

INTESTATE ESTATE OF THE LATE MATIAS YUSAY. JOSE YUSAY, ADMINISTRATOR, PLAINTIFF AND APPELLANT, VS. LILIA YUSAY GONZALES, DEFENDANT AND APPELLEE.

G.R. No. L-11378. August 20, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Jose S. Yusay, later on referred to as Jose, is appealing the order of the Court of First Instance of Iloilo, dated August 5, 1955, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court denies the petition dated April 5, 1954 of the administrator, consequently disapproving the project of partition dated November 24, 1,953 (Exhibit '2') and declaring null and void the document dated June 6, 1953 (Exhibit '1'). The administrator is hereby ordered to present a complete inventory of all the real and personal properties belonging to the administration and! to submit a new project of partition of the hereditary properties adjudicating to Lilia Yusay one-third (1/3) of the said properties as provided by law within 30 days from receipt of this order."

as well as the order of the same court, dated June 7, 1956, approving the re-amended project of partition submitted by the Commissioner appointed by the Court to prepare such project of partition.

From the records of the case, it appears that Matias Yusay died on May 13, 1948, leaving a legitimate son, appellant Jose, and Lilia Yusay, later on referred to as Lilia, an acknowledged natural daughter, and considerable property, especially real property. On June 6, 1963, Jose and Lilia executed a document (Exhibit 1) wherein she acknowledged having received from her brother Jose, 18 parcels of land with a total area of about 24 hectares as her just and legal share in the estate of her father, Matias, at the same time declaring any difference that may later be found shall be considered by one as a gift to the other. In the same document she said:

"I further renounce, waive and relinquish to claim, demand or ask for any other right inclusive, the right to rescind this agreement by reason of lesion and such other right that the law grants me under the circumstances."

On November 24, 1953, Jose and Lilia executed a project of partition (Exhibit 2), wherein Lilia again acknowledged having received from Jose 18 parcels as her reasonable, equitable and legal participation in the estate of her father and that in consideration of Lilia's relinquishment of her right to further inheritance, Jose assumed to pay all outstanding debts, accounts and obligations of her father.

On April 6, 1954, a petition (Exhibit 3) for the approval of project of partition, signed by Jose and Lilia on April 5, 1954, was filed in Court by counsel for Jose, who, since July 8, 1948, had been appointed administrator of the Estate. By order of April 10, 1954, the trial court through Judge Querubin approved the project of partition. In this connection, it may be stated that at the time Lilia signed Exhibits 1, 2 and 3, she was already of age and had the benefit of a college education. Since the death of her father in 1948, she went to live in the house of her brother Jose. On December 11, 1953, Lilia married Ramon Gonzales secretly before the Justice of the Peace. It seemed

that her brother was not aware of this secret marriage, and she continued to live in her brother's house. Only in the evening of April 4, 1954, did Lilia tell Jose of her secret marriage. Apparently, he did not approve of the marriage, and they were supposed to have had a "disgusto". On April 19, 1954, Lilia was remarried to her husband in a public and religious ceremony and thereafter she lived with her husband and was publicly known as Lilia Yusay Gonzales.

On May 3, 1954, Lilia filed a motion for reconsideration of the order of April 10, 1954, alleging that her signatures on Exhibits 1, 2 and 3, namely, her acknowledgment of having received 18 parcels of land as her share of the inheritance and her relinquishment of her right to further participation in the inheritance; the project of partition, and the petition for approval of said project of partition, respectively, had been obtained through fraud and false representation; that the project of partition was unjust and prejudicial to her because it deprived her of about 9/10 of her legal share in the inheritance; that the estate left by her father consisted of about 900 hectares, with an assessed value of about P310,000; that according to law she was entitled to receive 1/3 of said estate or about 300 hectares with an assessed value of not less than P100,000, whereas under the project of partition she was to receive a share of only about 24 hectares with an assessed value of about P9,680, that is to say, less than 1/10 of her legal share as an heir; and that in the project of partition, about 70 parcels of land, consisting of approximately 400 hectares were omitted. She prayed that the project of partition of November 4, 1953 and the order of April 10, 1954, approving the project of partition be annulled and that the administrator be ordered to file a complete inventory of the estate as well as a new project of partition adjudicating to her 1/3 of the estate. Jose opposed the motion for reconsideration. Hearing on the motion for reconsideration was held on May 29, 1954, both parties presenting evidence.

On June 5, 1954, the trial court through Judge Querubin, issued an order setting aside the order of April 10, 1954 and ordering the administrator to submit a complete inventory of the properties of Matias Yusay, as well as a new project of partition wherein 1/3 of said properties are to be adjudicated to Lilia. Jose moved for a reconsideration of said order of June 5, 1954, alleging among others that Lilia was estopped from repudiating the project of partition, having accepted the benefits thereof and having renounced any further claim or right to the inheritance, including the right to rescind the agreement by reason of lesion and that furthermore, the project of partition (Exhibit 2) as well as Exhibit 1, being public documents, may not be annulled except through an action instituted for that purpose. Said motion for reconsideration of Jose was favorably acted upon by Judge Roman Ibañez who issued an order, dated June 18, 1954, but filed in Court on June 26, 1954, setting aside the order of June 5, 1954 and reviving the order of April 10, 1954 which approved the project of partition.

On June 28, 1954, Lilia moved to annul the order of June 18, 1954, issued by Judge Roman Ibañez on the ground that the same was fraudulent, spurious and illegal, having been issued after the Judge ceased to be such. Acting on said motion of Lilia and the opposition thereto, Judge Hilarion U. Jarencio set aside the orders of April 10, 1954, June 5, 1954 and June 18, 1954, and ordered a new hearing of the original motion dated April 5, 1954 (Exhibit 3), for the approval of the project of partition (Exhibit 2), in order that he may, according to him, appraise for himself through the evidence to be presented by both parties whether the documents in question, particularly Exhibit 1, were, as alleged, obtained through illegal and improper means. Before hearing could be held, Jose filed a petition for injunction and prohibition with this Tribunal to prohibit the trial court from holding the new hearing and again to pass upon the motion of April 5, 1954 (Exhibit 3). Said petition (Yusay vs. Dollete, G.R. L-8727) was dismissed by this Court by resolution of February 8, 1955, and the trial court proceeded with the new hearing. After the hearing the trial court, through Judge Ambrosio T. Dollete, issued an order dated August 5, 1955, the dispositive portion of which has been reproduced at the beginning of this decision.

In view of the failure of the administrator to present a new project of partition and a complete inventory of the

estate as required by the trial court in its order of August 5, 1955, Lilia filed a motion, dated January 9, 1956, praying among others that three commissioners be appointed to effect a partition. By agreement of both parties the trial court appointed Peregrin Asico, sole commissioner to prepare a complete inventory of the estate and to submit a new project of partition.

The first and second projects of partition submitted by the commissioner were disapproved by the lower court on opposition of the administrator Jose; but the third or re-amended project of partition submitted by the same commissioner on May 31, 1956 was approved by the trial court in its order dated June 7, 1956 (one of the appealed orders) over the opposition of the administrator.

Before the parties filed their briefs on appeal, appellant Jose moved to suspend the appeal until final judgment in Civil Case No. 4091, wherein appellant filed a complaint seeking to annul the order of the trial court of August 14, 1951, finding Lilia the acknowledged natural daughter of Matias Yusay for the reason that should said order be finally annulled the appealed orders would lose their basis. Said motion however was denied by this Court by resolution of February 21, 1957.

Due to the death of administrator Jose on November 30, 1956, he was substituted as appellant by Florencia Piccio Vda. de Yusay, Teresita Piccio Yusay, Joselito Yusay and Maria Lourdes Y. Hortillas.

Appellant makes the following assignment of errors:

THE LOWER COURT ERRED IN NOT APPROVING THE PROJECT OF PARTITION SUBMITTED BY THE ONLY HEIRS OF THE DECEASED, MATIAS YUSAY (Exhibits 1 and 2), for

- a. The lower court had no jurisdiction to disapprove a project of partition submitted by all of the heirs if no creditor, not a party to the agreement, is prejudiced;
- b. Assuming that the court had discretion to annul it for a ground other than the above, the court may only do so on the basis of the same grounds that it may annul contract;
- c. The project of partition (Exhibits 1 and 2) is not null because the parties therein were capable of giving consent, and the consent that they gave was not vitiated by either mistake, violence, intimidation, undue influence or fraud; Assuming that the contract is not null, the same may not be validly rescinded on the ground of lesion, since the contracts were not strictly of "partition" only; besides Lilia Yusay had expressly waived the right to seek their rescission on this ground.

THE LOWER COURT ERRED IN APPROVING THE "RE-AMENDED PROJECT OF PARTITION SUBMITTED BY A COMMISSIONER APPOINTED BY THE COURT, for:

- a. It disregards the project of partition submitted by the parties themselves; and
- b. Assuming that it can validly do so, the partition made is erroneous, unequal, inequitable and unfair.

It is contended on behalf of appellant that to annul a project of partition already approved by a probate court, it is necessary to file a separate civil action for that purpose; that the project of partition in this case (Exhibit 2) was submitted by the only two heirs and that there is no showing that any creditor would be prejudiced by the said project of partition. It is also urged that after the approval of the original project of partition, the properties subject of the same had been apportioned among the two heirs who became owners thereof so that there remained no property to be partitioned and what is more, the probate court had no jurisdiction over the properties subject of the partition.

As to the jurisdiction of the probate court to set aside its order approving the project of partition, this question has definitely been decided. In the case of *Arroyo vs. Gerona*, 54 Phil. 909, the trial court approved an agreement of

partition and adjudicated the estate to the heirs and declared the proceedings closed. Later, in the same intestate proceedings some of the heirs who were parties to the partition agreement petitioned the court to annul the deed of partition on the ground that the same had been surreptitiously and fraudulently executed and to render nugatory the order issued permitting the summary partition of the estate. The probate court declared itself incompetent to grant the partition and dismissed the same without passing upon the validity of the agreement, claiming that the question of nullity of the deed of partition came within the jurisdiction of the ordinary courts. This Tribunal on appeal said:

"We are of opinion that the court which possessed jurisdiction to approve said agreement of partition may disapprove or annul it. An agreement of partition made by heirs who are all of age, certainly binds all of them, especially when judicially approved. * * *

"But this does not mean that none of the participants may thereafter ask for the annulment or rescission of the agreement upon discovering that fraud, deceit, mistake, or some other defect has vitiated the consent given, provided the action is brought within the statutory period. Of course, if the estate has passed to the heirs by virtue of the agreement of partition, there is nothing to administer and the intestate proceedings must be deemed terminated. But if the agreement of partition be successfully impugned, if it be shown that fraud was practiced in the compromise between the parties, then an administrator may properly be appointed to take charge of the estate with a view to its just distribution in accordance with the law."

This Court further stated:

"Taking up the question of jurisdiction of the court to entertain the appellants' motion [to annul the deed of partition and the order approving it] filed on July 9, 1929, it must be remembered that in *Benedicto vs. Javellana* (10 Phil. 197) this court held that all demands and claims filed by any heir, legatee or party in interest to a testate or intestate succession, shall be acted upon and decided in the same special proceedings, and not in a separate action, and the judge who has jurisdiction over the administration of the inheritance, and who, when the time comes, will be called upon to divide and adjudicate it to the interested parties, shall take cognizance of all such questions.

"In our opinion the court that approved the partition and the agreement in ratification thereof may annul both whenever, as it is here alleged, the approval was obtained by deceit or fraud, and the petition must be filed in the course of the intestate proceedings, for it is generally admitted that the probate courts are authorized to vacate any decree or judgment procured by fraud, not only while the proceedings in the course of which it was issued are pending, but even, as in this case within a reasonable time thereafter. (*Arroyo vs. Gerona*, supra; *Italics supplied*.)

It is therefore clear that a project of partition although made and subscribed by all the heirs and so, ordinarily, binding on them, even when approved by the probate court, does not mean that said court is thereafter divested of jurisdiction over the same. If later, especially within a reasonable time after the approval of said partition, it is proven to the satisfaction of the probate court that fraud or deceit was practiced in procuring the approval of the project of partition by the heirs or some of them, the probate court may still modify or even set aside its order approving the said project of partition.

In the present case, the petition for the disapproval of the project of partition (Exhibit 2) and the setting aside of the order approving said partition project, was filed within a short time after the issuance of the order; so was the order granting the petition.

One of the important, if not most important question to be determined is whether Lilia signed Exhibits 1 and 2 and agreed to the filing of the petition (Exhibit 3) for approval of the project of partition, knowing all the facts of the case and realizing the far-reaching consequences of her signature and approval; or whether fraud and undue

influence had been employed on her. Considering all the circumstances attending the case, we are inclined to agree with the trial court that there had been undue influence and fraud in securing Lilia's signature and approval because she was not made to realize at the time what rights and interests she had, and equally important, the vast extent of the estate of her father to which she was entitled by one-third. As already stated, the estate left by Matias Yusay was considerable and having in mind the relatively insignificant portion allotted to Lilia, the project of partition was unreasonable, even unconscionable. She was being given only a small part of the one-third portion of the estate to which she had a valid right.

Another reason we surmise why she agreed to the partition and to renounce her right to question or to seek for an increase of her share, was that she was not a legitimate child but only an acknowledged natural daughter, unlike Jose, who was a legitimate son. Therefore, she had what one may call an inferiority complex. Added to this was the fact that after the death of her father, she went to live with Jose and his family. To her this must have been a great favor because by having her in his home, he was giving her not only protection but also sort of wiping out the disadvantage that she had been laboring under as an illegitimate child, and elevating her social standing. In other words, by having her in his home, and with his family, Jose was proclaiming to the world that Lilia was his sister, daughter of his father, and on the same social plane where he stood. In view of all these favors, it is understandable why Lilia was prevailed upon to agree to the project of partition, and consented to forever renounce the full rights the law gave her as an heir. And her renunciation is contained in an ironclad document, Exhibit 1, particularly paragraph herein which we quote:

"I further renounce, waive and relinquish to claim, demand or ask for any other right inclusive, the right to rescind this agreement by reason of lesion and such other right that the law grants me under the circumstances."

She renounced and relinquished not only the right to claim any other right of inheritance but also the right to rescind said agreement, Exhibit 1. And it is hard to-understand how a person can agree to such full and complete renunciation or relinquishment of rights if he or she fully realized the meaning thereof. The trial court made a detailed narration and analysis of circumstances under which Lilia signed Exhibits 1 and 2.

"It is urged by the administrator that Lilia Yusay was already of age when she signed the documents, Exhibits '1' and '2' and '3', and was well aware of the contents thereof. The Court is inclined to believe that assertion of Lilia Yusay that when she signed Exhibit '1', Exhibit '2' and Exhibit '3', she was not made to read the contents thereof and was made to believe that the papers she was signing was for some obligations and was told to have confidence in her brother for any way it was for her own benefit. Although she was of age and educated there was undue influence exerted on her for she was living, perhaps on charity, with her brother. She does not know the extent of the estate of her late father. She does not even know at the time she signed those documents that there was an intestate proceeding for the settlement of the estate of her late father. A person unaware of the background and basis of the execution of the documents mentioned above could not have given her consent intelligently so as to have said documents bind her and prejudice her to the extent of nine-tenths (9/10) of her legal hereditary rights. The Court can relieve her of the inequity of a contract where unknowingly she has given away her rights, especially if it is to the extent of 9/10 of her lawful participation. It is also urged that at the time of the signing of the documents her lawyer was Attorney Ezpeleta and her right protected. At the time of the hearing of this incident the Court has gathered that Attorney Ezpeleta did not explain to her her rights. The administrator, Jose S. Yusay, claim that he does not know the extent of his father's estate because the farms were under an encargado. The Court cannot believe this statement, he must have withheld some information from his own lawyer, Attorney Ezpeleta. Whether his conclusion is true or not is not important. What is important is the attempt of Jose S. Yusay to deprive his own sister to inherit her legal hereditary share from the estate of their own father. This is the inevitable conclusion from the series of circumstances alleged and proved at the hearing." (Record on Appeal, pp. 221-223.)

And in support of its conclusion that appellant intended to deprive Lilia of the right to inherit her legal share in the hereditary estate, the trial court cited the following circumstances:

"(1) By his own admission the administrator categorically stated in open court that he does not mind those properties not covered by certificates of title and all what he did was to get only an inventory of the properties having certificates of title in the Register of Deeds of Iloilo;

"(2) That he claims that he does not know the properties of his father. The Court cannot believe this testimony of the administrator on the ground that there is evidence in the record that he was a companion of his father when the latter was still alive in the administration of these properties. "

(3) That the alleged delivery to the movant Lilia Yusay, of the twenty-four (24) hectares of land mentioned in Exhibit "1" did not actually take place and she is not in actual possession of these properties which she was supposed to have taken possession of; "

(4) That even out of the products of the land which she was supposed to get under Exhibits "1" and "2" the administrator did not mind if she was getting the products therefrom. The witnesses for the administrator claim that the products of the land supposedly given to movant Lilia Yusay were delivered to a certain woman who is the mother of Lilia but the Court believes that the testimonies of these witnesses were false and fabricated; "

(5) That the administrator herein know that there was deposits made in the Philippine National Bank in the name of Matias Yusay but in answer to a question at the hearing he said that he is not interested in knowing said deposits. The intention was clearly to defeat the law in applying with equal force to have his sister receive her legitimate share in the estate of the deceased Matias Yusay." (R. A. pp. 219-220.)

The findings of fact of the trial court would appear to be amply supported by the evidence on record. Lilia did not realize at the time that she was being deprived of about 9/10 of her hereditary share. Jose did not show her any inventory of the properties of the estate. He included in the project of partition only 93 parcels of land with an area of about 400 hectares, omitting about 92 parcels with an extension of about 505 hectares (Exhibits Y and CC). In the course of the hearing, Jose told the court that his father left less than P100 in the bank, for which reason he did not include the same in the project of partition. This statement of Jose was later refuted by the certificate of the manager of the Philippine National Bank, Iloilo Branch, who upon order of the court issued a certification stating that Matias Yusay had a demand deposit account with an outstanding balance of P500 and a savings account with an outstanding balance of P8,358.46 (Exhibits Z and Z-l). In August, 1948, three months after the death of Matias Yusay, Lilia who was then a minor of 17 years was made to execute an affidavit by Jose wherein she stated:

"That I desire to make public now and forever, that I do not wish to institute any action against Jose S. Yusay in his capacity as Administrator of the Estate of the deceased Matias Yusay, not even to question the fact of his being the only heir of the said deceased, for as I have said time and again to my own lawyer, I leave the matter of the settlement of the inheritance exclusively between Jose S. Yusay and myself." (Exhibit V)

This affidavit may explain the state of mind and attitude of Lilia in later subscribing to Exhibits 1 and 2, approving the project of partition and renouncing whatever right the law may grant her to demand her full share to the inheritance and to institute action for that purpose. Incidentally, it may be stated that the right of Lilia to rescind the partition in this case is provided for in Article 1098 of the Civil Code which provides:

"A partition, judicial or extra-judicial, may also be rescinded on account of lesion, when any one of the co-heirs received things whose value is less, by at least one-fourth, than the share to which he is entitled, considering the value of the things at the time they were adjudicated."

Appellant claims that the re-amended project of partition filed by the commissioner and approved by the trial

court in its order of June 7, 1956 is "erroneous because it abounds in property supposedly owned exclusively by the deceased, Matias Yusay, but which in truth was conjugal property of Matias Yusay and his deceased wife, Emilia Mendoza." On this point, the lower court in its decision said:

"He (administrator) also claim that some of the properties were conjugal properties of Matias Yusay and the latter's wife but there is no evidence to show that certain properties were conjugal properties of the spouses, Matias Yusay and his wife. The testimony of Luis Dayot cannot be given much weight on the ground that at the time that the alleged lot containing ninety-eight (98) hectares was purchased, he was only ten years old. A person of ten years at the time could not remember a transaction that had taken place forty years ago. Opportunity was given to Jose Yusay to prove the character of the properties registered in the name of Matias Yusay but he failed to. sustain his claim at the trial. All of the properties were either registered in the name of Matias Yusay as widower or in the name of Matias Yusay and his children. The character of the properties must have been passed upon by the Cadastral Court when these properties were originally heard for registration in his name alone. In this case, some properties were registered in his name and in the names of his children. The Court can make a conclusion that the properties registered in his name and his children were the only properties which were conjugal before the death of his wife. This conclusion is inevitable because of his having charge of the registration of these properties. Another treason is the failure of Jose Yusay to sustain by competent evidence his claim that most of the properties were conjugal in character." (R. A. pp. 221-222.)

We are satisfied that the re-amended project of partition presented by the commissioner is fair and impartial. There is no evidence that the commissioner was biased or partial. He was appointed by agreement of both parties. His project of partition was amended twice on objection of Jose by excluding therefrom the parcels of land and personal properties objected to by him.

In the order of the probate court of May 22, 1956, directing the commissioner to prepare a new project of partition, Jose as administrator was even ordered by the court to "take the necessary steps to verify whether the said lots belong to the estate or not and report to the Court his findings thereon."

In view of the foregoing, the appealed orders are hereby affirmed with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Endencia and Barrera, JJ., concur.

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