

GERTRUDES DE LOS SANTOS, PLAINTIFF-APPELLEE, VS. MAXIMO DE LA CRUZ, DEFENDANT-APPELLANT.

G.R. No. L-29192. February 22, 1971

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Direct appeal to this Court on questions of law from the judgment of the Court of First Instance of Rizal, Branch IX, in its Civil Case No. Q-8792.

From the record of this case, we cull the following salient facts: On May 21, 1965, Gertrudes de los Santos filed a complaint for specific performance against Maximo de la Cruz, alleging, among others, that on August 24, 1963, she and several co-heirs, including the defendant, executed an extrajudicial partition agreement (a copy of which was attached to the complaint) over a certain portion of land with an area of around 20,000 sq. m.; that the parties thereto had agreed to adjudicate three (3) lots to the defendant, in addition to his corresponding share, on condition that the latter would undertake the development and subdivision of the estate which was the subject matter of the agreement, all expenses in connection therewith to be defrayed from the proceeds of the sale of the aforementioned three (3) lots; that in spite of demands by the plaintiff, by the other co-heirs, and by the residents of the subdivision, the defendant refused to perform his aforesaid obligation although he had already sold the aforesaid lots. The plaintiff prayed the court to order the defendant to comply with his obligation under the extrajudicial partition agreement and to pay the sum of P1,000.00 as attorney's fees and costs.

In his answer, the defendant admitted the due execution of the extrajudicial partition agreement, but set up the affirmative defenses that the plaintiff had no cause of action against him because the said agreement was void with respect to her, for the reason that the plaintiff was not an heir of Pelagia de la Cruz, deceased owner of the property, and was included in the extrajudicial partition agreement by mistake; and that although he had disposed of the three lots adjudicated to him, nevertheless the proceeds of the sale were not sufficient to develop and improve properly the subdivided estate. The answer contained a counterclaim wherein the defendant alleged that the plaintiff had likewise sold her share in the estate for P10,000.00, and that the extrajudicial partition agreement being void insofar as the latter was concerned, he was entitled to one-fourth (1/4) of the proceeds as his share by way of reversion. The defendant prayed that the complaint be dismissed; that the extrajudicial partition agreement be declared void with respect to the plaintiff; and, on his counterclaim, that the plaintiff be ordered to pay him the sum of P2,500.00.

On motion of the defendant, the court below entered an order on July 19, 1965, declaring the plaintiff in default for not having answered the counterclaim.

On July 6, 1966, the case was submitted for decision on the following stipulation of facts:

"1. That the parties admit the existence and execution of the 'Extra-Judicial Partition Agreement' dated August 24, 1963, which we marked as Exhibit 'A' for the plaintiff, and Exhibit '1' for the defendant, which partition agreement was marked as Annex 'A' in the complaint;

"2. That the parties agree that the original purpose of the above-mentioned Extra-Judicial Partition Agreement was for the distribution of the land in question for the heirs of Pelagia de la Cruz; however the parties further agree that several lots in the said land have been sold by some of the co-heirs, and there are now several houses constructed therein and residents therein;

"3. That the parties agree that the defendant is the appointed Administrator and In-charge of the development and subdivision of the land in question, as provided for in the afore-mentioned extrajudicial partition agreement;

"4. That parties agree that Lots 1, 2 and 3 as described on page 3, 3rd para-graph to the last of said partition agree-ment have been sold by the defendant here-in; and parties further agree that there are no properly constructed roads, nor pro-per light and water facilities;

"5. That the parties agree that the defendant is the nephew of the deceased Pelagia de la Cruz aforementioned, who was the owner and predecessor in interest of the land which was the subject matter of the extra-judicial partition agreement;

"6. That the parties agree that the plaintiff is the grandniece of the said Pelagia de la Cruz;

"7. That Pelagia de la Cruz died in-testate and without issue on October 16, 1962, as evidenced by a death certificate, which is marked as Exhibit '2' for the defendant; and

"8. That Marciana de la Cruz is the mother of the plaintiff and the niece of the said Pelagia de la Cruz, and that the said Marciana de la Cruz died on September 22, 1935, as evidenced by Exhibit '3' for the defendant."

In its decision dated November 3, 1966, the court a quo held that the defendant, being a party to the ex-trajudicial partition agreement, was estopped from raising in issue the right of the plaintiff to inherit from the decedent Pelagia de la Cruz; hence, he must abide by the terms of the agreement. The court ordered the defendant "to perform his obligations to develop Lots 1, 2 and 3 of (LRC) Psd-29561 as described on page 2 of the Extra-judicial Partition Agreement" (meaning, ap-parently, that the defendant should develop the subdi-vision because said Lots 1, 2 and 3 were intended to be sold for this purpose), and to pay the plaintiff the sum of P2,000.00 as actual damages, the sum of P500.00 as attorney's fees, and the costs. No disposition was made of defendant's counterclaim. The defendant filed a "Motion for New Trial" but the same was denied. Hence, this appeal.

The seven (7) errors assigned by defendant-appellant in his brief boil down to the following:

1. The court a quo erred in not holding that the extrajudicial partition agreement is null and void with respect to plaintiff-appellee, and, consequently, that plaintiff-appellee has no cause of action against defendant-appellant.
2. The court a quo erred in holding that defendant-appellant is estopped from questioning plaintiff-appellee's right to have the agreement enforced.
3. The court a quo erred in ordering defendant-appellant to pay actual dam-ages to plaintiff-appellee, and, on the other hand, in not granting the relief prayed for by defendant-appellant in his counterclaim.

We shall discuss seriatim these errors as thus condensed.

1. In the stipulation of facts submitted to the court below, the parties admit that the owner of the estate, subject matter of the extrajudicial partition agreement, was Pelagia de la Cruz, who died intestate on October 16, 1962; that defendant-appellant is a nep-hew of the said decedent; that plaintiff-appellee is a grandniece of Pelagia de la Cruz, her mother, Marcia-na de la Cruz, being a niece of the said Pelagia de la Cruz; that plaintiff-appellee's mother died on Septem-ber 22, 1935, thus predeceasing Pelagia de la Cruz; and that the purpose of the

extrajudicial partition agree-ment was to divide and distribute the estate among the heirs of Pelagia de la Cruz.

The pivotal question is whether, in the premises, plaintiff-appellee is an heir of the decedent. We are convinced that she is not. Plaintiff-appellee being a mere grandniece of Pelagia de la Cruz, she could not inherit from the latter by right of representation.

"ART. 972. The right of representa-tion takes place in the direct descending line, but never in the ascending.

"In the collateral line, it takes place only in favor of the children of brothers or sisters, whether they be of the full or half blood."

Much less could plaintiff-appellee inherit in her own right.

"ART. 962. In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place. x x x."

Applying these two (2) provisions, this Court, in *Linart y Pavia vs. Ugarte y Iturralde*, 5 Phil., 176 (1905), said:

"x x x [I]n an intestate succes-sion a grandniece of the deceased can not participate with a niece in the in-heritance, because the latter being a nearer relative, the more distant grand-niece is excluded. In the collateral line the right of representation does not obtain beyond sons and daughters of the brothers and sisters, which would have been the case if Pablo Linart, the father of the plaintiff, had survived his deceased uncle."

In the present case, the relatives "nearest in degree" to Pelagia de la Cruz are her nephews and nieces, one of whom is defendant-appellant. Necessarily, plaintiff-appellee, a grandniece, is excluded by law from the inheritance.

But what is the legal effect of plaintiff-appellee's inclusion and participation in the extrajudicial partition agreement insofar as her right to bring the present action is concerned? They did not confer upon her the right to institute this action. The express purpose of the extrajudicial partition agreement, as admitted by the parties in the stipulation of facts, was to divide the estate among the heirs of Pelagia de la Cruz. Indeed, the said agreement itself states that plaintiff-appellee was participating therein in representation of her deceased mother. The pertinent portion of the agreement is herein quoted, thus:

"NOW, THEREFORE, we x x x and Diego delos Santos, married to Anastacia dela Cruz; Mariano delos Santos, married to Andrea Ramoy; Gertrudes delos Santos, married to Pascual Acuna; Alejo delos Santos, married to Leonila David; and Sotera delos Santos, married to Narciso Ramota; all in representation of our mother, MARCIANA DELA CRUZ, x x x, do hereby by these presents, mutually, voluntarily and amicably agree among ourselves to equitably divide the pro-erty left by the deceased PELAGIA DELA CRUZ, and adjudicate unto ourselves definite and independent portions of the estate in the following manner x x x."

It is quite apparent that in executing the partition agreement, the parties thereto were laboring under the erroneous belief that plaintiff-appellee was one of the legal heirs of Pelagia de la Cruz. Plaintiff-appellee not being such an heir, the partition is void with respect to her, pursuant to Article 1105 of the Civil Code, which reads:

"ART. 1105. A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person."

Partition of property effected between a person entitled to inherit from the deceased owner thereof and another person who thought he was an heir, when he was not really and lawfully such, to the prejudice of the rights of the true heir designated by law to succeed the deceased, is null and void (*De Torres vs. De Torres, et al.*, 28 Phil., 49). A fortiori, plaintiff-appellee could hardly derive from the agreement the right to have its terms enforced.

2. The extrajudicial partition agreement being void with respect to plaintiff-appellee, she may not be heard to

assert estoppel against defendant-appellant. Estoppel cannot be predicated on a void contract (17 Am. Jur. 605), or on acts which are prohibited by law or are against public policy (Baltazar vs. Lingayen Gulf Electric Power Co., et al., G.R. Nos. 16236-38, June 30, 1965 [14 SCRA 522]). In Ramiro vs. Graño, et al., 54 Phil., 744 (1930), this Court held:

"No estoppel arises where the representation or conduct of the party sought to be estopped is due to ignorance founded upon a mistake. And while there is authority to the contrary, the weight of authority is that the acts and declarations of a party based upon an innocent mistake as to his legal rights will not estop him to assert the same, especially where every fact known to the party sought to be estopped is equally well known to the party setting up the estoppel. (21 C.J., 1125, 1126.)"

And in Capili, et al. vs. Court of Appeals, et al., G.R. No. L-18148, February 28, 1963 (7 SCRA 367), this Court said:

"Finally, petitioners-appellants claim that appellees are estopped to raise the question of ownership of the properties involved because the widow herself, during her life-time, not only did not object to the inclusion of these properties in the inventory of the assets of her deceased husband, but also signed an extra-judicial partition of those inventoried properties. But the very authorities cited by appellants require that to constitute estoppel, the actor must have knowledge of the facts and be apprised of his rights at the time he performs the act constituting estoppel, because silence without knowledge works no estoppel. x x x."

3. The award of actual damages in favor of plaintiff-appellee cannot be sustained in view of the conclusion we have arrived at above. Furthermore, actual or compensatory damages must be duly proved (Article 2199, Civil Code). Here, no proof of such damages was presented inasmuch as the case was decided on a stipulation of facts and no evidence was adduced before the trial court.

We now come to defendant-appellant's counter-claim, in which he alleges that plaintiff-appellee sold her share to a certain person for the price of P10,000.00, and claims that he is entitled to one-fourth (1/4) of the proceeds by right of reversion. It will be noted that plaintiff-appellee had been declared in default on defendant-appellant's counterclaim; but the latter did not present any evidence to prove the material allegation therein - more specifically, the alleged sale of the former's share for the sum of P10,000.00. That no such evidence had been adduced is understandable, for the parties expressly submitted the case for the resolution of the court upon their stipulation of facts which, unfortunately, did not make any mention of the alleged sale; and neither had defendant made any offer or move to introduce the necessary evidence to that effect for the consideration and evaluation by the trial court.

Defendant -appellant contends, however, that in view of plaintiff-appellee's having been declared in default, the latter must be deemed to have admitted all the allegations in his counterclaim, so that the court a quo should have granted the relief prayed for by him. We find no merit in this contention.

Section 1, Rule 18 of the Revised Rules of Court, reads:

"SECTION 1. Judgment by default. – If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made to a counterclaim, cross-claim, or third-party complaint within the period provided in this rule."

The abovequoted rule was taken from Sections 128 and 129 of the Code of Civil Procedure. In Macondray & Co. vs. Eustaquio, 64 Phil., 446 (1937), this Court said:

"Under section 128 of our Code of Civil Procedure, the judgment by default against a defendant who has

neither appeared nor filed his answer does not imply a waiver of rights except that of being heard and of presenting evidence in his favor. It does not imply admission by the defendant of the facts and causes of action of the plaintiff, because the codal section requires the latter to adduce his evidence in support of his allegations as an indispensable condition before final judgment could be given in his favor. Nor could it be interpreted as an admission by the defendant that the plaintiff's causes of action find support in the law or that the latter is entitled to the relief prayed for. x x x."

Nevertheless, the basic fact appears in the stipulation submitted by the parties that said plaintiff-appellee admitted having received a portion of the estate by virtue of the extrajudicial partition agreement dated August 24, 1963, to wit:

"(9). Lot 9, (LRC) Psd-29561, containing an area of 1,691 sq. m. as described in the Technical Description to be adjudicated to Diego delos Santos, married to Anastacia dela Cruz; Mariano Santos, married to Regina Baluyot; Hilario delos Santos, married to Andrea Ramoy; Gertrudes delos Santos, married to Pascual Acuna; Alejo delos Santos, married to Leonila David; and Sotera delos Santos, married to Narciso Ramota, in co-ownership, share and share alike."

Such being the case, defendant-appellant is apparently correct in his contention that the lower court erred in not passing on his counterclaim and, consequently, in not sentencing appellee to turn over to him his corresponding share of said portion received by appellee under the void partition. Remote relatives or unrelated persons who unduly received and took possession of the property of a deceased person without any right, by virtue of a null and void partition, must restore it to the legitimate successor in the inheritance (*De Torres vs. De Torres, et al.*, supra). Of course, if such share has already been disposed of by appellee to a bona fide purchaser, as seems to be indicated in the unproven allegations of the counterclaim, We cannot render judgment awarding any specific amount to defendant-appellant as his proportionate share of the proceeds of such sale for the reason that, as already stated above, this aspect of the counterclaim has not been touched upon in the stipulation of facts nor has it been supported by evidence which appellant should have presented in the lower court but did not.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the judgment appealed from is hereby reversed and set aside; the defendant-appellant is absolved from any liability to and in favor of plaintiff-appellee; and, on appellant's counterclaim, appellee is hereby sentenced to restore or reconvey to him his corresponding share of the property she has received under the extrajudicial partition hereinbefore mentioned if the same has not already been disposed of as alleged. Costs in both instances against plaintiff-appellee.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

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