

ELIGIO LLANERA, PLAINTIFF AND APPELLANT, VS. ANA LOPOS, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-12588. August 25, 1959*

Ponente: BAUTISTA ANGELO, J.

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Gorgonio Llanera died single and intestate on October 13, 1942. He left an estate consisting of the proceeds of an insurance policy amounting to \$5,150.00. Upon the request of Remedios Ayque Altavano who claimed to be a relative of the deceased, a petition for settlement of his estate was filed in the Court of First Instance of Albay on January 22, 1948, wherein one Elias Ayque was appointed administrator of the estate. After hearing, the Court found that the deceased died without parents, brothers, sisters, nephews or nieces, but left the following relatives: Ana, Eustaquio, Julia and Maximina, surnamed Lapos, brothers and sisters of Aniceta Lapos, who was the mother of Gorgonio Llanera, and Casiana, Teodora, Petronilo, Cenen, Felix, Sotero and Ambrosia, all surnamed Lapos, first degree cousins of the deceased, being the children of a brother and sister of Aniceta Lapos. After all the expenses of administration had been paid, the Court ordered the balance of the estate to be distributed among said heirs thereby corresponding to the first group the sum of P1,188.00 each, and to the second the sum of P1,188.00 each per stirpes. And on May 28, 1949, the Court ordered the closure and termination of the proceedings.

It developed later however that the deceased had a brother by the name of Zacarias who died on June 19, 1935 leaving a son, Eligio, who was born in Sta. Rosa, Laguna on July 17, 1925. And when in 1953 Eligio came to know that his uncle Gorgonio died leaving an insurance policy the proceeds of which were distributed in the intestate proceedings instituted in the Court of First Instance of Albay and were adjudicated to those who were not entitled thereto, Eligio on September 30, 1954 filed a motion in said proceedings in order to assert his claim over the property as the sole heir of the deceased, which motion however he later withdrew because he intended to file a separate civil action for the vindication of his right in the proper court. And so on February 21, 1955, Eligio commenced this action in the Court of First Instance of Laguna to recover the proceeds of the insurance policy left by his uncle against those to whom they were illegally adjudicated alleging that the latter misrepresented that they were the only heirs of the deceased when in fact they knew well that he left a nephew who was alive and was the only one entitled to inherit his property.

Notwithstanding the fact that the defendants were duly served with summons, except one, only Elias Ayque answered the complaint, and so upon plaintiff's motion, they were declared in default. And then the case was called for trial where not even Elias appeared, the Court allowed the plaintiff to present his evidence. However, on February 18, 1957, the Court rendered decision dismissing the complaint on the ground that the venue was improperly laid and plaintiff's cause of action had already prescribed.

This appeal was taken to this Court on purely questions of law.

In holding that the Court of First Instance of Laguna has no jurisdiction to take cognizance of this case, the trial court said, "Rule 75 of the Rules of Court expressly provides that the Court of First Instance of the province in

which the decedent resided at the time of his death should take cognizance of the proceedings for the settlement of his estate to the exclusion of all other courts. Considering that Gorgonio Llanera, at the time of his death was a resident of Daraga, Albay, it follows that the Court of First Instance of that province should have exclusive jurisdiction to settle his estate. Any question, therefore, as to who are the persons who should succeed the decedent and inherit from his estate should be presented to and decided by the Court of First Instance of Albay."

The flaw we find in this reasoning is that it presupposes that the instant action is for the settlement of the estate of the deceased Gorgonio Llanera. Such is not the case for his estate has already been settled by the Court of First Instance of Albay so much so that the proceedings were declared closed and terminated on May 28, 1949. The present action is to recover the property illegally adjudicated to the defendants on the ground of fraud and being an action in personam the same can be filed either at the residence of any of the defendants or at the residence of the plaintiff, at the election of the latter (sec. 1, Rule 5). Plaintiff chose to institute the action in the Court of First Instance of Laguna, where he is a resident, and so it is incorrect to say that the venue of the present case has been improperly laid.

In holding that the present action has already prescribed, the trial court also said: "The claim of the plaintiff, in the opinion of the Court, was filed out of time. In summary settlement of the estate of a deceased person, any heir deprived of his lawful participation therein should file the corresponding petition in the court having jurisdiction of the estate within two years after the settlement and distribution thereof (sec. 4, Rule 74, Rules of Court). While the Rules of Court do not prescribe any time limit during which an heir deprived of his lawful participation in the estate of a person which was settled in a regular testate or intestate proceeding, Article 1100 of the Civil Code, however, provides that action for rescission on account of 'lesion' shall prescribe after four years from the time the partition was made. Considering that judicial partition of the estate of Gorgonio Llanera was made on May 17, 1949, hence plaintiff's action was commenced beyond the prescriptive period provided by law."

Again, we find this reasoning incorrect, for it overlooks the fact that the present action is not for rescission of a contract based on "lesion" but an action to recover property based on fraud which under our law may be filed within a period of four years from the discovery of the fraud, (sec. 43 par. 3, Act 190). Since, as alleged in the complaint, fraud was discovered only in 1953 and the action was brought in 1955, it is clear that plaintiff's action has not yet prescribed. It is therefore an error to dismiss the complaint based on prescription.

Wherefore, the decision appealed from is reversed. The case is remanded to the lower court for further proceedings, with costs against appellees.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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