

**PACITA, FILOMENO, REMEDIOS, ADELAIDA AND NELIA, ALL
SURNAMED DIMAYUGA, AND HEIRS OF SOCORRO
DIMAYUGA-LASALA; SERGIO LASALA, MARCELINO; SATURNINO
AND MINORS AIDA, DANTE, BELEN, L...**

G.R. No. L-48433. April 30, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the effect of a partition inter vivos on the successional rights to a thirteen-hectare homestead located at Pola, Oriental Mindoro.

The spouses Genaro Dimayuga and Segunda Gayapanao, who were married in 1915 (Exh. 2), acquired a Torrens title for that homestead in 1928 (Exh. 1). Segunda died intestate in 1940, survived by her son, Manuel, and her husband, Genaro.

During their marriage, Genaro had a mistress named Emerenciana Panganiban by whom he begot five children, named Filomeno, Pacita, Adelaida, Remedios and Socorro. A sixth child, Nelia Dimayuga, was born in 1944 or after Segunda's death. Emerenciana cultivated a homestead adjoining the thirteen-hectare homestead in question. So, it was not surprising that she became the paramour of Genaro.

Genaro, 56, married Emerenciana, 37, on February 26, 1947 (Exh. 3). That marriage legitimated Nelia, who had been a duly acknowledged natural child, but it did not improve the status of her brother and four sisters who were adulterous or spurious children.

On September 16, 1948, or about a month before Genaro's death a "partition of real property" was executed in English. It was duly notarized. It was signed by Genaro, Manuel, Filomeno and Pacita and thumbmarked by Emerenciana, in representation of her minor children Adelaida, Remedios, Socorro and Nelia (Exh. A), though Emerenciana had not been appointed judicial guardian of their property.

The document states the ages of the children as Pacita, 22, Filomeno, 19, Adelaida, 17, Remedios, 15, Socorro, 13, and Nelia, 4. But their birth certificates show that they were all minors. Filomeno and Pacita were twins born on December 25, 1929; Remedios and Adelaida were also twins born on January 2, 1932; Socorro was born in 1938 and Nelia, as already noted, in 1944 (Exh. 4 to 9).

In that partition, which the petitioners also regard as a donation, Genaro treated the homestead as his sole property and not conjugal, which it actually was (*Pisalbon vs. Bejec*, 74 Phil. 288; *Tabunan vs. Marigmen*, 101 Phil. 288). Manuel was given as share five and one-half hectares of the homestead (southern portion adjoining Emerenciana's separate homestead). The six illegitimate children were given seven and seven-tenth hectares (northern portion also adjoining Emerenciana's separate homestead). The partition was not registered.

The partition was amended in 1951 by means of an affidavit in Tagalog signed by the same parties except Genaro

who died intestate on October 8, 1948. An additional one hectare was given to Manuel, making his total share six and five-tenth hectares. The 1948 partition prejudiced him because "ang ginawang paghahati ni Genaro Dimayuga ay hindi tumpak sapagkat naapi si Manuel Dimayuga" (Exh. B).

Nineteen years later, or on May 28, 1970, Manuel having been advised that the entire homestead was inherited by him from his parents and freed from his father's moral ascendancy, executed an affidavit of adjudication which he registered. He obtained a Torrens title for the thirteen-hectare homestead (Exh. 1).

About two months later, the six illegitimate children filed a complaint for the annulment of Manuel's title and for the division of the homestead equally among Genaro's seven children including Manuel. The parties submitted a partial stipulation of facts. The plaintiffs offered the partition and the amendatory affidavit as their documentary evidence (Exh. A and B). On the other hand, Manuel's documentary evidence consisted of his title, the marriage contracts of his parents and of Genaro and Emerenciana and the birth certificates of the illegitimate children (Exh. 1 to 9).

There was no oral evidence. The parties submitted "the case on pure questions of law" (p. 15, Record on Appeal). The trial court annulled Manuel's title, decreed that about one-half of the homestead should be divided equally among the six illegitimate children and ordered Manuel to pay them P2,500 as moral and exemplary damages and attorney's fees.

Manuel appealed to the Court of Appeals which adjudicated to him three-fourth of the homestead and other one-fourth to Nelia. The six illegitimate children appealed to this Court. We gave due course to the appeal because of their contention that since the case involved only legal questions the Appellate Court had no jurisdiction over it. We treated the case as if it had been directly appealed from the trial court to this Court.

The petitioners or the six illegitimate children admit that the Appellate Court correctly applied the law by adjudicating three-fourth of the homestead to Manuel and one-fourth to Nelia (p. 10, Brief). However, they contend that their possession of about one-half of the homestead since the 1948 partition made them owners by prescription and that Manuel is estopped to deny that fact because he adjudicated the homestead to himself only twenty-two years later.

That contention is devoid of merit. It may be morally plausible but it is legally indefensible. No portion of the homestead, a registered land, may be acquired by prescription. "No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession." (Sec. 46, Act No. 496; Sec. 47, Property Registration Decree, P. D. No. 1529; Art. 1126, Civil Code.)

The petitioners cite *Parcotilo vs. Parcotilo*, 120 Phil. 1231. That case involves unregistered land which was held by the claimant and his predecessors for over thirty years, an extraordinary prescription. It was immaterial that the testament in that case was void.

Article 1056 of the old Civil Code provides that "if the testator should make a partition of his property by an act inter vivos, or by will, such partition shall stand insofar as it does not prejudice the legitime of the forced heirs." Article 1056 was construed to mean that a person who makes an inter vivos partition must first execute a will. If the will is void, the partition is void (*Legasto vs. Verzosa*, 54 Phil. 766; *Fajardo vs. Fajardo*, 54 Phil. 842; *Romero vs. Villamor*, 102 Phil. 641). With more reason would the partition be void if there was no will.

The 1948 partition was not in conformity with law. It assumed that Genaro was the owner of the entire homestead. That is wrong. One-half of the homestead, subject to the husband's usufructuary legitime, was inherited in 1940 by Manuel upon the death of his mother who was married to Genaro for twenty-five years. Genaro could dispose by an act inter vivos only one-half of the homestead. In that one-half portion, Manuel and

Nelia, as Genaro's legal and forced heirs, had a two-third legitime.

In "donating" the said one-half portion to his six illegitimate children, Genaro deprived Manuel of his legitime in his estate or in effect, made him renounce his future inheritance. The 1951 affidavit cannot be construed as a repudiation of his inheritance in his father's estate because the document does not have that tenor. For this reason, Manuel is not estopped to ignore that partition. The rule in *Alforque vs. Veloso*, 65 Phil. 272, cited by the petitioners, does not apply to Manuel. The facts in the *Alforque* case are radically different from the facts of the instant homestead case.

The five illegitimate children (the sixth child Nelia was legitimated) have no rights whatsoever to the said homestead. As already said, they were adulterous or spurious children.

"Desde de las leyes de Partida, la ciencia y la ley suponen, en todas sus determinaciones, la existencia bien caracterizada de los dos grupos de hijos adulterinos: unos, los simplemente adulterinos, ex damnato coitu o de dañado ayuntamiento, los nacidos de mujer soltera o viuda y de hombre casado; y otros notos, ex damnato et punibili coitu o de dañado y punible ayuntamiento, los nacidos de mujer casada, cualquiera que sea el estado del hombre, porque la madre, en algunos casos, incurria en la pena de muerte." (17 Enciclopedia Juridica Española, p. 780-1).

As such, they are not entitled to successional rights but only to support (Art. 139, old Civil Code; *Reyes vs. Zuzuarregui*, 102 Phil. 346; *Olivete vs. Mata*, 100 Phil. 563; *Javelona vs. Monteclaro*, 74 Phil. 393; *Lagrimas vs. Lagrimas*, 95 Phil. 113; *RAMirez vs. Gmur*, 42 Phil. 855).

Manuel and Nelia, as Genaro's legal and forced heirs, are entitled to inherit Genaro's one-half portion. It cannot be said that the five adulterous children have no resources whatsoever. Their mother, Emerenciana, has a homestead adjoining Genaro's homestead in question.

WHEREFORE, the trial court's judgment is reversed and set aside. Three-fourth of the said homestead is hereby adjudicated to Manuel Dimayuga and one-fourth to Nelia Dimayuga. The register of deeds should cancel Manuel's title and issue the corresponding titles in accordance with this decision. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

De Castro, J., no part.

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