

**DOLORES C. VDA. DE GIL, ADMINISTRATRIX AND APPELLEE, VS.
AGUSTIN CANCIO, CLAIMANT AND APPELLANT.***G.R. No. L-21472. July 30, 1965*

Ponente: BAUTISTA ANGELO, J.

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Carlos Gil, Sr. died testate in Manila on November 28, 1943 instituting as his exclusive heir his widow Isabel Herreros subject to the condition that should the latter die the estate, if any, would be inherited by Carlos Gil, Jr., the decedent's adopted son. In due time, the decedent's will was duly admitted to probate, the widow Isabel having been appointed as the administratrix of the estate.

Among the properties constituting the estate were two parcels of residential lands and a house erected thereon situated in Guagua, Pampanga. During the Japanese occupation, the widow Isabel and the adopted son Carlos secured from one Agustin Cancio a loan of P89,000.00 and in payment thereof they agreed on November 21, 1944 to transfer to Cancio the two lots after the same had been finally adjudicated to both or either of the two heirs. Subsequently, Carlos died, and on June 25, 1954 Isabel H. Vda. de Gil, as administratrix of the estate of her deceased husband Carlos Gil, Sr., filed a motion in the testate proceedings (No. 548) praying for an order to authorize her to execute the necessary deed of transfer of the two lots including the house erected thereon to Agustin Cancio or his heirs. Copy of this motion was served on Dolores C. Vda. de Carlos Gil, Jr. who expressed her conformity thereto in her capacity as guardian of her minor children on October 21, 1954. This motion was approved by Judge Ramon R. San Jose on condition that the original of the deed of transfer should be submitted to the court for approval.

As Isabel H. Vda. de Carlos Gil, Sr. died sometime in July, 1956, before being able to execute the deed of transfer in favor of Cancio, said deed was executed by Dolores C. Vda. de Carlos Gil, Jr. on July 3, 1956 in her capacity as co-administratrix and vendor of the properties, which deed was attached to a motion she filed in the testate proceedings (No. 548) praying the court for its approval. Accordingly, on July 9, 1956, the probate court issued an order directing the co-administratrix to pay the estate and inheritance taxes due on the properties covered by the sale before passing upon the motion filed for the approval of the aforesaid deed of sale.

Apparently, nothing was done on the matter by the co-administratrix notwithstanding the lapse of several years, and so on April 1, 1959, Agustin Cancio filed a motion in the probate proceedings reiterating the former petition of the co-administratrix dated July 5, 1956 requesting for the approval of the deed of sale stating that the Office of the Commission on Internal Revenue agreed to the registration of said deed of sale notwithstanding the non-payment of the estate and inheritance taxes in view of the fact that the value of the properties of the estate is more than sufficient to answer for whatever estate and inheritance taxes that may be assessed against the estate. But, to the surprise of petitioner Cancio, co-administratrix Dolores C. Vda. de Gil, Jr. filed a strong opposition to the petition on the ground that the late Isabel H. Vda. de Gil, Sr. and Carlos Gil, Jr. entered into the agreement to sell the properties without the authority of the court, that the properties subject of the sale had never been finally adjudicated to both or either of the two vendors, and that the alleged deed of sale should only be considered as an

equitable mortgage.

After the parties had submitted their memoranda on the issues raised by the oppositor, the probate court, Hon. Antonio Cañizares presiding, issued an order on January 25, 1961 denying the petition and setting aside the order of the probate court of October 22, 1954 which requires the submission of the deed of sale for the approval of the court upon the theory that since the obligation for which the properties were sold was personal in character and has no connection with the estate, whatever claim Cancio has in connection with said obligation should be threshed out in a separate action.

Cancio took the case to the Court of Appeals, but the same was later certified to this Court on the ground that it merely involves questions of law.

The order of the probate court issued on January 25, 1961 from which the present appeal was taken reads as follows:

"Upon consideration of the motion filed on April 1, 1959 by Agustin Cancio as well as the opposition thereto filed on April 11, 1959 by co-administratrix Dolores C. Vda. de Gil, and after a re-examination of the petition ex-parte, dated July 5, 1956, of said co-administratrix and of all the pleadings having reference to the sale of the estate property therein referred to, the Court is of the opinion that whatever right movant Cancio acquired under the agreement had between him, on the one hand, and former administratrix Isabel H. Vda. de Gil and Carlos Gil, Jr., on the other, that right cannot be enforced in this proceeding, the obligation contracted during the Japanese occupation by said Isabel H. Vda. de Gil and Carlos Gil, Jr. being personal to them and the estate having nothing to do with it.

"Wherefore, the Court hereby denies the aforementioned petition ex-parte, dated July 5, 1956, and as a consequence, the order of October 22, 1954 is hereby set aside and vacated."

It should be noted that when Isabel H. Vda. de Gil, Sr. and Carlos Gil, Jr. obtained the loan of P89,000.00 from Agustin Cancio on condition that the same would be paid by transferring to him the two lots and house which form part of the estate of the deceased Carlos Gil, Sr., said estate was already under the administration of Isabel because she was then the administratrix duly appointed by the court, and under the provision of the will the widow Isabel was instituted as the exclusive heir subject to the condition that should the latter die the properties would thereby be inherited by Carlos Gil, Jr., the adopted son of the deceased. On the other hand, it should be borne in mind that under the provision of Article 1430 of the Civil Code the widow and children of the deceased are entitled to certain allowances for their support out of the estate pending its liquidation and until their shares have been delivered to them. It is probably for this reason that both widow and the son, who were the prospective heirs, borrowed money from Agustin Cancio in order that they may have means to support themselves in the interregnum since the estate was then unproductive, a matter which comes perfectly within the purview of the law. And bearing in mind this situation of the two heirs which happened during the Japanese occupation, the probate court did not hesitate in approving the agreement thereby giving to the administratrix the necessary authority to execute the deed of sale covering the two properties of the deceased in favor of Agustin Cancio provided that the deed of sale be submitted to the court for its approval. And this matter is sanctioned by Section 4, Rule 89 of the Rules of Court, which provides:

"When it appears that the sale of the whole or a part of the real or personal estate; will be beneficial to the heirs, devisees, legatees, and other interested persons, the court may, upon application of the executor or administrator and on written notice to the heirs, devisees, and legatees who are interested in the estate to be sold, authorize the executor or administrator to sell the whole or a part of said estate, although not necessary to pay debts, legacies, or expenses of administration; * * *.

The objection, therefore, of the present administratrix on the ground that the original agreement between the late

administratrix Isabel and Cancio was without authority of the court has no factual basis.

It is true that the agreement between Isabel H. Vda. de GO, Sr. and Carlos Gil, Jr., on the one hand, and Agustin Cancio, on the other, concerning the transfer of the two lots in question in payment of the loan of P89,000.00 is conditioned upon the final adjudication of said properties to both or either of them, and here such adjudication has not been made in view of the early death of the two heirs; but this circumstance is now of no consequence considering that it is beyond dispute that the properties left by the late Carlos Gil, Sr. were inherited, first, by Isabel and, later, by the children of Carlos Gil, Jr. who inherited them through their father charged with the commitment in favor of Cancio. As a matter of fact, Dolores C. Vda. de Gil, Jr., co-administratrix of the estate, is now estopped from disputing the sale because she herself in her capacity as co-administratrix filed the petition in court asking for the approval of the same sale which she now disputes for reasons that do not appear in the record. And there is no doubt that an heir can sell whatever right, interest, or participation he may have in the property under administration, a matter which comes under the jurisdiction of the probate court (*Estefania R. Vda. de Cruz vs. Ilagan*, 81 Phil., 564). It is, therefore, error for the court a quo to say that this matter should be threshed out in a separate action.

Wherefore, the order appealed from is hereby set aside. The motion filed by Agustin Cancio date April 1, 1959 praying for the approval of the deed of sale in question is hereby granted. No costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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