

**FRANCISCO MALLARI, ET AL., PLAINTIFFS AND APPELLANTS, VS.
AUGUSTO MALLARI, DEFENDANT AND APPELLEE.***G. R. No. L-4656. February 23, 1953*

Ponente: MONTEMAYOR, J.

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For an easier apprehension of the present case and to form a sort of background, the following facts may be stated. Maria Mallari died on April 17, 1949 without issue but leaving nephews and at least one niece. During her lifetime Maria Mallari owned among other things three parcels of land and one-half of another parcel, in Macabebe, Pampanga, all registered under the Torrens System. On July 12, 1938, she was supposed to have donated the first parcel covered by transfer certificate of title No. 10048 to her nephew Domiciano C. Mallari, and the second, third and one-half of the fourth parcel covered by transfer certificates of title Nos. 10046, 10047 and 10063 to the same Domiciano C. Mallari, her nephew Francisco Mallari and her niece Catalina Mallari. The donees accepted the donations in the same deed or deeds and new certificates of title Nos. 11409, 11406, 11407 and 11408 were issued to them. Thereafter, the donees took possession of the parcels donated to them. In 1948 the donees Domiciano, Francisco and Catalina executed an extra-judicial partition of their joint properties, among them parcels 2, 3 and 4, as a result of which parcels 2 and 3 went to Domiciano and parcel 4 went to Francisco. Catalina received other pieces of property. In 1946 this extra-judicial partition was registered and the corresponding transfer certificates of title were issued to them.

Maria left what purported to be a will and in that instrument the four parcels of land said to have been donated by her to her nephews and niece were still listed as part of her estate. On May 7, 1949, defendant Augusto Mallari, another nephew of Maria filed a petition for the probate of the will of his aunt in special proceedings No. 450 in the Court of First Instance of Pampanga (Branch III) and Augusto was appointed special administrator of the estate. On June 11, 1949, the heirs of Domiciano who had already died, and Francisco and Catalina filed opposition to the probate of the will based on statutory grounds and claiming that the four parcels of land could no longer be disposed of in the will because they had previously been donated to them. Contending that the donations of the four parcels in question were invalid and ineffective, and that consequently, said parcels still formed part of the estate, Augusto as special administrator, petitioned the probate court to order the tenants of said four parcels under penalty of contempt of court to deliver to him that portion of the harvest corresponding to the owner. This petition was opposed by the heirs of Domiciano and by Francisco on the ground that they were in possession as owners of the property and that therefore, the portion of the harvest corresponding to the owner belonged to them.

On October 26, 1949, Francisco Mallari and the four heirs of Domiciano named Magdalena, Marcelo, Florentina and Gorgonia, filed the present action, civil case No. 261 in the Court of First Instance of Pampanga (Branch I) claiming that the four parcels in question (½ of the 4th) belonged to them by virtue of the donation made by Maria Mallari, and alleging that Augusto claims or asserts to have an interest in the said lands, and that, "without any authority or right whatsoever, threatens to take, by means of force, violence and intimidation, the existing palay harvest on said lands, without the consent of the plaintiffs; and said defendant is now preparing to take said palay,

and, unless restrained by this Honorable Court, will do so." Plaintiffs prayed that Augusto be compelled to disclose the facts upon which he bases his claim and that all his pretensions be passed upon and determined by the court, and that said defendant be declared not to have any title or interest whatsoever on said properties, and that the title of the plaintiffs thereto be declared valid and binding as against the whole world, and that for the time being, defendant be enjoined from taking and removing any of the palay from the said parcels. In the meantime or on October 27, 1949, the probate court (Branch III) acting upon the petition of Augusto and the opposition thereto, regarding the delivery of the owner's portion of the harvest from the parcels in question, issued an order to the effect that the Special Administrator was authorized to be present whenever the division of the harvest between the tenants and the oppositors was held in order to record the correct amount of the harvest. Then on January 18, 1950, Mareelo Mallari, one of the plaintiffs herein and one of the oppositors in the probate of the will filed in special proceedings No. 450 a complaint accusing special administrator Augusto Mallari of contempt of court for having used force in entering the four parcels in question in that between December 28th, 1949 and January 4th, 1950, he, with six other persons all armed with firearms and bolos entered the four, parcels in question and took from the streams used as fishpond inside said lands five banca loads of fish. Acting upon his complaint, the probate court issued an order dated July 5, 1950, dismissing the complaint "without prejudice on the part of any of the parties to take any subsequent action which they may deem proper in the premises".

Going back to civil case No. 261 in Branch I, instead of answering the complaint, Augusto filed a motion to dismiss on the ground that the complaint did not state facts sufficient to constitute a cause of action and that the court had no jurisdiction over the subject-matter. His theory was that the main object of the complaint was injunction, and this being an ancillary remedy, could not stand alone. His principal contention, however, was that the court had no jurisdiction because the probate court had already acquired exclusive jurisdiction under special proceedings No. 450. Acting upon this motion to dismiss the trial court (Branch I) granted it and dismissed the complaint by order of September 19, 1950 on the ground that the parties and the subject-matter involved in the probate proceedings and in the ordinary action were the same, and that the present action was in effect a duplication of the probate proceeding's, and that a final judgment in the probate proceedings will amount to an adjudication of the present action. Plaintiffs are now appealing from said order.

It is clear that the trial court erred in dismissing the complaint. The present action is not a duplication of the probate proceedings altho the parties and subject-matter may be identical. It is a well-settled rule that a probate court or one in charge of proceedings whether testate or intestate cannot adjudicate or determine title to properties claimed to be a part of the estate and which are equally claimed to belong to outside parties. All that the said court could do as regards said properties is to determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is no dispute, well and good; but if there is, then the parties, the administrator and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so. (Fernando Baquial vs. Felix Amihan, Supra, p. 501 and authorities cited therein.) It is therefore evident that the conflicting claims in the present action cannot be adjudicated in the probate proceedings. True, the parties and the properties involved are the same but only in an ordinary action may be determined whether the four parcels in question were really validly donated to the plaintiffs, and whether they do not now form part of the estate of Maria Mallari subject to disposition under the will whose probate is still pending. That was the reason why when the special administrator asked that the tenants on the four parcels of land be ordered to deliver to him the owner's share, the probate court did not grant the petition but merely authorized the special administrator to be present at the division of the harvest in order to record the amount of the same. Again, when one of the plaintiffs asked that the special administrator be punished for contempt of court for forcibly entering the lands and removing fish therefrom, the court dismissed the complaint without prejudice to the parties concerned to take any subsequent action which they

may deem proper in the premises.

In view of the foregoing, the order appealed from dismissing the complaint is set aside and this case is ordered remanded to the trial court for further proceedings, with costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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