

ALEJANDRO BALDEMOR, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF BENEDICTO BONOT DECEASED, PLAINTIFF AND APPELLANT, VS. EUSEBIA MALANGYAON, HENRICO BONOT, AND CLARA FALCON, DEFENDA...

G.R. No. 8806. March 24, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was brought for the purpose of recovering the possession of certain real and personal property particularly described in paragraph 2 of the complaint.

To the petition the defendants duly answered, denying generally and specifically the facts stated in the complaint, and alleging: That they were the legitimate descendants of the said Benedicto Bonot, that they were all of lawful age, that they had, prior to the commencement of the present action, mutually made a division among themselves of the property in question, that there are no debts existing against the estate of the said Benedicto Bonot, and that the plaintiff is without authority to maintain said action. Accompanying the answer there was presented Exhibit A in support of the allegation that the defendants had mutually divided the estate of their parent.

Upon the issue thus presented the question was presented to the court. After hearing the respective parties, the Honorable Percy M. Moir, judge, reached the conclusion that the plaintiff was without right to maintain the action in question and dismissed the complaint, absolving the defendants from any liability under the same, without costs, reserving to the defendant, Clara Falcon, the right to maintain an action against her coheirs for any fraud which they may have committed against her interest. From that judgment the plaintiff appealed to this court. There was no proof adduced during the trial of the cause, the case having been submitted to the lower court upon the pleadings.

It being admitted that the heirs had all reached their majority and had mutually divided the estate among themselves, the question is presented whether or not the special administrator may maintain an action for the purpose of taking possession of said property, thereby depriving the heirs of the possession of the same.

Section 596 of the Code of Procedure in Civil Actions as amended by section 1 of Act No. 2331 provides that:

"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."

Said section clearly gives the heirs the right to mutually partition their estate.

In the case of *Ilustre vs. Alaras Frondosa* (17 Phil. Rep., 321), this court said:

"In the absence of debts existing against the estate, the heirs may enter upon the administration of the said

property immediately. (Arts. 657 to 661, Civil Code.) If they desire to administer it jointly, they may do so. If they desire to partition it among themselves and can do this by mutual agreement, they also have that privilege.

* * * When there are no debts existing against the estate, there is certainly no occasion for the intervention of an administrator in the settlement and partition of the estate among the heirs. When the heirs are all of lawful age and there are no debts, there is no reason why the estate should be burdened with the costs and expenses of an administrator. The administrator has no right whatever to intervene in any way in the division of an estate among the heirs when they are adults and when there are no debts existing against the estate."

The only ground upon which an administrator can demand of the heirs at law the possession of real property which they have mutually divided among themselves is that such property will be required to be sold to pay the debts of the deceased. (*Malahacan vs. Ignacio*, 19 Phil. Rep., 434; *Fernandez vs. Tria*, 22 Phil. Rep., 603.)

In view of the foregoing, the judgment of the lower court should be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

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