

102 Phil. 420

[G. R. No. L-10421. November 20, 1957]

EULOGIO V. ROCAS, PETITIONER, VS. THE HON. PRIMITIVO L. GONZALES, ET AL., RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

This is a petition for certiorari with preliminary injunction to restrain the respondent judge of the Court of First Instance of Cavite from enforcing his order of February 24, 1956 in Special Proceedings No. 4963, enjoining the parties from trespassing into each other's shares of the estate, and warning petitioner Eulogio Rocas that he would be punished for contempt if he fails to comply with said order.

It appears that petitioner is one of the oppositors in Special Proceedings No. 4963 for the settlement of the testate estate of the deceased Antonino Rocas, while respondent Consolacion Rementilla Vda. de Rocas is the executrix therein. In said special proceedings, the following were declared the forced heirs of the deceased; Tomas Rocas, son of the deceased by his first marriage; Dominga, Ana, and Eulogio (herein petitioner), all surnamed Rocas, children of the deceased by his second marriage; and Consolacion Rementilla Vda. de Rocas, the third wife and surviving widow of the deceased, and the latter's nine children.

Among the properties left by the deceased and included in the inventory filed by the executrix Consolacion Rementilla were two parcels of land located in barrio Malabag, Silang, Cavite:

Item III which is covered by Tax Dec. No. 2609, of 1 hectare and 8 ares in area, and bounded by properties of Andres Toledo in the north, Justo Gintog in the south, Antonino Rocas in the east, and Eugenio Anarna in the "west; and

Item V, of 3 has., 72 ares, and 10 centares in area, bounded by properties of Justo

Gintog in the north, Francisco Toledo in the south, Pedro Mendoza Crous in the east, and Justo Gintog in the west.

After several incidents in the proceedings, the parties finally agreed on a project of partition, which was approved by the court on September 3, 1952. Item III of the inventory was divided among the heirs thus: 1,413 square meters to the children of the first and second marriages, and 9,387 square meters to the widow and her 9 children; while Item V was divided equally between the two sets of heirs.

Thereafter, commissioners were appointed to carry out the partition agreed upon by the parties and approved by the court. The commissioners found Item III to have an actual area of 19,254 square meters, 2,518 of which they adjudicated to the children of the first and second marriages, while 16,727 square meters was assigned to the widow and children of the third marriage. As for Item, V, which the commissioners termed the "Big Malabag", it was found to have an actual area of 41,290 square meters, which was divided equally between the two sets of heirs, 20,645 square meters on the east side to the widow and her nine children, and 20,645 square meters on the west side to the children of the first and second marriages.

By order of May 7, 1953, the commissioners' report of partition was approved by the court.

The oppositors (children of the deceased by his first and second marriages) failed to appeal in due time from this order; but on August 26, 1953 they petitioned for relief from the court's order approving the commissioners' report of partition, alleging that instead of dividing the land termed as Item V of the inventory equally between the two sets of heirs, the commissioners divided instead the land referred to as Item III thereof, at the same time including by mistake in the division a greater portion which was not included in the inventory and which belonged exclusively to the children of the first and second marriages. The petition for relief was, however, dismissed for lack of merit, and on appeal, the dismissal was affirmed by the Court of Appeals for failure of petitioners to file their petition on time and their failure to attach thereto affidavits of merits (C. A.-G. R. No. 12443-R). During the pendency of this appeal, the oppositors likewise filed an injunction case in the Court of Appeals to enjoin the sheriff from carrying out the partition of the estate in Special Proceedings No. 4963; but again, said injunction was denied by the appellate court on the ground that the order in question was already final and executory and that furthermore, the acts complained of had already been accomplished.

Unable to obtain relief in the probate court as well as in the Court of Appeals, oppositors filed Civil Case No. 5752 in the Court of First instance, alleging undue encroachment by the executrix in Special Proceedings No. 4963 over land (of 3 hectares and 57 ares in area) belonging exclusively to plaintiffs and not included in the inventory and partition of the deceased's estate in said special proceedings.

Thereafter, and during the pendency of Civil Case No. 5752, the executrix in Special Proceedings No. 4963 moved to declare herein petitioner Eulogio Rocas in contempt for having allegedly removed the boundary fenced placed by the sheriff and the commissioners in one of the parcels of the estate denominated as the "Big Malabag". Upon verification, it was found that petitioner did remove said fence on the claim that it had been placed on the land involved in Civil Case No. 5752. Whereupon, the court suspended the contempt proceedings to give the commissioners a chance to verify and determine if the parcel of 3 hectares and 57 ares claimed by petitioner Eulogio Rocas in Civil Case No. 5752 is included in the "Big Malabag" estate or not, and ordered further that a duly licensed surveyor be hired to survey the lands in question for final clarification and determination. After ocular inspection of the lands in dispute, the commissioners reported that the parcel of land being claimed by petitioner in Civil Case No. 5752 is included in Item III of the inventory of the estate in Special Proceedings No. 4963. Consequently, the lower court, on February 24, 1956, issued an order instructing the sheriff: to reconstruct the fence dividing said property, enjoining the heirs not to trespass into each other's shares, and warning petitioner Eulogio Rocas that he would be held in contempt if he refused to respect said order. Against this order, petitioner presented before this Court the present petition for certiorari with preliminary injunction, alleging that such order deprives him of his property without due process of law, and passes judgment on the merits of Civil Case No. 5752 before the same is tried and decided.

A study of the records appears to support the contention of petitioners that the partition made by the commissioners appointed by the probate court really did not follow the bases laid in the agreement of the parties. A comparison of the boundary description of the lands designated as Items III and V of the inventory and the delineation of such boundaries in the plan PSU-136684 (Annex 8 of the memorandum for respondents) reveals that lots 5 and 6 of said plan correspond to Item V of the estate inventory, being bounded on the North and West by land of Justo Gintog; South by the land of Francisco Toledo; and East by Pedro Mendoza; and that one tenth (1/10) of this land was allotted by the commissioners to the children of the first and second marriages of the late Antonino Rocas, and nine tenth (8/10) thereof to the widow and children of the third marriage, when according to the agreement

between the heirs (Rec. App. in C. A.-G. R. No. 12443-R, pp. 76-82), this land should have been divided in equal portions between the issues of the first and second marriages (petitioners herein) on the one hand and the widow and children of the third marriage (herein respondents). It would seem that lots 5 and 6 of plan PSU-138684 were mistakenly considered by the commissioners at Item III of the inventory, when they actually constitute Item V.

With regard to the land composed of lots 8 and 4 of plan PSU-136684, the error of the commissioners appear double : they erroneously assumed that these lots corresponded to what is known as Item V of the estate inventory, and divided the land *equally* between the two sets of claimants, when the boundaries indicate that it is Item III and should be divided one tenth (1/10) for respondents and nine tenths (9/10) for petitioners, according to the contract of partition; in addition, the commissioners erred in assuming that all of lots 3 and 4 constituted the land described in the inventory, when actually the inventory only covered the western portion of the land. Thus, Item III is stated in the inventory to contain only one (1) hectare and 8 ares of land (10,800 square meters), while lots 5 and 6 total over four (4) hectares (41,352 square meters). But clearer still, the land of Item III, as described in the inventory, was bounded as follows:

North, property of Andres Toledo;
South, property of Justo Gintog;
West, property of Eugenio Anarna;
East, property of *Antonino Rocas*:

thereby denoting that there is still another lot of the deceased situated East of this particular land; while lots 3 and 4 of the plan reveal that the land divided by the commissioners is bounded on the East by Rufino Cortes and Damian Among. Thus, it would appear that, as contended by petitioners, the commissioners included in their division of Item III (which they called Item V) some other lands of Antonino Rocas that are not covered by the inventory of the estate nor by the contract of partition between 'the heirs.

However, it is now unnecessary for this Court to make a final adjudication on these points, because petitioners themselves aver that there is a civil case No. 5752 pending between the parties, where the question of the conformity or discordance of the division by the

commissioners with the contract of partition between the heirs can be threshed out and decided. The fact that the court approved the report of the commissioners would not preclude the parties from questioning it, if it were really not in accord with the partition agreement, there being nothing to show that the parties or the court intended to alter the basic partition agreement, but approved the report in the belief that it conformed to the partition contract. It should not be forgotten that petitioners herein would be entitled to a greater share in the lands improperly included if it were true (as they contend) that the same were acquired by the deceased during his second marriage, since the children of the third marriage would only share in the half belonging to the common father, Antonino Rocas; while the half of Ms second wife descended to her own children upon her death and was not within the jurisdiction of the court taking cognizance of the estate of the husband Antonino Rocas.

But until the civil case No. 5752 is finally decided, it is proper that the parties should abide by the orders of the court and refrain from taking justice into their own hands. The order of the probate court commanding all and sundry to respect the *status quo* should be allowed to stand until the pending case is decided.

In view of the foregoing considerations, the writ of certiorari applied for is denied. Without costs. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.