevertheless, the court has approved it, and makes the statement that,

"If in due time this judgment should become final, there can be no question that the controversy between the parties would be finally settled."

Is this conclusion correct? Let us suppose that the appeal which is thus allowed results in affirming the order of the lower court. What is settled? According to the court, the order decides (1) that Ciria is an heir, and (2) that as

such heir he is entitled to one-sixth of the estate. These are the only points decided. The order appealed from being affirmed, the record will be remanded for execution. But it cannot be executed because the estate has not been divided or distributed. It cannot be divided or distributed because a committee has never been appointed as provided by law; the estate has never been appraised; and the heirs (nor anyone else for that matter) know nothing of what portions of the estate they are to receive. Clearly, these steps must all be taken before delivery can be made to Ciria of one-sixth of the property belonging to the estate. They can only be taken in the manner provided by law; that is, by the appointment of a committee to appraise the estate and to divide the same; then, the submission of its report to the court, which may accept it in whole or in part, reject it, or make such order as it may see fit. (Sec. 189.) Form and effect can be given to the action of the court only by a final judgment or order. But the difficulty with this proceeding is that all of these things are by the code directed to be included in the first order; that is, the order in which the court declared Ciria to be an heir and entitled to one-sixth of the estate. To my mind, this is a flagrant disregard of the provisions of the Code. It splits up into two separate proceedings that which the law directs shall be done in one. It allows two appeals where only one is provided by law, unless this court rules that when the record is returned and proceedings looking to the partition of the estate are instituted, no appeal will lie from the action of the committee and of the lower court in such partition proceedings. I cannot believe that the court will go so far. Nevertheless, when it grants an appeal in the partition proceedings, it will in effect admit that the decree which it now holds to be the final action of the court was not final.

Again, it will be noted that section 782, *supra*, provides that "any party in interest whose distributive share is affected by the determination of such controversy may appeal from the judgment of the Court of First Instance determining such controversy." By express provision there must be a determination of the controversy before an appeal will lie, and this determination must necessarily be a judicial one. Such a determination can only mean the end; the conclusion of the controversy. When the controversy has been brought to an end, or has been concluded, it has been definitely settled; that is, every phase or part of the controversy has been determined. It cannot be said that the controversy has been finally ended if there be any part of it undetermined. The distribution of the property is the predominating part of the controversy, as will be seen from the heading of the section. "Distribution" is the act of dividing or making an apportionment. (In *re Creighton*, 12 Neb., 280.) In general, the term "distribution," when applied to the estate of a deceased person, refers to the ultimate division of the estate of the deceased among the next of kin in case of intestacy, or among the beneficiaries under a will, after the estate is free from debt. (*Thomson vs. Tracy*, 60 N. Y., 31.)

The concurring opinion in the case at bar reads:

"I base my concurrence upon the provisions of section 782 of the Code of Civil Procedure. They are clear, specific, and mandatory and conclusive of the question. Moreover, this court has, on several occasions, tacitly held proper the appeal here in question. (*Conde vs. Abaya*, 13 Phil. Rep., 249; In the matter of the intestate estate of *Malignad*, 11 Phil. Rep., 158; *Moreno vs. Gruet*, 1 Phil. Rep., 217; *Thunga Chui vs. Que Bentec*, 1 Phil. Rep., 356; *Domingo m Warden of Bilibid*, 1 Phil. Rep., 542; *Alemanys vs. Sweeney*, 2 Phil. Rep., 654.) Although in these cases the question was not discussed, still the court must have held that the orders were appealable or it would have had no jurisdiction to decide the case on the merits. The decisions in *Montemayor vs. Cunanan* (14 Phil. Rep., 454); *Toribio vs. Toribio* (7 Phil. Rep., 526); *Ron vs. Mojica* (8 Phil. Rep., 328); *Insular Government vs. Bishop of Nueva Segovia* (17 Phil. Rep., 487), and other cases of the same nature are not in conflict with this decision, as they refer to appeals in ordinary actions taken under other sections of the Code of Civil Procedure which expressly prohibit appeals in such cases, and do not refer to appeals on special proceedings such as is the one at bar."

"They (the provisions of section 782) are clear, specific, and mandatory, and conclusive of the question." With this statement I fully agree. Said provisions are clear and specific in that they clearly and specifically state that an

appeal will only lie from the decree of distribution and not from incidental orders which are necessary to be entered and which are integral parts of the final decree of distribution. They are mandatory in that they direct that each and every part of the controversy must be settled before an appeal will lie.

"Moreover, this court has, on several occasions, tacitly held proper the appeal here in question." A number of cases are cited in support of this assertion.

The first is that of *Conde vs. Abaya* (13 Phil. Rep., 249). In that case the court declared that Conde was the sole heir of the deceased Casiano Abaya, and was entitled to all the property of the said deceased. The administrator was directed to act accordingly. From this judgment Roman Abaya appealed to the Supreme Court. It is clear that the order appealed from was a final decree of distribution; a declaration of heirs had been made and the property directed to be turned over to the sole heir. Every question had been finally settled in the court below before the appeal was entered.

In the next case, *In re Estate of Malignad* (11 Phil. Rep., 158), the commissioners appointed to divide the property submitted their report to the court and the same was approved. From the order of the court approving this division an appeal was entered. This case directly supports my position in the case at bar. There was a final order of distribution in which the commissioners said that they had divided the property set forth in the inventory into two parts almost mathematically equal. This was likewise a final decree of distribution.

In *Moreno vs. Gruet* (1 Phil. Rep., 217), the decision of the court relates solely to a motion to dismiss an appeal from an order removing a guardian, and has no connection whatever with appeals brought under section 782. The only time this section is mentioned or referred to in any manner is where the court said that article 782 is limited to orders directing the partition of property. Any bearing that this case has upon the question involved in the case at bar is clearly against the position taken by the majority of the court in the present case, since it was declared in the former that section 782 is limited to orders directing the partition of property.

In the next case, *Thunga Chui vs. Que Bentec* (1 Phil. Rep., 356), the following quotation from the syllabus is sufficient to show that it is entirely inapplicable:

"Where the only exception taken was an exception to the judgment, the appellate court has no power to review the evidence, and a motion to include the evidence in the bill of exceptions will be denied."

In the next case, *Domingo vs. Warden of Bilibid* (1 Phil. Rep., 542), the syllabus reads:

"Habeas corpus is a special proceeding in which no appeal has been provided for by the Code of Civil Procedure."

Section 782 is incidentally referred to as permitting appeals from decrees of distribution.

The syllabus in the last case, *Alemanys vs. Sweeney* (2 Phil. Rep., 654), reads in part as follows:

"A petition for a writ of mandamus to compel a judge of First Instance to allow an appeal from an order removing petitioners from their office of guardian * * * is not subject to demurrer on the ground that the facts related do not constitute a cause of action."

This case had nothing whatever to do with section 782, but was brought under section 783.

The result is that not a single one of the cases cited support the proposition that an appeal from a decree of distribution which does not contain a proposed division of the property is proper. But, on the contrary, all of the said cases show that this court has always treated the appeals provided for in section 782 as being appeals from decrees of final distribution, and not appeals from incidental orders or decrees, as the one in the case at bar.

It is said that the decisions in *Montemayor vs. Cunanan* (14 Phil. Rep., 454), *Toribio vs. Toribio* (7 Phil. Rep., 526), *Ron vs. Mojica* (8 Phil. Rep., 328), *Insular Government vs. Bishop of Nueva Segovia* (17 Phil. Rep., 487), and other cases of the same nature are not in conflict with the decision of the court in the case under consideration.

In *Montemayor vs. Cunanan*, Montemayor commenced an action against her husband for a divorce and for a division of the marital property. Judgment was rendered granting the divorce, dissolving the conjugal partnership, and directing that the property be divided in accordance with the law. From this judgment an appeal was taken. The appellee filed a motion in this Supreme Court asking that the appeal be dismissed upon the ground that the judgment appealed from was not final. This petition was granted, and the appeal dismissed, the court saying:

"It will be noted also that these sections provide for an appeal only upon a judgment which 'finally determines the action or proceeding.' This phrase, 'final judgment disposing of the action or proceeding,' seems to be significant. The evident purpose of the legislature in using this phrase was to prevent (except in very extreme cases) appeals from an order, decree, or judgment of the lower court which disposed of only a part of the proceeding or action. Appeals always mean delay in the final determination of causes. * * * In the present case the plaintiff was attempting to seek (a) a divorce, and (b) a division of the conjugal property. The court granted the divorce. If an appeal should be allowed against that decree, then it would be useless to proceed to a division of the conjugal property until after the question whether or not the plaintiff was entitled to her divorce was settled on the appeal. And then suppose the Supreme Court should affirm the decree of the lower court and return the cause for further proceedings, and in settling the second question with reference to the division of the conjugal property, one or both of the parties might claim that an error was committed, they would then be entitled to another appeal against that order or decree of the lower court and have the case brought to this court again."

It appears to me that the reasons given for dismissing the appeal in this case are perfectly applicable to the case at bar. The principle that an appeal will not lie from an order or judgment which does not finally determine the action or proceeding is the same in each case. In the one the divorce was granted, but no actual division of the property had been made. In the other, Ciria was declared to be an heir but no actual division of the property had been made. In the first the court dismissed the appeal upon the ground that the judgment appealed from was not final, while in the second it is held that the order is final. Logically, the two holdings are absolutely inconsistent, and, in my opinion, the latter is openly and manifestly against the law.

An examination of the other cases will show that this court has steadfastly held to the principle that an appeal will not lie from any order or judgment of the trial courts which does not finally determine the action or proceedings.

The decision in this case permits two appeals where only one is provided by the code. It at least doubles the time necessary for the distribution of the estate. It will have the effect of depriving the heirs of the enjoyment of the estate for a long time, and will increase the expense of administration and decrease the net value of the estate. It is a notorious fact that in this jurisdiction it is an exceedingly difficult and tedious task to wind up the affairs of the estates of deceased persons, and that in many instances several years elapse before they are finally disposed of. Both the Legislature and the courts are endeavoring to reduce this time and dispose of the estates promptly. But now this court, in a strained and unwarranted construction of section 782, indefinitely extends the time for the winding up of estates of deceased persons. The decision is not only in conflict with every other decision of this court upon the principle of finality of judgments, but it is, in my opinion, absolutely in conflict with the plain provisions of section 782. Knowing the disastrous effects which must necessarily flow from this holding is the reason which has prompted me to record my dissent at length.

The appeal should be dismissed with instructions to the lower court to proceed with the distribution of the estate in the manner provided by law.

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