5 Phil. 436

[G.R. No. 2108. December 19, 1905]

JUANA PIMENTEL, PLAINTIFF AND APPELLANT, VS. ENGRACIO PALANCA, AS ADMINISTRATOR OF THE ESTATE OF MARGARITA JOSE, DECEASED, ET AL.., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

Margarita Jose, a native and citizen of the Philippine Islands, died in the city of Amoy, China, on the 4th of February, 1902. Her last will was duly proved and allowed in the Court of First Instance of Manila on the 15th day of April, 1902, and on the same day Engracio Palanca was duly appointed administrator of the estate of the deceased. He entered upon the discharge of his duties as such administrator, and is still engaged therein. As far as appears from the bill of exceptions the estate still remains unsettled, and no final decree has ever been entered therein.

By her said will Margarita Jose left all her property, amounting to over 50,000 pesos, to her two children, Vicente Barreto, *alias* Tan-Keng, and Benito Carlos, *alias* Doon. On the 8th day of July, 1902, Juana Pimentel, the mother of said Margarita Jose, commenced this, an ordinary action, in the Court of First Instance of Manila, alleging that the two children of Margarita Jose were illegitimate, and that she was the heir at law and entitled to the whole estate. The prayer of the original complaint was that the plaintiff be declared the lawful heir and entitled to all the property of her daughter, Margarita Jose.

The defendant named in this original complaint was the "Estate of Dona Margarita Jose." The summons in the action was served upon the administrator, Engracio Palanca. He

appeared and demurred, on the ground, among others, that there was a defect of parties, and that the two sons should have been made defendants. This demurrer was overruled. He took an exception to the overruling of the demurrer, and answered, denying generally the facts stated in the complaint. A trial was had in the Court of First Instance, and judgment was entered in favor of th defendant on the 28th of July, 1903, the court holding that Vicente Barreto was the legitimate son of Margarita Jose Plaintiff made a motion for a new trial, which was granted on the 15th day of September, 1903. On the 22d day of January, 1904, the plaintiff presented an amended complaint, naming as defendants Engracio Palanca, as administrator of the estate of Margarita Jose, and Benito Carlos and Vicente Barreto. The prayer of that complaint is as follows :

"Por todo lo expuesto la demandante pide al Juzgado:

> "(*a*) Que la Iegalizacion de dicho testamento sea revocada y anulada;
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> "(*b*) Que la institucion de los demandados Vicente barreto *alias* Tan-Keng y Benito Carlos *alias* Doon como herederos en dicho testamento sea declarada nula por razon de la pretericion de un heredero forzoso.
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> "(*c*)
> Que la demandante sea declarada heredera de tres cuartas partes de los bienes de los cuales era duena la citada Margarita Jose al tiempo de su fallecimiento.
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> "(*d*) Que el nombramiento de
> administrador conferido por virtud del auto del Juzgado a favor del demandado Engracio Palanca sea anulado;
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> "(*e*) Que el
> demandado Engracio Palanca como tal administrador sea requerido a rendir cuentas de su administracion y a depositar en el Juzgado todo el dinero que tenga en su poder perteneciente a los herederos de la citada difunta;

> "(*f*) Que el Juzgado conceda a la demandante cualquier otro remedio adecuado y equitativo."

The
defendants all answered the amended complaint. A trial was had in the court below, and on the 7th of April, 1904, judgment was entered in favor of the defendants. The court held that Vicente Barreto was the legitimate son of Margarita Jose; that Benito Carlos was an illegitimate son, and that Margarita Jose had a right to bequeath her property to these sons to the exclusion of the plaintiff. He held also that the plaintiff, not having appealed from the probate of the will, could not maintain this action.

We think that judgment should be entered for the defendants, but not upon the ground stated in the decision of the court below.

The
will of Margarita Jose was made and she died after the present Code of Civil Procedure went into effect in these Islands. Her will was duly proved and allowed under the provisions of that code. An administrator was duly appointed and he is now engaged in settling the affairs of the estate. The important question in this case is, Can an ordinary action at law be maintained under these circumstances by a person claiming to be an heir of the deceased against other persons, also claiming to be such heirs, for the purpose of having their rights in the estate determined? We think that such an action is inconsistent with the provisions of the new code, and that it can not be maintained. Section 600 of the present Code of Civil Procedure provides that the will of an inhabitant of the Philippine Islands shall be proved and his estate settled in the Court of First Instance in which he resided at the time of his death. By section 641 when a will is proved it is obligatory upon the court to appoint an executor or administrator. By virtue of other provisions of the code this executor or administrator has, under the direction of the court, the full administration and control of the deceased's property, real and personal, until a final decree is made in accordance with section 753. During the period of administration the

heirs, devisees, and legatees have no right to interfere with the administrator or executor in the discharge of his duties. They have no right, without his consent, to the possession of any part of the estate, real or personal. The theory of the present system is that the property is all in the hands of the court, and must stay there until the affairs of the deceased are adjusted and liquidated, and then the net balance is turned over to the persons by law entitled to it. For the purpose of such administration and distribution there is only one proceeding in the Court of First Instance. That proceeding is not an action at law, but falls under Part II of the Code of Civil Procedure, and is a special proceeding. After the estate is fully settled, and all the debts and expenses of administration are paid, the law contemplates that there shall be a hearing or trial in this proceeding in the Court of First Instance for the purpose of determining who the parties are that are entitled to the estate in the hands of the executor or administrator for distribution, and after such hearing or trial it is made the duty of the court to enter a decree or final judgment, in which decree, according to section 753, 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." (See also sec. 782 of the Code of Civil Procedure.) By section 704 it is expressly provided that no action shall be maintained by an heir or devisee against an executor or administrator for the recovery of the possession or ownership of lands until there is a decree of the court assigning such lands to such heir or devisee, or until the time allowed for paying debts has expired.

It
seems clear from these provisions of the law that while the estate is being settled in the Court of First Instance in a special proceeding, no ordinary action can be maintained in that court, or in any other court, by a person claiming to be the heir, against the executor or against other persons claiming to be heirs, for the purpose of having the rights of the plaintiff in the estate determined. The very purpose of the trial or hearing provided for in section 753 is to settle and determine those questions, and until they are settled and determined in

that proceeding and under that section no action such as the present one can be maintained.

An examination of the prayer of the amended complaint above quoted will show that to grant it would be to prevent the settlement of the estate of a deceased person in one proceeding in the Court of First Instance. It would require, in the first place, the revocation of the judgment probating the will. This relief can not be obtained in an ordinary action. The plaintiff not having appealed from the order admitting the will to probate, as she had a right to do, that order is final and conclusive. It does not, however, as the court below held, determine that the plaintiff is not entitled to any part of the estate. The effect of such a decree was stated in the case of Castaneda *vs*. Alemany[1] (2 Off. Gaz., 366). The statements there made need not be repeated here. The plaintiff in her amended complaint asks also that the appointment of Engracio Palanca be annulled. This relief can not be granted in an ordinary action. The plaintiff had a right to appeal from the order of the court appointing the administrator in this case, and not having exercised that right such order is final and conclusive against her. The plaintiff also asks that the administrator be required to render an account to her of his administration, and deposit in court the money which he has in his possession. To grant this relief in an ordinary action between parties would be to take away from the court having in charge the settlement of the estate the express powers conferred upon it by law. To grant that part of the prayer of the amended complaint which asks that the plaintiff be declared to be entitled to three-fourths of the property of the estate, would be to take away from the court administering the estate the power expressly given to it by section 753 to determine that question in the proceeding relating to the estate.

The judgment of the court below is reversed, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below, with instructions to dismiss the same, with costs, but without prejudice to the right of the plaintiff to present her claims in the special proceeding relating to

the administration of the estate, when the final decree is made therein under section 753. No costs will be allowed in this court. So ordered.

Johnson and *Carson, JJ.,* concur.

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[1] 3 Phil. Rep., 426.

CONCURRING

ARELLANO, C. J., and **MAPA, J., :**

In view of sections 753 and 782, we agree with the preceding opinion on the ground therein set forth:

> "While the estate is being settled in the Court of First Instance in a special proceeding, no ordinary action can be maintained in that court, or in any other court, by a person claiming to be the heir, against the executor or against other persons claiming to be heirs, for the purpose of having the rights of the plaintiff in the estate determined."

The purpose of this concurring opinion is to reserve the question as to any other action in connection with the settlement of such estates not instituted during the period of administration but independently and which may relate to rights to any part thereof, especially the action for distribution which differs from the action of partition.

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