

# NOTES and COMMENT

## The Trend of Philippine Judicial Thought on the Scope of Probate Jurisdiction

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IT is well-stated that our Courts of First Instance are courts of general jurisdiction but, when sitting in probate, their jurisdiction is *limited and special*; that probate proceedings are purely statutory; and that the functions of probate courts are limited to the control of the devolution of property upon the death of its owner and cannot extend to the adjudication of collateral questions (Guzman v. Anog and Anog, *supra*).

In the settlement of the estate of deceased persons, probate courts generally have four powers: (a) to determine if the deceased left a duly executed and valid will; (b) to determine what are the properties of the deceased; (c) to determine what are the debts of the deceased; and (d) to determine who are the heirs of the deceased entitled under the law to participate in the distribution of the residue of the estate.

Although in connection with the first power of probate courts over the probate of wills, the Rules of Court require the custodian of the will to deliver the same to the court or to the executor therein named, require the person named executor in a will to signify in writing his acceptance or refusal of the trust, and prescribe a penalty for their neglect without satisfactory excuse (Rule 76 secs. 2, 3, 4), probate courts have no jurisdiction to de-

termine (1) the prosecution of this special procedural offense but the same must be prosecuted in the ordinary courts (United States v. Chua Gaimeo, 36 Phil. 917).

Although probate courts have the power to determine what are the properties of the deceased and to gather them into their possession for the payment of the debts of the deceased, probate courts cannot determine (2) claims for title to, or right of possession of, personal or real property, made by the heirs themselves, or title adverse to that of the deceased and not by right of succession, or made by third persons (De los Santos v. Jarra, 15 Phil. 147; Bauermann v. Casas et al, 10 Phil. 386; Devesa v. Arbes, 13 Phil. 273; Franco v. O'Brien 13 Phil. 359; Guzman v. Anog and Anog, 37 Phil. 61; Lunsod v. Ortega, 46 Phil. 664; Santiago v. Court of First Instance, 65 Phil. 62; Adapon v. Maralit, SC-G. R. No. 46898 January 20, 1940, VIII L. J. 222; In re Cresenciano Abesamia, CS-G. R. No. 47431 December 19, 1940, 40 O. G. No. 14 10th Supp. p. 941; Profeta v. Gutierrez David, SC-G. R. No. 47736 April 18, 1941, 40 O. G. No. 83 14th Supp. p. 162), although for the purpose merely of inclusion in or exclusion from the inventory, probate courts may pass upon a question of title on real or personal property, without prejudice to a final determination of the same question in a separate action

(*Garcia v. Garcia*, SC-G.R. No. 45430 April 15, 1939; *Marcelino v. Antonio*, SC-G. R. No. 46347 June 29, 1940, VIII L. J. 803); (3) actions for causes which survive the deceased that the executor or administrator may bring or defend for the protection of the property or rights of said deceased (Rule 88 sec. 2), such as an action for specific performance of a contract to convey land and to lease the same made by a deceased person (*II Moran*, id. 234-235; *Mojica v. Fernandez*, 9 Phil. 403; *Araneta v. Montelibano*, 14 Phil. 117), an action to compel the administrator to perform an onerous perfect donation of money made by the deceased (*Hipolito v. Robledo*, 18 Phil. 603), an action for partition filed by the administrator (*Albano v. Agtarap*, 22 Phil. 345 overruling *Bautista v. Tiongson*, 11 Phil. 579), an action to recover property of the deceased from any person who unduly detains it (*Dimagiba v. Dimagiba*, 34 Phil. 358; *Francisco v. Tabada*, 9 Phil. 568), and an action for forcible entry and detainer of a property of the deceased (*Santiago v. Cruz*, 54 Phil. 640) (4) claims in favor of the estate against third persons, except when such claims are made in the form of a counterclaim (*Bayot v. Zurbito*, 39 Phil. 650; *Villarruz v. Azaraga*, 15 Phil. 108); (5) conflicting claims as to property, real or personal, between the estate and third persons, although Rule 88, section 6, provides a procedure whereby the probate court may elicit information or secure evidence from persons suspected of having possession or knowledge of the property of the deceased, or of having concealed, embezzled, or conveyed away any of the property of the deceased (*Alafriz v. Mina*, 28 Phil. 137; *Chanco v. Madrilejos*, 9 Phil. 356; *Chanco v. Madrilejos*, 12 Phil. 543; *Franco v. O'Brien*, 13 Phil. 359, 362-3; *Guanco v. Philippine Na-*

*tional Bank*, 54 Phil. 244); (6) actions for foreclosure of mortgages, whether instituted by creditors of the deceased (*Estate of Gamboa v. Floranza*, 12 Phil. 191, 194) or instituted by the administrator (*Calimbas v. Paguio*, 43 Phil. 567; *Paterno v. Solis*, 15 Phil. 153); (7) actions to compel conveyance of realty which deceased contracted to convey when the existence or validity of such contract is disputed, although the probate court may authorize conveyance under Rule 90, section 8, when there is no such dispute (*II Moran*, id. 263-4); (8) actions in favor of the executor or administrator to hold persons who embezzle or alienate any of the money, goods, chattels, or effects of the deceased before the granting of letters testamentary or of administration for double their value (Rule 88 sec. 8; *Marschall v. Antholtz*, 54 Phil. 448; *Ingersoll v. Chui-Tian*, 11 Phil. 564); (9) actions for the recovery of property fraudulently conveyed by deceased (Rule 88 secs. 9, 10; *Heirs of Gregoire v. Baker*, 51 Phil. 75, 79); (10) actions to annul leases over decedent's property made by the executors (*Johnson de Hilado v. Nava*, SC-G. R. No. 46249 October 18, 1939; *Gamboa v. Gamboa*, SC-G. R. No. 45121; *Ferraris v. Rodas*, 38 O. G. 1627; *Rodriguez v. Borromeo*, 43 Phil. 479); and (11) actions to hold executors personally liable, either to the estate (*De la Viña v. Geopano*, 51 Phil. 935, 948) or to third persons (*Palileo v. Mendoza*, SC-G. R. No. 47106 June 27, 1940, VIII L. J. 676).

Although probate courts hold the properties of deceased persons for the payment of their debts, they may only determine claims for money, debt, or interest thereon and (12) claims other than for money, debt, or interest thereon must be filed in ordinary actions in courts of general jurisdiction (Rule 87 sec. 1; *II Moran*, id. 215-6), examples of the

latter being actions by a donee *inter vivos* or a reservee for the recovery of the property donated by the deceased or which the deceased was bound by law to reserve (Del Rosario, 2 Phil. 321; Lopez v. Olbes, 15 Phil. 540; Cabardo v. Villanueva, 44 Phil. 186). Should there have been a premature distribution of the assets the creditors of the deceased have the option either to procure the probate court to reopen the settlement proceedings or to maintain (13) an action in the ordinary courts to compel the distributees severally or jointly to contribute to the satisfaction of his claim to the extent of the amount and value of the property by which said distributees may have been prematurely enriched (Lopez v. Enriquez, 16 Phil. 336; Espino v. Rovira, 50 Phil. 152).

Because probate courts have the power to make a declaration of heirs and to determine the proportions or parts to which each heir is entitled under the law, they have the power to entertain the question of whether or not a person is a natural child acknowledged by the decedent (Conde v. Abaya, 13 Phil. 249; Severino v. Severino, 44 Phil. 343; Lopez v. Lopez 37 O. G. 3091), to decide which of two women is the lawful spouse of the decedent (Torres v. Javier, 34 Phil. 382), and to determine the validity of a provision of the will (Marcelino v. Antonio, SC-G. R. No. 46847 June 29, 1940, VIII L. J. 803). All these questions are involved in a claim for inheritance as heir (De Gala v. de Gala 60 Phil 311) and a separate action for declaration of heirs is not proper (Pimentel v. Palanca, 5 Phil. 436). But (14) after real estate has been assigned to two or more heirs, devisees or legatees, in common and undivided, any action for partition must be made in a separate action and not in the same testate or intestate proceedings (Rule 91 sec. 3). The purpose is to close the

administration as soon as possible (II Moran, *id.* 268).

It has been held also that (15) creditors of the heirs, as distinguished from the creditors of the decedent, have no right to intervene in the settlement proceeding as such creditors have no right or interest that call for the protection of the probate courts (Ortiga Hermanos v. Enage and Yap Tico, 18 Phil. 350-1; *In re Garcia Pascual*, 11 Phil. 38).

The conclusion is inevitable that our courts have adhered to the well-established principle of limited probate jurisdiction.

#### THE FUNDAMENTAL REASON UNDERLYING LIMITED PROBATE JURISDICTION.

Since the matters enumerated in the foregoing discussion as beyond the jurisdiction of probate courts to determine are all in some way connected with the settlement of the estate of deceased persons, it would seem at first blush that their litigation outside of the probate proceedings and in ordinary actions in court of general jurisdiction would occasion an undesirable multiplicity of suits. But it must not be overlooked that there is a fundamental reason underlying this limited jurisdiction of probate courts.

That fundamental reason is founded on the following premises: first, that the rights of succession are transmitted to the heirs from the moment of the death of their predecessor, and the heirs in other words immediately succeed to the dominion, ownership and possession of the property of the predecessor (Civil Code, 657, 661; *To Guio-Co v. Del Rosario*, 8 Phil. 546; *Guison v. Salud*, 12 Phil. 109; *Ilustre v. Alaras Frondosa*, 17 Phil. 321; *Marin v. Nacionceno*, 19 Phil. 238, *Malahacan v. Ignacio*, 19 Phil. 434; *Nable Jose v. Uson*, 27 Phil. 73; *Beltran v. Dorian*, 32 Phil. 66; *Bondad v. Bondad*,

34 Phil. 232; Baldemor v. Malangyaon, 34 Phil. 367; Veiasco v. Vizmanos, 45 Phil. 675; Fule v. Fule, 46 Phil. 317; Dais v. Court of First Instance of Capiz, 51 Phil. 396, 399-400; Centeno v. Centeno 52 Phil. 322, 337; De Gala v. De Gala, 51 Phil. 480; In re Crescenciano Abesamia, SC-G. R. No. 47431 December 19, 1940, 40 O. G. No. 14 10th Supp. pp. 94, 98; Lajom v. Viola, SC-G. R. No. 47475 May 6, 1942, 1 O. G. 452; Jayme v. Gamboa, SC-G. R. No. 47820 November 28, 1942, 2 O. G. 382, 388); and second, that if the deceased left debts the possession (not the title) of the properties of the deceased is withheld from the heirs and the same is placed under administration by the probate court for the payment of said debts (Pimentel v. Palanca, 5 Phil. 436; Flores v. Flores, 48 Phil. 982; Ilustre v. Alaras Frondosa, *supra*; Bondad v. Bondad, *supra*; Baldemor v. Malangyaon, *supra*; Buenaventura and Del Rosario v. Ramos, 43 Phil. 704; Mendoza Vda. de Bonnevie v. Cecilia Vda. de Pardo, 59 Phil. 486; Malahacan v. Ignacio, *supra*. Fernandez v. Tria, 22 Phil. 603; Suiliong & Co v. Chio-Tayson, 12 Phil. 13). It should be the purpose therefore of probate administration "*to put into one's hands the property which belongs to him not only at the earliest possible moment but also with the least possible expense*" (McMicking v. Sy Conbiong, 21 Phil. 211, 220; Lizarraga Hermanos v. Abada, 40 Phil. 124; Pascual v. Santos et al., 62 Phil. 148; M. Chua Kay & Co v. Widow and Heirs of Oh Tiong Keng, 62 Phil. 883;

Cosme de Mendoza v. Pacheco et al, 35 O. G. 1831; Wilson v Rear, 55 Phil. 44; Dacanay v. Hernandez, 53 Phil. 824; Cabrera v. Quiogue, 23 Phil. 518).

"It is the undisputed policy of every people which maintains the principle of private ownership of property that he who owns a thing shall not be deprived of its possession or use except for the most urgent and imperative reasons and then only so long as is necessary to make the rights which underlie those reasons effective. It is a principle of universal acceptance which declares that one has the instant right to occupy and use that which he owns, and it is only in the presence of reasons of the strongest and most urgent nature that that principle is prevented from accomplishing the purpose which underlies it. The forces which gave birth to this stern and imperious principle is the same force which destroyed the feudal despotism and created the democracy of private owners." (McMicking v. Sy Conbiong, *supra*, p. 119).

It is in the furtherance of this purpose that probate proceedings are not saddled with the litigation of matters which although connected with the settlement of the estate are really collateral thereto. It is in the furtherance of this purpose that probate jurisdiction is limited to the mere devolution of the property of a person upon his death to his heirs or to those entitled to succeed him under the law.

