

TARCELA VDA. DE BOUGH, PLAINTIFF-APPELLEE, VS. NARCISO ROCHA, JOSE RAMIREZ AND REMEDIOS RAMIREZ, DEFENDANTS-APPELLANTS.*G.R. Nos. L-23224. November 29, 1971*

Ponente: MAKALINTAL, J.

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This appeal from the decision of the Court of First Instance of Leyte, rendered jointly in its Civil Cases Nos. 161 and 163, was originally taken to the Court of Appeals but subsequently certified to this Court, only questions of law being involved.

Sometime in July of 1935 one Matilde Cantiveros died intestate in Carigara, Leyte. She was survived by her husband, Bruno Modesto, but left neither ascendant nor descendant. On October 12 of the same year Bruno Modesto filed an intestate proceeding in the Court of First Instance of Leyte (Sp. Proc. No. 2515), praying that he be named administrator of the estate and eventually declared the deceased's only heir. Before the petition could be finally resolved one Zosima de la Cruz presented for probate in the same proceeding a document purporting to be the last will and testament of the deceased. For lack of sufficient funds at that time to meet the considerable-expense likely to be incurred in opposing Zosima de la Cruz's petition, Bruno Modesto entered into a contract with several other parties on March 4, 1936, the pertinent portions of which provide:

SEPAN TODOS LOS QUE LA PRESENTE VIEREN

Que nosotros Bruno Modesto, esposo de la difunta Dña. Matilde Cantiveros y de Tanauan, Leyte, Restituto Anopol, y I. Gustavus Bough* representante de los herederos de la difunta Basilia Anopol, todos de Carigara, Leyte, y Carmen Anopol de Tacloban, Leyte, por la presente irrevocablemente hacemos constar que en la reparticion de los bienes de la difunta Dña. Matilde Cantiveros hecha por el Sr. Bruno Modesto en el sentido que una tercera parte quede con el; y una tercera parte sea dividida entre los arriba mencionados Restituto Anopol, I. Gustavus Bough, Sergio Anopol y Carmen Anopol; y que una tercera parte sea usada para pagar los gastos ocasionados en la litigacion motivada por un alegado testamento presentado por el Abogado Salazar en la Corte de la Primera Instancia de Tacloban, Leyte; y con esta reparticion estamos conformes.

Esta tercera parte se entiende es para pagar los gastos solamente que ocasionara en la latigation de la una tercera parte perteneciente y que corresponde a Restituto Anopol, I. Gustavus Bough, Sergio Anopol y Carmen Anopol; y como nadie de los herederos dispone suficientes fondos para sufragar los gastos que necesariamente vs a ocurrir, y para pagar dichos gastos; nosotros todos los herederos hemos suplicado, ofrecido y entregado bajo esta escritura al Dr. I. Gustavus Bough de Carigara, Leyte, la una tercera parte de todos los bienes de la difunta Dña. Matilde Cantiveros en consideracion y en compensacion para los gastos de esta litigacion que al Dr. Bough ha comprometido de pagar en favor de los arriba mencionados Restituto Anopol, I. Gustavus Bough, Sergio Anopol y Carmen Anopol.

Se entiende ademas que la parte que sera entregada al mencionado Dr. I. Gustavus Bough, en compensacion de sus gastos sera una tercera parte de todos los bienes de la difunta Dña. Matilde Cantiveros, sin reserva de

cualquiera naturaleza; caso que el asunto se decide el Juzgado en favor del solicitante del abintestato Sr. Bruno Modesto; y que esta tercera parte sera entregada al arriba dicho Dr. I. Gustavus Bough inmediatamente despues de haber dictado sentencia favorable las cortes competentes.

In time the Court of First Instance of Leyte denied the probate of the document presented by Zosima de la Cruz and declared Bruno Modesto the sole heir of his deceased wife. Upon appeal to the Court of Appeals (CA-G.R. No. 3247), the decision of the lower court was affirmed on February 29, 1940. This decision has long become final.

Sometime in May of 1941 I. Gustavus Bough and Carmen Anopol commenced suit in the Court of First Instance of Leyte (Civil Case No. 5285), praying that Bruno Modesto be ordered to partition the properties left by Matilde Cantiveros in accordance with the contract above-quoted. Judgment was rendered by said court in favor of plaintiffs Bough and Anopol, and upon appeal to the Court of Appeals (CA-G.R. No. 2224-R), the same was modified in a decision promulgated on June 16, 1949. Considering the action not as one for partition strictly but only as an action intended to determine the rights of the parties under the terms of the private contract, the Court of Appeals ruled:

"1. The contract Exhibit B is declared valid and binding upon all parties thereto, with the understanding that the same shall be effective and enforceable only upon the net estate of the deceased Matilde Cantiveros adjudicated to her only intestate heir, Bruno Modesto. For the purpose of making said contract effective, a copy of this judgment shall be served upon the administrator of the estate of said deceased Matilde Cantiveros and another copy should be filed in the record of Special Proceeding No. 2515, where the interested parties may ask for the corresponding order of delivery of their respective shares;

"2. The plaintiff, Tarcela R. Vda. de Bough, in her capacity as an administratrix of the intestate estate of the deceased I. Gustavus Bough, is hereby ordered to pay the sum of P4,250.00 to the administrator of the intestate estate of the deceased Matilde Cantiveros as reimbursement of an equal amount paid by the latter to the heirs of the deceased Ruperto Kapunan. Thus modified, the appealed judgment is affirmed in all other respects, with costs."

This decision has also long become final.

In the meantime, during the pendency of Civil Case No. 5285 certain transactions took place with respect to portions of the 61 parcels of land which comprised the estate of the deceased Matilde Cantiveros. It appears that on September 12, 1943 Bruno Modesto sold to the spouses Jose and Remedios Ramirez a 566.46 sq. m. parcel of land situated at District Bayabay, Carigara, Leyte (Exh. "1"). This sale was subsequently confirmed in a more formal document (Exh. "2") drawn up and signed anew by Bruno Modesto on January 21, 1947. And in another separate transaction, Bruno Modesto, in a document dated January 7, 1946 and entitled "VENTA CON PACTO DE RETRO" (Exh. "4"), conveyed to Juan Lloren a 1,200 sq. m. residential lot located in Carigara, Leyte.

It was against the foregoing backdrop that Tarcela Vda. de Bough, in her capacity as administratrix of the estate of the late I. Gustavus Bough, who had died before then, as well as his children by his first wife, the deceased Basilia Anopol, commenced in the court a quo Civil Cases Nos. 161 and 163 against the spouses Jose and Remedios Ramirez and against Ponciano Lloren, respectively. The administrator of the estate of Bruno Modesto, who had likewise died in the interim, was also impleaded as party defendant. The complaints in the two cases are similarly worded and contain a common plea: to order the respective defendants to deliver to the plaintiffs the parcels of land disposed of by Bruno Modesto, allegedly without judicial authority, during the pendency of the special proceeding for the settlement of the estate of Matilde Cantiveros.

Eventually, and in view of the fact that the plaintiffs had the same evidence in both cases, a joint trial was agreed

to by the parties although the defendants were allowed to present their respective evidence separately. In time the court a quo rendered the joint decision now on appeal, the dispositive portion of which reads:

"FOR ALL THE FOREGOING, the Court declares that the property in Civil Case No. 161 and the properties in Civil Case No. 163 pertain to the Intestate Estate of Matilde Cantiveros, Sp. Proceeding 2515, and the defendants are therefore ordered to deliver the said properties to the administrator of the said estate subject to a refund to Ponciano Lloren of the necessary improvements he may have made on the house built on one of the parcels in Civil Case 163 which the Court conservatively estimates at P1,500.00 considering that the house is 60% depreciated due to lack of painting; without costs and without damages; the plaintiffs may file their claim for a partition of the estate in the Special Proceedings 2515 before this Court as required in Exhibit A, and the defendants may intervene in said Special Proceedings 2515 to claim for a reimbursement from the share pertaining to Bruno Modesto."

Unable to secure a reconsideration of the decision, the defendants interposed this appeal, alleging that the trial court erred: (1) in not dismissing the two cases notwithstanding its finding that the plaintiffs had not acquired ownership of the properties in question nor were they entitled to the possession of the same; (2) in holding that the sales made to the defendants were null and void; and (3) in not holding that the defendants are owner of the parcels of land in question.

The defendants submit that the two cases should have been dismissed on the basis of the following findings of the court below, to wit:

"x x x The amended as well as the original complaint in both cases is captioned 'Sobre Propiedad' yet in the same, the plaintiffs do not pretend to have proprietary rights over the parcels of land described in the two cases, but they seek that the said properties be delivered to them x x x. If the purpose of the plaintiffs is to recover the possession of these properties, this Court cannot in these civil cases originally filed before it to recover such possession pass judgment on the legality of said possession, it appearing admitted by the plaintiffs that the defendants Ramirez in Civil Case 161 had been in possession of the property in said case since 1947 while the defendant Lloren in Civil Case 163 had possessed the lands described in the complaint in 1945, it not appearing in the complaint that the plaintiffs had for once been in possession of the respective properties in each of the civil cases. The plaintiffs neither have a cause of action to recover the ownership of the property it not appearing in the complaint that they claim rights of ownership over the specific properties described in each of the Civil Cases 161 and 163. Neither had it been proven that the plaintiffs in the two cases have ever possessed the land that they have sought to recover. x x x"

Considering the foregoing findings in relation to the relief sought in the complaints, the cases should indeed have been dismissed. Said relief, which is identical in both cases, is for judgment ordering the defendants to deliver the lands in question to the plaintiffs. Since the latter are not the owners thereof, nor even the previous possessors, the trial court correctly ruled that they have no cause of action to recover either ownership or possession. The same court, however, disregarded the plaintiffs' lack of a cause of action and, proceeding upon a theory not alleged or relied upon in the complaints, annulled the sales of the lands in favor of the defendants, on the ground that they had been executed by Bruno Modesto without authority of the pro-bate court in the intestate of the deceased Matilde Cantiveros, and ordered that they be returned to the administrator thereof so that they may be the object of partition to be claimed therein by the plaintiffs.

Aside from the fact that the relief thus granted is not the relief prayed for, it does not appear justified by the facts of record and is at best premature. It should be noted that in Civil Case No. 5285 filed by the spouses I. Gustavus Bough and Carmen Anopol in 1941 and then appealed to the Court of Appeals (CA-G.R. No. 2224-R), the said court, in its decision of June 16, 1949, spelled out the rights of the plaintiffs under the contract of March 4, 1936 and the procedure that should be followed "for the purpose of making said contract effective," namely:

"... a copy of this judgment shall be served upon the administrator of the estate of said deceased Matilde Cantiveros and another copy should be filed in the record of Special Proceeding No. 2515, where the interested parties may ask for the corresponding order of delivery of their respective shares."

The plaintiffs did not follow the procedure indicated by the Court of Appeals. No judicial partition appears to have been made in the intestate proceeding of the deceased Matilde Cantiveros. What does appear, however, and is in fact alleged in the complaints in these two cases, is that the plaintiffs received from Bruno Modesto a number of parcels of land corresponding to their share in the estate, although they say that the same is less than the entirety of such share. Neither the complaints nor the decision appealed from nor the briefs for the parties show that the delivery of the said parcels to the plaintiffs was with the authority or subsequent approval of the court in the intestate case, or how much of their share remains unsatisfied. And although there is an allegation in the complaints that the properties still in the hands of the administrator are insufficient to cover the unsatisfied portion, such allegation has not been established.

We gather from the record that until now Intestate Proceeding No. 2515 has not been closed and the estate of the deceased Matilde Cantiveros has not been definitely settled. What the plaintiffs should have done was to enforce the judgment of the Court of Appeals in CA-G.R. No. 2224 by presenting their claim for partition in the said proceeding instead of filing the present action for recovery in their own behalf. Considering that without having presented such claim and without authority of the court they received from the then administrator, Bruno Modesto, a number of parcels pertaining to their share in the estate, they are in no position to complain that Bruno Modesto, as such administrator or as the universal heir (to the estate of his wife) could only dispose of his rights and interest in an aliquot portion thereof – not of specific properties as he did in favor of the herein defendants. Thus, until it can be shown that the parcels of land already received by the plaintiffs are indeed short of the share to which they are entitled, as adjudged by the Court of Appeals and that the properties still remaining in the hands of the administrator are insufficient to cover the shortage, the judgment appealed from, ordering the defendants to return to the estate the properties they have purchased, is premature. And such showing can be made by the plaintiffs only by enforcing the judgment of the Court of Appeals, namely, by filing a claim in the intestate proceeding for the completion of their share. For the defendants to be singled out and compelled to return the properties in question to the estate in advance of such showing would be unfair to them, since other properties - fifteen parcels out of the 61 comprising the estate, according to the record - were similarly disposed of by Bruno Modesto in favor of other persons, against whom no actions for recovery appear to have been filed by the plaintiffs.

WHEREFORE, the judgment appealed from is hereby reversed insofar as it declares that the properties subject of these two cases pertain to the Intestate Estate of Matilde Cantiveros Sp. Proceeding No. 2515, and orders their delivery to the administrator thereof; and affirmed insofar as it directs the plaintiffs to file their claim for partition in said proceeding, subject to the right of defendants to intervene therein for the protection of their interests. This judgment is without prejudice to the right of plaintiffs to pursue the corresponding remedies and file such actions as may be proper against the herein defendants should the properties remaining in the estate of the deceased Matilde Cantiveros turn out to be insufficient to satisfy the portions pertaining to plaintiffs in accordance with the decisions of the Court of Appeals in CA-G.R. No. 2224-R. No pronouncement as to costs.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.
Reyes, J.B.L., J., concurs in the result.

* I. Gustavus Bough was married twice: first to Basilia Anopol and later to Carmen Anopol.

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