

RUFINO COLOMA AND TIMOTEO COLOMA, PLAINTIFFS AND APPELANTS, VS. ATANACIO COLOMA, MAMERTO COLOMA AND CALIXTO COLOMA, DEFENDANTS AND APPELLEES.

G.R. No. L-19399. July 31, 1965

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

On February 24, 1961 the plaintiffs-appellants, Rufino Coloma and Timoteo Coloma, filed a complaint against the defendants-appellees, Atanacio Coloma, Mamerto Coloma and Calixto Coloma, for the partition of thirteen parcels of land located at Piddig, Ilocos Norte, allegedly left undisposed of and unencumbered by one Agapito Geronimo who died intestate on March 19, 1949, leaving as his only heirs the two appellants Rufino Coloma and Timoteo Coloma and the appellee Atanacio Coloma who are brothers. The appellants alleged that after the death of Agapito Geronimo they and their brother Atanacio became owners pro indiviso of the properties left by their uncle, and that they tilled the lands together and divided the harvest in the proportion of one third for each of them, but that in the year 1953 the appellee Atanacio Coloma and his sons, appellees Mamerto Coloma and Calixto Coloma, refused to allow them (appellants) to participate in the cultivation of the lands and also refused to give them their usual share in the harvest. Appellants also alleged that they made repeated demands on the appellees for the latter to give them their share in the harvest but the appellees claimed that they are the owners of the properties left by Agapito Geronimo, and that in the year 1968 when appellants pressed on the appellees to give them their share of the lands and asked for the partition of the same the appellees exhibited to them (appellants) a document which the appellees claimed to be the last will and testament of the late Agapito Geronimo wherein it was provided that all the properties left by said Geronimo were divided to them (appellees) and other relatives but not including the appellants. The appellants also alleged that no will of Agapito Geronimo was ever probated in the Court of First Instance of Ilocos Norte, and that no adjudication was ever made to the appellees and others of the properties left by Agapito Geronimo. The appellants thereby prayed the court to order the partition of the properties left by Agapito Geronimo only among them (appellants Rufino Coloma and Timoteo Coloma) and the appellee Atanacio Coloma in the proportion of one third portion for each, with a further claim for the payment to them of their corresponding shares of the produce of the lands from 1955 until the partition shall have been effected and their respective one-third share shall have been delivered to them.

On March 6, 1961 the appellees, Atanacio Coloma, Mamerto Coloma and Calixto Coloma, filed a motion to dismiss the complaint on the ground that the appellants have no came of action because they are neither heirs nor co-owners of the properties left by the late Agapito Geronimo; that the late Agapito Geronimo had left a last will and testament which had been duly probated by the Court of First Instance of Ilocos Norte in Special Proceedings No. 3204 and that the appellants were not among the persons named in said will as devisees.

On March 24, 1961 the appellants filed an opposition to the motion to dismiss claiming that they had personality to file an action for partition because they are legal heirs of Agapito Geronimo and that if there was ever a will that was probated by the Court of First Instance of Ilocos Norte in Special Proceedings No. 3204 that decision in

said special proceedings was void because it was obtained thru fraud and due process of law was not observed in the proceedings. While the motion to dismiss, and the opposition thereto, were pending resolution by the court, the appellants, without previously securing leave of the court, filed an amended complaint.

In their amended complaint, in addition to what they had alleged in the original complaint, the appellants alleged that they came to know for the first time that Special Proceedings No. 3204 was instituted on June 30, 1960 and that the appellees had succeeded in having the alleged last will and testament of the late Agapito Geronimo probated and in partitioning the lands of Agapito Geronimo among themselves, only when the appellees filed their motion to dismiss the original complaint. The appellants further alleged that the order admitting the supposed will to probate is null and void, not only because Agapito Geronimo did not execute a last will and testament but also because the court did not have jurisdiction to hear and decide the petition for probate because not all the known heirs had been given notice as required by Sec. 4 of Rule 77 of the Rules of Court, and that the publication of the notice of hearing was made in a newspaper that was not of general circulation in the province of Ilocos Norte. The appellants, therefore, insisted that the proceedings had in Special Proceedings No. 3204 were null and void and that the late Agapito Geronimo died intestate so that his propertied should be divided among his nearest kins, namely, the appellants Rufind and Timoteo, and the appellee Atanacio, all surnamed Coloma, in equal portions. The appellants thereby prayed that the order for the probate of the alleged will of Agapito Geronimo, as well as of the proceedings had in Special Proceedings No. 3204, be declared null and void, and that the 13 parcels of land left by the late Agapito Geronimo be ordered partitioned equally among the appellants, Rufino and Timoteo, and the appellee Atanacio, all surnamed Coloma.

The appellees filed an opposition to the amendment of appellants' complaint and prayed for the dismissal of the complaint.

On April 27, 1961 the Court of First Instance of Ilocos Norte issued an order dismissing Civil Case No. 3331. The pertinent paragraphs of the order of dismissal read as follows:

"From the pleadings and other documents like the record of special proceedings No. 3204, it also appears that one Agapito Geromino died testate sometime in 1947 leaving 13 parcels of land all described in paragraph 3 of plaintiffs' complaint; that these parcels of land were left to the heirs mentioned in his last will and testament, who are the present defendants; That Agapito Geromino, deceased in special Proceed No. 8204, had a sister named Leocadia Geronino who pre-deceased Agapito (par. 2 of plaintiffs' amended complaint); that the plaintiff and defendant Atanacio are her children and are therefore brothers; that in Special Proceeding No. 3204 the Court issued an 'order' dated September 16, 1960, the pertinent portion of which is herein below quoted:

'From the evidence thus presented, the court is satisfied that the will Exh. 'B' (Exh. 'B-1'-translation), of the late Agapito Geronimo y Basilio was duly executed in accordance with law for which reason the same is hereby allowed to probate Calixto Coloma, Mamerto Coloma, Honorata Coloma, Rosita Coloma, Petra Manuel, Atanacio Coloma, and Marcela Manuel are hereby declared instituted heirs of the deceased Agapito Geromimo y Basilio and therefore they are entitled to participate in the estate and to apportion and divide it among themselves, in accordance with the will and thereupon to receive and enter into the possession of the portions of the estate so awarded to them. Said persons are hereby required to put up a bond in the amount of P500.00 condition for the payment of any just money claim that may be filed under Section 4, Rule 74 of the Rules of Court'; that the order is now final and the deed of partition among the instituted heirs was approved by the Court in its order of March 3, 1961.

"Plaintiffs claim in paragraphs 10 and 11 of their amended complaint that the order of the Court in Special Proceedings No. 3204 is null and void, or at least annulable, because there was no notice to the herein plaintiffs as 'heirs' and that notice of hearing was published in the 'Daily Record' which has no circulation in

Ilocos Norte. It is true that under Section 4, Rule 77 of the Rules of Court, copies of the notice of the time and place fixed for proving the will should be addressed to the known heirs legatees and devisees of the testator, but the herein plaintiffs are neither heirs, legatees nor devisees for they were not made beneficiaries in the will. They are mere collateral heirs of the deceased because their mother was his sister who pre-deceased the testator Agapito Geronimo. Plaintiffs' mother Leocadia Geronimo was a mere voluntary heir of her brother Agapito and upon her death ahead of his brother she transmitted nothing to the plaintiffs for 'A voluntary heir who dies before the testator transmits nothing to his heirs.' (Art. 766, New Civil Code). In the case of Gutierrez del Campo vs. Varela Calderon, 59 Phil. 631, it was held:

'As stated above the appellants in this case are not forced heirs of the deceased and therefore have no right to any part of the property left by the testator, once he had disposed of the same by will. If any of them were forced heirs they would be entitled to intervene in this case and protest their interest in so far as they may have been prejudiced by the will. It is evident therefore that they have not been injured or prejudiced in any manner whatsoever. Only forced heirs whose rights have been prejudiced have a right to intervene in a case of this character.'

"Notice of the hearing in Special Proceedings No. 3204 was published in accordance with law and, therefore, the judgment of the Court rendered therein is binding on all the world (Manalo vs. Paredes. 47 Phil. 938) including the plaintiffs. These foregoing facts clearly show that defendants' motion to dismiss on the ground of res judicata is well-taken....."

The appellants filed this appeal direct to this Court from the above-mentioned order of the Court of First Instance of Ilocos Norte dismissing Civil Case No. 3331.

The main question raised by the appellants is whether the lower Court had correctly dismissed the case on the ground of res judicata.

We believe that the lower court had correctly dismissed the case. As shown in the order appealed from, the lower court had found that the late Agapito Geronimo had left a will, and said will was admitted to probate in Special Proceedings No. 3204 of the Court of First Instance of Ilocos Norte; and that the proceedings had in said Special Proceedings No. 3204 were regular and in accordance with law. It is also shown that in the last will and testament of Agapito Geronimo, which was admitted to probate the appellants herein, who are the nephews of the said Agapito Geronimo, were not instituted as heirs. On the other hand, it was shown that the appellees along with other persons, also relatives of Agapito Geronimo, were instituted as heirs and devisees of the properties left by the said Agapito Geronimo, and that the properties of Agapito Geronimo had been distributed to these instituted heirs by order of the court in accordance with the provisions of said will. It had even been shown that the appellant Rufino Coloma was in fact one of the instrumental witnesses in the execution of the last will and testament of Agapito Geronimo. The order admitting the will of Agapito Geronimo to probate, and the order approving the distribution of the estate of the said Agapito Geronimo as provided in the said will and testament, had since become final and unappealable.

We believe that the lower court had correctly ruled that the case presented by the appellants had been barred by a prior judgment so that the dismissal of said case on the ground of res judicata is in order.

The conclusiveness of the judgment of the Court of First Instance of Ilocos Norte in Special Proceedings No. 3204 is apparent from the facts and/or circumstances recited in the order appealed from in the present case. In Special Proceedings No. 3204 the order of the court admitting the will to probate, and the order approving the distribution of the estate of Agapito Geronimo to the heirs instituted in the said will, have become final and unappealable. In Special Proceedings No. 3204 the court that rendered the judgment or orders had jurisdiction over the subject matter and over the parties. The judgment or orders had been rendered on the merits, because due

hearings had been held. Special Proceedings No. 3204 was a proceeding in rem that was directed towards the whole world, including the appellants herein, so that it can be said that there is a similarity of parties in Special Proceedings No. 8204 and in the case now at bar. There is an identity of subject matter involved in Special Proceedings No. 3204 and in the present case, because in both cases what are involved are all the properties left by the late Agapito Geronimo. There is an identity of the cause of action or issue involved, because in both Special Proceedings No. 3204 and in the present case the questions to be determined were as to whether the late Agapito Geronimo had executed a will in accordance with law, whether the proceedings had for the probate of the will was in accordance with law, and who are the persons that are entitled to inherit the properties left by the late Agapito Geronimo. The question as to who are entitled to the properties left by Agapito Geronimo was definitely settled in Special Proceedings No. 3204. The appellants in the present case, not being forced heirs of Agapito Geronimo, cannot claim any participation in the properties left by Agapito Geronimo who died testate and who had specified in his will the persons who should inherit his properties. What is sought by the appellants to be determined and settled in the present case had already been determined and settled in Special Proceedings No. 3204.

"The proceeding for the probate of a will is a proceeding in rem (40 Cyc. p. 1266), and the court acquires jurisdiction over all the persons interested through the publication of the notice prescribed by section 630 of the Code of Civil Procedure, and any order that may be entered is binding against all of them." (Manalo vs. Paredes, 47 Phil. 938. 942).

"The probate of a will in this jurisdiction is a proceeding in rem. The provision of notice by publication as a prerequisite to the allowance of a will is constructive notice to the whole world, and when probate is granted, the judgment of the court is binding upon everybody, even against the State." (Mercado vs. Santos, 66 Phil 215).)

In view of the foregoing, the order appealed from is affirmed, with costs against the appellants.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal, and Bengzon, J. P., JJ., concur.

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