

TESTATE ESTATE OF JACOBO FAJARDO Y PUNO. ANGELINA F. DE LOPEZ, ET AL., PETITIONERS AND APPELLEES, VS. ANTONIA J. VDA. DE FAJARDO, ET AL., OPPOSITOR AND APPELLANT.*G.R. No. L-9324. August 30, 1957*

Ponente: PADILLA, J.

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On 3 November 1954 Angelina F. de Lopez, Pacita F. de Villavicencio and Corazon F. del Castillo, children of the late Jacobo Fajardo y Puno, filed a petition in the Court of First Instance of Manila in Special Proceedings No. 59819, alleging that, pursuant to an agreement dated 18 November 1952, as amended by another dated 30 September 1953, entered into by and between the widow and heirs of the deceased, they agreed to subdivide into several lots the parcel of land covered by transfer certificate of title No. 352 and the parcel of land leased by the deceased in his lifetime from the Government, all situate in the province of Cotabato, and adjudicate the lots thus subdivided to the groups of heirs; that in order to arrive at a fair distribution of the estate, a committee to appraise the value of the share adjudicated to each group of heirs was formed; that the committee formed was composed of Demetrio Fajardo, representing the first group of heirs, and Lucio R. Ildefonso, representing the second group of heirs; that the parties agreed further that in case of conflict in the reports of the two members, Edgardo Villavicencio shall submit a report on the value of the lots as appraised by him and his report shall be final and binding upon the parties; that as the two members of the committee submitted different and conflicting reports, Edgardo Villavicencio submitted his own report on 6 September 1954; that in this report the widow Antonia J. Vda. de Fajardo, who is the administratrix of the estate, is called upon to pay to the petitioners the sum of P44,539.68, to settle the difference in value between the share adjudicated to the former and the latter; and that all the heirs are about to register the two agreements mentioned and to secure the corresponding certificates of title to the respective parcels of land adjudicated to them. Upon the foregoing allegations the petitioners prayed that the probate court direct the Registrar of Deeds in and for the province of Cotabato to annotate on the transfer certificate of title to be issued to Antonia J. Vda. de Fajardo for the lots adjudicated to her her obligation to pay the sum of P44,539.68 due and owing to the petitioners.

On 12 November 1954 the administratrix objected to the motion to annotate the lien on the ground that the sum of P44,539.68 awarded to the petitioners has not yet been approved by the Court, and for that reason the order to annotate the lien would be premature; that the sum of P44,539.68 awarded to the petitioners is unreasonable because the coconut trees planted in the parcel of land owned by the deceased are given the same valuation as those planted in the parcel of land leased from the Government; that the administratrix has a claim still unpaid in the sum of P3,631.76 against each of the petitioners which may be set off partially against the sum of P44,539.68; that the administratrix has made certain advances reimbursible by the heirs which may also be set off partially against the sum claimed by the heirs due them; that in the project of partition dated 24 November 1952 already approved by the Court, the petitioner Angelina F. de Lopez is required to pay the estate of the deceased Abelardo Fajardo the sum of P2,018.40, but the said sum still remains unpaid; and that the report submitted by Edgardo

Villavicencio has not yet been approved by the Court.

On 12 January 1955, the petitioners filed a reply to the opposition alleging that the report of Edgardo Villavicencio was submitted in compliance with the agreement entered into by the heirs duly approved by the Court on 10 October 1953; that in accordance with article 2044 of the new Civil Code, the report need not be approved by the Court to bind the parties therein; that granting that the sum of P44,539.68 awarded to the petitioners is unreasonable, the objection thereto is not well taken, because unreasonableness is not a ground upon which the validity of the report may be assailed pursuant to article 2038 of the same Code; that the administratrix has waived her right to collect from each of the heirs the sum of P3,631.76; that even if there is a sum of money due the estate of the deceased Abelardo Fajardo from petitioners Angelina F. de Lopez, the same cannot be set up as ground to object to the report filed by Edgardo Villavicencio because the creditor is a different estate; and that if any sum of money is due the estate of the late Abelardo Fajardo from the petitioners, their individual liability does not exceed P672.80 which they are willing to pay to the said estate.

On 28 January 1955 the Court issued an order, the dispositive part of which provides:

Premises considered this Court finds' that the report of Edgardo Villavicencio in question does not require judicial approval in view of the terms of the agreement above quoted, and that the unreasonableness of the amount awarded is not one of the grounds provided for by law to contest the award or decision of an arbitrator.

However, it appearing' that there are amounts allegedly due and payable to the oppositor from each of the movants, and in order to avoid multiplicity of incidents and actions, this Court is of the opinion that the matter should be set for hearing, as it is hereby set for hearing; on February 17, 1955, at 8:30 a.m., for the purpose of adjusting respective claims of the movants and the oppositor indicated above.

On 9 March 1955, acting upon the various pleadings filed by the parties, namely, motion for reconsideration, reply thereto, rejoinder to reply, and opposition to the rejoinder, the Court issued an order denying the motion for reconsideration.

The administratrix has appealed.

The aforequoted dispositive part of the order of the probate court appealed from holds in effect that the report of Edgardo Villavicencio is final and binding upon the parties and that the sum of P44,539.68 is due and payable by the administratrix to the petitioners.

The appellant contends that the said report is not final and binding upon the parties; that it must be approved by the Court to be so; and that that part of the agreement stipulating that the decision of the arbitrator is final, is contrary to public policy, for it deprives the courts of jurisdiction, and for that reason null and void. The appellees, on the other hand, invoke article 2044 of the new Civil Code which provides that "Any stipulation that the arbitrators' award or decision shall be final, is valid * * *."

Paragraphs 7 and 8 of the agreement entered into by and between the parties on 18 November 1952, as amended by another on 30 September 1953, provide:

7.[o]—Para la igualacion de Yalores tanto del terreno como de sus mejoras y plantaciones, queda constituido un comite de dos miembros, o sea: uno por parte de la viuda, hijo y nietos (primer grupo) y otro por parte de las tres hijas (segundo grupo). Para el primer grupo queda nombrado el heredero Dn. Demetrio Fajardo y para el segundo grupo, Dn. Lucio Ildefonso;

8[o]—En caso de desacuerdo en su actuacion entre los dos comisionados, actuara como arbitro Edgardo Villavicencio, cuya decision sera decisiva y final.

Nowhere in the aforequoted stipulations of the agreement, as amended, is the arbitrator empowered to award to any heir the sum of money he did award to the petitioners. The purpose in forming the committee of two was to appraise the value of the estate as a step leading to its just and fair partition among the heirs. At most that part of the report of the arbitrator awarding to the herein petitioners the sum of P44,539.68 as due from the administratrix, would merely be recommendatory but could not be deemed final and binding upon the administratrix. What is final and binding upon the parties is that part of the report appraising the subdivided parcels of land and improvements thereon. Section 24(d), Republic Act No. 876, known as the Arbitration Law, which took effect on 19 December 1953, and may be retroactively applied to the case at bar because it is procedural in character, provides that the court may vacate an award of an arbitrator when he has exceeded his powers. The probate court in effect awards to the petitioners the sum of P44,539.68 as due from the administratrix upon the ground "that the report of Edgardo Villavicencio in question does not require judicial approval in view of the terms of the agreement above quoted, and that the unreasonableness of the amount awarded is not one of the grounds provided for by law to contest the award or decision of an arbitrator." As already adverted to, this is an error, because the agreement entered into by the parties does not give the arbitrator the power to do so.

The order appealed from in so far as it holds "that the report of Edgardo Villavicencio in question does not require judicial approval in view of the terms of the agreement above quoted, and that the unreasonableness of the amount awarded is not one of the grounds provided for by law to contest the award or decision of an arbitrator," is set aside. Let the probate court proceed with the hearing of the case "for the purpose of adjusting the respective claims of the movants and the oppositor indicated above," without pronouncement as to costs.

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

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