

JOSEFA AGUSTINES, ENCARNACION AGUSTINES, JOSE AGUSTINES, LOURDES, ESTELA AGUSTINES, AND ABELARDO AGUSTINES, PETITIONER, VS. THE JUDGE OF COURT OF FIRST INSTANCE OF BULACAN, SEVE...

G.R. No. L-612. April 03, 1948

Ponente: BENGZON, J.

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BENGZON, J.:

A nine-hectare land in Marilao, Bulacan, is the subject of a three-cornered dispute between Severo Valenzuela on one side and the relatives of his deceased wife Generosa Agustines on the other, with the Archbishop of Manila as intervenor.

The main facts are unquestioned:

In August, 1934, Generosa Agustines died leaving a will which was subsequently submitted for probate in the court of first instance of Bulacan in special proceedings No. 4944. Having no children, she named her surviving husband Severo Valenzuela the universal heir, but she specified some bequests. There was opposition to the approval of the will; however, after some negotiations, the sister (Josefa) and the nephews and nieces of the decedent (the other petitioners in this special civil action) executed on February 8, 1935, an extrajudicial partition with the respondent Severo Valenzuela, expressing conformity with the probate of the testament and dividing the properties of the deceased. They promised specifically to respect the wishes of the testatrix, one of which was this:

"Sexto - Encargo a mi marido que, después de que haya percibido todos los bienes recayentes en mi herencia done * * * a la

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Iglesia Católica de Polo otra porcion que no exceda de nueve hectareas, a discrecion también de mi marido, del mismo terreno palayero e inculto, en el sitio de Quiririt, para que su producto se invierta en misas en sufragio de mi alma."

Giving effect to the above direction, the extrajudicial partition stipulated that, "Quinta base. Que el solicitante de este expediente Sr. Severo Valenzuela, instituido heredero universal en el testamento obrante en autos y marcado como Exhibit "A," por su parte renuncia a favor de los opositores, todo derecho que tenga o pudiera tener en la parcela de terreno, descrito y deslindado en el inventario de los bienes propios de la finada y designado con el numero cuatro (4) de dicho inventario, con excepción de, y después de descontar aquella porción de nueve (9) hectáreas, cuyo producto, la finada ha destinado, para misas en sufragio de su alma, a discreción de su esposo, Sr. Severo Valenzuela, por disposición testamentaria y otros tres hectareas más, de esta misma parcela de terreno que se adjudican y serán para el Sr. Severo Valenzuela. Entendiéndose, que en la segregación de estos 12 hectáreas, 9 de los cuales cuyo producto se destina en sufragio del alma de la finada y los otros tres hectáreas que pertenecieran

al Sr. Severo Valenzuela deben colindarse con, estar muy contiguos, a la pesquera designada y descrita en el inventario de los bienes propios de la finada, e indicadas con el número tres (3)."

Other items of the estate were apportioned among the signers of the deed of partition, which, submitted for approval, was confirmed by the probate court on October 31, 1936, in an order directing the administrator to deliver the respective shares to the heirs or legatees after paying the corresponding inheritance taxes. No appeal was ever taken from such order.

Years passed. Severo Valenzuela failed to transmit the lot or part thereof to the parish church of Polo or to the Roman Catholic Archbishop of Manila. Wherefore, in May, 1944, the Agustines connections, petitioners herein, filed a complaint against Severo Valenzuela (civil case No. 153) seeking the return to them of that nine-hectare lot in Quiririt, alleging his breach of trust, plus renunciation on the part of the church of Polo that had reportedly neglected to demand compliance with the beneficial legacy.

Advised of this move, the surviving husband Severo Valenzuela hastened to submit in September, 1944, in the testamentary proceeding No. 4944, a motion in which he represented that under the will he had discretion to determine the area of land to be conveyed to the Polo church and that, exercising such discretion, he elected to assign that tract actually cultivated by the tenant named Benito Salazar in Quiririt (admittedly one hectare more or less). He asked that this assignment be declared full compliance with the testamentary directions. The other parties to the testamentary proceeding were not given notice of this petition. It was approved on December 2, 1944.

After the liberation and after they had become aware of Valenzuela's act that tended to frustrate their civil action No. 158, the petitioners herein submitted motions for reconsideration, the main theme of which was that the said last order amended the decree of distribution of October 31, 1936, which had become final long ago. All was to no avail. Hence they started this special civil action to annul the order of December 2, 1944, on the concrete proposition that the court had no jurisdiction to issue it, the order of October 31, 1936, having become final and executory eight years before. They contend, first, that under the will, and in accordance with the partition approved by the court in 1936, the Polo church was entitled to nine hectares in the Quiririt farm of Generosa. They argue next that when that Church repudiated the nine-hectare lot, it again became a part of the whole Quiririt property which, under the partition, had been adjudicated to them.

On the other hand, Severo Valenzuela's position is that the whole nine-hectare realty was awarded to him, subject to his obligation to donate to the Polo church such portion thereof as he may designate in his discretion.

The intervenor, the Archbishop of Manila, representing the Polo church, shares the petitioner's opinion that a nine-hectare lot had been granted to said church. He maintains, however, that no voluntary renunciation of the legacy ever took place.

The questions at issue are these:

"(a) What was the share of the church of Polo under the will and the extrajudicial partition?

"(b) If it was a nine-hectare piece, is the order of December 2, 1944 in Special Proceeding No. 4944 valid?

"(c) If invalid, is certiorari the proper remedy?

- It will be recalled that the will of Generosa Agustines contained a provision directing her husband to donate a portion of her Quiririt farm not exceeding nine hectares to the Polo church.

It will also be recalled that the extrajudicial partition, containing the promise of all parties to respect all her testamentary directions, provided that all the land in Quiririt belonging to Generosa would be adjudicated to the

herein petitioners excepting "con excepción de, y después de descontar aquella porción de nueve (9) hectáres, cuyo producto, la finada ha destinado, para misas en sufragio de su alma, a discreción de su esposo, Sr. Severo Valenzuela, por disposición testamentaria y otros tres hectareas mas, de esta misma parcela de terreno que se adjudican y serán para el Sr. Severo Valenzuela. Entendiéndose, que en la segregación de estos 12 hectáreas, 9 de los cuales cuyo producto se destina en sufragio del alma de la finada y los otros tres hectáreas que pertenecerán al Sr. Severo Valenzuela deben colindarse con, estar muy contiguos, a la pesquera designada y descrita en el inventario de los bienes propios de la finada, e indicadas con el número tres (3)"

After examining and analyzing the circumstances of this litigation, we reach the conclusion that, as contended by petitioners and the intervenor, the extrajudicial partition definitely allotted a nine-hectare parcel to the Polo church. Supposing, that under the will Valenzuela's discretion included the determination of the area to be transferred — and not merely the selection of the site where the nine-hectare portion is to be segregated — still it seems clear that in the partition he elected or agreed that a nine-hectare portion shall be conveyed to the Polo church for masses.

While it is true, as pointed out by Valenzuela's counsel, that in the paragraph here inabove quoted from the extra-judicial partition the phrase "a discreción de su esposo" appears, still it must be admitted that it could not have implied a future choice by such husband, because immediately thereafter the document speaks of nine hectares, "cuyo producto se destina en sufragio del alma de la finada" without any discretionary reservations. It is obvious that "a discreción de su esposo" meant "segun discreción que hoy ejercita su esposo". It might also have referred to the particular location of the parcel to be separated.

It is noteworthy that, in addition to the nine-hectare portion, the deed mentions another parcel of three hectares exclusively given to Valenzuela. If the parties had not contemplated a nine-hectare donation to the Polo church, but empowered Valenzuela to fix the area subsequently, they would have assigned to him 12 hectares, with the provision that he will separate therefrom such portion as he may desire to convey to the parish of Polo. They did not say so. Instead they clearly stipulated that nine hectares were destined for "misas" (to the Church), and that three hectares would be reserved for him.

It is quite probable that if Generosa's kin had known, in the course of bargaining, that Valenzuela would not deliver all the nine hectares to the Polo church but would retain eight hectares thereof, they would not have ceded to him an additional lot of three hectares.

Proof positive that he had no choice as to the number of hectares is the fact that for eight years he never exercised it, keeping for himself in breach of trust the fruits of all the land. He might have ideas repugnant to the religious beliefs of his wife in regard to the celebration of masses for the dead. But as a man of honor, as the surviving partner, he had no excuse to set his own notions against those of his departed spouse, especially on a subject that concerned the disposition of her own properties. The will of the testatrix is law[1]. And his action in fixing one hectare, when his wife bequeathed a portion not exceeding nine hectares is surely such abuse of discretion (if he had any) that will not easily commend itself to judicial approbation.

To make ourselves clear, we must state at the risk of repetition that although under the provisions of the will Severo Valenzuela might have elected to transfer to the Polo church a portion less than nine hectares, however, in the deed of partition he agreed — exercising his discretion — to assign nine hectares for masses (to the Polo church). It must be emphasized that in the distribution of the decedent's assets, we must face the deed of partition which bears the court's fiat. The last will becomes secondary in value. Important to bear this distinction in mind, because both in Valenzuela's motion and in the court's order approving the assignment of one hectare, only the will was quoted, and not the extrajudicial partition. Valenzuela's motion invoking the will exclusively induced the

court into error.

A third reason to hold that the document of partition deeded nine hectares to the Polo church is the fact that the court and the parties considered it a final settlement of all the rights of all concerned, the court approving it in toto and ordering the administrator to deliver to the beneficiaries their respective portions or legacies. The court's order even wrote *finis* to the expediente. And the parties, including Severo Valenzuela regarded it as final for eight years, until he found it necessary, for his own interests, to make another move indirectly amending the final settlement of October, 1936. Now then, if that partition avowedly settled the estate and accomplished its distribution, the implication is unavoidable that it left nothing to future judicial action or determination. Consequently it did not contemplate any subsequent fixing by Valenzuela, and approval by the court, of the portion to be transmitted to the Church of Polo. The parties deemed it final — because the rights of all beneficiaries were therein defined with certainty. Therefore, the attempt by the surviving husband to modify it eight years thereafter was completely beyond the pale of the law.

This should be the logical place to discuss the effects of the nondelivery of the landed legacy for so many years. But in the interest of orderly procedure that matter should be left open to debate and decision in Civil Case No. 158 of the court of first instance of Bulacan.

- Having found in the preceding exposition that under the partition the Polo church (or the Roman Catholic Archbishop of Manila) was entitled to a nine-hectare lot, the conclusion becomes inevitable that the order of December 2, 1944, attempted to modify the final order of October, 1936. Which of course may not be done in this jurisdiction.

- And certiorari may be interposed and granted under the circumstances, the order of December 2, 1944, being an absolute nullity.[2]

Wherefore, the order of the Bulacan court of December 2, 1944 is declared null and void and of no effect whatsoever.

Petition granted with costs against respondent Severo Valenzuela.

Moran, C. J., Parás, Pablo, Hilado, Padilla, and Tuason, JJ., concur.

[1] Santos vs. Manarang, 27 Phil. 209, 216.

[2] Director of Lands vs. Santamaria and Javellana, 44 Phil. 594; Centeno vs. Centeno, 52 Phil. 339.

CONCURRING AND DISSENTING

PERPECTO, J.:

Petitioners pray for the annulment of the order of respondent court issued on December 2, 1944, in special proceedings No. 4944, concerning the estate of the deceased Generosa Agustines.

On February 8, 1935, an extra-judicial agreement of distribution of the estate was executed and the same was duly approved on October 31, 1936. The order of approval adjudicates to the heirs their respective shares and directs the administrator to make delivery of said shares within ten days.

On November 1, 1943, petitioners commenced civil case No. 158, seeking to recover from the executor Severo Valenzuela, husband of the testatrix, 9 hectares of land.

On September 7, 1944, Severo Valenzuela filed a motion in the testate proceedings, asking authority to assign and deliver to the Roman Catholic Archbishop of Manila, in full payment of its rights under the will of Genoresa Agustines, a definite parcel of land of one hectare. On December 2, 1944, the lower court Issued an order granting the authority prayed for.

Petitioners gained knowledge of the order on December 6, 1944, and they filed a motion to vacate the order. The motion was denied on October 5, 1945.

Motion for reconsideration was filed on October 10, 1945. It was denied by resolution dated May 20, 1946.

Petitioners impugn the jurisdiction of the lower court to issue the order of December 2, 1944, alleging that the agreement of distribution approved on October 31, 1936, has become final and that it fixed at 9 hectares the land adjudicated to the Roman Catholic Archbishop of Manila.

Respondent Valenzuela alleges that he had discretion to fix the area of the land bequeathed under paragraph (6):. of the will which reads as follows:

"SEXTO.- Encargo a mi marido que, después de que haya percibido todos los bienes recayentes en mi herencia, done....a la Iglesia Católica de Polo otra porción que no exceda de nueve hectáreas, a discreción tambien de mi marido, del mismo terreno palayero inculto, en el sitio de Quiririt, para que su producto se invierta en misas en sufragio de mi alma * * *"

The pertinent portion of the extra-judicial agreement is as follows:

"QUINTA BASE. Que el solicitante de este expediente Sr. Severo Valenzuela, instituido heredero universal en el testamento obrante en autos y marcado como Exhibit "A", por su parte renuncia a favor de los opositores, todo derecho que tenga o pudiera tener en la parcela de terreno, descrito y deslindado en el inventario de los bienes propios de la finada y designado con el número cuatro (4) de dicho inventario, con excepcion de, y despues de descontar aquella porción de nueve (9) hectareas, cuyo producto, la finada has destinado, para misas en sufragio de su alma, a discreción de su esposo, Sr. Severo Valenzuela, por disposicion testamentaria y otros tres hectáreas más, de esta misma parcela de terreno que se adjudican y seran para el Sr. Severo Valenzuela. Entendiéndose, que en la segregacion de estos 12 hectáreas, 9 de los cuales cuyo producto se destina en sufragio del alma de la finada y los otros tres hectáreas que pertenecieran al Sr. Severo Valenzuela deban colindarse con, o, estar muy contiguos, a la pesquera designada y descrita en el inventario de los bienes propios de la finada, e indicadas con el numero tres (3); y el resto pasara a ser de la exclusiva propiedad, la primera mitad sera de la Sra. Josefa Agustines y la otra mitad, hacia al Norte, será de los hermanos Encarnación Agustines, Dr. José Agustines, Lourdes Agustines, Estela Agustines y Abelardo Agustines; y para la Sra. Asuncion Agustines se entiende adjudicada a su favor la cuarta parte del solar y casa descrita y deslindada en el inventario de los bienes propios de la finada, e indicada como el numero dos (2), en el mencionado inventario y aquella otra cuarta parte del solar y el camarín ruinoso, también descrito y deslindado en el referido inventario, como bienes propios, de la finada y marcado como el número uno (1), en el mencionado inventario."

Under the terms of the will and of the extrajudicial agreement of distribution, there should not be any doubt that, until Severo Valenzuela had decided to fix the area of the land in question at one hectare in his motion dated September 7, 1944, he had discretion to determine said area.

The will instructs him to donate a parcel of land to the Catholic Church of Polo.

According to Article 618 of the Civil Code, "a donation Is an act of liberality by which a person disposes gratuitously of a thing in favor of another who accepts it." As no one can be compelled to perform an act of liberality, it is evident that, under the wordings of the will, Valenzuela was free to donate the land or not. If he

elected to make a donation, he was subject to only one limitation, that is, that the maximum area that he could donate would not exceed 9 hectares. Within said limitation, he had full discretion.

The extra-judicial agreement of distribution has not in any way modified the terms of the will. Therein the parties made the following commitment: "Respetaran todas y cada una de las disposiciones del testamento." And it repeated that Valenzuela had discretion regarding the land to be donated so that its products may be used for masses.

Valenzuela exercised his discretion on September 7, 1944, and he fixed the area of the land he decided to donate at one hectare. No one has the power or right to compel him to donate more than said area.

Having exercised his right to make the donation only on September 7, 1944, after the Constitution of the Philippines had already taken effect, a constitutional question arises. Is the Catholic Church of Polo or the Roman Catholic Archbishop of Manila, designated interchangeably by the parties as meaning the same personality, entitled to acquire the land in question?

The provisions of Article XIII of the Constitution, especially Section 5 thereof, have been definitely interpreted by the Supreme Court in the well-known Krivenko case in the sense that the right to acquire any kind of land in the Philippines is reserved exclusively to Filipino citizens or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens "save in cases of hereditary succession." Here there is no hereditary succession for two reasons: 1. The Catholic Church of Polo is not an heir of the deceased Generosa Valenzuela, and 2. The acquisition of the property here in question is by donation.

Was the Catholic Church of Polo or the Roman Catholic Archbishop of Manila a Filipino citizen at the time the donation was made by Valenzuela on September 7, 1944? Article. IV of the Constitution deals with Filipino citizenship and in all its provisions only individual persons are contemplated, never an abstract entity such as the Catholic Church of Polo or the Roman Catholic Archbishop of Manila, which is a unipersonal corporation or, as alleged in the petition, "a corporation sole."

There is absolutely no showing that the Catholic Church of Polo is a corporation or association at least sixty per centum of the capital of which is owned by Filipino citizens. There is no showing that the Roman Catholic Archbishop of Manila is such a corporation or association. Upon the statements made at the hearing of this case, it appears that the Roman Catholic Archbishop of Manila is only a branch of a universal church ruled by the Pope, with permanent residence in Rome, Italy. Neither the Catholic Church of Polo nor the Roman Catholic Archbishop of Manila appears to possess the conditions which, according to express provisions of the Constitution, will entitle to acquire the one hectare of land donated by Severo Valenzuela.

For all the foregoing, the donation made by Severo Valenzuela in favor of the Catholic Church of Polo and the order of the Court of First Instance of Bulacan dated December 2, 1944, approving said donation, are declared null and void on constitutional grounds.

DISIDENTE

BRIONES, M.:

Hay en este asunto una cuestion procesal importante. En la misma decisi3n de la mayor3a se admite que se halla pendiente ante el Juzgado de Primera Instancia de Bulac3n el asunto civil No. 158, entre las mismas partes, en que precisamente se plantea de modo directo y categorico el punto principal discutido, a saber: si la extensi3n de terreno a que tiene derecho la iglesia cat3lica de Polo es 9 hect3reas, o puede ser menos, a discreci3n del viudo de

la donante, Severo Valenzuela. Con esta admisión no alcanzo a comprender por qué la mayoría estima el presente recurso de certiorari, anticipándose a enjuiciar y decidir prácticamente la cuestión que se litiga en el referido asunto civil No. 158. No cabe duda de que esto es impropio y antijurídico. En el recurso especial que nos ocupa no tenemos elementos de juicio, suficientes para resolver la controversia. En el mencionado asunto civil es donde los derechos de las partes debieran determinarse y resolverse, sobre todo los derechos de la iglesia. Es elemental que el certiorari sólo procede cuando no hay otro remedio expedito y adecuado. Aquí hay otro remedio no sólo más expedito, sino más adecuado, y es la tramitación del referido asunto civil No. 158.

La decisión de la mayoría es puramente académica, no resuelve nada como no sea anticipando el juicio sobre un asunto que todavía no ha llegado a esta Corte Suprema. Así que estimo innecesario expresar mi opinión sobre el fondo de la cuestión, esto es, si el viudo tiene o no derecho a donar a la iglesia menos de 9 hectáreas, de acuerdo con la discreción que en el testamento le concede su difunta esposa. Expresaré mi opinión cuando llegue el momento oportuno.

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