

46 Phil. 847

[ **G.R. No. 20098. September 21, 1923** ]

**INTESTATE ESTATE OF FELIX ENRIQUEZ, DECEASED. FELISA DIAZ, PETITIONER AND APPELLANT, VS. BASILIA SOLAPCO, OBJECTOR AND APPELLEE.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

The question at issue in this appeal is about an order of the Court of First Instance of Rizal, entered May 18, 1922, approving a plan of partition submitted by Basilia Solapco, which order is assailed by Felisa Diaz, the administratrix of the estate involved in this proceeding.

The errors assigned to such an order are made to consist in the failure of the trial court to make findings of fact in said order; in preferring the plan of partition approved without the parties having presented any proof pro or con; in appointing a committee of partition; in fixing the usufruct of the widow; in approving the aforesaid plan of partition; in not taking into consideration the final account of the administratrix already approved by that court; and in entering the order appealed from.

Pending this proceeding for the administration of the estate of the deceased Felix Enriquez, of whom the administratrix Felisa Diaz is the surviving spouse, the latter and the relatives of the deceased, his legal heirs, namely, Basilia Solapco, Santos Solapco, and Brigida Juanjuangco, presented different plans of partition of the said estate, of which plans, that submitted by the latter, found on pages 22-34 of the bill of exceptions, is the one that met with the approval of the court, as above stated.

There is no question but the widow Felisa Diaz, as well as the aforesaid relatives of the deceased, has a right to share in the above-mentioned inheritance. What is disputed by the parties is the individual allotment of

determinate property to the one or the other, for the solution of which controversy the procedure provided by section 762 of the Code of Civil Procedure must be followed, after adjudicating to each coheir his undivided portion in accordance with section 753 of the said Code.

It does not appear that the court has adjudicated to each of the heirs his undivided portion, nor that the procedure provided by section 762 of the said Code was followed.

For the purposes of this decision, it is unnecessary to discuss in detail the errors assigned.

The order appealed from is reversed, without special pronouncement as to costs, and it is ordered that the trial court proceed to the distribution of the inheritance in accordance with sections 753 and 762 and others in harmony therewith of the Code of Civil Procedure. So ordered.

*Araullo, C.J.,*

*Johnson, Street, Malcolm, Avanceña, Villamor, and Johns, JJ.,*

concur.

---

#### RESOLUTION UPON MOTION FOR RECONSIDERATION

*October 19, 1923.*

#### **ROMUALDEZ, J.:**

We have considered the motion for reconsideration dated October 5, 1923, and the supplementary motion under date of October 9, 1923, presented by the opponent-appellee, who in the former motion prays for a reconsideration of the decision rendered herein, and in the latter petition that, should it not be possible to reinstate the order appealed from, the decision of this court revoking said order be at least modified so as to make clear the dispositive part of our decision; and we now find:

That in cases like the one before us, wherein a controversy arises between the persons entitled to the inheritance as to the portions to be allotted to each, it is necessary that the different proceedings provided by sections 753 and 762 of the Code of Civil Procedure be clearly, specifically and orderly followed so as to prevent unnecessary questions. The trial court, before approving the plan of partition and allotting the properties according to said plan, as it did, it should have satisfied itself that "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" were paid, as provided by sections 753 and 754 of the aforesaid Code. And it can be implied from the order appealed from that certain debts and taxes were not paid, for it closes by saying, "as soon as the expenses of administration and the inheritance tax imposed by the law are paid."

Without the inheritance having been totally liquidated, and it not appearing that the bond required by section 754 aforesaid was given, said order approves the plan of partition in question and then assigns to the widow in usufruct different properties from those assigned to her as such in the plan of partition. Then it directs the sale of certain properties, appoints a committee to partition the real properties and orders the delivery to Basilia Solapco of properties specifically assigned to the heirs of Apolinaria Solapco.

The different proceedings separately provided by sections 753 and 763 of the aforesaid Code are accumulated and confounded in this case, and what is worse, it approves the allotment of certain real properties' to the respective heirs when on account of the controversy as to the allotment of specific realties, they should have been adjudicated in undivided portions to the parties interested as to which portions there should be a community which would subsist until they arrive at an extrajudicial agreement, or should come into court for the purpose of partitioning them, and should obtain said partition.

The proper course to be followed in this case, once the inheritance is liquidated, is to enter an order determining the persons having a right to inherit and the undivided portions of the inheritance to which each is entitled under the provision of section 753 of the Code of Civil Procedure, without adjudicating to any particular heir any specific property, but leaving the parties interested to come to an extrajudicial agreement as to the distribution

of the real properties of the inheritance adjudicated *pro indiviso*, or, if that is not possible, to come to court for the purpose of partitioning them in accordance with section 762 of the Code of Civil Procedure, and only then will there be occasion to appoint a committee to make the partition.

Now the lower court may, from the plans of partition submitted to it, adopt such points as, without having any reference to specific adjudication of real properties, would appear to be the most adequate determination under the law of the undivided portions that pertain to each of the persons having a right to the inheritance.

This is implied in the order contained in our decision, in which we did not deem it necessary to go into details, as we do now, inasmuch as the language of the law is clear.

Having made this explanation, the motion for reconsideration is denied. So ordered.

*Johnson, Street, Malcolm, Avanceña, Villamor, and Johns, JJ., concur.*

---