

IGNACIA LAO, IN HER CAPACITY AS CO-SPECIAL ADMINISTRATRIX OF THE ESTATE OF ALBINA DE LOS SANTOS, AND DOMINGO LAO, PLAINTIFFS-APPELLANTS, VS. FRANCISCO DEE AND MARIA LAO, DEFENDA...

G.R. No. L-3890. January 23, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Ignacia Lao, in her capacity as special administratrix of the estate of the late Albina de los Santos, as well as heir of said deceased, and Domingo Lao, also as heir of the deceased, filed a complaint for the annulment of an order of the Court of First Instance of Manila dated January 28, 1949, rendered in the testate proceedings of the deceased, approving the sale of certain real property in favor of Francisco Dee, and for the annulment of the sale itself. The complaint was filed against Francisco Dee as vendee and Maria Lao, a co-special administratrix of the estate, also an heir, in her individual capacity.

The order of the probate court is sought to be annulled on the following grounds: the court overlooked the fact that a special administrator has no power to sell real property; the court approved the sale in the belief that Ignacia Lao had given her consent to the sale, when in fact she was induced to sign the deed of sale by Maria Lao and her attorney through misrepresentation that the deed of sale was a mere petition for the approval of the proposed sale; the court did not know that the vendee Francisco Dee was not a Filipino citizen, or that Ignacia Lao executed the deed of sale on the alleged misrepresentation that Francisco Dee was a Filipino citizen.

Both Francisco Dee and Maria Lao filed separately a motion to dismiss. The lower court granted the motions to dismiss and ordered the dismissal of the complaint, with costs against the plaintiffs. From this order the plaintiffs appealed to this Court.

Appellants have assigned seven errors as committed by the lower court, but we will only discuss some which we believe are decisive of the present appeal.

The first error assigned refers to the lifting of the order of default entered against defendant Francisco Dee. It appears that, because of his failure to file his answer, or put in a responsive pleading within the reglementary period, on motion of the plaintiffs, Francisco Dee was declared in default. He filed a motion to lift the order of the court, attaching thereto affidavits of merits to prove that his failure to answer, or file a motion to extend the time to plead to the complaint within the reglementary period, was due to mistake or excusable negligence which ordinary prudence could not have guarded against, and that Francisco Dee has a meritorious defense against the complaint. They attempted to show that, prior to the expiration of the reglementary period, Francisco Dee filed a lengthy motion to dismiss, which directly challenged the right of the plaintiffs to institute the action, and that, during that period of time, a case for ejectment between the same parties was pending in the municipal court wherein many incidents had arisen which heavily occupied and absorbed the time and attention of Dee's counsel. The motion was heard and argued, and, thereafter, the court lifted the order, allowing Francisco Dee to file a

responsive pleading. This is now assigned as error by appellants.

It is our ruling that motions of this nature are addressed to the sound discretion of the court, and unless abuse of discretion is shown, the order of the court should be left undisturbed. Here there is no such showing. It is true that instead of filing a responsive pleading, Dee filed a motion to dismiss; but this may be allowed under Rule 8, Section 1, of the Rules of Court, if one has good grounds to do so. The dismissal of this case proves that Dee's move was justified. This error is, therefore, without merit.

One of the grounds on which the lower court predicated its order of dismissal is that Ignacia Lao has no legal capacity to sue as special administratrix of the estate of Albina de los Santos, she having ceased to be such administratrix by order of the probate court dated July 6, 1949, which accepted her resignation filed almost two years ago. Appellants now assign this as error.

The fact that Ignacia Lao tendered her resignation as administratrix on August 6, 1947 and that her resignation was approved by the court on July 6, 1949, relieving her as administratrix, is not disputed. Not having the character of administratrix on August 4, 1949, when she filed this action, she had no legal capacity to sue. And although she subsequently appealed from the order of the court accepting her resignation, this did not cure her incapacity because the appeal was later dismissed by the Supreme Court. This error, therefore, has become moot.

Another ground on which the lower court based its order of dismissal is that Ignacia Lao and Domingo Lao were suing as heirs of the deceased Albina de los Santos to recover the title and possession of a property which formed part of the estate which, according to the court, they have no right to do unless such property has been assigned to them as their share in the inheritance. This is also assigned as error.

Again we find no error in this respect. Section 8, Rule 88, of the Rules of Court, bars the filing of an action by an heir to recover the title or possession of lands belonging to the estate until there is an order of the probate court assigning said lands to such heir. In other words, there must be first a partition of the estate, and delivery of the latter to the heir. The reasons for this rule are aptly stated by former Chief Justice Moran as follows: "An executor or administrator who assumes the trust, takes possession of the property left by the decedent for the purpose of paying debts. While his debts are undetermined and unpaid, no residue may be settled for distribution among the heirs and devisees. Consequently, before distribution is made or before any residue is known, the heirs, or devisees have no cause of action against the executor or administrator for recovery of the property left by the deceased." (II Moran, Comments on the Rules of Court, p. 416).

Here, there has been so far no partition of the estate. Precisely the property was sold as a preliminary step to partition. The sale was made by express authority of the court on the strength of the petition of the heirs themselves. Including the now appellant Ignacia Lao. The sale was made by the two administratrices of the estate. The terms of the sale were more than what the heirs expected. The authority was to sell the property for P250,000, and yet Francisco Dee paid P260,000. The heirs, therefore, have no reason to complain. In any event, under the rule, only the two administratrices of the estate can impugn the validity of the sale, and we doubt if this can be done, for the court would not sanction the undoing of what it has been accomplished through its own express authority. This is not, therefore, a case which comes under the exception of the rule that "when the executor or administrator is unwilling or fails or refuses to act, in which event the heirs may act in his place" (Pascual v. Pascual, Vol. I, Off. Gaz., No. 6 [1942] p. 342).

Let us now come to the crucial error assigned by appellants, which refers to the conclusion of the lower court that the cause of action of the complaint based on the alleged ground of fraud employed on Ignacia Lao is already barred by a prior judgment for the reason that the same extrinsic fraud had already been passed upon by the probate court and the Supreme Court.

For an enlightened discussion of this error there is need to make a brief narration of the background which led the court to conclude that the cause of action based on the alleged extrinsic fraud is already barred by a prior judgment.

The record shows that on May 28, 1948, the administratrices of the estate of Albina de los Santos, Maria Lao and Ignacia Lao, with the express conformity of the other heirs Antonio and Alexandra Lao, filed a motion to sell the property in question. This was opposed by the heir Domingo Lao. This opposition notwithstanding, the court issued an order authorizing the sale for not less than P250,000.

On July 22, 1948, Domingo Lao filed a motion for reconsideration. This motion was denied. Domingo Lao filed another motion for reconsideration. This motion was also denied. From these orders no appeal was interposed.

On January 28, 1949, Maria Lao, a co-administratrix, informed the court that the property was sold to Francisco Dee for P260,000, and prayed that the sale be approved. By order of January 28, 1949, the sale was approved.

On January 31, 1949, Domingo Lao filed an urgent petition for revocation of the approval of the deed of sale, to which the vendee objected. On February 23, 1949, the court denied the petition as entirely without merit.

On February 28, 1949, Domingo Lao filed another motion for reconsideration through a new counsel. This time, the motion was opposed not only by the vendee, but by his co-heirs Maria Lao and Alejandra Lao. On March 10, 1949, the court again denied the motion for reconsideration.

On March 26, 1949, Domingo Lao filed a petition for certiorari in the Supreme Court praying for the annulment of the order of approval of the sale in favor of Francisco Dee, as well as for the annulment of the deed of sale. On April 18, 1949, the Supreme Court dismissed the petition for lack of merit.

On May 3, 1949, Domingo Lao filed a motion for reconsideration alleging for the first time that Ignacia Lao was the victim of fraud and misrepresentation by her co-administratrix Maria Lao and her attorney. He also claimed that Ignacia Lao was likewise the victim of fraud on the part of the vendee, Francisco Dee, as regards his Filipino citizenship. The Supreme Court denied the motion for reconsideration. On May 20, 1949, Domingo Lao filed another motion for reconsideration disputing the validity of the sale on the ground that a special administrator does not have power to sell real property belonging to the estate. By resolution of June 23, 1949, this motion was also denied.

On June 27, 1949, Domingo Lao, Antonio Lao and Ignacia Lao filed a motion in the probate proceedings for the annulment of the same order based on the same ground of extrinsic fraud. To this motion Francisco Dee filed an opposition, and on July 2, 1949, the court issued an omnibus order denying the motion for lack of merit. A motion for reconsideration was filed by petitioner, and was again opposed by Francisco Dee, and on July 20, 1949, the court denied the motion stating that "no further petition or motion with respect to this matter will be entertained". No appeal was interposed to these orders of the probate court.

As may be seen, the order of the court approving the deed of sale in favor of Francisco Dee was issued on January 28, 1949. This is the order which was assailed by Domingo Lao in several motions he filed in the probate court and in a petition for certiorari he filed in the Supreme Court. As may be noticed, Domingo Lao made no less than six attempts to obtain the revocation of said order in the probate court, alleging varied grounds, some of which are the same as those on which the present action is based, and made similar attempts to obtain the same relief in the Supreme Court, but all proved futile, inasmuch as both the probate court and the Supreme Court found flimsy the grounds on which the motions were based. It should be particularly noted that when the alleged fraud was raised for the first time before the Supreme Court, Domingo Lao attached to his motion for reconsideration no less than six exhibits in an attempt to substantiate the fraud allegedly employed on Ignacia Lao, one of them being an

affidavit of Ignacia Lao herself, and the other an affidavit of another heir Antonio Lao. But in spite of those exhibits, the Supreme Court found the claim not meritorious. It should also be mentioned that when Domingo Lao made another attempt to annul the order approving the sale in the probate court, after his several attempts to secure the same purpose in the Supreme Court had failed, he was Joined by his co-heirs Antonio Lao and Ignacia Lao, and attached to their motion for annulment the same exhibits they submitted to the Supreme Court. This time they made a serious attempt to prove their charges of fraud. But again they failed to convince the court, as shown by the fact that it denied the motion with the admonition that "no further petition or motion with respect to this matter will be entertained". The court apparently did not believe the charges of fraud and must have found them to be mere alibi to harass the other heirs and the vendee and frustrate the sale. This is reflected in the following passages of the order of the probate court:

"The order of January 29, 1949 was assailed in a petition for certiorari (L-2891) filed In the Supreme Court in March or April, 1949. The ground now invoiced there have been taken into consideration by the Supreme Court in summarily dismissing the petition.

Prior to the filing of the petition for certiorari, petitioner Domingo Lao moved for a reconsideration of the order of January 29, 1949 but no mention of fraud was made In his motion although the alleged fraud already existed at that time (February 28, 1949, date of the filing of the motion for reconsideration) as maybe inferred from the dates mentioned in Exhibits "E" and "F" of the motion now under consideration.

The denial of the petition for certiorari is conclusive upon the validity of the order of this Court of January 29, 1949, approving the sale. The grounds now invoked have been considered by the Supreme Court in denying the petition. The alleged fraud already existed at the time the motion for reconsideration was filed by Domingo Lao on February 28, 1949 and can no longer be entertained now especially after it has been invoked in the petition for certiorari".

It, therefore, appears that the questions now involved in this case had been passed upon once by the Supreme Court and once by the probate court and were both decided against the pretense of the herein appellants. While it may be contended that the resolution of the Supreme Court denying the annulment of the order approving the sale on the ground of extrinsic fraud does not constitute res judicata because it has no jurisdiction to pass on that question, the issue therein being merely excess of Jurisdiction, or abuse of discretion, however, it cannot be denied that the omnibus order of the probate court dated July 2, 1949, has a decisive effect. The probate court had jurisdiction to act on that matter. The question was raised by the same appellants herein, who were Joined by their co-heir Antonio Lao, and the same was opposed by the same parties who now stand as appellees. The movants presented evidence to substantiate their charges of fraud. The decision was adverse to them. The order became final for lack of appeal. That order, therefore, has now the effect of res judicata, there being identity of parties and of subject matter. That order bars the present action.

Having reached the foregoing conclusion, we do not deem it necessary to discuss the other errors assigned by the appellants.

Wherefore, the decision appealed from is hereby affirmed, with costs against the appellants.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.
Feria, J., took no part.

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