

**INTESTATE ESTATE OF THE DECEASED EDUVIGES BANAGA.
LIBRADA LUCERO, ADMINISTRATRIX AND APPELLANT, VS.
LEONORA BANAGA AND MARIA BANAGA, OPPOSITORS AND
APPELLEES.**

G.R. No. L-34224. October 15, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Eduviges Banaga died intestate on September 24, 1921 in San Antonio, Zambales. She was survived by her two legitimate children named Rufina Pascasio and Anselmo Pascasio and two acknowledged natural children named Felix Banaga and Leonora Banaga (Banaga vs. Pascasio, CA-G.R. No. 4848, July 31, 1954).

Rufina Pascasio died on December 31, 1943. She was survived by her eight legitimate children all surnamed Lucero. Among them is Librada Lucero, the administratrix. Felix Banaga, who is dead, is survived by his legitimate child, Maria Banaga, one of the oppositors. Precilla Lucero, one of the children of Rufina Pascasio, died on December 29, 1953 and was survived by her husband, Jacinto Pascual, and their only child, Presma Pascual.

Special Proceedings No. 346 were instituted for the settlement of the estate of Eduviges Banaga (on a date not shown in the record) in the Court of First Instance of Zambales. Rufina Pascasio administered her estate. After Rufina's death, her daughter, Librada Lucero, succeeded her as administratrix.

On February 10, 1959 Librada Lucero submitted a project of partition dated July 19, 1957, which bore the conformity of oppositors' counsel and of Leonora Banaga as well as the conformity of Remedios Lucero, Adoracion Lucero, Teofilo Lucero, Sr., in representation of his minor child Lolita, and of Jacinto Pascual, in his own behalf and in behalf of his minor child Presma Pascual. The only interested parties who did not, expressly give their conformity to the project of partition were Anselmo Pascasio, Wilfredo Lucero, Artemio Lucero and Teofilo Lucero, Jr., all residents of the United States.

In that project of partition, fourteen lots and portions of two other lots were adjudicated to Anselmo Pascasio and the heirs of Rufina B. Pascasio in satisfaction of their two-thirds share of the decedent's estate. On the other hand, fourteen lots and portions of two other lots were adjudicated to Leonora Banaga and Maria Banaga in satisfaction of their one-third interest.

The project of partition explicitly clarifies that it was made with due regard "to the productivity, kind, area, value, location and accessibility of each and all the properties involved therein, the preferences of the parties and other consideration obtaining in the premises". It characterizes the distribution and adjudication as the "most convenient, advantageous and equitable to all the parties". It contains the following clause:

"That the heirs, parties hereto, have manifested their approval and conformity to the above form and manner of distribution of the estate; and, recognizing themselves as coheirs and co-owners of said estate, do hereby

mutually agree, as they have agreed, to execute, sign and deliver and/or cause the execution, signing and delivery of any and all documents necessary for the complete and effective transfer of the title, ownership and possession of the properties adjudicated unto them, free from all liens and encumbrances." (13 Record on Appeal).

The project of partition further stated that the debts, funeral charges, expenses of administration and estate and inheritance taxes had been paid. Its last clause contains a list of all of the decedent's heirs and their residences.

Pursuant to the probate court's order of February 20, 1959, the project of partition was published in a newspaper so that the nonresident heir's may be duly notified. The absent heirs were required to present their opposition to the project of partition within sixty days from the date of the last publication.

On December 23, 1966, or long after the publication of the project of partition, the probate court issued an order approving it. The court noted that the administratrix had submitted a final accounting dated December 7, 1965 and that no opposition was filed to the project of partition. The administratrix was directed to deliver to the heirs their shares.

On May 15, 1967, or after the order of approval had become final, the administratrix filed a motion praying for the exclusion from the partition of sixteen registered lots on the ground that their Torrens titles are not in the names of the deceased Eduviges Banaga but were issued "in the names of other persons" as evidenced by a certification of the Register of Deeds. The administratrix prayed that the order approving the project of partition be set aside, that the registered lots listed in the said certification be excluded from the decedent's estate and that a new project of partition be ordered for the "true estate" of the deceased. The certification reveals that the "other persons", named as the registered owners, are Anselmo Pascasio, Rufina Pascasio and Felix Pascasio, the children of Eduviges Banaga. Felix Pascasio is also known as Felix Banaga. As already noted, he died already and his sole heir is oppositor Maria Banaga.

Maria Banaga and Leonora Banaga opposed the motion for exclusion. The probate court, in its order of September 7, 1967, denied the motion. The administratrix filed a motion for reconsideration. It was denied in the order of December 21, 1967. The administratrix appealed to the Court of Appeals which certified the case to this Court because the assignment of errors "reveals no factual problem" and "presents pure questions of law". The briefs do not contain statements of facts.

Appellant administratrix avers that the only issue is whether or not properties not owned by Eduviges Banaga at the time of her death may be included in the distribution of her estate. That statement is not accurate.

This Court's impression is that, when Eduviges died in 1921, the lands forming part of her estate (including the sixteen registered lots) were all unregistered and that the subsequent registration of sixteen lots in the names of her children, Anselmo, Rufina and Felix, took place after her death. Presumably, the registration in their names was in trust for her heirs, including Leonora Banaga, the sister of Felix Pascasio (See *Severino vs. Severino*, 44 Phil. 343). According to the oppositors, the said lots were adjudicated in the cadastral proceeding to Anselmo, Rufina and Felix "for having been inherited from the late mother, Eduviges Banaga" (p. 4, Brief).

Leonora Banaga and Maria Banaga repeatedly alleged in their pleadings that the sixteen registered lots in question, which were owned by Eduviges Banaga, formed part of her estate. They were included in the inventory of her estate and in the project of partition with an indication of their Torrens titles. They have been in the possession of the administratrix for more than twenty-five years except Lots 5069 and 5137 which were titled in the names of Anselmo, Rufina and Felix, all surnamed Pascasio, and other persons. The estate and inheritance taxes were paid on the theory that the sixteen registered lots belonged to the estate of Eduviges Banaga.

The contention of the administratrix that, inclusion of those lots in the inventory and partition was due to a mistake or inadvertence might not be true. Rufina Pascasio, the deceased first administratrix, and her successor, the present administratrix, who was her daughter, knew that those registered lots were part of the estate of Eduviges Banaga, as shown by the fact that they took possession thereof and they indicated in the inventory the Torrens titles of those lots. The probate court, in denying the motion for reconsideration, apparently gave credence to oppositors' allegation that the registered lots were "undoubtedly the properties formerly belonging to the late Eduviges Banaga and, as matter of fact, said properties are included in the inventory" (p. 47, Record on Appeal).

It is obvious that the problem of the administratrix and her lawyer is how to implement the project of partition or how to deliver to the distributees (particularly oppositors Leonora and Maria Banaga) the lots which are not registered in the name of the decedent, Eduviges Banaga. The administratrix candidly avowed that when she discovered that the Torrens titles for the registered lots were not in the name of Eduviges Banaga, she was in a quandary. She was hesitant as to what she should do. She suffered "mental torture". In her motion for exclusion she proposed to solve the distribution problem by excluding the registered lots from the portion, setting aside the approved partition and undertaking a new partition. That solution is not correct.

We are of the opinion that the partition, approved by the probate court, should stand. To all appearances, it was a partition that was soberly deliberated upon by the interested parties. It has the express concurrence of the interested parties, except four of them, who are abroad. Those four were given constructive notice of the project of partition by means of publication. The order approving the partition had long become final. Hence, the trial court's order, denying the administratrix's motion for exclusion and setting aside the project of partition, should be affirmed.

But, as the administratrix and her lawyer are in pressing need of light and guidance as to how the registered lots should be delivered to the distributees, it is imperative that certain guidelines be spelled out for the implementation of the duly approved project of partition. The trial court and oppositors' counsel did not point out how those registered lots should be conveyed to the distributees.

The term "delivery" or tradition has two aspects: (1) the de jure delivery or the execution of deeds of conveyance and (2) the delivery of the material possession (*Florendo vs. Foz*, 20 Phil. 388, 393). The usual practice is that, if the land to be delivered is in the name of the decedent, the administrator executes a deed, conveying the land to the distributee. That deed, together with the project of partition, the order approving it, the letters of administration and the certification as to the payment of the estate, inheritance and realty taxes, is registered in the corresponding Registry of Deeds. Title would then be issued to the distributee. Thereafter, the administrator or executor places him in material possession of the land if the same is in the custody of the former.

In this case, that routinary procedure can be followed with respect to the unregistered lots. Oppositors Leonora Banaga and Maria Banaga are entitled to deeds of conveyance for the unregistered lots adjudicated to them. They are likewise entitled to the material possession of all the lands adjudicated to them, registered or unregistered (except Lots 5069 and 5137), if in the present posture of the intestate proceeding no injustice would be caused to anyone by such conveyance and transfer of possession.*

The oppositors, in their appellees' brief, alleged that in 1966 they waived their right to demand a final accounting from the administratrix. Their waiver was motivated by a desire to receive without delay their shares in the project of partition. They intimate that the administratrix and her coheirs, the children of Rufina Pascasio, have already been enjoying their own shares, whereas, the oppositors have been denied for a long time the right to possess the properties adjudicated to them. Those properties have been possessed by the administratrix for more than a

quarter of a century.

The sixteen registered lots, whose Torrens titles are in the names of the decedent's children, Anselmo, Rufina and Felix, all surnamed Pascasio, presumably as trustees, pose a legal problem. The administratrix cannot convey them directly to the distributees without first causing those titles to be cancelled and the lots to be reconveyed to the estate and then registered in its name. Without the proper deed of conveyance from the registered owner, or without the appropriate court order, the titles cannot be changed (See Secs. 50 and 112, Act 496). The lots should first be returned to the decedent's estate so that the administratrix could deliver them to the distributees.

The problem is complicated by the fact that Anselmo Pascasio is abroad and has not voluntarily submitted to the jurisdiction of the probate court, thus precluding the ventilation of the cancellation of the titles in the intestate proceeding (See *Pascual vs. Pascual*, 73 Phil. 561). Three other heirs are nonresidents. Rufina Pascasio and Felix Pascasio, the other registered owners, are dead. On the other hand, it should be underscored that the three registered owners were children of Eduvigis Banaga.

In strict legal theory, the remedy of the administratrix is to file a separate action against Anselmo Pascasio and the heirs of Rufina Pascasio and Felix Pascasio for the purpose of cancelling the title in their names and asking for the reconveyance to the estate of Eduvigis Banaga of the lots registered in their names, so that the same may in turn be conveyed to the distributees thereof pursuant to the project of partition (See section 2, Rule 87 of the Rules of Court).

Of course, such a judicial action is without prejudice to whatever extrajudicial measures may be resorted to by the administratrix. She could try to persuade her uncle, Anselmo Pascasio, (a) to execute the proper deed, wherein he would acknowledge that his interest in the registered lots is restricted solely to what has been adjudicated to him in the project of partition and (b) at the same time to convey to the distributees the residue of the shares registered in his name. Similar representations may be made by the administratrix to her coheirs and to Maria Banaga for the extrajudicial settlement of the estates of Rufina Pascasio and Felix Pascasio so that their heirs (among whom is the administratrix herself) could in turn convey the corresponding portions of the registered lands to the distributees named in the project of partition.

It should finally be observed that a partition may be novated with the consent of all the interested parties (Cf. *Fua Cam Lu vs. Yap Fauco*, 74 Phil. 287; *Zapanta vs. Rotaeché*, 21 Phil. 154) especially if such novation is required in the interest of justice and equity and is warranted under the prevailing circumstances for the expeditious settlement of the estate.

What we have stated above are premised on the assumption that Anselmo Pascasio, Rufina Pascasio and Felix Pascasio are merely the nominal registered owners of the lots in question and that the true owner thereof is the estate of their mother Eduvigis Banaga. That assumption is based on the pleadings of the parties. It has already been noted that the orders under appeal and the briefs do not contain a clear and concise statement in narrative form of the uncontroverted facts from which the pure legal issues supposedly arise.

The guidelines already set forth should not preclude the probate court from making a thorough and searching inquiry as to how the Torrens titles for the lots in question came to be placed in the names of the children of Eduvigis Banaga instead of in the name of her estate. Should it turn out that Anselmo, Rufina and Felix, all surnamed Pascasio, are the true owners of the lots, not merely the nominal, owners or trustees, then the partition would be void as to those properties. No one can give that which he has not (*nemo dat quod non habet*).

There is a pending incident which should be resolved. A certain Felix Arcala, not a party in the appeal, filed a manifestation asking this Court to approve a deed of sale for Lot 2090. The deed was executed by the

administratrix in August, 1949, pursuant to an authorization issued by the probate court. It was revived or reconstituted by her on March 27, 1974. The appellees, in their comment, opposed the prayer in Arcala's manifestation.

In the duly approved project of partition Lot 2090 was adjudicated to Anselmo Pascasio and the heirs of Rufina Pascasio. It is covered by Original Certificate of Title No. 3930 in the names of Anselmo and Rufina (3, 19, 23 Record on Appeal). If, as claimed by the administratrix, she could not deliver Lot 2090 to the distributees because its Torrens title is not in the name of Eduvigis Banaga, then it would appear that, for that same reason, she could not sell it to Felix Arcala. Of course, we do not make any definitive finding on this point. We merely stress that the fact that the administratrix sold Lot 2090 supports our observation that the registered lots were treated by the administratrix as properties owned by the estate and not by the registered owners.

In view thereof and inasmuch as this Court has no jurisdiction to approve the sale, Arcala's motion-manifestation of July 5, 1974 is denied.

WHEREFORE, the orders of the lower court under appeal are affirmed and the case is remanded to the probate court for further proceedings consistent with the directives contained in this decision. No pronouncement as to costs.

SO ORDERED.

Fernando, Chairman, Barredo, Antonio and Fernandez, JJ., concur.

* The Court notes the verified letter of Leonora Banaga dated September 4, 1973 that the intestate proceeding "has been lingering for almost 20 years" and that she has not received any benefit from the estate,

The Court also notes that Lot 2090, which is registered in the names of Rufina Pascasio and Anselmo Pascasio and which was sold by the administratrix in 1949 to Felix Arcala, has been in Arcala's possession since 1949 according to his counsel's manifestation at the hearing of this case on October 4, 1974. That circumstance confirms the Court's impression that the lots registered in the names of Eduvigis Banaga's children are a part of her estate and have been in the possession of the administratrix and not of the registered owners,

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