

**BENITA TOMIAS, ET AL., PLAINTIFFS AND APPELLANTS, VS.
CONRADO TOMIAS, ET AL., DEFENDANTS AND APPELLEES.***G. R. No. L-3004. May 30, 1951*

Ponente: REYES, J.

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Eustaquio Tomias died intestate in 1920, leaving 7 children named Leon, Benita, Monica, Bernabela, Toribia (alleged to be known also as Enrica), Agustina, and Josefa, all surnamed Tomias. Possessed of property at the time of his death, he was succeeded in the possession and enjoyment thereof by his 7 children. Two of these, however, later died, Leon in 1931 and Josefa in 1944. It is claimed that the latter was survived by a daughter named Josefa or Filomena Tomias. Leon, who had married twice, was survived by 4 children—Conrado, Magdalena, Dolores, and Anicetas—the first two, by the first marriage, and the other two by the second marriage. It is claimed, however, that he also had a natural son named Filemon Tomias.

On January 19, 1948, Conrado Tomias and Magdalena Tomias (two of the children of the deceased Leon Tomias), in conjunction with their cousin Josefa or Filomena Tomiaa (only daughter of the deceased Josefa Tomias), filed a complaint (registered as civil case No. 857 of the Court of First Instance of Occidental Negros) against their aunts Benita, Monica, Bernabela, Enrica, and Agustina, alleging that their deceased grandfather Eustaquio Tomias was the absolute owner of 15 parcels of land (in Occidental Negros) of the total assessed value of P8,290 and that since the death of Leon Tomias the defendants had continued in possession of said land and had been refusing to divide it among the heirs and to give plaintiffs their share of the products. Plaintiffs, therefore, prayed for partition and accounting. For refusing to join as plaintiffs, Dolores Tomias and Anicetas Tomias (the other two legitimate children of Leon Tomias) were included as defendants. Through their counsel Atty. Jose M. Millares, the defendants appeared and filed their answer; but as this was merely a general denial, the plaintiffs moved for a judgment on the pleadings, whereupon the court rendered its decision, declaring plaintiffs and defendants owners in common of the 15 parcels of land described in the complaint, together with the improvements thereon, in the proportion of one-seventh each to Josefa, Benita, Monica, Bernabela, Enrica, and Agustina, all surnamed Tomias, and one-twenty-eighth to each of the 4 legitimate children of the deceased Leon Tomias, namely, Conrado Tomias, Magdalena Tomias, Dolores Tomias, and Anicetas Tomias. The court also ordered an accounting.

The above decision was rendered on April 21, 1948, and no appeal having been taken therefrom, it became final in due time. But some 5 months thereafter the defendants, together with Filemon Tomias, an alleged natural son of Leon Tomias, sought to annul it by filing an action for that purpose (civil case No. 1063) on the ground (1) that the court did not have jurisdiction over the case because some of the parcels of land partitioned among the heirs did not belong to the deceased Eustaquio Tomias but to other persons not made parties to the suit, and (2) that not all of the heirs were represented in the suit because Filemon Tomias, an alleged natural child of Leon Tomias, had not been made a party therein.

On motion of defendants the action to annul was dismissed by the court on the ground that it raised issues already

raised and decided in the former case (civil case No. 857). Plaintiffs asked for a reconsideration of this ruling, alleging for the first time that Toribia Tomias, one of the children of the deceased Eustaquio Tomias, had not been served with summons and implementing the allegation with the affidavit of Toribia Tomias to the effect that she had neither received a copy of the complaint in the partition case nor authorized Atty. Millares to appear for her in that case. Plaintiffs also filed an affidavit of Filemon Tomias to the effect that he was an acknowledged natural son of the deceased Leon Tomias.

The lower court denied the motion for reconsideration, holding (1) that Filemon Tomias was not an indispensable party to the action in the absence of a judicial decree declaring him to be an acknowledged natural child of the deceased Leon Tomias, and (2) that Toribia Tomias appears to have been included as one of the defendants in the partition case under the name of Enrica Tomias, she being known by this name in the locality where she lives and among members of her family. A second motion for reconsideration having been denied, plaintiffs have appealed to this Court.

We find no merit in the appeal.

- The judgment in the partition case may not be voided on the mere allegation that some of the parcels of land partitioned were the property of persons not made parties to the suit when none of those persons has come to court to protest.
- There is no showing that Toribia Tomias has been prejudiced by the adjudication of one-seventh of the inheritance to Enrica Tomias, the court having found that Toribia and Enrica are one and the same person. There is no claim that Toribia is entitled to more.
- The claim of Filemon Tomias for a share in the inheritance as an alleged natural son of Leon Tomias does not call for the annulment of the decision in the partition case. That claim should be asserted in a separate action against the four legitimate children of Leon Tomias to whom the latter's share in the inheritance was adjudicated in the partition.

Wherefore, the order appealed from is affirmed without prejudice to the proper action which the appellant Filemon Tomias may bring against the legitimate heirs of Leon Tomias. With costs against the appellants. Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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