

INTESTATE ESTATE OF THE DECEASED, CARLOS VILORIA. VICENTE VILORIA, PETITIONER AND APPELLEE, VS. ISIDRO VILORIA, OPPOSITOR AND APPELLANT.

G. R. No. L-5217. May 13, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

On May 10, 1948, the petitioner Vicente Viloría filed in the Court of First Instance of Pangasinan a petition for summary distribution of the properties left by the deceased Carlos Viloría among his only surviving children and heirs, namely, the petitioner and Isidoro Viloría. The latter filed an opposition, alleging that he (Isidoro Viloría) should have a total share of some 17,079 square meters, and Vicente Viloría should have a total share of some 15,262 square meters. After several postponements of the hearing, the parties, assisted by their respective attorneys, submitted a written stipulation whereby a one-fourth portion on the western side of lot No. 3436 and a one-fourth portion on the northeastern side of lot No. 3394 are ceded to the oppositor Isidoro Viloría and the remaining three-fourths of said lots are ceded to the petitioner Vicente Viloría. In view of this stipulation, and after receiving evidence from the petitioner in support of his jurisdictional averments in the complaint, the Court of First Instance of Pangasinan rendered a decision on March 8, 1951, the dispositive parts of which read as follows:

"Wherefore, the Court hereby declares that Carlos Viloría died intestate without debts, obligations, or credits whatsoever and that the persons entitled to succeed in the properties left by said deceased are his two children, Vicente Viloría and Isidoro Viloría, to whom said properties be summarily adjudicated in accordance with the stipulation and agreement submitted by said heirs on February 26, 1951 and which is hereby approved, subject, however, to the provisions of section 4, Rule 74 of the Rules of Court.

"Let a copy of this decision be forwarded to the Branch of Internal Revenue at Dagupan City for the purpose of ascertaining the inheritance taxes, if any."

Notice of this decision was served on the parties, thru their respective attorneys, on March 13, 1951. On August 1, 1951, the oppositor, Isidoro Viloría, thru another counsel, filed a petition praying that said decision be set aside and a trial on the merits be ordered, on the ground that the oppositor, being illiterate, did not know the true contents of the stipulation on which the decision was based, and that said decision came to his personal knowledge only on July 23, 1951. On August 9, 1951, the oppositor filed an amended petition, containing the new allegation that the petition failed to include in his petition for summary distribution lot No. 4972, of some 7,995 square meters, as part of the hereditary estate left by the deceased Carlos Viloría. The petitioner filed an opposition. On August 23, 1951, the Court of First Instance of Pangasinan issued an order, denying oppositor's petition and amended petition to set aside the decision of March 8, 1951. From this order the oppositor has appealed.

It is argued for the appellant that his petition is one for relief under Rule 38 of the Rules of Court, founded on

fraud or mistake consisting in the fact that he signed the stipulation in question in the belief that it adjudicated to him one-half of the entire estate left by the deceased Carlos Vilorio. We cannot accept appellant's position. The stipulation bore not only his signature but also that of his attorney, and during the hearing held on March 5, 1951, he confirmed, upon being questioned by the trial Judge, his thumbmark appearing on the document containing the stipulation. His attorney was also present at the hearing, and it cannot be supposed, in the absence of any showing to the contrary, that the latter acted irregularly. Indeed, the appellant did not ask for a change of attorney. The appellant cannot claim that he learned of the decision only on July 23, 1951, because he was represented by counsel who received notice on March 13, 1951, and this is notice to the appellant. Much less can the latter claim that he was not timely apprised of the tenor of the appealed decision, because he must have known that said decision was to conform to the stipulation in question.

The alleged fact that the petitioner-appellee omitted in his petition for summary distribution lot No. 4972, is of no moment, since the same may be subject of a proper action, if desired, between the oppositor-appellant and the petitioner-appellee.

Wherefore, the appealed decision is affirmed without costs. So ordered.

Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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