

ROMULO LOPEZ, ET AL., PLAINTIFFS AND APPELLANTS, VS. LUIS GONZAGA, ET AL., DEFENDANTS. LUIS GONZAGA AND ASUNCION GONZAGA, DEFENDANTS AND APPELLANTS.

G.R. No. L-18788. January 31, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Joint and direct appeal by both parties-plaintiffs and parties-defendants from the decision of the Court of First Instance of Negros Occidental (in its Civil Case No. 5033) to this Supreme Court, because the properties involved are valued at more than P200,000.00. The appealed decision dismissed the petition of plaintiffs (appellants) for partition and cancellation of titles of registered lands, and ordered them to pay defendants (appellees) P1,000.00, by way of attorney's fees, but, refused to award moral damages in favor of the defendants.

The original petition was filed with the court a quo on 6 October 1958, alleging among other things, that one Soledad Gonzaga Vda. de Ferrer died intestate on 11 April 1935 without any issue and leaving real and personal properties worth. P400.000.00; that she was survived by the plaintiffs, who are her nearest of kin, being her brothers, sisters, nephews, and nieces; that during the lifetime of the deceased, she expressed the wish that as long as, her brother, Luis Gonzaga, the principal defendant, was engaged in his coconut oil experimentation he could use the products and rentals of her properties in furtherance of his experiments; that the said scientific venture by the said defendant was discontinued when he became totally blind in October, 1955, in view of which the plaintiffs now ask a partition of the estate and the cancellation of titles of lands allegedly fraudulently transferred by, and in the name of, the defendant.

The defendant filed a motion to dismiss on the grounds of res judicata, and non-inclusion of indispensable parties. The plaintiffs amended their petition to include the omitted parties. After hearing on the motion to dismiss, the court denied the said motion. Thereupon, the defendants filed their answer repleading a denial as to the intestacy of the deceased, and alleging, among others, that a will of Soledad Gonzaga Vda. de Ferrer instituted Luis Gonzaga as the sole heir to her entire estate, and that the will was duly allowed and probated.

After trial, the court a. quo rendered judgment, and both parties appealed, as aforesaid.

The genuineness of the following documents, and the jurisdiction of the court, with respect to them, are not disputed:

"REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF ILOILO
11th Judicial District

December 11, 1958

To whom it may concern:

This is to certify that according to the records of this office, there is no Expediente No. 2183 entitled Estate of Doña Soledad Gonzaga Vda. de Ferrer, as all pre-war records were burned, lost or destroyed during the World War II.

(Sgd.) Cipriano Cabalana
Clerk of Court"

"UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF OCCIDENTAL NEGROS
18th Judicial District

G.L.R.O. Cad. Record No. 214
Lots Nos. 414 and 424
CAD. SURVEY OF MANAPLA
X.....X

PETITION

Luis Gonzaga y Jesena through the undersigned attorney, to the Honorable Court respectfully follows:

That Soledad Gonzaga Vda. de Ferrer is the registered owner of Lots Nos. 414 and 424,. Cadastral Survey of Manapla, which parcel of land are described in Transfer Certificate of Title Nos. 11460 and 13855, respectively.

That Soledad Gonzaga Vda. de Ferrer died on April 11, 1935, and she left all her properties in favor of Luis Gonzaga y Jesena in her will, which will "was probated on May 17, 1935, in the Court of First Instance of Iloilo (Exp. No, 2163, Iloilo).

That the project of partition dated February 3, 1936, (Exp. No. 2163, Iloilo) a copy of -which is hereto attached in which the petitioner Luis Gonzaga y Jesena is the only heir, "was approved by the Honorable. Court of Iloilo in its order dated February 8, 1936, a copy of the said order is hereto attached.

WHEREFORE, in view of the foregoing,, the petitioner re-respectfully prays the Honorable Court to order the cancellation of Transfer Certificate of Title Nos. 11460 and 13855, Office of the Register of Deeds of Occidental Negros, wherein Lots Nos. 414 and 424 are described, and in lieu thereof to issue Transfer Certificate of Titles for Lots 414 and 424, Cadastral Survey of Manapla, Occidental Negros, in favor of Luis Gonzaga y Jesena, single, of legal age, Filipino and a resident of Manila. P. I.

Iloilo, Iloilo, for Bacolod, Occ, Neg. P. I. March 11, 1936.

(Sgd.) Francisco S. Hortillas

Attorney for the petitioner

2 General Luna, Iloilo

I, Francisco S. Hortillas,. of legal age, after having been duly sworn, depose and say: That I am the attorney for the petitioner in. the above case, and that all the allegations contained in the foregoing petition are true to the best of my information and belief.

(Sgd) Francisco Hortillas

Subscribed and sworn to before me this 11th day of March 1936. He exhibited to me his cedula No. E-1250120, issued at Jaro, Iloilo, P. I., on January 16, 1936.

(Sgd) Illegible

Notary Public

Until Dec. 31, 1937

Doc. No. 40

Page No. 60

Book No. 1

Series of 1936

The Register of Deeds

Bacolod City, Occ. Negros

Sir:

Please take notice that on Saturday,, March 21, 1936, at 8:00 a.m. or soon thereafter as the undersigned may be heard, he will submit the foregoing petition to this Honorable Court for approval.

(Sgd} Francisco S. Hortillas

I hereby certify that I have sent a copy of the foregoing petition to the Register of Deeds of Occidental Negros evidenced by the registry receipt hereto attached.

(Sgd) Francisco S. Hortillas

"UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF ILOILO
17th Judicial District

Testate Proceedings of

The Deceased Solepad

GONZAGA VDA. DE FERRER,

Luis Gonzaga Y Jesena, Petitioner.

Civil Case No. 2163

X.....X

PETITION FOR ADJUDICATION

The undersigned administrator to the Honorable Court respectfully states:

That the undersigned administrator, Luis Gomaga y Jesena is the only heir mentioned in the probated will of the late Sra. Soledad G. Vda. de Ferrer.

Town

Title

No.

Province

Value

Manapla

Trans.

Cert.

8433

Occ. Neg.

P25,230.00

Manapla

Trans.

Cert.

11460

Occ. Neg.

5,210.00

Manapla

Trans.

Cert.

13855

Occ. Neg.

7,310.00

Jaro

Trans.

Cert.

13051

Iloilo

510.00

Jaro

Trans.

Cert.

13054

Iloilo

500.00

P38,760.00

Accounts Collectible and Cash

Roman Sopena

P1,100.00

Juan Sornito

330.00

Quintin Mejorada and others

2,800.00

Maria Ledesma and others

600.00

and Cash

1,018.54

That there is a pending civil complaint against the administrator by Consolacion G. de Lopez, et al, Civil Case No. 10321, Court of First Instance of Iloilo, demanding payment of the sum of P833.40. The undersigned administrator is willing to file a cash bond for the sum object of the complaint in case this expedients will be closed before the trial, of the Civil Case No. 10321, Iloilo.

Iloilo, P.I., February 3, 1936.

(Sgd.) FRANCISCO S. HORTILIAS

Attorney for the Administrator

2 General Luna, Iloilo "

The Clerk of Court
Iloilo, Iloilo

Sir:

Please include the foregoing petition for adjudication in the calendar for Saturday, February 8, 1936.

(Sgd.) FRANCISCO S. HORTILLAS

A True Copy:

(Sgd) TELESFORO GEDANG
Deputy Clerk of Court
17th Judicial District
Iloilo, P. I."

"ESTADOS UNIDOS DE AMERICA
COMMONWEALTH DE FILIPINAS
JUZGADO DE PRIMERA INSTANCIA DE ILOILO
17.0 DISTRITO JUDICIAL

Testamentaria Gonzaga

Expediente No. 2163

AUTO

Previa prestacion por Luis Gonzaga y Jesena de ima fianza por valor de P1,000.00 que tendra por objecto responder al resultado de la causa civil No. 10321 de este Juzgado, titulada 'Consolacion G. de Lopez, et al., demandantes, contra Luis Gonzaga', se aprueba la cuenta final de fecha enero 29, 1936, asi como el proyecto de particion de fecha 3 del actual. Queda cancelada la fianza prestada por el adminiatrador en este expediente, y archivado el mismo por terminado.

Asi se ordena.

Iloilo, Iloilo, febrero 8, 1936.

M. Buyson Lampa

Juez

A True Copy:

(Sgd) TELESFORO GEDANG
Deputy Clerk of Court
17th Judicial District
Iloilo, P. I,"

"ESTADOS UNIDOS DE AMERICA

MANCOMUNIDAD DE FILIPINAS
JUZGADO DE PRIMERA INSTANCIA
DE NEGROS OCCIDENTAL
18.0 Distrito Judicial

Expediente Cadastral No. 72

El Gobierno de Las G.L.R.O. Rec. No. 10822

Islas Filipinas, Lote No. 313

Solicitante, MANAPALA

LUIS GONZAGA y Jesena,

Mocionante.

X.....X

AUTO

Vista la p&ticion. del solicitante Sr. Luis Gonzaga y Jesena, de fecha 11 de marzo-de 1936, el Juzgado, hallando de misma bien fundada;

Por el presente, ordena la eancelaeion de los certificados de transferencia de titulo Nos. 11460 y 13855, sobre los lotes Nos. 414 y 424, respectivamente, del Catastro de Manapla, Negros Occidental, y la c Expedicion de otros a favor de Luis Gonzaga y Jesena, filipino, mayor de edad, soltero y vecino de la ciudad de Manila, I. F., haciendose conatar en los crtificados que se han de expedir todos los gravamenes que exiatcn el los certifleados de tranferencia Nos. 11460 y 13855.

Asi se ordena.

Bacolod, Occ. Negros, 21 de marzo, 1936.

(FDO) Braulio Bejasa

Juez

"ESTADOS UNIDOS DE AMERICA
MANCOMUNIDAD DE FILIPINAS
JUZGADO DE PRIMERA INSTANCIA
DE NEGROS OCCIDENTAL
18.0 Distrito Judicial

Exp. de Reg. No. 72.

El Gobierno de Las G.L.R.O. Rec. No. 10822

Islas Filipinas, Lote No. 313

Solicitante, MANAPLA

Luis Gonzaga. y Jesena,

Mocionante.

X X

AUTO

Vista y considerada la mocion del solicitante Luis Gonzaga y Jesena, de Fecha 11 de marzo de 1986, el Juzgado, hallando misma bien fundada;

Por el prorente, ordena la cancelacion del certificado de transferencia de titulo No, 8422 sobre el Lote No. 313 del catastro de Manapla, Negros Occidental, y la expedicion de otro a favor de Luis Gonzaga y Jesena, filipino, mayor de edad; soltero y vecino de la ciudad de Manila, I.F., haciendose conatar en la certificado que se ha de expedir todos los gravámenes qua existen en el certificado de tranferencia candelado, sc tuviere alguno.

Asi se ordena,

Bacolod, Occidental Negros, 21 de marzo, 1936.

(Sgd.) Braulio Bejasa

Juez

BB/spm.

Received the foregoing¹ document at 9:00 A.M. on May 7, 1936, and registered under Act 496 as follows:

Day Book, Vol. 6, Entry No. 49684 Inscribed on page 101 of Book Vol. 87 of Transfer Certificate of Title as Certificate No. 21151.

Bacolod, Occ. Negros, May 7, 1936.

(Sgd.) Mariano Coreova

Register of Deeds"

"ESTADOS UNIDOS DE AMERICA
MANCOMUNIDAD DE FILIPINAS
JUZGADO DE PRIMERA INSTANCIA DE ILOILO
17.0 Distrito Judicial

G.L.R.O. Record No. 9959

Lotes Nos. 1129-B y 1129-C

SITUADO EN EL MUNICIPIO DE JARO

X X

AUTO

Vista la peticion do Luis Gonzaga y Jesena cancelacion de los Certificados de Transferencia de titulo numeros 10051 y 13054, por las razones expuestas en la misma, y encontrando el Juzgado la misma bien fundada, por la presents ordena el Registrado de Titulos de la Provincial del Iloilo eancela los Certi ficados de Transferencia de Titulos numeros 10051 y 13054 y expiden otros en su higar a nombre de Luis Gonzaga y Jesena, soltero, mayor de edad, iilipino y vecino d'e Manila, P.I.

Asi se ordena.

Iloilo, Iloilo, Marzo 25, 1936.

M. Buyson Lampa

Juez"

As a witness, the defendant's counsel, Atty. Amelia K. del Rosario, testified that the aforequoted records of the probate court of Iloilo were discovered by her among the records of the cadastral court in Negros Occidental.

Due to the destruction of the court and property records of Iloilo as a result of the last war, as attested by the Clerk of Court, no will or probate order was produced, and neither were attested copies registered with the Office of the Register of Deeds other than those previously copied in this opinion; but the testimony of appellee and the copies of judicial pleadings and orders obtained by him from the Registry of Deeds of Negros Occidental leave little room for doubt that Dona Soledad Gonzaga died leaving a will instituting her nephew, the appellee Luis Gonzaga y Jesena, as her sole testamentary heir, in default of forced heirs; that said will was duly probated in 1935 or 1936 by the Court of First Instance of Iloilo in its Special Proceeding No. 2163; that the net residue of the estate was adjudicated by the court to said appellee, subject only to a claim of Consolacion G. de Lopez for P1,000.00 (Exh. 2); and that, thereafter, upon sworn petition of appellee, through his counsel, Francisco S. Hortillas, the Courts of First Instance of Iloilo (Exhibit 12) and Occidental Negros (Exhibit 3) ordered the respective Provincial Registers of Deeds to cancel the Certificates of Title standing then in the name of the deceased Soledad Gonzaga, and in lieu thereof to issue new certificates in the name of appellee Luis Gonzaga y Jesena, as admittedly was done. In the course of the years prior to the institution of this case in 1958, appellee held the properties and dealt with them as sole owner, leasing, encumbering, and selling some of them.

We can not fail to be impressed by the statements of attorney Francisco Hortillas, averring under oath in clear and unmistakable terms, not only once but twice, before the Courts of First Instance of Itoilo, and Negros (Exhibits 1 and 9), that the deceased Dona Soledad, in her probated will, made Luis Gonzaga y Jesena the sole heir to her properties. These manifestations are nigh conclusive, for the reason that attorney Hortillas was himself married to Monserrat Gonzaga, a sister of Soledad, who would have been one of the latter's heirs intestate had it not been for the testament in favor of the appellee. It taxes credulity beyond all reason to imply (as appellants do) that attorney Hortillas, violating family ties and affection, conspired with appellee to deprive his own wife and children (now some of present appellants) of their lawful share by intestacy in the properties left by Doña Soledad, if it were untrue that the latter had duly and properly bequeathed all her estate to appellee Luis Gonzaga. The authenticity of the sworn petitions of the late attorney Hortillas (Exhibits a and 1) are not impugned, and they were actually acted upon and granted by the two courts of first instance to which he addressed his petitions.

Coupled with his undoubted possession as owner and with his own dominical acts exercised over the former properties of Dona Soledad Gonzaga for twenty-two years (1936-1958), the exhibits aforementioned constitute practically conclusive proof of the truth of appellee's defenses, as found by the court below, despite the destruction of the original will and decree of probate.

Plaintiffs-appellants, however, assail the trial court's admission of the said court records on the ground that defendant-appellee failed to lay proper basis, or predicate, for their admission. Granting that the original will was destroyed with the court records in the last war, it is averred that appellee was duty-bound to produce the copy that, according to appellee's deposition, was in the custody of Encarnacion Gonzaga, as well as that left with attorney Hortillas. The argument is misleading. There is no proof that copies of the will ever existed other than the one burned while in appellee's possession (Dep. p. 23). Page 24 of the appellee's deposition is to the effect that—"

"My sister Encarnaion had the custody of the will because she was the one who was at the "bedside of my sister (referring to the testatrix Doña Soledad);

but by "the will" was obviously meant the one signed by the testatrix and the witnesses, not a copy.

Similarly, the witness was asked,

"When you filed this petition through your lawyer for the probate of the will, am I correct that you also presented a copy of the will?";

to which question the witness answered,

"The original was the one submitted".

From this answer, it certainly can not be inferred that Attorney Hortillas kept a copy of the original submitted to the court.

Neither do we see that appellee was bound to call, or account, for the witnesses to the testament. He was not trying to show that the will complied with the statutory requirements, but that the will had been admitted to probate; and of course, the probate decree conclusively established the due execution.

Appellants contend that if it were true that the will constituted Luis Gonzaga as sole heir, he had no need to ask the court for an order of adjudication. There is no merit to this contention. The order of adjudication is the judicial recognition that in appointing Luis as her only heir the testatrix did not contravene the law, and that the heir was in no way disqualified to inherit; just as a final order admitting a will to probate concludes all and sundry from thereafter contending that statutory formal requirements have not been observed in executing the testament. Instead of contradicting the testamentary institution of heir, the order of adjudication confirms it in this case. It may well be noted, in passing, that the order of February 8, 1986 (Exhibit 1 or B) speaks of approval of a "project of partition", while the petition of January 29, 1936 referred to therein spoke of an order of adjudication to a single heir. Since the order made evident reference to the petition of January 29, we agree with the court below that the difference in terminology was an inadvertent mistake. Anyway, appellants do not claim under the will or the partition; their theory is that Doña Soledad Gonzaga died intestate.

The failure of the defendant, Luis Gonzaga, to file with the Register of Deeds a certified copy of his letters of administration and the will, as provided in Section 90 of Act 496, and to record the attested copies of the will and of the allowance thereof by the court under Section 624 of Act 190, does not negate the validity of the judgment or decree of probate nor the rights of the devisee under the will. Section 90 of Act 496 refers to the dealings with registered lands by an executor or administrator; and while Luis Gonzaga was an administrator, this is beside the point, because his dealings with the lands, if any, during his tenure as an administrator are not here in question. That the defendant sought judicial orders to effect the transfers to his name of the certificates of title after the will was probated, and succeeded in having them so transferred, are not "dealings" with the property as administrator under section 90 of the Registration Act. The defendant sought and obtained the change in title in his own behalf and capacity. Although the step taken is not exactly what Section 624 of Act 190 directs, the same purpose was achieved—that of notice to all strangers of the cause and nature of the transfers; and it does not appear that anyone was prejudiced by the defect in registration complained of. At any rate, the recording of the judicial orders" sufficed as notice to interested parties, and was substantial compliance with the required recording of the will itself. No one faced by the recorded documents could ignore the reference therein to the probated testament; and the rule is that knowledge of what might have been revealed by proper inquiry is imputable to the inquirer (cf. *Emas vs. De Zuzuarregui*, 53 Phil. 197, 204).

As to the fact that Luis Gonzaga paid the inheritance taxes as "executor or administrator", the same is of no

importance. It is usual for an Administrator to pay these taxes, since by few no delivery of properties can be made to the heirs until and unless the inheritance taxes are paid [Internal Revenue Code, Section 95 (c)].

The contention that defendant-appellee, having been appointed Administrator, must be deemed a trustee up to the present is infantile. In the first place, no administration could continue to exist after the order of February 8, 1936 had approved the final account, adjudicated the property to the only heir, cancelled the bond of the administrator, and ordered the case "archivado el mismo por terminado". No proof exists that the proceedings were ever reopened. Secondly, the transfer of the certificates of title to Luis Gonzaga's own name in 1936 would constitute an open and clear repudiation of any trust, and the lapse of more than twenty years' open and adverse possession as owner would certainly suffice to vest title by prescription in the appellee, since appellants, who knew of the death of Doña Soledad in 1935, never made any move to require Luis to reconvey the property, or any part thereof. The lame explanation that Doña Soledad Gonzaga had expressed the wish that all the income should go to Luis while he conducted experimental studies on coconut products is wholly unconvincing as an excuse for the laches; his right to the income could not have blocked a partition of the capital assets among- appellants, if they had been at all entitled to them.

That some of the plaintiffs were denied their day in court is incredible, since all the plaintiffs were represented by counsel "Vicente Delfin, who claimed, and is presumed, to have been authorized to appear in their behalf, and who did appear for them from the inception of the case until after the lower court's decision was rendered. The authority of said counsel was never questioned until the adverse decision was rendered by the court below; and the complainant's failure to appear by themselves, or by other counsel, prior to the judgment is mute but eloquent proof that their allegation that Delfin was not their attorney is but a last minute attempt to escape the adverse effect of the appealed decision, a maneuver that deserves, no consideration.

Coming to the defendants' appeal: It is grounded on the disallowance of attorney's fees, expenses, and moral damages. The lower court granted only P1,000.00 for attorney's fees, but the defendants urge that the amount should be P41,000.00, based on an agreement of P1,000.00. plus 10% of the value of the properties if the case is decided in their favor. The other expenses refer to transportation, board and lodging, stenographic notes, photostatic copies of exhibits, securing documents, and taking of deposition in the sum of P1,205.00. Moral damages asked is P100,000.00.

The award of attorney's fees against the adverse party is essentially discretionary with the trial court (Francisco vs. GSIS, L-18287, 30 March 1963), and, in the absence of an abuse of discretion, the same should not be disturbed. The other expenses, unless recoverable as judicial costs, cannot be allowed because the complaint, although unmeritorious, is not dearly unfounded; moral damages, likewise, are not allowable because the suit is not a malicious prosecution under No. 8 of Article 2219 of the Civil Code. The issue is one primarily addressed to the discretion of the court below, which we are not inclined to disturb.

For the foregoing reasons, the appealed decision is hereby affirmed, with costs against the plaintiffs-appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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