

DONATO LAJOM, PETITIONER, VS. HON. JOSE N. LEUTERIO, JUDGE OF THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, AND RAFAEL VIOLA, RESPONDENTS.

G.R. No. L-13557. April 25, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition for a writ of certiorari and mandamus to set aside certain orders, and reinstate another order, of respondent judge.

The factual background of this case may be found in our decision in G. R. No. L-6457, entitled "Donato Lajom vs. Jose Viola, et al." (promulgated May 30, 1956), from which we quote:

"Maximo Viola died on September 3, 1938. Judicial proceedings of his testate estate were instituted in the Court of First Instance of Bulacan (Civil Case No. 4741) and closed on March 17, 1937. An agreement of partition and distribution (dated October 25, 1935) was executed by and between Jose P. Viola, Rafael Viola and Silvio Viola, legitimate children of Maximo Viola and Juana Toura, whereby the properties left by their father, Maximo Viola, were divided among themselves. On March 17, 1939, Donato Lajom (plaintiff-appellee herein) filed in the Court of First Instance of Nueva Ecija a complaint, amended on May 16, 1939, praying, among other things, that he be declared a natural child of Maximo Viola, impliedly recognized and acknowledged in accordance with the laws in force prior to the Civil Code, thereby being a co-heir of Jose P. Viola, Rafael Viola and Silvio Viola (defendants-appellants); that the agreement of partition and distribution executed in 1935 by these three legitimate children of Maximo Viola be declared null and void and after collation, payment of debts and accounting of fruits, a new partition be ordered adjudicating one-seventh of the estate left by Maximo Viola to Donato Lajom and two-seventh to each of the three appellants. The latter filed a demurrer to the amended complaint which was sustained by the Court of First Instance of Nueva Ecija in its order of July 31, 1939, holding that the allegations of the amended complaint called for the exercise of probate jurisdiction and that as the complaint showed that the will of the deceased Maximo Viola had already been probated in the Court of First Instance of Bulacan which had first taken cognizance of the settlement of his estate., the Court of First Instance of Nueva Ecija could not subsequently assume the same jurisdiction. Upon appeal to the Supreme Court by the plaintiff-appellee, the order sustaining the demurrer was reversed and the case was remanded to the Court of First Instance of Nueva Ecija for further proceeding.

"On December 21, 1942, the defendants-appellants accordingly filed an answer to the amended complaint containing specific denials and setting up the affirmative defenses that the appellants are the sole heirs of Maximo Viola; that corresponding judicial proceedings of his testate estate were duly instituted and terminated in the Court of First Instance of Bulacan, of which plaintiff-appellee was fully aware; that the action was filed by the appellee two years after the termination of said testate proceedings and almost six. years after the death of Maximo Viola, without having previously asserted any right whatsoever to any part of said estate, and he is therefore now barred from doing so; and that assuming the appellee to be an acknowledged natural child of Maximo Viola, his right of action had prescribed. After trial, the Court of First Instance of Nueva Ecija rendered a decision in favor of the plaintiff, the dispositive part of which reads as follows:

'EN VISTA DE LAS CONSIDERACIONES ARRIBA EXFUESTAS, el Juzgado falla este asunto a favor del demandante y contra de log demandados, declarando al demandante, Donato Lajom, hijo natural, implicita y tacitamente, reconocido por su padre, el difundo Dr. Maximo Viola, do acuerdo con la Ley de Toro; se declara la particion y distribucion hecha por los demandados 'Convenio de Particion y Adjudicacion de los Bienes Dejados por el Difundo Dr. Maximo Viola, ilegal, nulo y de ningun valor; se ordena la colacion de los bienes en cuestion, poniendo los mismos en manos do un administrador judicial; se ordena a todos y cada uno de los aqui demandados a presentar una liquidacion de los frutos y productos provenientes de dichas propiedades asignadas a cada uno de ellos desde el Octubre 25, 1935, con el fin de una nueva distribucion; se ordena a los demandados Jose P. Viola y Silvio Viola a someter una liquidacion de los frutos y productos de las tres parcelas de terreno mencionadas en los parrafos 1 y 2 del Annex 'A' que han sido puestas bajo su administracion en el Procedimiento Especial No. 4741 del Juzgado de Primera Instancia de Bulacan a partir del 3 del Septiembre de 1933; y fnalmente, se ordena la particion y adjudicacion a favor del demandante de una septima (1/7) parte de dichas propiedades y productos; dos septimas (2/7) partes a cada uno de los aqui demandados, cuando todas esas propiedades pertenecientes al finado Dr. Maximo Viola sean colados, todas las deudas pagadas y los frutos rendidos. Con costas.' "

Said decision of the Court of First Instance of Nueva Ecija was, on appeal, affirmed by this Court in said case No. L-6457 on May 30, 1956.

When the decision of this Court became final, the records were remanded to the lower court where plaintiff filed a motion for the execution of the judgment, the collation of all properties of the late Dr. Maximo Viola and the redistribution of his estate as indicated in said judgment. Acting on the motion, respondent Judge issued an order dated October 30, 1956, pertinent parts of which are of the following tenor:

"The decision annulled the partition entered into by the defendants and ordered the 'collation of all the properties in question', placing the same in the hands of a judicial administrator. What the properties in question are, do not clearly appear. In the inventory attached to the original complaint, 75 parcels of land were enumerated. In the agreement of partition which was annulled, the inventory, of the estate of the late Dr. Maximo Viola enumerates only 47 parcels of land. These 47 parcels, according to the agreement of partition, were all conjugal. In the motion for execution, plaintiff now enumerates 84 parcels of land. The decision did not state what properties belonged to the late Dr. Maximo Viola, but it did provide for the partition of all the estate belonging to the late Dr. Viola after the same had been' collated and all the debts paid and the fruits liquidated. It would be manifestly unfair to either party to consider the 75 parcels of land enumerated in the inventory attached to the amended complaint as the conjugal properties of the late Dr. Maximo Viola and his deceased wife, or to limit the same to the 47 parcels enumerated in the inventory of the estate of the late Dr. Maximo Viola attached to the agreement, of partition. As a starting point, however, ½ of the 47 parcels enumerated in the agreement of partition and marked, as Exhibit F-1, which is Exhibit A of the deed of partition, are undoubtedly the properties of the late Maximo Viola which must be partitioned among the plaintiff and the defendants in accordance with the decision. Accordingly, the defendants, who are in possession of each' and everyone of these 47 parcels, are hereby ordered to deliver, the same to the judicial-administrator to be hereinafter appointed, for his administration until the final partition in accordance with the decision of this Court. As there is a disagreement among the parties with respect to the other properties, the plaintiff is hereby ordered to submit within 15 days upon receipt of this order a list of such other properties which he believes belong to the late Dr. Maximo Viola. The defendants shall file their opposition thereto within a like period after which the same shall be set for hearing to determine whether or not such properties belong to the late Dr. Maximo Viola and which should be partitioned among his heirs.

"The decision ordering the defendants to collate is questioned by the defendants, first, on ground that what has been left by will should not be collated, and second, that what has been left by way of donation to some of the defendants should not also be collated. The decision requires the defendants to collate all the properties of the late Dr. Maximo Viola so that they may be partitioned among the heirs. That decision is now final, and it is not

for this Court to say that the Court rendering the decision had committed an error. If error there had been, it is now beyond the power of this Court or any Court to correct the same. However, the will having completely omitted the plaintiff who is a compulsory heir, and having disposed of all the properties in favor of the defendants, it naturally encroached upon the legitime of the plaintiff. Such testamentary dispositions may not impair the legitime (Art. 1037, Spanish Civil Code). In another sense, the plaintiff, being a compulsory heir in the direct line, and having been preterited, the institution is annulled in its entirety (Art. 814, Spanish Civil Code now. Art. 854, N.C.C., *Neri vs. Akutin*, 72 Phil., 322).

"With respect to the properties donated by the late Dr. Maximo Viola and his wife to some of the defendants, the same must be collated, but the donation having been made jointly by the spouses, only ½ thereof must be brought into collation in accordance with Article 1046 of the Spanish Civil Code. Moreover, the same things donated are not to be brought to collation and partition, but only their value at the time of the donation in accordance with Article 1045 also of the Spanish Code.

"In accordance with the agreement of the parties, Mr. Manuel V. Gallego, Jr. is hereby appointed administrator of the properties herein collated and may take his oath and assume the performance of his duties upon the filing of a bond in the sum of P20,000.

"In accordance with the dispositive part of the decision, the defendants Jose V. Viola and Silvio Viola are hereby ordered to submit a liquidation, of the fruits and products of the three parcels of land mentioned in paragraphs 1 and 2 of Annex A. Each and everyone of the defendants is hereby ordered to submit a liquidation of the fruits and products of the properties assigned to each and everyone of them from October 25, 1935, all within 15 days from the receipt of this order."

When Rafael Viola filed the report required in this order, Donato Lajom noticed that nothing was said in the aforementioned report concerning the fruits of a riceland, with an area of 215 hectares, allegedly donated by Dr. Maximo Viola to said Rafael Viola. So, Lajom asked that Rafael Viola be ordered to include the products of said riceland in his report, in order that the property may be included in the redistribution of the Viola Estate. Rafael Viola objected thereto upon the ground that said property was not "mentioned or included in the complaint filed in this case." The objection was sustained and the petition was denied in an order dated October 30, 1957, stating that:

"* * * In paragraph II of the amended complaint (p. 43 of the record) only the donation inter vivos in favor of the defendants Jose Viola and Silvio Viola were questioned. The dispositive part of the decision required the defendants to collate the properties in question. The properties which were donated to Rafael Viola had not been put in issue by the pleadings and they are not in question and, therefore, cannot be deemed to have been embraced in the dispositive part of the decision requiring the defendants to collate the properties in question."

A motion for reconsideration of said order of October 30, 1957 was denied, on January 30, 1958, upon the ground that:

"The decision required the defendants to collate the properties in question. The properties donated to Rafael Viola and which are sought to be collated by the plaintiff are not in question, not having been put in issue by the pleadings. Neither are they mentioned in the Inventory of the 75 parcels which are annexed to the complaint. If the court, in its previous orders, made mention of collation of all the properties of the deceased, the court had committed an error, and, therefore, corrects that error in accordance with this order and in the order of October 30, 1957."

Thereupon Lajom instituted the present case for certiorari and mandamus, with the prayer:

"* * * that the respondent Judge be ordered to set aside his Order of October 30, 1957 and January 30, 1958 and reinstate his original Order of October 30, 1956 requiring 'the defendants to collate all the properties of the late Dr. Maximo Viola so that they may be partitioned among the heirs' and 'with respect to the property

donated by the late Dr. Maximo Viola and his wife to some of the defendants the same must be collated."

Petitioner maintains that the riceland aforementioned was involved in case G. R. No. L-6457, because respondents maintained in their brief and in the motion for reconsideration filed by them in the Supreme Court that the lower court had erred in ordering the collation of all the properties of the deceased. Moreover, he urges that the order of respondent Judge of October 30, 1956, had already declared that all properties of the deceased, including those donated by him, were subject to collation; that said order became final and executory, no appeal having been taken therefrom; and that, consequently, said order could not be validly modified or reversed by the aforementioned orders of respondent Judge, dated October 30, 1957 and January 30, 1958.

We find no merit in this pretense. The decision affirmed by this Court in G. R. No. L-6457 ordained the collation of the "properties in question". The properties in question were described in an inventory attached to petitioner's original complaint in case No. 8077 and did not include the aforementioned riceland, with an area of 215 hectares. Indeed, Lajom admits that he did not include, and could not have included or mentioned it, in his complaint because, at the time of its filing, he did not know of the existence of said property. Hence, the same was not in question in case No. 8077, and was not covered by the decision therein rendered and subsequently affirmed by the Supreme Court in Case No. L-6457.

It is not accurate to say that the order of October 30, 1956, had directed the collation of all property of the deceased. It did not even require the collation of 75 parcels of land enumerated in the inventory already adverted to. It expressed the view that one-half of the 47 parcels covered by the agreement of partition therein nullified, should be delivered to the administrator to be herein after appointed. Then it added:

" * * * As there is a disagreement among the parties with respect to the other properties, the plaintiff is hereby ordered to submit within 15 days upon receipt of this order a list of such other properties which he believes belong to the late Dr. Maximo Viola. The defendants shall file their opposition thereto within a like period after which the same shall be set for hearing to determine whether or not such properties belong to the late Dr. Maximo Viola and which should be partitioned among his heirs."

Thus, it left the question whether other properties should be collated or not open for future determination. In any event, respondent Judge was merely enforcing a decision that had already become final. Any order directing what was, not required in said decision—and the same contained no pronouncement with respect to the riceland adverted to above—would be in excess of his jurisdiction and therefore, null and void.

It is next alleged that petitioner having been the victim of preterition, the institution of heirs made by the deceased Dr. Maximo Viola became ineffective, and that Civil Case No. 8077 was thereby converted into an intestate proceedings for the settlement of his estate. This contention is clearly untenable. There might have been merit therein if we were dealing with a special proceedings for the settlement of the testate estate of a deceased person, which, in consequence of said preterition, would thereby acquire the character of a proceeding for the settlement of an intestate estate, with jurisdiction over any and all properties of the deceased. But, Civil Case No. 8077 is an ordinary civil action, and the authority of the court having jurisdiction over the same is limited to the properties described in the pleadings, which admittedly do not include the aforementioned riceland.

Without prejudice, therefore, to the institution of the corresponding intestate proceedings by the proper party, the petition herein should, therefore, be, as it is hereby, denied, with costs against the petitioner. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

Padilla and Endencia, JJ., took no part.

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