

**MARCELA DE BORJA VDA. DE TORRES, SATURNINA DE BORJA VDA. DE ORTEGA, EUFRACIA DE BORJA VDA. DE LIMACO, JACOBA DE BORJA, OLIMPIA DE BORJA, AND JUAN DE BORJA, PETITIONERS VS. THE H...**

*G. R. No. L-4681. July 31, 1951*

Ponente: TUASON, J.

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**TUASON, J.:**

The petitioners contest the jurisdiction of the respondent Judge to issue the order herein sought to be reviewed directing them to deliver to the administrator of the intestate estate of Marcelo de Borja, (Special Proceedings No. R-2414 of the Court of First Instance of Rizal) a certain parcel of land which is in petitioners' possession and to which they assert exclusive ownership. They contend that the administrator's remedy to recover that property is an action at law and not by motion in the intestate proceeding.

It appears that in the above-entitled intestate estate, the commissioners appointed by the court submitted on February 8, 1944, a project of partition, in which the land in question, which is and was then in the possession of the herein petitioners, was included as property of the estate and assigned to one Miguel B. Dayco, one of Marcelo de Borja's heirs. Over the objection of the petitioners, surviving children of Quintin de Borja who was one of Marcelo's children, the proposed partition was approved in February, 1946, and the order of approval on appeal was affirmed by this Court in 1949. Although the administratrix of Quintin de Borja's estate was the party named in the partition in behalf of that estate, the present petitioners took active part in the proceeding for the reason that they had been declared their father's sole heirs in the settlement of their father's estate. Moreover, one of these children was herself the duly appointed administratrix of the last named intestate estate.

Pertinent to the question posed by the petitioners is section 1 of Rule 91 which provides as follows:

"When the debts, funeral charges, and expenses of administration, the allowances to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing by the judge, under oath.

"No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

Applying this Rule in the case of *De Jesus vs. Daza*, [\*] 43 Off. Gaz., (No. 6), 2055, the facts of which were in all

essential particulars analogous to those of the present case, this Court said: "\* \* \* the probate court, having the custody and control of the entire estate, is the most logical authority to effectuate this provision within the same estate proceeding, said proceeding being the most convenient one in which this power and function of the court can be exercised and performed without the necessity of requiring the parties to undergo the inconvenience, delay and expense of having to commence and litigate an entirely different action. There can be no question that if the executor or administrator has the possession of the share to be delivered the probate court would have jurisdiction within the same estate proceeding to order him to deliver that possession to the person entitled thereto, and we see no reason, legal or equitable, for denying the same power to the probate court to be exercised within the same estate proceeding if the share to be delivered happens to be in the possession of 'any other person,' especially when 'such other person' is one of the heirs themselves who are already under the jurisdiction of the probate court in the same estate proceeding."

There are factors present in the case at bar but not in the *De Jesus vs. Daza* case which greatly reinforce the probate court's authority to make the order under review: The partition here had not only been approved and thus become a judgment of the court, but distribution of the estate in pursuance of the partition had fully been carried out, except as to the land now in dispute, and the petitioners had received the property assigned to them or their father's estate. And this was not all. As the administrator had refused, on technical grounds, to turn over to them their or their father's share, they moved for and secured from the probate court an order for the execution of the partition. And when the administrator elevated the case to this Court on certiorari, they as respondents in that petition vigorously defended the probate court's action. They complained bitterly that execution of the partition was long overdue and that the administrator was unduly delaying the closing of the estate.

The order now before this Court has to be sustained if for no other reason than that the petitioners are in estoppel. In the face of what they have done, they are precluded from attacking the validity of the partition or any part of it. A party can not, in law and in good conscience, be allowed to reap the fruits of a partition, agreement or judgment and repudiate what does not suit him.

There is not much to the complaint that the respondent Judge issued the order under consideration without affording the petitioners a hearing on the merits of their pretended title to the land in their possession. The question of the petitioners' title and possession has been concluded by the partition and become a closed matter. All they could prove if allowed to call witnesses would be that the aforesaid property belonged to them or to their father's estate and that they are in possession of it to the exclusion of Marcelo de Borja's personal representative. Granting all such proofs to be true, as indeed we may for the purpose of this decision, yet they would not detract from the authority of the court to make the order under consideration. The court had only the partition to examine, to see if the questioned land was included therein. The inclusion being shown, and there being no allegation that the inclusion was effected through improper means or without the petitioners' knowledge, the partition barred any further litigation on said title and operated to bring the property under the control and jurisdiction of the court for proper disposition according to the tenor of the partition. To all intents and purposes, the property was in custodia legis. What the petitioners could have done was to ask for a reconsideration or modification of the partition on the grounds of fraud, excusable mistake, inadvertence, etc. if they could substantiate such allegations. They can not attack the partition collaterally, as they are trying to do in this case.

The petition is denied with costs against the petitioners.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Reyes, Jugo and Bautista Angelo, JJ., concur.

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[\*] 77 Phil., 152.

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