

FERNANDO BAQUIAL, PLAINTIFF AND APPELLEE, VS. FELIX AMIHAN, ADMINISTRATOR OF JUAN AMIHAN AND HILARIA CABAUG, DECEASED SPOUSES, AND ENRIQUE AMIHAN, DEFENDANTS AND APPELLANTS.

G. R. No. L-4377. January 23, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Bohol, Hon. Jose R. Querubin presiding, dated March 24, 1950, denying a motion to dismiss presented by the defendants-appellants Felix Amihan, the administrator of the estate of Juan Amihan, and Enrique Amihan. The record discloses that the action was instituted by the plaintiff-appellee to recover the ownership and possession of a certain parcel of land situated in the barrio of Rizal, Sierra-Bullones, Bohol, covered by certificate of title No. 1012. This certificate of title is in the name of Juan Amihan, married to Hilaria Cabahug. The land was acquired by them as a homestead patent. Plaintiff-appellee alleges that he purchased the said land from the widow of Juan Amihan, Hilaria Cabahug, for P2,000 on November 12, 1946, and since then he had been in possession until the year 1948 when Felix Amihan, administrator of the estate of Juan Amihan, entered upon the land, depriving him of the possession thereof.

The record further discloses that Juan Amihan died around the year 1946, before the land was sold by his widow to plaintiff-appellee Fernando Baquial. Proceedings having been instituted for the settlement of his estate (special proceeding No. 88, Felix Amihan, Administrator), the administrator filed on January 17, 1949, a motion asking for authority to sell the land, alleging that it was the only real estate left by the deceased. Against this petition Fernando Baquial presented an opposition, claiming that the land had already been sold to him by the decedent's widow, as evidenced by the deed executed by her on November 12, 1946. The court denied this opposition. It declared that the due execution of the deed of sale was not proven, that neither was a valuable consideration proven, and that the deed of sale in favor of Baquial was not registered. It, therefore, dismissed the opposition and approved the authorization prayed for. The order was issued by Hon. Jose S. Rodriguez, then presiding said court, and is dated March 26, 1949. However, when the sale was submitted to the court for approval, the Judge then presiding held that the court has no jurisdiction to try the question of ownership, and issued an order holding the approval of the sale in abeyance and instructing the parties interested to institute a separate civil action to settle the question of ownership.

It was by virtue of the above holding that the present action, civil case No. 499 was instituted by Fernando Baquial. Upon the presentation of the complaint, a motion to dismiss was presented, on the ground that the order of the court issued by Judge Rodriguez dated March 26, 1949, dismissing Baquial's opposition to the petition for authority to sell, was a final judgment or order binding upon Fernando Baquial. The motion to dismiss having been denied, an appeal from the order of denial was prosecuted.

It is claimed on the appeal that the question of ownership was not decided by the order of the court dated March

26, 1949, and that what was determined thereby was the invalidity of the deed of sale executed by Hilaria Cabahug in favor of plaintiff-appellee, which the court found to be fraudulent and, therefore, null and void; that these findings cannot now be disputed in this action, as the order dismissing plaintiff's claim is not an interlocutory but a final order, because it operates to dispose of plaintiff's claim with finality, and no appeal was taken against said order. In support of his contention counsel cites the case of *Lanuza vs. Gonzales*, 17 Phil., 413.

The case cited is not applicable to the case at bar, because the prior judgment in that case was rendered in an ordinary action, not in a special proceeding for the settlement of the estate of a deceased person. The rulings of this court have always been to the effect that in the special proceeding for the settlement of the estate of a deceased person, persons, not heirs, intervening therein to protect their interests are allowed to do so to protect the same, but not for a decision on their action. (2 Moran, 432, 1952 revised edition, citing the case of *Intestate Estate of the deceased Lee Liong, Dinglasan, et al. vs. Ang Chia,[*] et al.*, G. R. No. L-3342, April 18, 1951.) In the case of *In re Estate of the deceased Paulina Vazquez Vda. de Garcia, Teresa Garcia vs. Luisa Garcia, et al.*, 67 Phil., 353, this Court held:

"A court which takes cognizance of testate or intestate proceedings has power and jurisdiction to determine whether or not the properties included therein or excluded therefrom belong prima facie to the deceased, although such a determination is not final or ultimate in nature, and without prejudice to the right of interested parties, in a proper action, to raise the question bearing on the ownership or existence of the right or credit." (Syllabus; see also *Andrea Cordova Vda. de Mañalac, etc. vs. Buenaventura Ocampo, et al.*, 73 Phil., 661.)

To this same effect are rulings in various states of the United States.

* * *. That the probate court is without jurisdiction to try the title to property as between the representatives of an estate and strangers thereto is too well established by the authorities to require argument. See *Schouler, Ex'rs*, sec. 236; *Lynch vs. Divan*, 66 Wis., 493, 29 N.W. Rep., 213; *Budd vs. Hiller*, 27 N. J. Law, 54; *Snodgrass vs. Andrews*, 30 Miss. 472; *Theller vs. Such*, 57 Cal., 447. (*Stewart vs. Lohr*, 1 Wash. St., 341; 25 Pac., 457; see also *In re Groome's Estate*, 94 Cal., 69, 29 Pac., 487; *Maury vs. Jones*, 25 F. [2d], 412.)

There is also authority abroad that where the court is without jurisdiction to determine questions of title, as for example, as between the estate and persons claiming adversely, its orders and judgments relating to the sale do not render the issue of title *res judicata* (34 C. J. S. 539).

In the case at bar, the opposition of the plaintiff herein was filed against a petition of the administrator to sell the property, and the court's finding on the invalidity of plaintiff's deed, although necessary to determine the motion to sell, cannot, under the ruling cited, be considered *res judicata*. The probate court was not, therefore, entirely without any legal justification when it held the approval of the sale in abeyance until the question of ownership of plaintiff herein had been decided in a proper action.

It is not, however, necessary for us to predicate our decision on the question of the jurisdiction of a probate court in a proceeding to settle an estate, to determine the title of a third person claiming land sought to be sold by the administrator. We prefer to do so on other grounds. In the first place, we find that the order of the court for the sale of the property is not a final order or judgment on the question of the validity of the sale executed by the widow of the decedent in favor of the plaintiff herein, or on the question of the ownership of the property claimed by the plaintiff. The reason is that it never became final, because it was suspended by the new order holding the approval of the sale in abeyance. The record fails to disclose the date of this subsequent order, but even if it was promulgated more than thirty days after the original order of sale, the court could still suspend its effects, because an order or decree of sale is not considered final until an actual sale has been made thereunder and confirmed by the court. (24 C.J., 615; 34 C.J.S., 536.) The order to sell the property was, therefore, suspended by the subsequent one holding the approval of the sale in abeyance; hence, it never acquired any finality.

In the second place, it does not appear that when the court issued its order holding in abeyance the approval of the sale, the administrator objected to said order and appealed therefrom. Having failed to do so, he can not now claim that the previous order of March 26, 1949, authorizing the sale, had not been modified and is a final order.

Lastly, no appeal can be taken against the order denying the motion to dismiss, with costs against the appellants.

Paras, C.J., Pablo Bengzon, Padilla, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

[*] 88 Phil., 476.

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