

BASILIA F. VDA. DE ZALDARRIAGA, ETC., PLAINTIFF-APPELLEE, VS. PEDRO ZALDARRIAGA, ET AL., DEFENDANTS-APPELLANTS.*G.R. No. L-13424. May 31, 1961*

Ponente: DIZON, J.

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On June 5, 1953 Basilia P. Vda. de Zaldarriaga, in her capacity as Judicial Administrator of the Intestate Estate of her husband, Jose¹ Zaldarriaga, commenced the present action in the Court of First Instance of Negros Occidental against Pedro Zaldarriaga, Ernesto Zaldarriaga, in his personal capacity and as Judicial Administrator of the Intestate Estate of his deceased father Jesus Zaldarriaga, Guadalupe and Jesus, Jr., both surnamed Zaldarriaga, for the partition of Lots Nos. 936, 937, 940 and 941 of the Cadastral Survey of Cadiz, Negros Occidental, for accounting and other reliefs in connection with the sugar produced therefrom and the sugar quota assigned thereto, for the annulment of a partition made by and between Ernesto, Guadalupe and Jesus, Jr., all surnamed Zaldarriaga, of a portion of said lots and of the sugar quota allotted thereto, to recover exemplary and corrective damages due to the alleged malicious refusal of said defendants to make a partition of the above-mentioned properties, and for attorney's fees. The original complaint was amended twice, the last amended pleading having been admitted on June 13, 1955.

After the denial of the motion to dismiss filed by said defendants, they filed their answer in which, after admitting some allegations made in the third amended complaint and denying others, they alleged, in synthesis, that the lots sought to be partitioned belonged to the conjugal partnership of the spouses Pedro Zaldarriaga and Margarita Iforong; that upon the latter's death, the former and their children made an extrajudicial partition whereby 4/8 portion of the properties were allotted to Pedro Zaldarriaga, 1/8 portion each to Julio, Manuel, Jesus and Jose, all surnamed Zaldarriaga; that each one of the parties took possession and cultivated the share allotted to him, except Jos⁶ who preferred to continue residing in Iloilo and Dumaguete, leading his share abandoned and uncultivated since the partition was made in 1919; that upon the death of Julio and Manuel, their father, Pedro, inherited their respective 1/5 portion; that the defendants appropriated and received nothing more than the sugar produced, the sugar quota and the war damage payments corresponding to their respective share in the aforesaid properties.

After due trial upon the issues thus raised, the lower court rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered as follows;

(1) The order of the Intestate Court in Special Proceeding No. 483 approving the Project of Partition and Declaration of Heirs made by the defendants Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus Zaldarriaga, Jr. is hereby declared null and void and the sugar quotas listed and recorded in their names as Plantation Audit Nos., 23-463, 28-469 and 28-470 respectively in the Sugar Quota Office should be cancelled.

(2) The sale made by the defendant Pedro Zalduarriaga of his 6/8 portion of Hda. Escolastica with its sugar quota in favor of his three codefendants, Ernesto Zalduarriaga, Guadalupe Zalduarriaga and Jesus Zalduarriaga, Jr. is hereby declared null and void, and the document evidencing said sale is hereby cancelled and declared also null and void.

(3) The defendant Pedro Zalduarriaga is hereby ordered to account for and pay the intestate of Jose Zalduarriaga or his heirs represented by the plaintiff-administratrix the amount of P94,586.00 representing rentals, profits and other claims.

Provisions of the rentals, and profits corresponding to the forthcoming crop years 1957-58, etc. is hereby made and defendant Pedro Zalduarriaga is hereby ordered to pay the intestate of Jose Zalduarriaga or his heirs the amount of P3,794.00 as rentals and P500.00 as profits every crop year until this case is finally closed and terminated,

(4) Partition and distribution of Hda. Escolastica consisting of Lots Nos. 936, 937, 940 and 941 of the Cadastral Survey of Cadiz, Occidental Negros, with its sugar quota is hereby made and it is hereby adjudicated as follows:

(a) To Pedro Zalduarriaga 6/8 of said parcels of land (Lots Nos. 936, 937, 940 and 941) or 172.63 Hectares. To Pedro Zalduarriaga 3/5 of the entire sugar quota of Hda. Escolastica for A Sugar (export to U.S.) or 4479 piculs of A sugar and 3/5 of the entire sugar quota of Hda. Escolastica for B and C Sugar to be determined by the Sugar Quota Office every year due to the flexibility of this quota.

(b) To the Intestate of Jose Zalduarriaga or his Heirs 23.73 hectares of said parcels of land (Lots Nos. 936, 937, 960 and 941).

To the Intestate of Jose Zalduarriaga or his Heirs 1/5 of the entire sugar quota of Hda. Escolastica for A Sugar or 1493 piculs of A Sugar (export to U.S.) and 1/5 of the entire sugar quota of Hda. Escolastica for B and C sugar to be determined by the Sugar Quota Office every year due to the flexibility of this quota.

(c) To the defendants Ernesto Zalduarriaga, Guadalupe Zalduarriaga and Jesus Zalduarriaga, Jr. as legitimate heirs of Jesus Zalduarriaga 2878 hectares of said parcels (Lots Nos. 936, 937, 940 and 941).. To the defendants Ernesto Zalduarriaga, Guadalupe Zalduarriaga and Jesus Zalduarriaga, Jr. 1/5 of the entire sugar quota of Hda. Escolastica for A Sugar or 1493 piculs of A Sugar (export to U.S.) and 1/5 of the entire sugar quota of Hda. Escolastica for B and C Sugar to be determined by the Sugar Quota Office due to the flexibility of this quota every year.

(d) In view of the fact that the boundaries of the respective share of each co-owner in the land is not yet delineated and marked, this Court hereby appoints Messrs. Jose Azcona, Clerk of Court of First Instance of this province and Segundo Hipolito as commissioners (sec. 3, Rule 71, Rules of Court) to make an equitable

separation, delineation and partition of the respective share of the land pertaining to each co-owner in accordance with this decision taking into consideration the provisions of Article 10⁵ of the New Civil Code. The Commissioners shall make full and accurate report to this Court of all their proceedings as to partition.

(5) The defendant Pedro Zaldarriaga is hereby sentenced and ordered to pay the intestate of Jose Zaldarriaga or his heirs the amount of Fifteen Thousand (115,000.00) Pesos as moral damages, and the amount of Ten Thousand (P10,000.00) Pesos as exemplary or corrective damages.

(6) The defendants Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus, Zaldarriaga, Jr. are hereby sentenced and ordered to pay the intestate of Jose Zaldarriaga or his heirs the amount of Five Thousand (P5,000.00) Pesos as moral damages and the amount of Five Thousand (P5,000.00) Pesos as exemplary or corrective damages.

(7) All the defendants are hereby ordered to pay the intestate of Jose Zaldarriaga or his heirs the amount of Ten Thousand (P10,000.00) Pesos as attorney's fees.

(8) The counterclaim of the defendants is hereby dismissed as without merit.

(9) That defendants are hereby ordered to pay the costs of this suit.

It is so ordered."

Notice of the above decision was served on Atty. Eleuterio J. Gustilo, who represented all the defendants, on April 16, 1957. On May 3 of the same year he filed a motion for reconsideration and new trial which, after due hearing, was denied by the court on July 24 of the same year. Notice of the order of denial was received by Atty. Gustilo on July 31, 1957. Thereafter and within the reglementary period the defendants - except Pedro Zaldarriaga who had died on May 29, 1957 and had not yet been formally substituted as defendant by the special administratrix of his estate appointed on August 7, 1957 in special proceedings No. 4476 of the Court of First Instance of Negros Occidentals filed their cash appeal bond, notice of appeal and record on appeal, and on October 9, 1957 the lower court approved the record on appeal and ordered that the same be certified and elevated to this Court.

This appeal was taken prematurely. . The decision appealed from is not final but merely interlocutory (*Fuentebella vs. Carrascoso*, G.R. No. L-48102, May 27, 1942) because it did not put an end to the litigation in the trial court. After its rendition there remained to be had thereat, in accordance with the procedure laid down in Rule 71, Rules of Court, substantial proceedings such as the appointment of commissioners; the proceedings or hearings to be held before them, in the course of which the parties may present competent and pertinent evidence to enable the commissioners to submit and recommend to the court a fair and just partition on the basis of the interlocutory decision rendered; the submission of their report which, according to the rules, must be set for hearing, with previous notice served on the parties. It is only after such hearing that the court may render a judgment finally

disposing of the action (Rule 71, section 7, Rules of Court). The decision appealed from precisely appointed the Clerk of Court and Segundo Hipolito as commissioners of partition to make an equitable separation, delineation and partition of the respective share of the land pertaining to each coowner, etc.". This they were not allowed to do because of the premature appeal interposed by the defendants.

In view of the above considerations and in consonance with our ruling in G.R. No. L-13252, entitled *Con-sue lo Tan Vda. de Zaldarriaga vs. Basilia F. Vda. de Zaldarriaga* and the Hon. Eduardo D. Enriquez, the present appeal is dismissed and the record of the case is hereby remanded to the lower court for further proceedings in accordance with the procedure established in Rule 71 of the Rules of Court. Without special pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Paredes, JJ., concur.
Padilla and Barrera, JJ., no part.

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