

TESTATE ESTATE OF ALEJANDRO GONZALES Y TOLENTINO.*G.R. No. L-2027. October 14, 1950*

Ponente: MONTEMAYOR, J.

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Alejandro Gonzales y Tolentino died testate in 1932, leaving as forced heirs his widow Doña Manuela Ibarra de Gonzales and his five legitimate children—Alejandro, Jr., Leopoldo, Manuela, Juan, and Manuel, all surnamed Gonzales. Among the properties he left are several big parcels of land or haciendas, among which is the Hacienda Toboy, lot 7646, Asingan cadastre, which now concerns us. His will was probated on August 27, 1932 in S. P. No. 42412 of the Court of First Instance of Manila. Under said will, the testator gave the strict legitime and the 1/3 available for betterment to his aforesaid five legitimate children, the betterment subject to the usufruct of his widow. The third portion for free disposal was bequeathed to his seven illegitimate children, a brother and two sisters-in-law in equal shares. But long before his death the testator in 1924 had given by way of donation propter nuptias to his son Manuel Gonzales (appellee in this case) 1/5 of Hacienda Toboy. It is this 1/5 portion of said Hacienda and its selection by the donee that motivated the present proceedings.

Since the probate of the will in 1932, nothing appears to have been done by the heirs and legatees in the way of partitioning the estate among them according to the terms of the said instrument until February 24, 1938, when a project of partition was prepared and filed in court and finally approved by the probate court on July 11, 1942. Under said project of partition, 1/5 or 5/25 of Hacienda Toboy was to be set aside for Manuel Gonzales and his wife Lourdes del Prado as the donation propter nuptias made in 1924 by the testator. The remaining 4/5 was to be divided among the five children, including Manuel Gonzales, so that each child was to have 4/25 of Hacienda Toboy. The Hacienda Masilsil at Umingan, Pangasinan would go to the legitimate children, excluding Manuel Gonzales; Hacienda Carosallsan at Umingan, Pangasinan and Hacienda Bued would be given to the widow Manuela Ibarra; and Hacienda Evangelist a at Omingan, Pangasinan was to go to the testator's brother and two sisters-in-law and to his seven illegitimate children.

Notwithstanding the project of partition and its approval by the court, it seems that no partition was made of the estate. So, on November 5, 1943, a proposed amicable settlement was presented in court, wherein the heirs among other things agreed and considered binding and in full force the project of partition. This amicable settlement was approved by the lower court on December 2, 1943.

Again, nothing seems to have been done to distribute the property, at least as regards Hacienda Toboy.

Evidently, for the purpose of partitioning Hacienda Toboy, the legitimate children with the exception of Manuel Gonzales petitioned the court to allow them or rather their surveyor to enter said Hacienda in order to make a subdivision survey and plan of the same. Over the objection of Manuel Gonzales the petition was granted and the result of the survey appears to have been embodied in the proposed subdivision plan, annex X, whereby the whole Hacienda Toboy with the exception of a portion set aside as the donation propter nuptias to Manuel Gonzales and his wife, was divided into five equal parts, said to be equal not only in area but also in value because each one of the five heirs is supposed to receive the same area of rice land, corn land and residential land.

Armed with this subdivision plan, annex X, the heirs, excluding Manuel Gonzales filed a motion in court requesting that the share of each heir in Hacienda Toboy be designated in accordance with said subdivision plan.

By order of May 10, 1946, the trial court after hearing the parties, directed the administrators (1) to deliver to the heirs of the testator their respective shares in accordance with the project of partition already approved; and (2) to deliver to the said heirs share and share alike the remainder of the Hacienda Toboy after Manuel Gonzales had selected within ten (10) days the portion donated to him.

On May 22, 1946, Manuel Gonzales filed a motion for reconsideration of the above order asking among other things, for extension to thirty days of the period of ten days granted to him within which to make the selection, so as to give him an opportunity to secure the services of a private surveyor to go over the property.

On July 5, 1946, the other heirs filed an answer to the motion of Manuel Gonzales claiming that the ten-day period granted to Manuel Gonzales, even including the thirty days extension requested by him within which to make his selection, had long expired, and that consequently, nothing more remained to be done except for the administrators to distribute the Hacienda among the various heirs. They asked that "the order of 10th May 1946, be left intact."

By order of September 21, 1946 (this order is involved in the present appeal), the trial court gave Manuel Gonzales thirty days within which to select the portion of Hacienda Toboy donated to him and directed the administrators to deliver to the heirs their respective portions in the said Hacienda after Manuel had made his selection of the donation. This order of September 21, 1946, was appealed by the four co-heirs of Manuel Gonzales to the Supreme Court where it was docketed under G.R. No. L-1254. On May 21, 1948, this Court affirmed said order with costs against appellants, at the same time instructing the parties and the lower court to take steps for the prompt termination of the testate proceedings of Alejandro Gonzales y Tolentino.

On October 9, 1946, Manuel Gonzales filed a motion in the trial court informing said tribunal that pursuant to its order of September 21, 1946, he had selected lots 5 and 8 (contiguous lots) of the subdivision plan of Hacienda Toboy (Annex X), submitted by his co-heirs that since the combined area of said two lots was 420,849 square meters, there was an excess of 21,659.6 square meters, over the donation of 1/5 of the Hacienda which 1/5 is equivalent to 399,189.6 square meters, but that this excess may be deducted from his additional 1/5 share of the remaining portion as one of the five heirs, which 1/5 share is equivalent to 319,351.52 square meters. He asked that said two lots 5 and 8 selected by him be adjudicated to him and that the administrators be ordered to deliver them to him, including his 1/5 share in the remainder of Hacienda Toboy.

On October 23, 1946, the other heirs filed a written opposition to Manuel's motion objecting to it on the ground that Manuel Gonzales had allowed the ten-day period granted to him by order of the court of May 10, 1946 within which to make his selection to elapse; that the final accounts of Manuel Gonzales as administrator of the estate from August, 1942 till May, 1946 had not yet been submitted in court, and that if lots 5 and 8 (Hacienda Toboy) were adjudicated to him as he requested, his co-heirs would be deprived of the means to enforce their claims against/ and finally, that inasmuch as the court order of September 21, 1946 had been appealed, matters should be maintained in status quo until the validity of the order appealed from was decided.

No court action seems to have been taken on that particular issue.

On November 29, 1946, Manuel Gonzales filed a motion wherein he stated among other things that as a donee of the 1/5 portion of Hacienda Toboy he was entitled to about 40 hectares, and that as a co-heir he had a right to about 32 hectares, or a total area of about 72 hectares; that while the widow and the legatees and other heirs had been enjoying the other properties of the estate since 1943, he, on the other hand had not shared in any property of

the estate of any substantial value. So, he insisted that the administrators be ordered to immediately deliver to him lots 5 and 8.

On December 4, 1946, the other heirs filed written opposition to the last motion of Manuel Gonzales stating among other grounds that said Manuel Gonzales had not filed his last account as administrator of the estate; that he owed the estate a substantial sum which is more than his share in the estate as heir; that because of the fault of said Manuel Gonzales when he was administrator, the estate is still indebted to various persons and the products of the Hacienda Toboy could not be distributed until said debts were paid, and that inasmuch as the order of the court of September 21, 1946 was pending appeal, the administrators should retain any share of Manuel Gonzales in the estate in order to satisfy any claim of his co-heirs in the event that the order appealed from was eventually reversed by the Supreme Court.

On January 21, 1947 (this order is also involved in the present appeal), the trial court acting upon the motion of Manuel Gonzales of November 29, 1946 and finding it well founded despite the written opposition of his co-heirs of December 4 1946, ordered the two administrators to deliver said lots 5 and 8 of Hacienda Toboy to Manuel Gonzales.

A copy of the said order of January 21, 1947 was received by counsel for the appellants and co-heirs on January 24, 1947.

On March 13, 1947, Manuel Gonzales filed a motion in the trial court, seeking among other things to compel the two administrators to comply with the order of January 21, 1947 ordering them to deliver lots 5 and 8 of Hacienda Toboy to him.

On March 17, 1947, the other heirs filed a petition in the trial court to set aside the order of January 21, 1947 on the ground that Hacienda Toboy consists of rice land, corn land and portions which are poor, sterile or barren, only good for residential purposes, and that to do justice to each of the five heirs, after excluding the portion donated to Manuel Gonzales, the remainder was divided into five portions approximating each other in value, giving to each of the five heirs the same area of rice land, corn land and residential land as appears in the subdivision plan, annex X; that the two lots 5 and 8 selected by Manuel Gonzales as his donation are both rice lands and besides exceeding in area 1/5 of the total area of the Hacienda, they also exceeded the value of said 1/5 portion, besides disrupting the whole scheme of the proposed subdivision; that as a matter of fact, the subdivision plan, annex X, had not yet been approved by the court and consequently, Manuel Gonzales had no right to make his selection of lots therefrom; that although the order of January 21, 1947 was received by counsel for the movants on January 24, 1947, in his office, at the time, said counsel was in his home, sick, and that thereafter on various days in the month of January and the following month of February he had court trials or hearings and had no opportunity to be informed of the said order until March 12, 1947. He reiterates his prayer that the order of January 21, 1947 be set aside, and that an order be issued approving the proposed subdivision or partition of Hacienda Toboy, annex X, and fixing a period within which the heirs could select their shares.

On March 29, 1947, Manuel Gonzales filed a long written opposition and motion enumerating and describing in detail the court proceedings since the will was first presented for probate, and emphasizing the long delay in the distribution of the property, especially to him as donee and as heir, and the prejudice caused to him by such delay. He asked that the petition of March 17, 1947 be denied, and that the two administrators be cited for contempt of court for Refusing to deliver to him the two lots 5 and 8 of Hacienda Toboy, and that the Provincial Sheriff of Pangasinan be ordered to deliver to him these two lots.

On September 25, 1947, the trial court Issued an order reviewing in detail as did Manuel Gonzales in his last motion the proceedings had in court from the beginning, stating among other things that the co-heirs of Manuel

Gonzales did not appeal from the order of May 10, 1946 which had ordered the administrators to deliver to the heirs share and share alike the remainder of Hacienda Toboy after Manuel Gonzales had selected the portion donated to him; that the court by its order of September 21, 1946, reiterated the right of Manuel Gonzales to make his selection of the portion donated to him, and that although the heirs and widow appealed from said order of September 21, 1946, the appeal did not affect the final character of the order of May 10, 1946; that the selection made by Manuel Gonzales of lots 5 and 8 was in accordance with the orders of the court of September 21, 1946 and of January 21, 1947 which were already final and executory, and it ordered that lots 5 and 8 be delivered to Manuel Gonzales. The court denied the motion of the widow and the other heirs dated March 17, 1947 and maintained its order of January 21, 1947 for having become final and executory.

A motion for reconsideration filed by the other heirs having been denied for lack of merit, said heirs filed this appeal making the following assignment of errors:

I

"The lower court erred in holding that the order dated 21st September, 1946, which is on appeal, is final and executory.

II

"The lower court erred in allowing oppositors and appellees to select their share contrary to the proposed project of partitions."

The question involved in the first error assigned has become moot. As already stated at the beginning of this decision, appeal was taken by the same petitioners-appellants in the present case from that order of the trial court of September 21, 1946, to this Court under G.R. No. L-1254, and that said order was affirmed in our decision promulgated on May 21, 1948. Moreover, the issue involved in the appeal taken from said order of September 21, 1946, did not affect in any manner whatsoever the question raised in the present appeal, namely, the right of Manuel Gonzales to select the 1/5 portion of Hacienda Toboy donated to him by his father.

Going to the second error assigned, we find that it is now too late for the appellants to raise the point of the propriety of allowing Manuel Gonzales to select his share contrary to the proposed project of partition. What was really done by the trial court was to allow him to select not his share as an heir but his 1/5 portion as a donation propter nuptias. We repeat that it is now too late to raise this point. This right of selection was first granted Manuel Gonzales in the order of the court of May 10, 1946. It was not questioned by the appellants. On the contrary, the appellants in their pleading of July 5, 1946, called the attention of the court that inasmuch as the ten-day period granted to Manuel Gonzales within which to make his selection had already elapsed, appellants prayed that the order of May 10, 1946 be held intact. In other words, the propriety and correctness of giving Manuel Gonzales the right or privilege to select his 1/5 portion as donation propter nuptias was never questioned. It was acquiesced in by the appellants. As a matter of fact, counsel for appellants in his brief, pages 21-22, as well observed by counsel for appellee, states that "the only right acquiesced to by the heirs was for him (Manuel Gonzales) to choose his 1/5 portion as donation propter nuptias." This right of selection granted by the trial court in its order of May 10, 1946 was reiterated in the order of September 21, 1946, and on appeal this order of September 21, 1946, was affirmed by the Supreme Court.

It only remains for us to determine the propriety and correctness of the appellee's selection of lots 5 and 8 of the subdivision plan, annex X, of his 1/5 portion as donation propter nuptias. We see the point of the appellants that these two lots are both rice lands and besides the fact that their total area exceeds 1/5 of the Hacienda, they do not include any of the poorer portions of the Hacienda such as corn land or the sterile land good only for residential purposes. We should remember however, that the right accorded Manuel Gonzales to make his selection was

unqualified. Of course, he should not have been allowed to abuse that right. But he could not very well be expected to select any one of the subdivision made by the appellants in their subdivision plan, annex X, In fact, said plan gave no choice nor contemplated any selection whatsoever. Appellants arbitrarily set aside without consulting the appellee the portion supposed to represent his donation. In the first place, that portion set aside with an area of 297,969 square meters is much less than $\frac{1}{5}$ or $\frac{5}{25}$ of the whole Hacienda, which should correspond to the donation according to the very project of partition previously prepared and filed by the appellants themselves and approved by the court. It is even less than $\frac{1}{5}$ of the remaining $\frac{4}{5}$ or $\frac{4}{25}$ of the Hacienda, that should correspond to one of the five heirs, both in area and in value according to the very computations and valuations given by the appellants in their subdivision plan, annex X. For instance, rice land is supposed to be the most valuable portion of the Hacienda, While each heir according to said subdivision plan gets about 21 hectares of rice land as part of his $\frac{1}{25}$ portion, the appellee who as donee has a bigger portion because he has $\frac{5}{25}$ is assigned only 18- $\frac{1}{2}$ hectares of rice land. In other words, the whole scheme of the subdivision plan (Annex X) was wrong. It is contrary to and violates the basic project of partition agreed to by the parties and approved by the court. What should have been done was to divide the whole hacienda into five portions, even according to the theory of the appellants, equal both in area and In value, and then let the appellee select any one of those five portions as his donation. After his selection the four remaining portions should again be consolidated and divided into five equal parts to be assigned to the five heirs either by lottery or in some other manner agreeable to them. But this was not done.

It is true that the selection made by the appellee is rather unjust to his co-heirs but as his counsel states in his brief, there might be some reasons behind this seeming injustice which may have prompted the lower court in letting Manuel Gonzales select his donated portion in the first place, and later on sanctioning his selection. Although the donation was made way back in 1924, the donee does not seem to have ever received or occupied the land donated or enjoyed its fruits. Again, as stated in his motion of November 29, 1946, and not disputed or denied by the appellants in their subsequent pleadings, although his co-heirs had enjoyed other properties of the estate of their deceased father since 1943, he, on the other hand, had not had that enjoyment or benefit. Then, according to the project of partition prepared by the heirs and approved by the court, the whole Hacienda of Masilsil at Umingan, Pangasinan, was given to the appellants to the exclusion of the appellee.

But we note a flaw in the computation of the appellee of the area which he claims as his donation of $\frac{1}{5}$ of the Hacienda, He bases his computation on the total area of 1,995,947 square meters. From this should be deducted 9,482 square meters covered by roads, leaving a net area of 1,986,465 square meters. One-fifth of this net area will constitute the extension of the donation for purposes of computing the excess of the total of the two lots 5 and 8.

In conclusion, we find that the right given by the trial court to Manuel Gonzales to select his $\frac{1}{5}$ portion of Hacienda Toboy as his donation propter nuptias was not only not objected to but was also acquiesced in by the appellants and it is now too late to raise the point; that his selection of lots 5 and 8 of subdivision plan, annex X, has been approved by the trial court and any error or impropriety committed, was in part due to the fault of the appellants in having prepared and presented in court a plan which did not conform to the scheme and theory of the project of partition approved by the court; and that furthermore, the appellants did not question in time the approval by the court of his selection of lots 5 and 8.

In view of the foregoing, the order appealed from is hereby affirmed. To do Justice to the appellants, and to carry out as much as possible the scheme of the project of partition, after separating lots 5 and 8, a new subdivision plan of the Hacienda may be made so as to divide it into five portions among the five heirs, the four portions corresponding to each of the appellants to be each equal in area as well as in value, and the fifth portion to

correspond to the appellee to be less in extension because of the excess incurred in by him in selecting lots 5 and 8 and, possibly, also less in value to make up for the fact that his selected lots 5 and 8 are supposed to comprise the most valuable portions of the Hacienda. No pronouncement as to costs.

Ozaeta, Paras, Feria, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

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