

LEON DE JESUS ETC., ET AL., PLAINTIFFS AND APPELLANTS, VS. EUSEBIA DE JESUS, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-16553. November 29, 1961

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

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

Appeal on points of law from an order of the Court of First Instance of Bataan dismissing the complaint in its civil case No. 2563.

In the intestate estate proceedings for the settlement of the estate of Melecio de Jesus (Sp. Proc. No. 1960 of the court below), the widow Ines Alejandrino, administratrix, filed on March 10, 1948 an inventory of the estate, including therein Lot No. 931 of the Cadastral Survey of Hermosa, Bataan, containing an area of 155.9334 hectares and covered by Transfer Certificate of Title No. 1044 in the name of the deceased.

Subsequently, on May 22, 1948, Eusebia de Jesus, the deceased's sister, filed a verified claim against the estate for the amount of P7,585.84. This claim was never heard. Instead, the administratrix Ines Alejandrino, claimant Eusebia de Jesus, and the heirs of Cirilo de Jesus, another brother also deceased, entered, on May 24, 1948, into a stipulation of Facts wherein administratrix Alejandrino recognized that Eusebia de Jesus and Cirilo de Jesus are co-owners with the deceased Melecio de Jesus of Lot No. 931, and that said parcel was registered in the sole name of the deceased only in trust for all the co-owners. On the same day, administratrix Ines Alejandrino and claimant Eusebia de Jesus entered into another agreement called "Supplementary Stipulation of Facts" wherein the latter agreed to waive and renounce her money claim for P7,585.84 against the estate upon the approval and becoming final of the aforementioned Stipulation of Facts. Both agreements were, on the very day of their execution, presented to the court for approval, on the ground that they "will conserve the family filiation and attachment and will forestall any litigation between them"; and on the day following, May 25, 1948, the probate court entered an order approving both agreements.

Years later, in July, 1955, Ines Alejandrino was replaced by her son Leon de Jesus in the administration of the estate of Melecio de Jesus. As such administrator, and joining as plaintiff his mother, Ines Alejandrino, former administratrix, Leon de Jesus filed on October 11, 1958 in the lower court the present action (Civil Case No. 2563), seeking to annul the stipulations entered by the former administratrix Ines Alejandrino with the defendants Eusebia de Jesus and the heirs of Cirilo de Jesus on May 24, 1948, on the theory that they are null and void for lack of jurisdiction on the part of the probate court to act on them, as well as for lack of the requisite notices to all the interested parties, specifically the heirs of the deceased Melecio de Jesus. Defendants moved to dismiss the complaint, claiming *res judicata* and prescription, and on December 16, 1958, the trial court sustained the motion and ordered the dismissal of the complaint. From this order, the plaintiffs appealed to this Court.

The principal issue here is whether or not the stipulations in question are void and ineffective, either for lack of jurisdiction on the part of the probate court to act on them, or for lack of notice of their approval to the heirs of the deceased.

On the question of jurisdiction, we think the probate court had jurisdiction to act on and approve of the stipulations in question, not only as an incident to its power to exclude any property from the inventory of the estate of the deceased, but under section 9, Rule 90, Rules of Court, which permits the probate court, whoever the deceased in his lifetime held real property in trust for another person, to authorize the executor or administrator to deed such property to the person or persons for whose use and benefit it was so held. There being no controversy between the former administratrix and, the defendants that the latter and the deceased Melecio de Jesus own the lot in question in common and that it was registered in the deceased's name only in trust for all the co-owners, there was no need to file a separate action in an ordinary court to establish the common ownership of the parties over said property, and the probate court could approve, as it did approve, the agreement wherein the parties expressly recognized their common ownership of the property in question and the trust character of the exclusive title held by the deceased over the same, especially since the parties themselves state that such agreement was entered into in order to forestall future litigation between them and to foster family relations, and in addition, the defendant Eusebia de Jesus had agreed, in consideration of the court's approval of said agreement, to waive a money claim against the estate, so that court approval of said agreement would really redound to the benefit of the estate and the heirs.

Section 9, Rule 90, however, provides that authority can be given by the probate court to the administrator to convey property held in trust by the deceased to the beneficiaries of the trust only "after notice given as required in the last preceding section"; i.e., that "no such conveyance shall be authorized until notice of the application for that purpose has been given personally or by mail to all persons interested, and such further notice has been given, by publication or otherwise, as the court deems proper" (sec 8, Rule 90). This rule makes it mandatory that notice be served on the heirs and other interested persons of the application for approval of any conveyance of property held in trust by the deceased, and where no such notice is given, the order authorizing the conveyance, & well as the conveyance itself, is completely void.^[1] Here, plaintiffs claim that no such notice was given the heirs of the deceased Meledo de Jesus of the petition for approval of the stipulations in question, and it is quite probable that the claim is true, because said heirs were all minors when the proceedings in question took place. It would have been necessary, therefore, to appoint a guardian ad litem for them before they could be validly served said notice, yet the records here do not show that such appointment of guardian was obtained. In fact, any such appointment appears improbable, considering that the stipulations in question were approved the very next day following their execution and submission for approval. It must be observed that in 1948, before the promulgation of the Civil Code of the Philippines, parents as such were not the legal representatives of their children before the courts and could not dispose of their property without judicial authorization (*Palet vs. Aldecoa & Co.*, 15 Phil. 232; *Siman vs. Leus*, 37 Phil. 969; *Rosario vs. Manila Railroad Co.*, 22 Phil. 140).

As this question of notice would ultimately decide the validity or invalidity of the entire proceedings in the probate court leading to the approval of the contested stipulations, plaintiffs-appellants should be given the opportunity to prove their claim that no such notice was given them. If proved, the claim would likewise dispose of the defense of prescription put up by defendants in their motion to dismiss for an action to set aside completely void proceedings is imprescriptible and can not be barred by lapse of time.

As for the ruling of the trial court that the present administrator Leon de Jesus is estopped from questioning the agreements, voluntarily entered into by the former administratrix Ines. Alejandrino, suffice it to repeat what we said in the recent case of *Boñaga vs. Soler*, *Supra*, that:

"a decedent's representative is not estopped to question the validity of his own void deed purporting to convey land (*Chase vs. Cartwright*, 22 Am. St. Rep. 207, and cases cited; *Mocks vs. Olpherts*, 25 L. Ed. (U.S.) 735; 21 Am. Jur. 756, s. 667); and if this be true of the administrator as to his own acts, a fortiori, his successor can not be estopped to question the acts of his predecessor that are not conformable to law (cf. *Walker vs. Portland*

Savings Bank, LRA 1915 E, p. 840; 21 Am. Jur. p. 820, s. 785.)"

The appealed order dismissing the complaint is reversed, and the case is remanded to the court below for answer and trial on the merits. Costs against defendants-appellees

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] The effect of lack of notice under sections 9 and 8, Rule 90, should be the same as the effect of lack of notice under section 4 of the same rule, involving a sale of the whole or part of the real or personal estate of the deceased whenever that is beneficial to the heirs, devisees, legatees, and other interested persons, which lack of notice renders the authority and conveyance completely void (*Estate of Gamboa vs. Fioranza*, 12 Phil. 191; *Areilla vs. David*, 77 Phil. 718; *Gabriel vs. Encarnacion*, 94 Phil., 917; 50 Off. Gaz., (6) 2440; *Boñaga vs. Soler*, 112 Phil., 651; 58 Off., Gaz., (52)-8637).

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