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[G.R. No. L-6395. June 30, 1954]

JOSE YNZA, PLAINTIFF AND APPELLANT, VS. HUGO P. RODRIGUEZ, ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

MONTEMAYOR, J.:

Dionisio Ynza, of Spanish descent, single, and a resident of Iloilo City, died on September 3, 1932, leaving a will (Exhibit A) which was probated on October 6, 1932, in Special Proceedings No. 2025. He left extensive properties, real and personal, in the City of Iloilo and in the Province of Negros Occidental. The paragraphs of his will pertinent to and involved in the present case are the following:

> "Cuatro. Ordeno que todoa mis bienes arriba relacionados y loa que posea en el dia de mi muerte, asi como todo el dinero efeotivo que encuentre en caja, en los Bancos depositados en mi nombre, los azucares y otros bienes y derechos que me corresponden sean repartidos en la siguiente forma:
>
> "1. Lego a Julia Ynza, soltera de 25 anoa de edad, una tercera parte de todos mis bienes y derech°s.
>
> "2. Lego a Jose Ynza, soltero de 23 anoa de edad, una tercera parte de todos mis bienes y derechos.
>
> "3. Lego a Maria Cristina Ynza de 21 anas de edad, una tercera parte de todos mis bienes y derechos.
>
> "Quinto. Es mi voluntad que si alguno de mis legatarios arriba nombrados, falleciere sin sucesion entonces la parte 4 61 legada

> acrecera a la porcion 6 porciones correspondiente a los demas legatarios que le sobrevivan."

The will designated one Enrique Pijuan as. executor and the probate court appointed plaintiff-appellant Jose Ynza as co-administrator. Subsequently, however, because of ill-health Pijuan resigned as executor and Jose Ynza remained sole administrator of the estate. It might be stated incidentally that the three legatees Julia Ynza, Jose Ynza and Maria Cristina Ynza were, according to the record, adulterous children of the testator Dionisio Ynza, said to be children by different married women. The fact that in his will Dionisio Ynza affirmed that he was a bachelor and he did not mention any blood relationship with his three legatees lends support to this fact of illegitimacy of said three children.

In the month of December, 1932, about three months after the death of the testator and after the will was probated, one of the children and legatees, Maria Cristina Ynza who was then residing in Spain, came to the Philippines with her husband. Inasmuch as she wanted to keep her residence in Spain, she decided to sell as in fact she sold her share of one-third of all the estates of Dionisio Ynza, to her co-legatees Julia Ynza and Jose Ynza, for the sum of P118,000, thereby leaving Jose and Julia sole co-owners of said estates. A project of partition (Exhibit B) was submitted by Jose Ynza as administrator and it was approved by the court on January 14, 1933 (Exhibit D).

On April 24, 1934, Jose Ynza sold to his co-legatee and co-owner Julia his one-half share of the estate situated in the City of Iloilo as a result of which, he remained half co-owner only of the properties situated in Negros Occidental.

Julia Ynza died without issue in Iloilo on November 22, 1949, leaving a will (Exhibit E) which was probated On January 9, 1950, in Special Proceedings No. 652 of the Court of First Instance of Iloilo. In said will Julia left all her properties, real and personal, in the City of Iioilo to the Sisters Sofia Staub and Claudia Staub with a proviso

that they have under their care her protegee Carmen Danuya, and that upon her attaining majority she be given the sum of P5,000 by the executor. Her properties situated in Negros Occidental were disposed of thus:

> "A Jose Ynza lego Una Cuarta Parte; a los hijos de Maria Cristina Ynza lego UNA CUARTA PARTE; a Maria Luisa Lahorra lego Una Cuaeta Parte; y a Aida Milagros Rodriguez lego UNA CUARTA PARTE, de todas mis propiedades ubicadas en la provincia de Negros Occidental, con todos sus mejoras, que mas specificamente se mencionan mas arriba."

One Jugo P. Rodriguez was appointed executor, and as regards the properties in Negros Occidental, he was appointed trustee in the following words:

> "Con el fin de que los bienes que dejo, ubicados en la provincia de Negros Occidental los cuales han sufrido grandes dafios durante la pasada guerra, pueden ser rehabilitados, organizados y administrados debidamente, al efecto de ponerlos en buen estado economico antes de ser distribuidos a mis legatarios o fideicomisarios, es mi voluntad que se conserven dichos bienes en estado de fideicomiso por espacio de 15 años * * *"

With the approval of Jose Ynza and his co-legatees under the will of Julia, Hugo P. Rodriguez qualified as executor of the will and as trustee of the properties in Negros Occidental, and with the conformity of the legatees, including Jose Ynza, he filed a motion for the declaration of heirs and for the approval of the subject of partition, which project was approved by; the court which ordered the distribution of the properties among the legatees (Exhibits 9 and 10). Later, in a motion for reconsideration (Exhibit 11) Jose Ynza for himself and for the children of Maria Cristina Ynza, questioned the propriety of the appointment of Hugo P. Rodriguez as trustee and he asked the court to order him to deliver to the movant Jose Ynza his one-fourth portion of

the V2 of the real properties in Negros Occidental, left by the deceased Julia Ynza as well as the one-fourth portion corresponding to the children of Maria Cristina Ynza.

On December 22, 1950, Jose Ynza filed Civil Case No. 1855 of the Court of First Instance of Negros Occidental against Jugo P. Rodriguez as executor of the will of Juiia Ynza and as *guardian ad litem* of his daughter Aida Milagros Rodriguez, Jose Lahorra as guardian *ad litem* of his daughter Maria Luisa Lahorra, and Regina Lacambra as guardian *ad litem* of Alicia Ortega Ynza and Maria Rosa Ortega-Ynza (children of Maria Cristina Ynza), alleging that he (Jose Ynza) was the absolute owner of one-half *pro indiviso* with the late Julia Ynza of the three haciendas Nervion, Victoria-Ynza and Sta. Filomena situated in Negros Occidental as well as one-fourth of the one-half belonging to the estate of Julia Ynza or a total of five-eight, and that as such owner of five-eight he had the right to demand the partition of said three haciendas, and since it was not possible to divide or sell said properties without prejudicing the interests of the parties, it was advisable that said haciendas be ceded to one of the legatees who could pay to his or her co-legatees the amount or value of their respective shares, and that for this purpose three commissioners be appointed to fix said amount. The defendants answered the complaint expressing conformity to the partition of the properties in Negros Occidental and even to the appointment of the commissioners should the parties be unable to come to an agreement regarding partition. The court appointed three commissioners who later filed their report (Exhibit 12-F) and a project of partition whereby each of the three haciendas were divided into two parts, one to pertain to Jose Ynza and the other to the estate of Julia Ynza. In the course of the hearing of the case and the report of the commissioners, plaintiff Jose Ynza moved for the sale at public auction of at least one of the haciendas for the reason that partition of the same would disfigure the hacienda and would result in the reduction of its value. On September 4, 1951, the court decided the case approving the report of the commissioners, except that portion referring to personal properties, the court leaving their partition to the parties to decide. The portion alloted to Jose Ynza according to the

project of partition prepared by the commissioners was adjudged and decreed to him and the portion alloted to the estate of Julia Ynza was adjudged and decreed to said estate “to be held and enjoyed by the legatees and assigns subject to the will left by the deceased Julia Ynza.” Plaintiff tried to appeal this decision but due to his failure to file the necessary appeal bond the decision became final and on November 25, 1951, a writ of execution (Exhibit 12-T) was issued and the writ was executed on February 27, 1952, whereby Emilio Lacambra in representation of Jose Ynza delivered to the Provincial Sheriff the properties belonging to the estate of Julia Ynza situated in the Province of Negros Occidental (Exhibit 12-V). In the meantime, Jose Ynza as plaintiff in case G. R. No. L-4957 filed mandamus proceedings in the Supreme Court to compel the court in Civil Case No. 1855 to sell at public auction the properties subject of the partition proceedings. His petition for mandamus was later dismissed at his own instance by resolution of this court of November 23, 1951 (Exhibit 23).

In an attempt to stop the Negros Occidental court from executing its judgment, plaintiff filed prohibition proceedings in the Supreme Court against Judge Jose Teodoro as Judge of the Court of First Instance of Negros Occidental, the clerk of said Court, the Register of Deeds of that province and Hugo P. Rodriguez as administrator of the estate of Julia Ynza, in case G. R. No. L-5330, but the petition was summarily dismissed for lack of merit by resolution of this court of December 18, 1951. Then plaintiff Jose Ynza instituted the present action in the Court of First Instance of Iloilo, Civil Case No. 2281, against Hugo P. Rodriguez as administrator of the estate of Julia Ynza, Sofia Staub, Claudia Staub, Jose Lahorra as guardian *ad litem* of his daughter Maria Luisa Lahorra; Alfredo Javellana and Gloria Salvador; Rosario A. de Rodriguez as guardian *ad litem* of her minor daughter Aida Milagros Rodriguez; Maria Cristina Ynza for herself and as guardian *ad litem* of her minor daughters Alicia and Maria Rosa Ortega-Ynza; and Sofronio N. Flores and Cirilo Abrasia, to declare himself absolute owner of all the properties left by Julia Ynza including their products, by virtue of the right of accretion established in the conditional legacy by Dionisio Ynza under paragraph 5

of his will (Exhibit A). For purposes of ready reference we again reproduce said paragraph 5 of the will (Exhibit A), to wit:

> "Quinto. Es mi voluntad que si alguno de mis legatarios arriba nombrados, falleciere sin sucesion, entonees la parte a el legada acrecera a la porcion 6 porciones correspondientes a los demas legatarios que le sobrevivan."

After hearing, the Court of First Instance of Iloilo presided over by Judge Manuel Blanco held that the three legatees Jose Ynza, Julia Ynza and Maria Cristina Ynza had not respected but on the contrary had violated the wish of their father contained in paragraph 5 of his will, because they had been buying and selling the whole or part of the legacies received by them; as for instance Maria Cristina Ynza sold her share to Jose and Julia for P118,000 and Jose Ynza sold his one-half share of the properties situated in Iloilo left by his father to his co-legatee Julia Ynza. Again, Jose Ynza had agreed to the provision of the will of Julia Ynza regarding the distribution of her properties and also agreed to the project of partition on the basis of said will whereby said properties were given to other persons other than Jose Ynza and Maria Cristina Ynza despite the fact that Julia Ynza died without issue. As a result the trial court absolved the defendants from the complaint, with costs. Jose Ynza is appealing from that decision.

We are in full accord with the lower court that the attitude and conduct of the plaintiff-appellant in this case is far from consistent with the condition imposed in paragraph 5 of his father's will. He was the first to violate said condition or provision. Furthermore, by his conduct he led hist co-legatees under the will of Julia Ynza to believe that said condition need not be followed, and that consequently, although Julia Ynza died without issue she could dispose of all her property by will; that said disposition by Julia's will was valid and could be carried out, and that he (Jose Ynza) was agreeable to getting only one-fourth of the properties of Julia Ynza situated in Negros Occidental and nothing from the properties situated in the City of

Iloilo.

Going back to this fifth paragraph of the will of Dionisio Ynza, it may not be considered as accretion as apparently contemplated by the testator by his employment of the word “accrecera”. Under the old Civil Code, Article 982 thereof, there is right of accretion in testamentary succession when two or more persons are called to the same inheritance or to the same portion thereof without special designation of parts, and one of the persons so called die before the testator or renounces the inheritance or be incapable of receiving it. In the present case, the three persons called to the inheritance, namely, Rose, Julia, and Maria Cristina, survived the testator. However, the condition imposed in paragraph 5 of the will of Dionisio Ynza might possibly be regarded as a charge or trust’ limiting the ownership and disposition of the 1/3 portion alloted to each of the legatees. The, intention of the testator might have been as contended by plaintiff-appellant to prevent the property from going into the hands of strangers and at the same time giving a right to the surviving legatee or legatees the right to receive intact the one-third portion of the legatee, who dies without issue. This right may naturally be renounced or waived by any of the legatees who stand to benefit by it; and as to the condition that none of the properties or estate of Dionisio Ynza should go into the hands of strangers, since it is a condition not entirely unselfish, and it is not affected with public interest but on the contrary, is rather against public policy in that it limits the rights of ownership and free disposal of private property, said condition may not be enforced at the instance of the State. It may be enforced only by the legatees who have an interest in its enforcement; but surely not by the legatee who from the very beginning not only had violated that condition but had renounced his right to it. Under the condition imposed by paragraph 5 of the will of Dionisio Ynza, it may be supposed that in order to carry out the condition that the portion of the legatee dying without issue should go to his surviving co-legatees, none of the legatees may dispose of his one-third portion in his lifetime; and yet, both Jose Ynza and Julia Ynza not only allowed Maria Cristina to dispose of and sell her legacy of one-third portion, contrary to the provision of the will of

their father but they (Jose and Julia) bought that third portion of Maria Cristina. By so doing they violated the wish of their father contained in his will. They also renounced their right to inherit or receive Maria Cristina's one-third portion should she die without issue, a possibility at the time.

After Jose Ynza who had become one-half co-owner with his sister Julia Ynza of the estate left by their father Dionisio Ynza by reason of their purchase of the legacy given to their sister Maria Cristina, he (Jose Ynza) again violated the condition contained in paragraph 5 of the will by selling his one-half share of the estate situated in the City of Iloilo. Lastly, upon the death of Julia Ynza and upon the disposition of her propetries under her will, giving all her properties in Iloilo to the Sisters surnamed staub and her properties in Negros Occidental in the proportion of three-fourth to strangers and only one-fourth to Jose Ynza, said disposition again constituted a violation of the condition imposed in the will of their father Dionisio Ynza and plaintiff-appellant not only consented to said violation but he also agreed to the distribution of the property by accepting his share of one-fourth of the properties of Julia in Negros Occidental and agreed to the project of partition and distribution in favor of other persons. Not only this; in the partition proceedings held in the court of Negros Occidental, first he (Jose Ynza) proposed that instead of partition, a]l the properties of the estate of Julia in that province be given to one of the legatees who would then pay in cash the portion corresponding to the other legatees. This proposition was also a violation of the provision of the will because the whole estate may go to strangers, contrary to the intention of the testator Dionisio Ynza. Later, he proposed the sale of the estate of Julia Ynza in Negros Occidental and reiterated this proposition in the mandamus proceedings initiated by him in the Supreme Court to sell said properties at public auction, all contrary to the condition contained in paragraph 5 of his father's will. All this conduct and attitude of plaintiff-appellant is hardly consistent with his theory of the enforcement of the provisions of paragraph 5 of his father's will. He led the defendants herein to believe that the disposition of Julia's property according to her will

and the distribution among her legatees was valid and proper. He is now estopped from claiming or maintaining otherwise. Furthermore, the decision of the Court of First Instance of Negros Occidental approving the project of partition and disposing of the properties involved in accordance with the project of partition has become final and executory. It has now acquired the status of *res judicata.*

But plaintiff-appellant claims that at the time that he agreed to the partition of the properties in Negros Occidental he was unaware of the condition imposed in the will of his father. This contention is hardly tenable considering the fact that he must have been quite familiar with the contents of his father's will (Exhibit A), because he was the very person who had it probated by the court and afterwards he was appointed co-administrator with the executor of the will, and when said executor resigned, plaintiff-appellant was left as the sole administrator and the only one in charge of carrying out the provisions of the will.

In view of the foregoing, denying the petition for injunction, the decision appealed from is hereby affirmed, with costs against plaintiff-appellant.

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

CONCURRENTE

PABLO M.:

El parrafo 5.o del testamento del finado Dionisio Ynza es del tenor siguiente: "Es mi voluntad que si alguno de mis legatarios arriba nombrados, falleciere sin sucesion, entonces la parte a el legada acrecera a la porcion o porciones correspondientes a los demas legatarios que le sobrevivan." El demandante alega que, habiendo fallecido Julia Ynza sin sucesion, "ella no puede legar a las aqui demandadas Sofia y Claudia Staub, Maria Luisa Lahorra, Aida Milagros

Rodriguez, Alicia y Maria Rosa Ortega Ynza las propiedades que habia recibido del finado Dionisio Ynza como legataria condicional de este * * *.” Concluye que las propiedades de Julia Ynza deben acrecer su participation y, por eso, pide en sn demanda que “todas las propiedades dejadas por la finada Julia Ynza con sus productos sean declaradas su propiedad en virtud del derecho de acrecion.” Por carecer de base, esta peticion debe desestimarse.

“Los derechos a la sucesion—dice el Codigo Civil—de una persona se trasmiten desde el momento de su muerte.” (Articulo 657) y “La sucesion se difiere por la voluntad del hombre manifestada en testamento y, a falta de este, por disposicion de la ley. La primera se llama testamentaria y la segunda, legitima”. Tambien puede trasmitirse, una parte de los bienes por voluntad del hombre, y otra por disposicion de la ley. (Articulo 568,. Codigo Civil espanol.)

Julia Ynza habia otorgado un testamento disponiendo de sus bienes; despues falkcio; su testamento fue Iegalizado; entonces ella fallecio con sucesion testamentaria. No cabe, por tanto, el derecho de acrecimiento que reclama el demandante porque Julia fallecio con sucesi6n. Algunos confunden la sucesion con la descendencia son dos cosas distintas. Los descendientes como los legatarios suceden al finado. El descendiente sucede por ley o por testamento, o por ambos; el legatario sucede por testamento: ambos, descendiente y legatario, suceden a un finado.

En el casb presente, Julia Ynza fallecio sin descendiente pero con sucesion. Dionisio Ynza, el testador, dispuso que “si alguno de mis legatarios arriba nombrados, falleciere sin sucesion (fijese que no dijo falleciere sin descendiente), entonces la parte a el legada acrecera a la porcion o porciones correspondientes a los demas legatarios que le sobreyivan.” Si el testador hubiera dispuesto en su testamento que si alguno de sus legatarios falleciere sin descendiente, entonces Jose Ynza tendria derecho a lo que reclama.

Algunos dicen que el Codigo de Procedimiento Civil dispone la reversion de bienes al Estado (escheat); por dicha ley—arguyen—el Estado

sucede al finado. Esta contencion es infundada. El articulo 750 del Codigo de Procedimiento Civil dice asi; “Cuando una persona, duena de bienes muebles o inmuebles en las Islas Filipinas, muera intestada, sin dejar herederos ni quien legitimamente le suceda, el presidente y el concejo del municipio en donde el difunto tuvo su ultima residencia, en el caso de haber vivido en las Islas, y en caso contrario los del municipio en donde tenia bienes, pueden presentar al Juzgado de Primera Instancia de la provincia, a nombre del municipio, una solicitud para que se practique una investigacion en la materia. El Juzgado senalara entonces el tiempo y lugar para la vista y fallo de la peticion, y hara que se publique un anuncio al efecto en un periodico de mayor circulacion en la provincia en donde residio ultimamente la persona, si hubiera muerto en las Islas Filipinas, y en caso contrario en otro de igual circulacion en la provincia en donde tenia bienes. El anuncio manifestara en sustancia los hechos principales contenidos en la solicitud, el tiempo y lugar en que deben comparecer y ser oidos los que reclamen los bienes. Debera publicarse este anuncio por lo menos durante seis semanas consecutivas, debiendo aparecer la ultima insercion, por lo menos seis semanas antes del tiempo designado por el juzgado para hacer la indagatoria.”

El municipio no sucede al nnado. El municipio adquiere los bienes de un finado si el muere sin dejar herederos o personas que le sucedan de acuerdo con la ley o, en otras palabras, si no deja sucesion. Esta transmision juridica se llama reversion—no sucesion—de bienes al Estado. Los bienes dentro de la nacion son del Estado; los que fuesen adquiridos por sus habitantes se convierten en propiedad privada; los propietarios pueden disponer de sus bienes; pero, si fallecen sin sucesidn, dichos bienes se revierten al Estado. El Estado por medio de su Legislatura encomendo al municipio en donde estuviesen dichos bienes o la ultima residencia del finado la reclamacidn de dichos bienes para su reversion.

Por esta razon voto por la confirmacion de la decision apelada.

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