

MARINA DIZON-RIVERA, EXECUTRIX-APPELLEE, VS. ESTELA DIZON, TOMAS V. DIZON, BERNARDITA DIZON, JOSEFINA DIZON, ANGELINA DIZON AND LILIA DIZON, OPPOSITORS-APPELLANTS.*G.R. No. L-24561. June 30, 1970*

Ponente: TEEHANKEE, J.

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Appeal from orders of the Court of First Instance of Pampanga approving the Executrix--appellee's project of partition instead of Oppositors-Appellants' proposed counter-project of partition.[1]

On January 28, 1961, the testatrix, Agripina J. Valdez, a widow, died in Angeles, Pampanga, and was survived by seven compulsory heirs, to wit, six legitimate children named Estela Dizon, Tomas V. Dizon, Bernardita Dizon, Marina Dizon (herein executrix-appellee), Angelina Dizon and Josefina Dizon, and a legitimate granddaughter named Lilia Dizon, who is the only legitimate child and heir of Ramon Dizon, a pre-deceased legitimate son of the said decedent. Six of these seven compulsory heirs (except Marina Dizon, the executrix-appellee) are the oppositors-appellants.

The deceased testatrix left a last will executed on February 2, 1960 and written in the Pampango dialect. Named beneficiaries in her will were the above-named compulsory heirs, together with seven other legitimate grandchildren, namely Pablo Rivera Jr., Gilbert D. Garcia, Cayetano Dizon, Francisco Rivera, Agripina Ayson, Jolly Jimenez and Laureano Tiamzon.

In her will, the testatrix divided, distributed and disposed of all her properties appraised at P1,801,960.00 (except two small parcels of land appraised at P5,849.60, household furniture valued at P2,500.00, a bank deposit in the sum of P409.95 and ten shares of Pampanga Sugar Development Company valued at P350.00) among her above-named heirs.

Testate proceedings were in due course commenced[2] and by order dated March 13, 1961, the last will and testament of the decedent was duly allowed and admitted to probate, and the appellee Marina Dizon-Rivera was appointed executrix of the testatrix' estate, and upon her filing her bond and oath of office, letters testamentary were duly issued to her.

After the executrix filed her inventory of the estate, Dr. Adelaido Bernardo of Angeles, Pampanga was appointed commissioner to appraise the properties of the estate. He filed in due course his report of appraisal, and the same was approved in toto by the lower court on December 12, 1963 upon joint petition of the parties.

The real and personal properties of the testatrix at the time of her death thus had a total appraised value of P1,811,695.60, and the legitime of each of the seven compulsory heirs amounted to P129,362.11.[3] (1/7 of the half of the estate reserved for the legitime of legitimate children and descendants).[4] In her will, the testatrix "commanded that her property be divided" in accordance with her testamentary disposition, whereby she devised and bequeathed specific real properties comprising practically the entire bulk of her estate among her six children

and eight grandchildren. The appraised values of the real proper-ties thus respectively devised by the testatrix to the beneficiaries named in her will, are as follows:

"1. Estela Dizon

P 98,474.80

2. Angelina Dizon

106,307.06

3. Bernardita Dizon

51,968.17

4. Josefina Dizon

52,056.39

5. Tomas Dizon

131,987.41

6. Lilia Dizon

72,182.47

7. Marina Dizon

1,148,063.71

8. Pablo Rivera, Jr.

69,280.00

9. Lilia Dizon, Gilbert Garcia,

Cayetano Dizon, Fran-

cisco Rivera, Agripina

Ayson, Dioli or Jolly

Jimenez, Laureano

Tiamzon

72,540.00

T o t a l V a l u e

P1,801,960.01"

The executrix filed her project of partition dated February 5, 1964, in substance adjudicating the estate as follows:

"(1) with the figure of P129,254.96 as legitime for a basis Marina (executrix-appellee) and Tomas (appellant) are admittedly considered to have received in the will more than their respective legitime, while the rest of the appellants, namely, Estela, Bernardita, Ange-lina, Josefina and Lilia received less than their respective legitime;

(2) thus, to each of the latter are adjudicated the pro-perties respectively given them in the will, plus cash and/or properties, to complete their res-pective legitimes to P129,254.96;

(3) on the other hand, Marina and Tomas are adju-dicated the properties that they received in the will less the cash and/or properties nec-essary to complete the prejudiced legitime mentioned in number 2 above;

(4) the adjudications made in the will in favor of the grandchildren remain untouched."

On the other hand, oppositors submitted their own counter-project of partition dated February 14, 1964, wherein they pro-posed the distribution of the estate on the following basis:

"(a) all the testamentary dispositions were propor-tionally reduced to the value of one-half (1/2) of the entire estate, the value of the said one-half (1/2) amounting to P905,534.78; (b) the shares of the Oppositors-Appellants should consist of their legitime, plus the devises in their favor propor-tionally reduced; (c) in payment of the total shares of the appellants in the entire estate, the properties devised to them plus other properties left by the Testatrix and/or cash are adjudicated to them; and (d) to the grandchildren who are not compulsory heirs are adjudicated the properties respectively devised to them subject to reimbursement by Gilbert D. Garcia et al., of the sums by which the devise in their favor should be proportionally re-duced."

Under the oppositors' counter-project of partition, the testamentary disposition made by the testatrix of practically her whole estate of P1,801,960.01, as above stated, were proposed to be reduced to the amounts set forth after the names of the res-pective heirs and devisees totalling one-half thereof as follows:

"1. Estela Dizon

P 49,485.56

2. Angelina Dizon

53,421.42

3. Bernardita Dizon

26,115.04

4. Josefina Dizon

26,159.38

5. Tomas V. Dizon

65,874.04

6. Lilia Dizon

36,273.13

7. Marina Dizon

576,938. 82

8. Pablo Rivera, Jr.

34,814.50

9. Granchildren Gilbert

Garcia et al

36,452. 80

T o t a l

P 905,534.78"

while the other half of the estate (P905,534.78) would be deemed as constituting the legitime of the executrix-appellee and oppositors-appellants, to be divided among them in seven equal parts of P129,362.11 as their respective legitimes.

The lower court, after hearing, sustained and approved the executrix' project of partition, ruling that "(A)rticles 906 and 907 of the New Civil Code specifically provide that when the legitime is impaired or prejudiced, the same shall be completed and satisfied. While it is true that this process has been followed and adhered to in the two projects of partition, it is observed that the executrix and the oppositors differ in respect to the source from which the portion or portions shall be taken in order to fully restore the impaired legitime. The proposition of the oppositors, if upheld, will substantially result in a distribution of intestacy, which is in controversion of Article 791 of the New Civil Code" adding that "the testatrix has chosen to favor certain heirs in her will for reasons of her own, cannot be doubted. This is legally permissible within the limitation of the law, as aforesaid." With reference to the payment in cash of some P230,552.38, principally by the executrix as the largest beneficiary of the will to be paid to her five co-heirs, the oppositors (excluding Tomas Dizon), to complete their impaired legitimes, the lower court ruled that "(T)he payment in cash so as to make the proper adjustment to meet with the requirements of the law in respect to legitimes which have been impaired is, in our opinion, a practical and valid solution in order to give effect to the last wishes of the testatrix."

From the lower court's orders of approval, oppositors-appellants have filed this appeal, and raise anew the following issues:

1. Whether or not the testamentary dispositions made in the testatrix' will are in the nature of devises imputable to the free portion of her estate, and therefore subject to reduction;
2. Whether the appellants are entitled to the devise plus their legitime under Article 1063, or merely to demand completion of their legitime under Article 906 of the Civil Code; and
3. Whether the appellants may be compelled to accept payment in cash on account of their legitime, instead of some of the real properties left by the Testatrix;

which were adversely decided against them in the proceedings below.

The issues raised present a matter of determining the avowed intention of the testatrix which is "the life and soul of a will." [5] In consonance therewith, our Civil Code included the new provisions found in Articles 788 and 791 thereof that "(If) a testamentary disposition admits of different interpretations, in case of doubt, that interpretation by which the disposition is to be operative shall be preferred" and "(T)he words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of two modes of interpreting a will, that is to be preferred which will prevent

intestacy." In *Villanueva vs. Juico*[6] for violation of these rules of interpretation as well as of Rule 123, section 59 of the old Rules of Court,[7] the Court, speaking through Mr. Justice J. B. L. Reyes, over-turned the lower court's decision and stressed that "the intention and wishes of the testator, when clearly expressed in his will, constitute the fixed law of interpretation, and all questions raised at the trial, relative to its execution and fulfillment, must be settled in accordance therewith, following the plain and literal meaning of the testator's words, unless it clearly appears that his intention was otherwise." [8]

The testator's wishes and intention constitute the first and principal law in the matter of testaments, and to paraphrase an early decision of the Supreme Court of Spain[9] when expressed clearly and precisely in his last will amount to the only law whose mandate must imperatively be faithfully obeyed and complied with by his executors, heirs and devisees and legatees, and neither these interested parties nor the courts may substitute their own criterion for the testator's will. Guided and restricted by these fundamental premises, the Court finds for the appellee.

1. Decisive of the issues at bar is the fact that the testatrix' testamentary disposition was in the nature of a partition of her estate by will. Thus, in the third paragraph of her will, after commanding that upon her death all her obligations as well as the expenses of her last illness and funeral and the expenses for probate of her last will and for the administration of her property in accordance with law, be paid, she expressly provided that "it is my wish and I command that my property be divided" in accordance with the dispositions immediately thereafter following, whereby she specified each real property in her estate and designated the particular heir among her seven compulsory heirs and seven other grandchildren to whom she bequeathed the same. This was a valid partition[10] of her estate, as contemplated and authorized in the first paragraph of Article 1080 of the Civil Code, providing that "(S)hould a person make a partition of his estate by an act inter vivos or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs." This right of a testator to partition his estate is subject only to the right of compulsory heirs to their legitime. The Civil Code thus provides the safeguard for the right of such compulsory heirs:

"ART. 906. Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied.

"ART. 907. Testamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive."

This was properly complied with in the executrix-appellee's project of partition, wherein the five oppositors-appellants namely, Estela, Bernardita, Angelina, Josefina and Lilia, were adjudicated the properties respectively distributed and assigned to them by the testatrix in her will, and the differential to complete their respective legitimes of P129,362.11 each were taken from the cash and/or properties of the executrix-appellee, Marina, and their co-oppositor-appellant, Tomas, who admittedly were favored by the testatrix and received in the partition by will more than their respective legitimes.

2. This right of a testator to partition his estate by will was recognized even in Article 1056 of the old Civil Code which has been reproduced now as Article 1080 of the present Civil Code. The only amendment in the provision was that Article 1080 "now permits any person (not a testator, as under the old law) to partition his estate by act inter vivos." [11] This was intended to repeal the then prevailing doctrine[12] that for a testator to partition his estate by an act inter vivos, he must first make a will with all the formalities provided by law. Authoritative commentators doubt the efficacy of the amendment[13] but the question does not here concern us, for this is a clear case of partition by will, duly admitted to probate, which perforce must be given full validity and effect. Aside from the provisions of Articles 906 and 907 above quoted, other codal provisions support the executrix-appellee's project of partition as approved by the lower court rather than the counter-project of partition

proposed by oppositors-appellants whereby they would reduce the testamentary disposition or partition made by the testatrix to one-half and limit the same, which they would consider as mere devises or legacies, to one-half of the estate as the disposable free portion, and apply the other half of the estate to payment of the legitimes of the seven compulsory heirs. Oppositors' proposal would amount substantially to a distribution by intestacy and pro tanto nullify the testatrix' will, contrary to Article 791 of the Civil Code. It would further run counter to the provisions of Article 1091 of the Civil Code that "(A) partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him. "

3. In *Habana vs. Imbo*,^[14] the Court upheld the distribution made in the will of the deceased testator Pedro Teves of two large coconut plantations in favor of his daughter, Concepcion, as against adverse claims of other compulsory heirs, as being a partition by will, which should be respected insofar as it does not prejudice the legitime of the compulsory heirs, in accordance with Article 1080 of the Civil Code. In upholding the sale made by Concepcion to a stranger of the plantations thus partitioned in her favor in the deceased's will, which was being questioned by the other compulsory heirs, the Court ruled that "Concepcion Teves by operation of law, became the absolute owner of said lots because 'A partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him' (Article 1091, New Civil Code), from the death of her ancestors, subject to rights and obligations of the latter, and, she can not be deprived of her rights thereto except by the methods provided for by law (Arts. 657, 659, and 661, Civ. Code).^[15] Concepcion Teves could, as she did, sell the lots in question as part of her share of the proposed partition of the properties, especially when, as in the present case, the sale has been expressly recognized by herself and her co-heirs x x x."

4. The burden of oppositors' contention is that the testamentary dispositions in their favor are in the nature of devises of real property, citing the testatrix' repeated use of the words "I bequeath" in her assignment or distribution of her real properties to the respective heirs. From this erroneous premise, they proceed to the equally erroneous conclusion that "the legitime of the compulsory heirs passes to them by operation of law and that the testator can only dispose of the free portion, that is, the remainder of the estate after deducting the legitime of the compulsory heirs and all testamentary dispositions, either in the nature of institution of heirs or of devises or legacies, have to be taken from the remainder of the testator's estate constituting the free portion."^[16]

Oppositors err in their premises, for the adjudications and assignments in the testatrix' will of specific properties to specific heirs cannot be considered all devises, for it clearly appears from the whole context of the will and the disposition by the testatrix of her whole estate (save for some small properties of little value already noted at the beginning of this opinion) that her clear intention was to partition her whole estate through her will. The repeated use of the words "I bequeath" in her testamentary dispositions acquire no legal significance, such as to convert the same into devises to be taken solely from the free one-half disposable portion of the estate. Furthermore, the testatrix' intent that her testamentary dispositions were by way of adjudications to the beneficiaries as heirs and not as mere devisees, and that said dispositions were therefore on account of the respective legitimes of the compulsory heirs is expressly borne out in the fourth paragraph of her will, immediately following her testamentary adjudications in the third paragraph in this wise: "FOURTH: I likewise command that in case any of those I named as my heirs in this testament any of them shall die before I do, his forced heirs under the law enforced at the time of my death shall inherit the properties I bequeath to said deceased."^[17]

Oppositors' conclusions necessarily are in error. The testamentary dispositions of the testatrix, being dispositions in favor of compulsory heirs, do not have to be taken only from the free portion of the estate, as contended, for the second paragraph of Article 842 of the Civil Code precisely provides that "(One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of this Code with regard to the legitime of

said heirs." And even going by oppositors' own theory of bequests, the second paragraph of Article 912 of the Civil Code covers precisely the case of the executrix-appellee, who admittedly was favored by the testatrix with the large bulk of her estate in providing that "(T)he devisee who is entitled to a legitime may retain the entire property, provided its value does not exceed that of the disposable portion and of the share pertaining to him as legitime." For "diversity of apportionment is the usual reason for making a testament; otherwise, the decedent might as well die intestate." [18] Fundamentally, of course, the dispositions by the testatrix constituted a partition by will, which by mandate of Article 1080 of the Civil Code and of the other cited codal provisions upholding the primacy of the testator's last will and testament, have to be respected insofar, as they do not prejudice the legitime of the other compulsory heirs.

Oppositors' invoking of Article 1063 of the Civil Code that "(P)roperty left by will is not deemed subject to collation, if the testator has not otherwise provided, but the legitime shall in any case remain unimpaired" and invoking of the construction thereof given by some authorities that " 'not deemed subject to collation' in this article really means not imputable to or chargeable against the legitime", while it may have some plausibility [19] in an appropriate case, has no application in the present case. Here, we have a case of a distribution and partition of the entire estate by the testatrix, without her having made any previous donations during her lifetime which would require collation to determine the legitime of each heir nor having left merely some properties by will which would call for the application of Articles 1061 to 1063 of the Civil Code on collation. The amount of the legitime of the heirs is here determined and undisputed.

5. With this resolution of the decisive issue raised by oppositors-appellants, the secondary issues are likewise necessarily, resolved. Their right was merely to demand completion of their legitime under Article 906 of the Civil Code and this has been complied with in the approved project of partition, and they can no longer demand a further share from the remaining portion of the estate, as bequeathed and partitioned by the testatrix principally to the executrix-appellee.

Neither may the appellants legally insist on their legitime being completed with real properties of the estate instead of being paid in cash, per the approved project of partition. The properties are not available for the purpose, as the testatrix had specifically partitioned and distributed them to her heirs, and the heirs are called upon, as far as feasible to comply with and give effect, to the intention of the testatrix as solemnized in her will, by implementing her manifest wish of transmitting the real properties intact to her named beneficiaries, principally the executrix-appellee. The appraisal report of the properties of the estate as filed by the commissioner appointed by the lower court was approved in toto upon joint petition of the parties, and hence, there cannot be said to be any question -- and none is presented -- as to fairness of the valuation thereof or that the legitime of the heirs in terms of cash has been understated. The, plaint of oppositors that the purchasing value of the Philippine peso has greatly declined since the testatrix' death in January, 1961 provides no legal basis or justification for overturning the wishes and intent of the testatrix. The transmission of rights to the succession are transmitted from the moment of death of the decedent (Article 777, Civil Code) and accordingly, the value thereof must be reckoned as of then, as otherwise, estates would never be settled if there were to be a revaluation with every subsequent fluctuation in the values of the currency and properties of the estate. There is evidence in the record that prior to November 25, 1964, one of the oppositors, Bernardita, accepted the sum of P50,000.00 on account of her inheritance, which, per the parties' manifestation, [20] "does not in any way affect the adjudication made to her in the projects of partition of either party as the same is a mere advance of the cash that she should receive in both projects of partition." The payment in cash by way of making the proper adjustments in order to meet the requirements of the law on non-impairment of legitimes as well as to give effect to the last will of the testatrix has invariably been availed of and sanctioned. [21] That her co-oppositors would receive their cash differentials only now when the value of the currency has declined further, whereas they could have received

them earlier, like Bernardita, at the time of approval of the project of partition and when the peso's purchasing value was higher, is due to their own decision of pur-suing the present appeal.

ACCORDINGLY, the orders appealed from are hereby affirmed. Without costs.

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

[1] Appeal was direct to this Court, as the value of the estate exceeded P200,000.00, in accordance with the then subsisting provisions of Sec. 17, third paragraph, subsec. 5, now eliminated by Rep. Act 5440 enacted on Sept. 9, 1968.

[2] Sp. Proc. No. 1582 of the Court of First Instance of Pampanga.

[3] These figures are those of oppositors-appellants which are adopted for purposes of this decision. Per appellee's brief, p. 3, executrix-appellee sums up the value of the estate at P1,809,569.55, and therefore the legitime of each of the seven (7) forced heirs at P129,254.96. While there is thus a slight difference in the valuation of the estate and legitime of the forced heirs (a difference of P2,126.05 for the whole estate and of P107.15 in each legitime), the same is of no importance ... because the issue involved in this appeal is not the value of the estate but the manner it should be distributed among the heirs." (Notes in parentheses supplied)

[4] Art. 888, Civil Code.

[5] Santos vs. Madarang 27 Phil. 209.

[6] L-15737, Feb. 28, 1962; 4 SCRA 550.

[7] "SEC. 59. Instrument construed so as to give effect to all provisions. -- In the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (now Rule 130, sec. 9)

[8] Citing In re Estate of Calderon 26 Phil. 333.

[9] Tribunal Supremo of Spain, sentencia of 20 Marzo 1918.

[10] ART. 1079. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value. (n)

[11] Romero vs. Villamor 102 Phil. 641 (1957).

[12] Legasto vs. Versoza, 54 Phil. 766 (1930); Fajardo vs. Fajardo., 54 Phil. 842 (1930).

[13] Reyes and Puno, Vol. III, p. 216; Tolentino, Vol. III, pp. 538 -540.

[14] L-15598 and L-15726, March 31, 1964; 10 SCRA 471.

[15] See Arts. 776 and 777 Phil. Civil Code. The latter article provides that "(T)he rights to the succession are transmitted from the moment of the death of the decedent."

[16] Appellants' brief, pp. 15-16.

[17] Rec. on Appeal, p. 20; emphasis supplied.

[18] Icasiano vs. Icasiano, L-18979, June 30, 1964; 11 SCRA 422.

[19] III Tolentino's Civil Code, 1961 ed., p. 518.

[20] Record on Appeal, p. 107.

[21] See Arts. 955, 1080 and 1104, Civil Code.

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