

FIDELA MORIN VDA. DE MARBELLA, PLAINTIFF AND APPELLEE, VS. VICTORIANO KILAYKO, ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. L-11141. June 27, 1958*

Ponente: FELIX, J.

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Matias Morin, a resident of Talisay, Negros Occidental, died intestate on October 7, 1950, leaving a considerable amount of properties. As he had neither ascendants nor descendants, Concepcion Kilayko and 17 others, namely, Victoriano, Francisco, Lilia, Gilda, Milagros, Jesus, Jose Ma., Agustin, Juan, Patrocinio, Alberto, Luz, Jose, Josefina, Nicolas, Domingo and Ramiro, all surnamed Kilayko, relatives of the deceased in the 5th degree and claiming to be his only heirs, filed a petition with the Court of First Instance of Negros Occidental (Sp. Proc. No. 1776) for judicial administration of the estate of said deceased. In virtue thereof, Concepcion Kilayko was duly appointed administratrix of the estate and thereafter submitted an inventory of the properties of the deceased consisting of real as well as personal properties, shareholdings in commercial and industrial corporations, the value of which was placed at P86,106.14.

In the latter part of November, 1951, alleging that as children of the first cousins of the deceased they were his only surviving heirs, the aforementioned kins submitted a project of partition dividing and distributing the properties among themselves, together with Justa Antigua, a foster relative of the late Matias Morin, and Paterna Guianzon, who had rendered invaluable services to him in his last illness, which agreement was duly approved by the Court in its order of June 7, 1952. These proceedings were finally terminated on November 14, 1953.

On October 1, 1954, Fidela Morin Vda. de Marbella instituted a civil action against the Kilaykos, Justa Antigua and Paterna Guianzon with the Court of First Instance of Negros Occidental (Civil Case No. 3158), contending that she was a half-sister of Matias Morin, being a child had by Valentin Morin, father of the deceased, with his first wife; that such relationship was known to the family circle of Matias Morin and other members of his household; that through fraud and collusion, defendants represented themselves to be the rightful heirs when in fact, plaintiff was closer to the deceased in succession; that defendant Concepcion Kilayko omitted to include in the inventory of the properties of the deceased submitted to the Court certain real properties; that plaintiff was never advised of the demise of her brother nor was notified of the intestate proceedings commenced by the defendants. Alleging that the Court was without jurisdiction, plaintiff prayed that the judgment pronouncing defendants as heirs of the deceased and ordering for the partition of the properties be declared null and void, or at least voidable; to declare her as the rightful heir; that defendants be required to reconvey unto plaintiff all properties and assets found in the inventory as well as those omitted therein; that defendants be required to render an accounting of all the fruits and income of the entire estate or to pay the total sum of P200,000.00 by way of damages, for attorney's fees and costs. Plaintiff likewise prayed that the properties subject of the controversy be placed under receivership.

Justa Antigua de Ereñeta, one of the defendants, filed an answer admitting the averment that plaintiff was a legitimate child of Valentin Morin, father of the deceased, with the former's first wife, which fact she allegedly

disclosed to Concepcion Kilayko. She denied, however, that there was fraud and collusion in the distribution of the properties of the deceased because she only received a small portion of the estate in the belief that plaintiff was already dead. In praying that she be absolved from any liability, this defendant expressed willingness to return the properties that she had received if plaintiff would be declared the rightful heir to the same. The rest of the defendants, on the other hand, moved to dismiss the complaint on the ground of *res judicata* for it was contended that as the order of the Court adjudicating to them the respective properties that they had received was issued on June 7, 1952, and it having become final, the matter could no longer be reopened.

Considering the arguments adduced by both parties in their pleadings, the Court found the motion to dismiss to be well-founded and in its order of December 4, 1954, dismissed the complaint. Plaintiff thus filed an exhaustive motion for reconsideration advancing reasons to support her contention that the order of the lower court of June 7, 1952, approving the project of partition presented by the alleged heirs of the deceased did not constitute *res judicata* against one who was not notified thereof and had a better right over the properties in litigation. Passing upon the said motion and the opposition thereto offered by defendants, except Justa Antigua, the Court reconsidered its previous ruling and required said defendants to file their answer to the complaint. In their joint answer, defendants except Justa Antigua denied the material averments of the complaint among which were the imputation that they have knowledge of the existence of a half-sister of the deceased Matias Morin; that there were properties belonging to the said deceased that were not included in the inventory; and that there was fraud and collusion in the distribution of the properties in question. By way of special defenses, it was alleged that the complaint failed to state facts constituting a cause of action; that granting that there was, same was already barred by a prior judgment; and that plaintiff had lost whatever right she may have on the ground of laches. It was, therefore, prayed that the complaint be dismissed and plaintiff condemned to pay said defendants the sum of P5,000.00 each; for attorney's fees and costs.

Due hearing was conducted and after the parties had rested their respective cases, the lower court rendered judgment holding that preponderant evidence supported the conclusion that Fidela Morin de Marbella was a half-sister of the deceased Matias Morin and was thus declared the rightful heir to the properties left by the latter. Accordingly, defendants were ordered to reconvey and, deliver to plaintiff the properties which they might have received, together with the fruits thereof, computed from the date they took possession over the same up to the time of actual delivery. In case said provision would be incapable of performance, it was ordered that the value thereof at the time they were disposed of be paid to plaintiff. And as prayed for by plaintiff, the estate of the deceased was ordered placed under receivership.

From this decision, defendants, except Justa Antigua, brought the matter to this Court on appeal assigning several errors allegedly committed by the court a quo. Stripping the same, however, to bare essentials, the main issue presented by the instant appeal could be boiled down into whether or not the order of adjudication dated June 7, 1952, issued by the probate court distributing the properties of the deceased among defendants pursuant to the project of partition submitted by the latter, which order has already become final, has the effect of *res judicata* on the matter of declaration of heirs and the consequent distribution of the estate, and therefore bars a subsequent action for recovery brought by a preterited relative.

We have gone over the evidence presented during the trial of this case in the court a quo and found reason to sustain the trial Judge's ruling that plaintiff Fidela Morin Vda. de Marbella was able to establish her relationship with Matias Morin, and taking into account the fact that the Kilaykos, as children of 3 first cousins of the deceased, were only related to the latter in the 5th degree, plaintiff, as half-sister of said deceased, is more entitled to the inheritance for it is a cardinal principle in intestate succession that the existence of a nearer relation excludes the farther, saving the right of representation when it properly takes place (Art. 962, Civil Code.)

Defendants-appellants, however, maintain that aside from the fact that they were already declared heirs of the deceased Matias Morin by an order of the lower Court which has long become final and, therefore, can no longer be the subject of a subsequent action tending to reopen the matters already adjudicated therein, it appearing that the petition for recovery was filed almost one year after the intestate proceedings were finally closed, plaintiff has already lost whatever right she may have by reason of abandonment or laches.

It may be noted at this juncture that although the estate was placed under judicial administration upon petition of the Kilaykos, it is a fact that after the notice to creditors appeared in the issues of the "News Clipper", a newspaper of general circulation in the province of Negros Occidental, for 3 times, said petitioners alleging that they were the only heirs of Matias Morin presented before the Court a project of partition dividing the estate among themselves together with Justa Antigua and Paterna Guianzon, which agreement was duly approved by the Court. While it is undeniable that the distribution of the estate was effected in a special proceeding, it may likewise be conceded that the settlement thereof was more or less summary for the Judge most likely upon being informed of the absence of creditors or claims stamped his approval to the said agreement and the properties were correspondingly adjudicated to the heirs appearing therein. Apparently, as the deceased left no pending obligations, the Kilaykos have deemed it more convenient to follow the procedure outlined by Rule 74 of the Rules of Court regarding extra-judicial settlement of the estate, a step which the Court is unlikely to disapprove considering that the heirs may not only submit an agreement dividing the estate among themselves, but may even ask the probate court to turn over to them both real and personal property without division, where such request is unanimous, and this right carries with it the privilege to dispose of the same in the manner the heirs please (*Vda. de Cruz vs. Ilagan*, 81 Phil. 554).

We are inclined to believe that plaintiff actually was not aware of the death of her brother, much less of the institution of the intestate proceedings and the consequent distribution of his estate, although appellants tried to disprove and contest the same and feigned ignorance of her relation to the late Matias Morin. At any rate, appellants argue that an intestate proceeding being one in rem, the publication of notices in connection therewith has the effect of notifying the whole world that such a proceeding existed and plaintiff-appellee is, therefore, charged with knowledge thereof; in which case, appellants conclude, any ruling of the Court rendered therein shall be binding on all interested persons. But it cannot be denied that as the nearest relative of the deceased, plaintiff's dominion over the estate was transmitted to her upon her brother's death by operation of law (Art. 777, Civil Code). And the Civil Code also provides that a partition which includes a person believed to be an heir, but who is not, shall be void with respect to such person. As the order of the lower Court of June 7, 1952, adjudicated the properties in question to appellants who are not entitled to the inheritance in view of the existence of plaintiff's superior right, the aforesaid order is reviewable and subject to readjustment within 2 years after the settlement and distribution of the estate (See Sec. 4, Rule 74 of the Rules of Court) and thus cannot have the effect of barring a subsequent action by the rightful heir for the recovery of the properties belonging to the estate of Matias Morin. As this Court has already said in another case:

"A judicial partition in probate proceedings (and the same thing can be said of partition in intestate proceedings) does not bind the heirs who were not parties thereto. No partition, judicial or extra-judicial, could add one iota or particle to the interest which the partitioners had during the joint possession. Partition is of the nature of a conveyance of ownership and certainly none of the co-owners may convey to the others more than his own true right. A judicial partition in probate proceedings is not final and conclusive, and not being of such definitive character to stop all means of redress for a co-heir who has been deprived of his lawful share, such co-heir may still, within the prospective period, bring an action for reinvestiture in the province where any of the real property of the deceased may be situated. Broad perspectives of public policy are set out in the opinion of the Court in support of the wisdom of allowing a co-heir the benefits of the law of prescription even after a partition, judicial or extra-judicial, has been had (*Lajom vs. Viola*, 73 Phil. 563).

We find merit, however, in appellants' allegation as to the legality of the decision of the Court a quo allowing the recovery of fruits of the properties received by them. As there was no clear-cut indication of appellant's bad faith in taking over and dividing the estate among themselves, they could be considered as possessors in good faith up to the time they were notified of plaintiff's right by the institution of the action for recovery of the properties (Civil Case No. 3186 of the Court of First Instance of Negros Occidental). The fruits accruing to the properties constituting the estate previous to that date is not, therefore, recoverable.

Wherefore, and with the modification just stated, the decision appealed from is hereby affirmed, with costs against the defendants (except Justa Antigua). Plaintiff, however, shall reimburse said defendants for whatever amounts they may have paid as inheritance tax, if they have paid any, for having received the estate of the deceased Matias Morin. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Concepcion, Reyes, J. B. L., and Endencia, JJ. concur.

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