

CLEMENTE ALVIAR, PLAINTIFF-APPELLEE, VS. CESAREO ALVIAR, ET AL., DEFENDANTS-APPELLANTS.*G.R. No. L-22402. June 30, 1969*

Ponente: CONCEPCION, C.J.

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Appeal from a decision of the Court of First Instance of Rizal, originally taken to the Court of Appeals, but subsequently certified by the latter to the Supreme Court, upon the ground that only questions of law are involved therein, the facts having been stipulated by the parties.

Clemente Alviar, the original plaintiff herein, and Belen Alviar were legitimate children of Florentino Alviar and Bibiana Carillo. Sometime after the latter's death on January 30, 1901, Florentino Alviar married Flora Erasga, who begot him five (5) children, namely: Cesareo, Fabiana, Luisa, Zenaida and Castor, all sur-named Alviar. On September 6, 1951, Belen Alviar died intestate. She was single and had been survived by her brother Clemente Alviar, and five (5) half brothers and sisters, said Cesareo, Fabiana, Luisa, Zenaida and Castor Alviar. Belen's estate consisted of two (2) parcels of agricultural land situated in the Barrio of Sukol, Calamba, Laguna, with an area, respectively, of 17,199 and 6,422 square meters, more or less, otherwise known as lots 2 and 3 of subdivision plan Psu-3720, and more particularly described in TCT No. 3033 of the Province of Laguna, and a residential lot in Pasay City, of about 237 square meters, otherwise known as Lot No. 223-D of subdivision plan Psd-18972, and more particularly described in TCT No. 1578 of the Province of Rizal.

On June 28, 1955, these six (6) brothers and sisters executed a deed of extrajudicial partition adjudicating to Clemente Alviar the two (2) parcels of agricultural land in Calamba, Laguna, and to the five (5) half brothers and sisters of the deceased the residential lot in Pasay City. In pursuance of said deed, the parties took possession of their respective shares. Moreover, Clemente Alviar secured TCT Nos. 15307 and 15308 to said lots 2 and 3 of subdivision plan Psu-3720 in Calamba, Laguna. The residential land in Pasay City was, in turn, partitioned among his aforesaid half brothers and sisters and subdivided into lots Nos. 223-D-1 and 223-D-2. The first was allotted to Luisa and Zenaida Alviar, who secured thereto TCT No. 8495 in their names, whereas the second was covered by TCT No. 8496 in the name of Cesareo Alviar, his sister Fabiana having renounced her share therein in his favor. Their brother Castor had, likewise, waived his share in said residential land.

Over five (5) years later, or on September 4, 1962, Clemente Alviar commenced the present action, against his half brother and sisters, Cesareo, Fabiana, Luisa and Zenaida Alviar, and their mother, and his step-mother, Flora Erasga, to annul the deed of extrajudicial partition above referred to and the aforementioned TCT Nos. 8495 and 8496, covering the residential lot in Pasay City, as well as to recover the possession thereof and the title thereto, upon the ground that, acting in bad faith and conspiring, confederating and conniving with each other, as well as "taking advantage of plaintiff's lack of education, illiteracy and ignorance, and knowing full well that" the "children by second marriage of Florentino Alviar had no rights, participation and interest over" the three (3) lots left by Belen Alviar, the defendants had "misled" the plaintiff "into signing" said deed. Inasmuch as Clemente Alviar died soon thereafter, his widow, Paulina Pamulaklakin and their children, Ramon and Norma Alviar,

substituted him as plaintiff in this case.

The defendants having filed an answer denying specifically the allegations of the complaint regarding the irregularities allegedly attending the execution of the deed of extrajudicial partition, both parties later filed a stipulation of facts on the relationship between them, the civil status of Belen Alviar, the properties constituting her estate, the execution of the deed of extrajudicial partition and the steps taken to carry out its provisions, and submitted the case for the determination of only one question, namely: "who are the parties entitled to participate in the inheritance of Belen Alviar, and in what proportion?"

Plaintiffs maintained that since Clemente Alviar was a full brother of Belen Alviar, whereas the main defendants herein are merely her half brother and sisters, Clemente is a relative of Belen nearer in degree than said defendants, who are more distant to her, so that they (defendants) are excluded by Clemente, and he is entitled to succeed to the entire estate of Belen. The trial court in effect overruled this pretense and rendered a decision holding that both parties "are entitled to inherit from Belen Alviar, x x x plaintiffs to receive two-seventh (2/7)" of the residential lot in Pasay City, and "each of the defendants" - Cesareo, Fabiana, Luisa, Castor and Zenaida Alviar - "one-seventh (1/7) thereof, with no pronouncement as to costs."

The defendants moved for a reconsideration of this decision, upon the ground that the same should have ordered the redistribution, not only of the lot in Pasay City, but, also, of the two (2) parcels of agricultural land in Laguna. This motion having been denied, the defendants appealed to the Court of Appeals, which, as above pointed out, subsequently certified the case to the Supreme Court.

The main issue raised by the parties in this case is whether or not, as a full brother of Belen Alviar, the degree of relationship to her of the deceased Clemente Alviar was nearer than that of their half brothers and sisters, the children of their father by second marriage, and he excluded them in the succession to her estate. The lower court decided this question in the negative and correctly. In-deed, "proximity of relationship is determined by the number of generations" and "each generation forms a degree."^[1] In relation to Belen Alviar, her full brother, Clemente Alviar, is, therefore, in the same degree of relationship as their half brothers and sisters, the aforementioned defendants, for all of them constitute the first generation of descendants of their common father, Florentino Alviar. In fact, this rationalization is rendered superfluous, apart from being confirmed, by the explicit language of Arts. 1003, 1004 and 1006 of our Civil Code, reading:

"ART. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles."

"ART. 1004. Should the only survivors be brothers and sisters of the full blood, they shall inherit in equal shares."

"ART. 1006. Should brothers and sisters of the full blood survive together with brothers and sisters of the half blood, the former shall be entitled to a share double that of the latter."

These provisions, particularly the last, leave no room for doubt that brothers and sisters of full blood do not exclude those of half blood, for, otherwise, there would be no occasion for the concurrence of both classes and the application of said Art. 1006.

More important than this, however, is the fact that Clemente Alviar had entered into a contract with his half brothers and sisters for the extrajudicial partition of the properties of the deceased Belen Alviar and that there is nothing in the stipulation of facts submitted by the parties to warrant the annulment or rescission of said agreement. The validity thereof thus being indubitable, there is absolutely no reason why the same should be disturbed.

WHEREFORE, the decision appealed from should be, as it is hereby reversed, and another one shall be entered absolving the defendants-appellants from the complaint, and dismissing the same, with costs against the plaintiffs-appellees.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Dizon, J., did not take part.

[1] Art. 963, Civil Code of the Philippines.

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