

**ANITA MANG-OY, ASSISTED BY HER HUSBAND, WILLIAM MANG-OY;
LEONORA MIGUEL, ASSISTED BY HER HUSBAND, MIGUEL OLILA;
HELENA TAYNAN, AND JOSE TUMPAO, PETITIONERS, VS. THE
COURT OF APP...**

G.R. No. L-27421. September 12, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

We are back to the early 1900's in the cool regions of the Mountain Province, setting of many legends of adventure and romance among the highlanders of the North. Our story is not as fanciful, involving as it does not a rivalry for the hand of a beautiful Igorot maiden but a prosaic dispute over a piece of land. Even so, as in those tales of old, the issue shall be decided in favor of the just and deserving albeit according to the dictates not of the heart but of the law.

The hero of this story we shall call Old Man Tumpao although at the time it all began he was still a young and vigorous man. He had a first wife by whom he begot three children, who are the private respondents in this case.[1] Upon her death, he took to himself a second wife, by whom he had no issue but who had two children she had "adopted" according to the practice of the Igorots then.[2] It is their children who, with some others, are the petitioners in this case.

The facts are as simple as the ancient hills.

On September 4, 1937, Old Man Tumpao executed what he called a "last will and testament" the dispositive portion of which declared:

"Lastly, I appoint my son BANDO TUMPAO, whom I named, that after departing from this life, he shall be the one to carry or fulfill my Testament, and that he shall have the power to see and dispose all what I have stated, he shall not change what I have already stated in my Testament so that there is truth in my will, I will affix my right thumbmark at the end of my written name because I do not know how to read and write, after it has been read to me and affirm all what is my Will this 2:00 o'clock in the afternoon this 4th day of September 1937, before those who are present and have heard what I have stated, Pico La Trinidad, Benguet, 4th September, 1937." [3]

The contents of this document were read to the beneficiaries named therein who at the time were already occupying the portions respectively allotted to them. In implementation of this document, they then, on September 7, 1937, executed an agreement providing as follows:

"We who are named children and who will inherit from our father TUMPAO: BANDO TUMPAO, LAMBIA, ABITO, JOSE and LABET, and we also whose lands are included, SUCDAD BUTIOG, TULINGAN PUL-OT and ANTONY MENECIO all of legal age and residing in the town of La Trinidad, Sub-Province of Benguet we say in truth after swearing under oath in accordance to law that the testament of our father TUMPAO who is presently ill by virtue of our right to inherit and also acknowledge or recognize the lands as

included in the area of said land as appearing in Title No. 416 in the name of our father TUMPAO here in La Trinidad, Barrio Pico, have heard and understood the Will as told by him concerning our right to the land which we will inherit and also to those whose lands which were included in the said Title No. 416 because we were all called be present and hear his will. We heard and agreed to his will as appearing in his testament regarding the land which we will inherit. We also recognized and agree to the appointment of our brother BANDO to whom the parcels of land is to be delivered and he will also be the one to deliver to us our shares as soon as we will demand the partition in accordance with the will of our father TUMPAO as soon in the Testament which we saw and have heard by all.

"It is also agreed upon among us in this confirmation that when our brother BANDO who is appointed to distribute to us our shares we affirm in this instrument that will answer for all the expenses when it shall be surveyed so the share of each will be segregated so also with the approval of the title, which shall appear the name of each of us and that we do not dispute the land which we are actually working shall pertain to us as embodied in the said will of our father TUMPAO.

"We execute this deed of confirmation in the presence of the Notary Public here in Baguio so that this. Will, be used as our agreement so also with the will of our father so that they be one to be followed as regard upon by all and we affix our right thumbmark at the end of our written name because we do not know how to read and write this 7th day of September, 1937 in the City of Baguio."[4]

Two days later, Old Man Tumpao died.

The parties remained in possession of the lots assigned to them, apparently in obedience to the wish of Old Man Tumpao as expressed in his last "will" and affirmed by the other above-quoted instrument. But things changed unexpectedly in 1960, twenty three years later, that brought this matter to the courts.

On November 4, 1960, the respondents executed an extrajudicial partition in which they divided the property of Old Man Tumpao among the three of them only, to the exclusion of the other persons mentioned in the above-quoted documents.[5] By virtue of this partition, Old Man Tumpao's title was canceled and another one was issued in favor of the three respondents.[6]

It is this title that is now being questioned by the petitioners, who are suing for reconveyance. They had been sustained by the trial court,[7] which, however, was reversed by the Court of Appeals. They are before this Court to challenge that reversal.

In deciding against them, the Court of Appeals held that the "will" executed by Old Man Tumpao was null and void because it had not been probated. The agreement of partition among the supposed beneficiaries of the will was nullified because it was a partition inter vivos and had not been approved by the Director of the Bureau of Non-Christian Tribes. It was likewise held that the land in dispute was acquired during Old Man Tumpao's first marriage although it was registered during his second marriage and so the petitioners were liable in rentals for the lots occupied by them, as well as attorney's fees.[8]

After examining the musty records, we sustain the ruling - made both by the trial court and the Court of Appeals - that the will, not having been probated as required by law, was inoperative as such. The settled principle, as announced in a long line of decisions in accordance with the Rules of Court, is that no will shall pass either real or personal property unless it is proved or allowed in court.[9]

We find, however, that the document may be sustained on the basis of Article 1056 of the Civil Code of 1899, which was in force at the time the said document was executed by Old Man Tumpao in 1937. The said article reads as follows:

"Art. 1056. If the testator should make a partition of his properties by an act inter vivos, or by will, such

partition shall stand in so far as it does not, prejudice the legitime of the forced heirs."

On this score, we agree with the trial court. The applicable decision is *Albela vs. Albela*,^[10] also decided by the Court of Appeals, with Justice J. B. L. Reyes as the ponente.

In this case, Agustin Albela executed on January 19, 1935, a deed of partition dividing two parcels of land between his daughters, Eduarda and Restituta, who indicated their conformity by signing the instrument. They took possession of their respective shares upon his death, but fourteen years later, Restituta ejected Eduarda from her lot, alleging title by purchase from a third party and denying the existence of the partition. Eduarda sued for recovery and was upheld by the trial court on the basis of the deed of partition.

Let Justice J. B. L. Reyes, who later became a distinguished member of this Court, take over at this point:

"In their argument, appellants do not question the authenticity of the above document, but argue against its validity, on the grounds summarized in their brief (p. 7), as follows:

'Therefore the allegations of the plaintiff-appellee, Eduarda Albela, rest on a document which defies classification. If it is a deed of partition, it is null and void because it is not embodied in a public document; if it is a simple donation of realty, it is also null and void, because it is not in a public document and there is no acceptance; if it is a donation *Mortis Causa*, certainly it is null and void because it does not follow the rules governing testamentary succession; and if ever it is to be classified as a will, more so, it is still null and void because it does not conform to the requirements of Section 618, Act 190 as amended by Act 2645.'

"None of these objections is valid in law. The appellants evidently fail to realize that Article 1056 of the Civil Code of 1889 authorizes a testator to partition *inter vivos* his property, and distribute them among his heirs, and that this partition is not necessarily either a donation nor a testament, but an instrument of a special character, *sui generis*, which is revocable at any time by the causante during his lifetime, and does not operate as a conveyance of title until his death. It derives its binding force on the heirs from the respect due to the will of the owner of the property, limited only by his creditors and the intangibility of the legitime of the forced heirs. 'El testador es libre y sus herederos han de pasar por lo que haga en cuanto no perjudique la legitima de los forzosos. Inutil es soñar en otras limitaciones que no existen.' (7 Manresa Commentaries, 6th Ed., p. 639.

"That such partition is not governed by the rules of wills or donations *inter vivos* is a consequence of its special nature. Says the learned Manresa on this point:

'Con estas palabras (en acto entre vivos) la ley en el Artículo 1056, como en el 1057, que despues examinaremos, alude a las formalidades con que puede practicarse la particion, no a los efectos de esta, significando que para ella no es preciso que intervengan las formas solemnes que todo testamento o acto de ultima voluntad en general requiere. Ni aun sera preciso guardar las formalidades especiales de las donaciones, porque no se trata de disponer a titulo gratuito, sino de dividir aquellos bienes de que ya anteriormente se dispuso en forma legal.' (Underlines supplied. Op. Cit., p. 635)

"It was sufficient, therefore, that the partition, Exhibit A, should be in writing. It does not have to be in a public document except to affect third persons (Art. 1280), being valid between the parties who signed it in its present form.

"If any invalidity could be alleged against the partition, it would lie in the absence of a previous testament preceding it (*Legasto v. Verzosa*, 54 Phil. 766). And even this may not be indispensable in the present case, for the testator's partition did not depart from the shares allotted to his heirs by the law of intestacy. Nor is a prior will necessary under Article 1080 of the new Civil Code, which replaced the word 'testator' in Article 1056 of the Code of 1889 with the broader term 'person.'

"Be that as it may, the nullity of the partition Exhibit A would not alter the result. There being only two daughters

surviving the deceased Agustin, each one of them would necessarily be entitled to one-half of each of the two parcels he owned at his death, and Agustin's former ownership is no longer disputed by the appellants in this instance. In addition, since both daughters signed the partition Exhibit A, its terms would bind both, and estop them from asserting a different interest. Appellants' act in appropriating the whole inheritance and its fruits can find no support in law or justice."

There is no difference in legal effect between Agustin Albela's deed of partition and Old Man Tumpao's "last will and testament." Both are sustainable under Article 1056 of the Civil Code, which was in force at the time they were executed. Even as Agustin Albela's partition was signed by the two daughters themselves, so was Old Man Tumpao's "will" affirmed by the beneficiaries in their agreement of September 7, 1937, which reiterated and recognized the terms of such "will." While not valid as a partition inter vivos under Articles 816 and 1271 of the old Civil Code, it was nevertheless binding on the parties as proof of their conformity to the dispositions made by Old Man Tumpao in his "last will and testament."

As the trial court put it:

"The will alone, 'Exh. B', would be inoperative for the simple reason that it was not probated. However, when the persons who were named therein as heirs and beneficiaries voluntarily agreed in writing to abide by its terms probably to save the expenses of probate, and furthermore, carried out its terms after the death of the testator until now, then it must be held to be binding between them.

"Said agreement was not a disposal of inheritance by a prospective heir before the death of the testator, but an agreement to carry out the will. It was not contested by the defendants and after the lapse of 25 years their right, if any, to assail it has prescribed under Art. 1144 of the Civil Code.

"Art. 1144 - The following actions must be brought ten years from the time the right of action accrues:

"1) Upon a written contract;

"2) Upon an obligation created by law;

"3) Upon a judgment.

"Any formal defect of the deed, 'Exh. C', was cured by the lapse of time.

"What the plaintiffs received had an aggregate area of less than 1/3 of the land of Old Tumpao. It covers about 11,000 square meters while the total area was more than 35,000 square meters. Under the old Civil Code, it was within the free disposable portion of ones' estate despite the existence of any forced heirs. (See old Civil Code, Art. 808)

"In view of the foregoing considerations, the defendants are ordered to execute a deed of conveyance in favor of the plaintiffs of the areas respectively owned and occupied by them and to pay the costs.

"Succad Butiog is ordered to pay the defendants P160.00 more as a reasonable amount of his additional share in the expenses of segregating his lot but they (defendants) are ordered to execute a deed of conveyance in his favor of the said lot owned by him.

"The expenses of survey and segregation must be borne by the plaintiffs."

We may add that the agreement entered into by the parties in implementation of Old Man Tumpao's "will" did not have to be approved by the Director of the Bureau of Non-Christian Tribes because the Administrative Code of Mindanao and Sulu was not extended to the Mountain Province.[11]

Moreover, the document was not a conveyance of properties or property right.[12]

It remains to state that the property in dispute having been registered in 1917, the presumption is that it was acquired during the second marriage and so cannot be claimed by the respondents as the conjugal property of their mother and Old Man Tumpao. Hence, they are not entitled to retain the entire land as their exclusive inheritance or to collect rentals for the lots occupied by the petitioners.

The trial judge, the Hon. Feliciano Belmonte, was correct in ordering the reconveyance to the petitioners of their respective shares. We affirm his decision in toto.

How much simpler was life among the natives in the North during the early days, when right and wrong were weighed according to the primal code of the ancient hills. Even so, though that past is gone forever, justice now, as it was then, is still for the deserving.

WHEREFORE, the decision of the Court of Appeals is REVERSED and that of the trial court reinstated, with costs against the respondents.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, and Feliciano, JJ., concur.

[1] Rollo, p. 7.

[2] Ibid., pp. 7-8.

[3] Exh. "B".

[4] Exh. "C".

[5] Rollo, pp. 4-5; Exhibit "I".

[6] Ibid., p. 5.

[7] Id.

[8] Id., pp. 36-41.

[9] Guevara v. Guevara, 74 Phil. 492; Guevara v. Guevara and Quinto, 98 Phil. 250; Mendoza v. Pilapil, 72 Phil 546; Baluyot v. Paño, 71 SCRA 86; Manirang v. Court of Appeals, 114 SCRA 478; Roberts v. Leonides, 129 SCRA 33.

[10] C.A. - G.R. No. 5583-R, June 20, 1951.

[11] Bambao v. Lednisky, 1 SCRA 330; Malaguit v. Alipio, 12 SCRA 95.

[12] Mangayao v. Lasud, 11 SCRA 158; Miguel v. Catalino, 26 SCRA 234.

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