

MAXIMINA OYOD DE GARCES, ET AL., PLAINTIFFS-APPELLANTS, VS. ESMERALDA BROCE, ET AL, DEFENDANTS. ESMERALDA BROCE, DEFENDANT-APPELLANT.

G.R. No. L-23758. May 20, 1968

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

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

Appeal instituted by both parties in Civil Case No. 137 (6780) of the Court of First Instance of Negros Occidental, from the decision rendered therein, dismissing the complaint in said case; declaring as valid the sale to defendant Esmeralda Broce, by the heirs of Fortunata Oyod, of a portion of Lot No. 228 of the San Carlos Cadastre and referred to as Lot No. 228-D; and ordering therein defendant, Esmeralda Broce to pay to plaintiffs the sum of P780.00 with legal interest thereon, from the date of the promulgation of the decision until its full payment.

The following facts are not in dispute:

In a complaint filed on September 19, 1962 in the Court of First Instance of Negros Occidental (which was later amended), Maximina Oyod de Garces, Gregorio Oyod and Pio V. Garces sought the termination of a lease and annulment of sale, in favor of defendants Tranquilino Broce and Esmeralda Broce, and the return by the latter, of a parcel of land described as Lot No. 228-D of the subdivision of Lot No. 228 of the Cadastral Survey of San Carlos, Negros Occidental, with an area of 354,250 square meters more or less, that plaintiffs claimed to be their property pro-indiviso.

At the pre-trial hearing of the case, the parties stipulated on the following:

1. That the original owners of Lot No. 228 were Severo Oyod and Bonifecia Mahinay and their ownership is evidenced by Original Certificate of Title No. 23777 of the Registry of Deeds of Negros Occidental.
2. That the said registered owners had four children namely - Fortunata, Eugenia, Gregorio and Maxima Oyod.
3. That Eugenia died sometime in 1950 after the death of Severo Oyod; that Maxima Oyod is married to Pio V. Garces; and that Fortunata Oyod, married Pedro Barbon and their children are Melecia, Narciso, Leopoldo, Carlos, Margarita, Leonardo, Lilia and Ildefonso Barbon.
4. That in 1930 the heirs of Severo Oyod executed a Deed of Extra-Judicial partition which is document 888, page 12, book 7, series of 1930 of Notary Public Victorino G. Apuhin (pp. 101 to 105 of record).
5. That on September 5, 1951 the heirs of Severo Oyod executed a Deed of Extra-judicial Settlement which is document 457, page 93, book 2, series of 1951 of Notary Public Filomeno T. Enriquez (pp. 77 to 78 of the record).
6. That Fortunata Oyod executed a lease agreement in favor of Tranquilino Broce on October 28, 1957 (Document 284, page 39, book 9, series of 1957 of Notary Public Apuhin, pp. 77 to 78 of the Record).
7. That on September 25, 1962, the heirs of Fortunata Oyod Barbon executed an Extra-judicial Settlement and

Sale in favor of Esmeralda P. Broce which is document 188, page 92, book 1, series of 1962 of Notary Public Roque Agravante (pp. 109 to 111 of the record).

8. That the questions before this Court are as follows:

- (a) Which should prevail, the Extra-judicial Settlement of 1930 or that of 1951?
- (b) If the 1930 Extra-Judicial Settlement is upheld, then the buyer Esmeralda Broce bought on September 25, 1962, Lot No. 228-D, as described in the 1930 document.
- (c) If the 1951 Extra-judicial Settlement is upheld, then Fortunata Oyod owned an undivided share in Lot No. 288; and what Esmeralda Broce acquired in 1962 is not Lot No. 228-D specifically, but an undivided share of 1/4 in Lot 228.

After due hearing, the court rendered judgment on July 11, 1964, upholding the due execution and validity of the 1930 extrajudicial partition by the heirs of Severo Oyod and Bonifacia Mahinay of Lot No. 228, and of the sale in 1962 to Esmeralda Broce of Lot No. 228-D by the heirs of Fortunata Oyod. And, finding that the heirs of the deceased Severo Oyod contracted an obligation with the Philippine National Bank prior to the sale of lot No. 228-D, to pay the outstanding taxes on the entire Lot 228, the court ruled that lien was thus created and attached to the land. Esmeralda Broce was then ordered to pay to plaintiffs the sum of P780.00 or 1/5 of the said obligation, as share of Lot 228-D.

Both parties appealed; plaintiffs excepting from the ruling that sustains the validity of the extrajudicial partition of 1930 and the order to Esmeralda Broce to pay only the sum of P780.00 instead of P2,392.00; whereas, defendant Esmeralda Broce prays for her total exculpation from any liability.

It is evident from the issues formulated and litigated in the court below, which are again being raised in this appeal by the plaintiffs-appellants, that the controversy lies on the effect of the execution of the extrajudicial partition of 1951, which was duly recorded in the Registry of Deeds, upon the 1930 agreement which, although embodied in a public instrument, was admittedly not registered.[1] For, if there was a valid partition of Lot No. 228 (one of the properties included in the 1930 agreement) and ownership of the portions respectively assigned to the heirs thereunder had indeed passed to the latter, then the sale of Lot No. 228-D to Esmeralda Broce in 1962 would also be valid. Upon the other hand, if there was proper cancellation and substitution of that 1930 settlement, by the extrajudicial partition of 1951, wherein the heirs agreed to, form a co-ownership of the whole Lot 228, then what could be acquired by defendant-appellee Esmeralda Broce would only be an undetermined 1/4 share of the same lot.

The issue - of the effect of an unregistered extrajudicial settlement[2] among the heirs of the estate of a deceased person - is not new. It was previously resolved by this Court in favor of the validity of that partition in the case of *Hernandez vs. Andal*, 78 Phil. 196, in this wise:

"Is section 1 of Rule 74 constitutive and not merely evidential of partition? In other words, is writing the act that confers legal validity upon the agreement? There are no indications in the phraseology of this rule which justify an affirmative answer to these questions. It must be noted that where the law intends a writing or other formality to be the essential requisite to the validity of the transaction, it says so in clear and unequivocal terms. Thus, the statute of frauds as originally enacted in England and as enacted in some of the states, uses the words 'utterly void' with reference to certain transactions. Under the terms of such statute transactions required to be in writing are absolutely void and not merely voidable if not made in the manner indicated. Again article 633 of the Civil Code says that donation may be valid only when made in a public document. Article 146 of the Mortgage Law makes known its intention to have the execution of a public instrument and its registration in the registry indispensable to the validity of the contract by using this phrase: 'in order that

voluntary mortgages may be legally created in a valid manner.' Article 1765 of the Civil Code also employs for the same purpose similar expression with reference to the execution of a public document: 'in order that mortgage may be validly constituted,' And with respect to the formalities of last wills and testaments, section 618 of Act No. 190 makes this emphatic statement: 'No will shall be valid to pass upon any estate real or personal nor charge or affect the same, unless it be written etc.' Other examples might be mentioned.

"Section I of Rule 74 contains no such express or clear declaration that the required public instrument is to be constitutive of a contract of partition or an inherent element of its effectiveness as between the parties. And this Court had no apparent reason, in adopting this rule, to make the efficacy of a partition as between the parties dependent on the execution of a public instrument and its registration. x x x." (78 Phil. 204-205).

Touching on the purpose of the registration-requirement in the said, provision, this Court ruled in the same case:

"The requirement that a partition be put in a public document and registered has, in our opinion, for its purpose the protection of creditors and at the same time the protection of the heirs themselves against tardy claims. Note that the last sentence of the section speaks of debts and creditors. The object of registration is to serve as constructive notice, and this means notice to others. It must follow that the intrinsic validity of a partition not executed with the prescribed formalities does not come into play when, as in this case, there are no creditors or the rights of the creditors are not affected. No rights of creditors being involved, it is competent for the heirs of an estate to enter into an agreement for distribution in a manner and upon a plan different from those provided by law." (Cas. cit., pp. 208-209).

There is nothing here on record to indicate that when the first partition agreement was entered into, there existed any claim against the estate of the deceased or that prejudice was thereby caused to any third party. Considering that a voluntary division of the estate of the deceased, by the heirs among themselves, is conclusive^[3] and confers upon said heirs exclusive ownership of the respective portions assigned to them,^[4] the extrajudicial partition made by the heirs of Severo Oyod in 1930 could not have been cancelled or substituted by the execution, by some of these heirs, of another extrajudicial settlement of the same estate in 1951 even if the latter document be registered, particularly since one of the co-signers of the 1930 agreement, Eugenia Oyod, had died on January 8, 1950 (Exh. D) before the second extrajudicial settlement was made. The lower court, therefore, committed no error in holding that the sale to defendant-appellee Esmeralda Broce of Lot 228-D in 1962 did not suffer from any infirmity.

A second reason is that it is not shown that the appellee Broce had notice or knowledge of the second partition of 1951. As the 1930 partition was operative to vest title in Fortunata Oyod to the lot allotted to her even if the agreement was unrecorded, Broce had reason to rely thereon.

However, there is no basis to the lower court's order to defendant-appellant, Esmeralda Broce, to assume a proportionate share of the indebtedness contracted by the surviving heirs of the deceased Severo Oyod with the Philippine National Bank. The fact alone that the property in dispute originally formed part of the estate of said deceased person and that the obligation was contracted prior to its purchase by herein defendant-appellant, to pay the taxes due on the estate of the deceased, does not render the vendee answerable therefor. As pronounced by this Court in the case of *Habaña vs. Imbo*, supra if there is really need to sell properties belonging to an heir to pay the debts of the estate, there should first be exhaustion of other properties still owned by the said heir. In the present case, there is no proof that the heirs of Fortunata Oyod received from the estate of Severo Oyod no property other than Lot 228-D. Furthermore, it does not even appear that this obligation to the Philippine National Bank was duly constituted as an encumbrance on the whole Lot 228. As mere vendee of Lot 228-D, defendant-appellant cannot be required to share in the pay-ment of an obligation contracted by the heirs of the estate, of which she is not one.

WHEREFORE, as above modified, the decision appealed from is hereby affirmed. Costs against plaintiffs-appellants.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] By the 1951 agreement, the heirs (except Eugenia Oyod) agreed to hold the properties pro-indiviso, while in the 1930 settlement, the heirs allocated to each a specific portion of the properties left by their common ancestor.

[2] Under Section 1 of Rule 74 of the Rules of Court, the heirs may divide the estate of a deceased person among themselves as they see fit "by means of a public instrument filed in the office of the register of deeds".

[3] *Leaño vs. Leaño* 25 Phil. 180, 184.

[4] *Habaña vs. Imbo*, L-15598 & L-15726, March 31, 1964; Art. 1068, Civil Code of 1889.

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