

CATALINA BILLION, ASSITED BY HER HUSBAND, RICARDO DE CASTRO, CONSORCIA BILLION, AND MEDINA BILLION, PLAINTIFFS AND APPELLEES, VS. IRINEO BILLION, PRFECTA BILLION, BARILLA BILLIO...

C.A. No. L-23. November 04, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Seven years ago, that is on June 25, 1941, plaintiffs filed with the lower court a complaint for the partition of thirteen immovable properties located in Alaminos, Pangasinan, and of their income and products. They alleged that the properties were left by Juan Billion, who died on April 16, 1937, and whose heirs are both plaintiffs and defendants, and that defendants Irineo and Perfecta Billion took charge of the administration of the properties oh the death of Juan Billion. Plaintiffs claim that all the plaintiffs and defendants surnamed Billion are entitled each to an undivided one-seventh of the properties. On July 22, 1941, defendants filed an answer, admitting some allegations of the plaintiffs and denying others, and putting up special defenses and a counterclaim.

On December 2, 1942, both parties agreed that plaintiffs Catalina and Consorcia Billion and defendants Irineo, Perfecta, Barilla, and Vicente Billion are the legitimate children of the late Juan Billion, and plaintiff Medina Billion is the only daughter of the late Francisco Billion, another son of Juan, and that the properties enumerated in paragraph (2) of plaintiffs' complaint excepting parcels M, N, and O, as well as the properties enumerated in paragraph (2) of the special defenses of the defendants, belonged sometime or another to Juan Billion. On September 30, 1943, decision was rendered, wherein the following seventeen declarations are made

"(1) That Juan Billion died intestate, leaving as his heirs Ms children, namely: Catalina, Gon- sorcia, Irineo, Perfecta, Barilla and Vicente, and Medina, who is the only legitimate daughter of Francisco Billion, a deceased son of Juan Billion;

"(2) That each is entitled to receive one-seventh (1/7) of the properties left by the deceased Juan Billion;

"(3) That the properties left by the deceased Juan Billion are parcels (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (l) and (m) of the complaint and (b) of the counterclaim;

"(4) That parcel (a) of the counterclaim is the exclusive property of Catalina Billion;

"(5) That parcels (n) and (o) are the exclusive properties of Irineo Billion;

"(6) That the properties of Juan Billion, from the time of his death, give a rent of ninety-nine (99) piculs of palay of 100 Kilos each valued at P6.00 per picul, except the agricultural year 1941-1942 in which year it is estimated that the defendants received only one-half of the products;

"(7) That since the defendants have received the products from the time of the death of Juan Billion, to the present, they are hereby ordered to pay the plaintiffs their corresponding shares after deducting the amounts paid by them on the account of the estate;

"(8) That Juan Billion, at the time of his death, left an indebtedness in the amount of P400 to Gregorio Basobas; P100.00 to Francisco Ranit; and P97.44 to the Agricultural Credit Cooperative Association of Alaminos, Pangasinan;

"(9) That the defendants, during the last illness as well as on the occasion of the funeral of the deceased Juan Billion, spent the amounts of P40.00 for medicines; P37.00 for doctor's fee; P7.00 for coffin; and P12, the value of the pig killed and used on the day Juan Billion died;

"(10) That the defendants also paid the amount of P39.00 for land taxes;

"(11) That from the share of Consorcio Billion the sum of P97.00 should be deducted which amount has been sent by Barilla Billion from the sale of palay harvested from the estate;

"(12) That the claim of Perfecta Billion for compensation for the different sums she alleged to have sent to Medina Billion is hereby disallowed;

"(13) That the amount of P829.44, the sum total of the amounts mentioned in paragraphs (8), (9), (10) and (11), be deducted from the value of the products of the estate;

"(14) That the amount of P500.00 claimed by Irineo Billion cannot be credited to him and his claim, therefore, is hereby dismissed for lack of sufficient evidence;

"(15) That parcel (k) has been sold by the heirs for the amount of P227.00, which had been received by the defendants, but should be paid to the common mass of properties for partition;

"(16) That parcels (l) and (m) should be assigned to Irineo Billion as his share in the inheritance and should the value thereof exceed his 1/7 share in the properties, Irineo Billion should be required to pay the difference; and

"(17) That should the parties fail to come to an amicable settlement in accordance with this decision, the Court, after the time fixed by law, shall appoint Commissioners to make the partition."

Appellants raise several questions in their eight assignments of error. They are to be disposed of separately.

I

Appellants contend that the lower court erred in not ordering that the parcel of land situated in barrio Bisocol, Alaminos, described as parcel "a" of paragraph (1) of the defendants' special defenses, be collated with the mass of the estate of Juan Billion for the determination of the share of each of his heirs.

According to the lower court, the parcel of land in question is in the possession of Catalina Billion and her husband, Ricardo de Castro. On December 12, 1896, Victorio, father of Juan Billion, executed a will, in paragraph (h) of which he stated that he and his wife, Telesfora Reyes, gave said parcel of land to Catalina, because the latter had been living with them and was brought up by them since infancy. Juan Billion was named executor in the will. On March 16, 1903, after the death of Victorio, his widow executed a document confirming the terms of the will and the fact that the parcel of land in dispute was given to Catalina. The will of Victorio was not executed in accordance with the applicable law at the time of its execution, as it was not ratified before a notary public, and was not probated. Before Catalina acquired the possession of the parcel of land in question, it was in the possession of Juan Billion who administered it in the name of Catalina and utilized the income derived therefrom for her maintenance. The lower court concluded that, because the property has been in the possession of Catalina for a period of more than forty years, in virtue of said continuous possession, the property has been vested on her, and should not be brought to the common mass for partition.

The law governing the execution of wills in 1896, when Victorio executed his will in question, is Article 694 of

the Civil Code, which requires that the will should be executed before a notary public. According to Article 704 of the Civil Code, wills executed without the authentication of a notary shall be ineffective if they are not afterwards reduced to a public instrument and recorded in a protocol in the manner prescribed in the Civil Procedure, which has not been done' with regards to the will in question.

Appellants contend that, under Article 902 of the Civil Code, Victorio Billion must be considered as having died without a will or under a void will, and therefore, his properties passed to his only son Juan Billion by operation of the law and, therefore, should be collated as all properties received by forced heirs by way of gratuitous title during the lifetime of the deceased.

Appellants' contention is well taken. Catalina's claim as to the ownership of the parcel of land in dispute is based on the will executed by her grandfather Victorio. There being no dispute as to the invalidity of said will, her claim has no ground to stand on. That upon Victorio's death, Juan Billion took possession of the property, and plaintiffs admitted that it was declared for tax purposes in the name of Juan Billion, and that Ricardo de Castro, Catalina's husband, testified that she did not have any property when he married her, only serve to emphasize the fact that she did not acquire the ownership of said parcel of land.

Catalina could not have acquired the ownership of the parcel in question by prescriptive possession against her co-heirs. They could not be excluded from their claim to the property.

II

Appellants contend that the lower court erred in holding that there was no valid partition made by Juan Billion among his heirs.

The lower court declared in its decision the following:

"* * * According to the testimony of the defendants, Juan Billion, before his death, gathered his children and divided his properties among them, but that this partition was made verbally. Since this procedure followed by the deceased Juan Billion is not one of the valid conveyances established by law, it cannot have any valid effect. Although it has been established by our Supreme Court in the case of *De. Guzman vs. Pangilinan*, 28 Phil. 322, that "where ancestors make partition of properties and the heirs entering into the possession of the same have been mutually made and assented thereto, no written document is necessary to sustain the partition", yet in the case at bar the plaintiffs have not assented to the verbal partition made by the deceased Juan Billion as they were not present during the alleged partition, nor have they entered into the possession of the parcels assigned to them. Since the alleged partition made by the deceased Juan Billion is of no legal effect and there being no will or testament, the present action for partition is in order." (Record on Appeal pp. 37-38)

Appellants' contention is untenable. The successive donations made by Juan Billion to several children is incompatible with, the singleness and simultaneity in the partition they alleged to have taken place.

III

Appellants alleged that the lower court erred in holding that the price of palay from 1937 to 1942 was P6.00 per picul, and suggest that the lower court's pronouncement be modified by taking the average between P5.00 per picul, the price given by plaintiff Catalina Billion, and from P3.00 to P3.50 per picul, the prices given by appellants.

Upon the evidence, we are of opinion that the price fixed by the lower court should be reduced to P4.25 per picul, which seems to be the reasonable medium between the exaggerated contentions of both parties, as while appellants would set the price from P3 to P3.50 the witnesses for the appellees would set it at P6.00, P7.00, P8.00

and P9.00. Besides, P4.25 is the average between the maximum price of P3.50 given by appellants and the minimum given by appellees, that of P5.00 given by Catalina Billion herself.

IV

The fourth assignment of error made by appellants is necessarily related to the first question as to whether the parcel of land "a" of paragraph (1) of the special defenses should be collated for partition purposes. Appellants contend that the fruits of said parcel should also be collated.

Appellants' contention is well taken. The collation of the fruits should be made in accordance with the following provisions of Article 1049 of the Civil Code:

"The fruits of and interest produced by property subject to collation shall not belong to the estate except from the day on which the succession is opened. For the purpose of determining the amount thereof, the fruits and interest produced by property of the estate of the same kind as that subject to collation shall be made the basis of the calculation."

V

Appellants contend that the lower court erred in holding that the amount of P227,00, proceeds of the sale of the parcel "k" of the second paragraph of the complaint, be made a part of the estate. They alleged that said property was sold by Juan Billion during his lifetime, the sale having been ratified by his heirs by executing the deed of sale, Exhibit "3", signed among others, by plaintiffs Catalina Billion and Consorcia Billion, and that Catalina's contention that she did not get her share from the sale of the land has no merit because none of the other heirs got any, as the proceeds were spent by Juan Billion himself during his lifetime. Appellants' position is correct. What has been spent by Juan Billion cannot be part of the properties he left.

VI

Appellants contend that the lower court erred in holding defendants liable to the plaintiffs to the extent of three-sevenths of the products of the property from 1937 to 1942, as there is no evidence that Vicente Billion had anything to do with the products pertaining to others, while Perfecta Billion assumed responsibility for the products of the share corresponding to Medina Billion and Barilla Billion for the products of the share of Consorcia Billion.

Considering the evidence, the contention is well taken with respect to defendant Vicente Billion, but with respect to the other defendant the lower court was correct. The responsibilities assumed by Perfecta Billion and Consorcia Billion do not relieve Irineo Billion from his responsibility in favor of plaintiffs.

VII

The next assignment of error made by appellants is that the lower court erred in believing the testimony of Perfecta Billion regarding her delivery to Medina Billion of the latter's share of the products.

There is not enough ground why we should reverse the conclusion of the lower court, which had the opportunity of hearing the witnesses of both sides.

VIII

The last assignment of error made by appellants refers to the lower court's failure to credit to Irineo Billion P500.00 for redeeming the property mortgaged by Juan Billion to Gregorio Basobas.

Appellants alleged that during his lifetime Juan Billion mortgaged the parcel of land known as parcel "b" of the second paragraph of the complaint to Gregorio Basobas, and that at present the possession of the property is in the hands of the defendant Barilla Billion, while Irineo Billion, as evidenced by Exhibit "2", mortgaged his own property, his purpose being to redeem the property from Gregorio Basobas.

The lower court said, respecting the parcel in question:

"The claim of defendant Irineo Billion, that parcel "b" was mortgaged by Juan Billion to Gregorio Basobas for the amount of P500.00 and as redeemed by said Irineo Billion for the same amount is not supported by any other evidence. He has failed to produce any document showing that he paid Gregorio Basobas P500.00. For his failure to show any documentary proof to support his claim, the court cannot favorably consider the claim of Irineo Billion that he be compensated for P500.00."

There is no ground for reversing the conclusion of the lower court. Appellants themselves were not able to point out in their brief any specific evidence in support of their contention that the parcel of land in question was ever mortgaged by Juan Billion to Gregorio Basobas.

The appealed decision is modified in accordance with the conclusions we have arrived at in the body of this decision, and the lower court is ordered to proceed accordingly. No costs.

Paras, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

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