

TECLA GARCIA, PETITIONER, VS. COURT OF APPEALS AND PATRICIA DIMAUNAHAN, RESPONDENTS.

G.R. No. L-19783. July 30, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition by Tecla Garcia to review and reverse a decision of the Court of Appeals, in CA-G.R. No. 25153-R, that in turn reversed that of the Court of First Instance of Manila (Civil Case No. 20057) dismissing the action for specific performance brought by Patricia Dimaunahan against Tecla Garcia on the ground that it was barred by a former judgment between the parties.

On April 6, 1943, Hilarion Dimaunahan died leaving a widow, Tecla Garcia, and four brothers and sisters, Clara, Romero, Agatona and Patricia Dimaunahan.

On August 17, 1945, the widow instituted in the Court of First Instance of Batangas a proceeding for the summary distribution of the estate of her husband (Case No. 3949). On April 11, 1946, by the corresponding order, the Court decreed one-half of the estate in favor of Hilarion's brother and sisters, subject to the widow's usufruct, and awarded the other half to the widow, Tecla Garcia, as her share in the conjugal property, in conformity with the Civil Code of 1889 in force when the decedent left this world.

On August 19, 1946, a sister of the deceased, Patricia Dimaunahan, instituted in the same court intestate proceedings for the settlement of the estate of her brother Hilarion (Civil Case No. 4115). The court, for the purpose of consolidating the two estate proceedings, dismissed Case No. 4115, and directed Patricia Dimaunahan to appear and intervene in the summary settlement Case No. 3949 to protect her interests. Accordingly, Patricia filed an opposition in Civil Case No. 3949, alleging, inter alia, the estate was worth more than originally alleged, and that on December 1, 1944 the widow, Tecla Garcia, by a public instrument, had transferred and conveyed to Patricia four (4) parcels of land as part of the hereditary portion due the latter (Rec. App., p. 20).

Patricia Dimaunahan began adducing her evidence, but the trial was postponed on March 21, 1949 to enable her counsel to take depositions of certain witnesses.

On December 22, 1949, the court, on petition of the widow, Tecla Garcia, dismissed the opposition of Patricia Dimaunahan for lack of interest, and revived the distribution order of April 11, 1946 and gave the widow 10 days to comply with the same, and thus conclude the proceedings. Conformably to the wishes of the court, the widow filed, on February 9, 1950, a project of partition, and asked for authority to sell Parcel III of the Inventory.

Before the court could act on the motion, the records were destroyed by fire; but the proceedings in Case No. 3949 were reconstituted, and so declared by order of July 10, 1950. On August 8, 1950, the court approved the project of partition and authorized the widow to sell Parcel III of the inventory, and on August 11, 1950 approved the deed of sale.

On September 4, 1950, oppositor Patricia Dimaunahan asked the court to set aside the reconstitution and authority

to sell. Upon the Court's refusal to do so, Patricia reported to the Court of Appeals (CA-GR No. 7883-R), but the latter affirmed the action of the Court of First Instance of Batangas (Petition, Annex E). Thereafter, Patricia instituted in the Court of First Instance of Manila (Case No. 20057) an action to compel Tecla Garcia to execute deed of conveyance of the four parcels of land formerly claimed by her in the Batangas court, upon the basis of an alleged affidavit of Tecla (Rep. App. p. 9) annexed to the complaint agreeing to such conveyance. In her answer, the defendant interposed, by way of defense, that (a) venue was improperly laid; (b) that the action was barred by the prior judgment of the Court of First Instance of Batangas; and (c) denied the genuineness and due execution of her alleged affidavit. After trial, the Manila Court dismissed the action as barred by prior judgment.

Patricia Dimaunahan once more appealed to the Court of Appeals, and this time obtained judgment reversing that of the Court of First Instance of Manila.

Hence, this petition for review by Tecla Garcia.

We And the appeal meritorious. In holding that the respondent's suit in the Manila Court was not barred by the previous dismissal of her claim in the Batangas summary settlement proceedings, the Court of Appeals reasoned, in CA-GR No. 25153-R, as follows:

"In this case, appellant is neither contesting the partition approved by the intestate court, nor asking for more than was given to her in said project as heir of the late Hilarion Dimaunahan. Here, her cause of action is one for specific performance, and one of the documents upon which she has based her claim for performance is the affidavit (Exh. A-2)."

This pronouncement is totally at variance with the Record on Appeal. A comparison of the alleged affidavit of Tecla Garcia, annexed to the complaint in Case 20067 of the Court of First Instance of Manila (R. App. pp. 9-10), with the inventory and partition approved by the Batangas Court will show that (1) the four parcels of land described in the affidavit and stated therein to be conveyed to Patricia "as part of her hereditary portion" were identical in boundaries to parcels I, II, III and V of the partition inventory (Rec. of Appeal, pp. 24-26); and (b) that in the partition, which the respondent opposed in the Batangas Court, Parcels I and V were adjudicated to Tecla Garcia, Parcels II and IV were allocated jointly to Patricia, Romero, Clara and Agatona, all surnamed Dimaunahan, being the surviving brother and sisters of the deceased Hilarion (Rec. App. pp. 26-27), which parcel III was set aside for sale (Rec. pp. 27-28) and subsequently sold App. 31-35) by the widow to defray the expenses of the last illness and burial of the decedent. Clearly, therefore, the suit for specific performance in Manila has the purpose of varying the final distribution made by the Court of Batangas, increasing the share of respondent Patricia at the expense of her brother Romero, her sisters Clara and Agatona, and of the widow, petitioners herein Tecla Garcia.

The Batangas Court undeniably has jurisdiction in the summary settlement proceedings to apportion and divide the properties of the deceased Hilarion among the persons entitled to participate in his estate (*Viuda de Francisco vs. Carreon*, 95 Phil. 243).

"Of course, several decisions hold that If during the summary proceeding some of the heirs claim, by title adverse to that of the decedent, some parcels of land, the probate court has no jurisdiction to pass upon the issue which must be decided in a separate suit'. But here there is no question that the realty belonged to the decedent; and a separate suit was unnecessary, specially remembering that in these summary settlements the judge is expected to "proceed summarily" and "without delay" "to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them." (Cas. cit.)

In the exercise of this jurisdiction, the Batangas Court directed respondent Patricia Dimaunahan to appear and oppose the partition proposed by the widow; which Patricia did, filing a pleading to oppose it, and submitting

evidence. Unfortunately for her, the opposition was subsequently dismissed for failure to prosecute; and this dismissal, which has become *Anal*, operated as a judgment on the merits against her claim (Revised Rules, Rule 17, sec. 3; Old Rule 30, sec. 3).

It thus appears that the present action was correctly dismissed by the Manila Court as barred by the prior judgment of the Batangas Court, all the elements of *res judicata* being present. First, the Court of First Instance of Batangas had jurisdiction to decide respondent's claim to a greater part of the real estate left by the deceased Hilarion Dimaunahan; second, there was a judgment on the merits adverse to respondent's claim, since her opposition was dismissed for lack of prosecution; third, the parties are the same, Patricia Dimaunahan on one side and the widow on the other, and fourth, the causes of action are the same, for in both cases Patricia claimed to be entitled as heir, to the greater portion of the hereditary real estate, although the present suit is in the form of an action for specific performance of an alleged promise of petitioner.

It is irrelevant that the validity of the widow's alleged affidavit was not actually decided in the summary settlement. There was opportunity to do so, but Patricia lost it by her laches, as expressly found by the same Court of Appeals in CA-G.R. No. 7882-R decided on December 29, 1952, and now already final.

"When a right of fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties, and those in privity with them in law and estate." (*Oberiano vs. Sobremesana*, L-4622, May 30, 1952).

That the present suit should be in the form of an action for specific performance is no bar to the application of *res judicata*. The test of identity of causes of action is whether the same evidence would support and establish both the former and the present causes of action (*Peñalosa vs. Tuason*, 23 Phil. 303); and it is incontrovertible that in both cases Patricia relied on the widow's alleged affidavit, purporting to recognize her right to the four parcels of land described therein, "as part of the hereditary portion due her". This affidavit is dated 1st December 1944 and antedated the summary settlement proceedings begun on August 17, 1945.

The conclusion thus reached enables us to dispense with the other questions raised by petitioner, and which were submitted to, but not passed upon by, the Court of First Instance.

The issue that respondent's appeal to the Court of Appeals was late because her notice of appeal, appeal bond, and Record of Appeal were filed on February 7, 1959, one day after the expiration of the 30-day appeal period, is untenable, since the Record of Appeal shows that the appeal was perfected on the last day, February 6 (R. App., 48).

In view of the foregoing, the appealed decision of the Court of Appeals, in C.A.—G.R. No. 25153-R, is reversed, and that of the Court of First Instance dismissing respondent's suit is confirmed. Costs in all instances against respondent, Patricia Dimaunahan.

Bengzon, C. J., Concepcion, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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