95 Phil. 237

[G.R. No. L-5033. June 28, 1954]

IN THE MATTER OF THE SUMMARY SETTLEMENT OF THE INTESTATE ESTATE OF THE DECEASED JOSE M. FRANCISCO, TIBURCIA M. VDA. DE FRANCISCO, ADMINISTRATRIX AND APPELLEE, VS. FAUSTA CARREON AND CATALINA CARREON, OPPOSITORS AND APPELLANTS.

D E C I S I O N

BENGZON, J.:

September 2, 1947, Rosa Aldana Francisco petitioned the Court of First Instance of Rizal summarily to settle the estate of her husband Jose M. Francisco who had died in 1944. Alleging under oath that they had three minor children who were his legal heirs, and that the deceased left a parcel of land with house thereon, and no creditors, she asked for declaration that the persons entitled to share in his estate are the said three minor children, with herself as usufructuary.

In connection with her petition she requested for appointment as guardian *ad litem* of her three minor children, and her request was granted in due course.

After the requisite publication, the petition was heard, and later approved by an order dated November 29, 1947, declaring "the petitioner Rosa Aldaha Francisco, and her children Jose Francisco Jr., Thelma Francisco and Aurelio Francisco as the only heirs of the deceased" and adjudicating unto the said heirs the above-mentioned property in the proportion of one-half undivided share to the widow, and the other half in equal parts, to the said children.

This order was registered in the office of the Register of Deeds, who issued thereafter (January 15, 1948) a new certificate of title in the names and in the proportion already stated.

August 4, 1948, Rosa Aldana Francisco mortgaged her share of the realty to the sisters Fausta Carreon and Catalina Carreon for the sum of P13,000, and the deed of mortgage was duly registered August 16, 1948. Afterwards, on January 19, 1950 she conveyed by absolute deed of sale, to the aforesaid creditors, her interest and participation in the land. This sale was likewise inscribed in the office of the Register of Deeds.

However, in a motion of March 14, 1950, Tiburcia Magsalin Vda. de Francisco, mother of the deceased Jose M. Francisco, allegedly in representation of the minor Jose Francisco y Palumpon, seventeen, averred that this minor was a recognized natural son of the deceased, with legal right to participate in his estate, that the previous proceedings were void because Rosa Aldana Francisco had concealed such fact, and because she had interests in conflict with those of her three sons, the truth being that the land was private property of Jose M. Francisco of which she could not have been awarded a portion in fee simple.

Tiburcia prayed specifically for the following remedies:

(*a*) Her appointment as guardian *ad litem* of Jose Francisco y Palumpon; (*b*) her appointment as guardian *ad litem* of the three legitimate children Jose, Thelma and Aurelio, in place of Rosa Aldana Francisco; (*c*) declaration that Jose Francisco y Palumpon was a recognized natural child of the deceased with the right to inherit; (*d*) annulment of the order of November 29, 1947, with the adjudication that the only heirs of the deceased are the four children already named, the widow being entitled to usufruct only; (*e*) annulment of the mortgage and sale executed by Rosa Aldana Francisco in favor of the Carreon sisters; and (*f*) appropriate instruction to the Register of Deeds.

Oppositions to the motion were presented by Rosa Aldana Francisco and by the two sisters Fausta and Catalina Carreon. One of the objectors pointed out that Tiburcia Magsalin could not be named guardian of the natural and the legitimate children, because she would then be representing interests in conflict. Wherefore the court chose to appoint, and did appoint, the natural mother of Jose Francisco y

Palumpon (Macaria Palumpon) as his guardian *ad litem*, even as it named Tiburcia Magsalin Vda. de Francisco the guardian of the minors, legitimate children Jose Thelma and Aurelio.

Now, when the motion to annul or reopen was called for hearing, Macaria Palumpon requested in open court the dismissal, without prejudice, of Jose Francisco y Palumpon's demand for recognition. Her request was granted; but the court announced that the three minor children's petition for reopening of the order adjudicating one-half to Rosa Aldana Francisco, with all consequent effects upon the mortgage and sale, will be taken up later, i.e., on May 5, 1950.

Both Rosa Aldana and the Carreons moved for reconsideration, contending that, inasmuch as Jose Francisco y Palumpon had withdrawn, there was no authority to continue, for the matter became a closed incident.

Thereafter, and probably to meet objections, Tiburcia Magsalin Vda. de Francisco, as guardian *ad litem* of the three legitimate, submitted an "amended motion" wherein she made practically the same allegations of her previous motion and prayed for identical remedies—except those touching the recognition of Jose Francisco y Palumpon.

Overruling objections, the court admitted the amended motion, heard it granting the interested parties opportunity to present their evidence and arguments, and rendered judgment holding the realty was private property of the deceased Jose Francisco, who had acquired it four years before his marriage to Rosa Aldana. Wherefore it revoked the order of November 29, 1947; it held that the whole property passed to the ownership of the three legitimate children of the deceased, subject to usufructuary rights of the widow; it annulled the mortgage and the sale executed by Rosa Aldana in favor of the Carreon sisters, and then issued other appropriate instructions to the Register of Deeds.

Rosa Aldana acquiesced in the resolution. Not the Carreon sisters, who appealed in due time, asserting the court erred: (1) in continuing to hear the motion for reopening, even after the natural child had

withdrawn from the litigation and (2) in taking cognizance of the annulment of the mortgage and sale, which it could not validly consider as a probate court.

Arguing their first assignment of error, the appellants assert that Jose Francisco y Palumpon was the only one applying for positive relief—recognition as natural child—and that once his petition for recognition had been withdrawn, the court had no justification in ordering the continuance of the hearing in so far as the other heirs were concerned. The "amended motion", appellants add, could serve no purpose, because the motion was not susceptible to any amendment, for it had ceased to exist. Strictly speaking, and at first blush, appellants seem to be correct. Yet inasmuch as the original order granting the widow Rosa Aldana one-half of the property was entirely erroneous, and she apparently failed to fully protect her children's right, their point results in pure technicality on which "scant consideration" is ordinarily bestowed.[1] All the more when it serves to promote unfair advantage.

Nevertheless, let us carefully examine the motion of March 14, 1950. It is signed by Tiburcia Magsalin. In it she asked for appointment as guardian *ad litem* for the natural child *and for the three* legitimate children. She asked for remedial measures beneficial to *the four* children. Hence, the motion may be regarded in a spirit of liberality, as interposed on behalf of the said four children—not only a motion of the natural child. It is true that the motion begins, "Comparece el menor Jose Francisco y Palumpon, quien en este caso sera representado por su curadora-ad litem etc."; but that did not necessarily exclude the other children for whom relief was prayed. Precisely, because the complaint also prayed for relief beneficial to the three legitimate children—contrary to the interests of the natural child as hereinbefore related—the court declined to permit Tiburcia Magsalin to represent the four children, but allowed her to act for three only. At any rate "parties may be dropped or added by order of the court on motion of any party or *of its own initiatives* at any stage of the action and on such terms as are just".[2] And in line with this precept, the court's position may equitably be upheld.

Again, supposing the original motion of March 14 did not afford legal standing to the three legitimate children, and that it could not be "amended", as contended by appellants, we perceive no reason to prevent the court below from considering such amended motion as a new and independent petition in the *expediente*, filed expressly on behalf of the three minor children.[3]

The matter of time might conceivably be material in regard to considering the "amended" motion as "original" motion; but in this case it happens to be immaterial, because under section 5 of Rule 74 such motion may be lodged with the court within one year after the minors have reached majority; and they are still minors now. Incidentally this section 5 fully answers appellants' contention that Tiburcia's moves should have been initiated within two years after November 8, 1947.

Appellants may not justly complain that they thought such petition for readjustment or reopening could take place only within two years as prescribed by section 4 of Rule 74 and as annotated in the certificate of title; because they are conclusively presumed to know the existence and provisions of section 5, Rule 74. As the trial judge correctly observed:

> "But the whole trouble is that they accepted the mortgage with the encumbrance annotated; and while it referred to Rule 74, Section 4, and did not specifically mention section 5, the fact that section 4, Rule 74 was therein noted should have been sufficient warning to them that the title was subject to the interest of persons unduly prejudiced hereby. We take judicial notice of the fact that in the adjudication in summary settlements more often than not, the order merely says that the sale shall be subject to the provisions of section 4, Rule 74. This is the case because the Court can not foresee whether the movant would be affected; but section 5 being an imposition of the law, and being a mere sequence to the provisions of Section 4; we hold that where the title on its face shows that it was subject to the provisions of Rule 74, section 4, a third person who accepts it must take notice that he is running the risk of interfering with the rights

of minors as provided under section 5, Rule 74."

Contrary to appellants' claim, relief for the minors cannot be directed against the bond which, according to appellants, should have been demanded under section 3, Rule 3 Amendments favored and liberally construed; Diaz, et al., vs. De la Rama, 40 Off. Gaz., (No. 12) p. 2464. 74; because that section applies where personal property is distributed—not where, as here, realty is the subject of partition.

Last stand of appellants is the proposition that the court of first instance of Rizal, acting as probate court, had no jurisdiction to act on the petition, which should have been the subject of a separate action. And the case of Mendiola vs. Mendiola 7 Phil., p. 71 is cited; but such precedent is inapplicable, because there a partition by contract was signed by the parties who were all of age.

Of course, several decisions hold that "If during the summary proceeding some of the heirs claim, by title adverse to that of the decedent, some parcels of land, the probate court *has no jurisdiction* to pass upon the issue which must be decided in a separate suit".[4]
But here there is no question that the realty belonged to the decedent; and a separate suit was unnecessary, specially remembering that in these summary settlements the judge is expected to "proceed summarily" and "without delay" "to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them."[5]

The resolution under review apportions property admittedly belonging to the decedent among his legal heirs. It is no objection that it affects the herein appellants. They knew or ought to know the rule permitting such to re-apportionment even after two years, and they have been given every chance to be heard, having been by their own petition, regarded as parties to the entire proceedings. And section 4, Rule 74 (which must be deemed extensible to situations covered by section 5, Rule 74) expressly authorizes the court to give to every heir his lawful participation in the real estate "notwithstanding any transfers

of such real estate" and to "issue execution" thereon. All this implies that, when within the amendatory period the realty has been alienated, the court in re-dividing it among the heirs has authority to direct cancellation of such alienation in the same estate proceedings, whenever it becomes necessary to do so. To require the institution of a separate action for such annulment would run counter to the letter of the above rule and the spirit of these summary settlements.

From the foregoing, the conclusion follows that no prejudicial error was committed by the lower court, whose order is, consequently, *affirmed with costs.*

Paras, C. J., Pablo, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and *Concepcion, JJ.,* concur.

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[1] Chua King *vs.* Whitaker, 46 Phil., 578, 583.

[2] Section 11 Rule 3, Rules of Court cf. Alonso vs. Villamor, 16 Phil., 315; Chua King *vs*. Whitaker, *supra*.

[3] Amendments favored and liberally construed; Diaz, et al., *vs.* Dela Rama, 40 Off. Gaz., (No. 12) p. 2464.

[4] Guzman vs. Anog, 37 Phil. 61. 8 Rule 74 sect. 4.

[5] Rule 74 sect. 4.

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