

PAULINA DE JESUS AND TORCUATO CARLOS, PETITIONERS, VS. MAGNO S. GATMAITAN, ET AL., RESPONDENTS. PAULINA DE JESUS, PETITIONERS, VS. BONIFACIO YSIP, ET AL., RESPONDENTS.

G. R. Nos. L-5757 and L-5892. March 23, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

These two petitions for certiorari although of different court origins,—one the Court of First Instance of Manila and the other the Court of First Instance of Bulacan—involve the same facts, parties petitioner and respondents and the same properties and issues. We are therefore preparing one single decision on them.

The facts we gathered from the pleadings, pertinent to and necessary in the present considerations may be briefly stated as follows: Eustaquio de Jesus and Victorina Diaz were husband and wife. They had four children named Paulina, Ramon, Pedro and Loreto, all surnamed de Jesus. Eustaquio, the father, died intestate on February 3, 1916, leaving certain properties in Manila. Victorina died on February 4, 1947, leaving real properties in Manila and a number of parcels of rice land in Bulacan. For a while it was said that she died intestate. Later, however, Paulina de Jesus, one of the two daughters, filed for probate in the Court of First Instance of Bulacan an instrument purporting to be the last will and testament of her mother Victorina. This was in 1951. At first her sister and two brothers opposed the probate of the will. While the case was pending hearing however, their opposition was withdrawn and the will was eventually probated in 1952.

Shortly after the death of Victorina in 1947 her four children Paulina, Ramon, Pedro and Loreto executed in Manila a deed of extra-judicial settlement of the properties left by their father and mother. Said properties were partitioned among the four heirs with the exceptions of a lot in Manila and about ten parcels of rice land in Marilao, Bulacan, which were kept undivided among them, and it is said that ever since Victorina's death, said rice lands in Bulacan were administered by Paulina and her husband Torcuato Carlos. As already stated, although Victorina died in 1947, Paulina did not file the will for probate until 1951. She now claims that the delay was due to the fact that her brothers borrowed the document from her and did not return it until several years later. There seems to be some plausibility to this explanation because the will of Victorina provides that her ten parcels of rice land in Marilao, Bulacan, should be kept undivided among her four children for a period of ten years after her death, and as we have already said, in the deed of extra-judicial settlement executed by her children, instead of dividing and partitioning all her properties, they kept these ten parcels of rice land in Marilao pro indiviso. One inference is that at the time of preparing the deed of extra-judicial settlement Victorina's four children were aware of the existence of the will, possibly had it before them, and even followed one of its provisions.

On August 6, 1951, Ramon, Pedro and Loreto filed a complaint against Paulina and her husband in the Court of First Instance of Manila, civil case No. 14431, asking for the partition of the properties (one lot in Manila and the rice lands in Bulacan) which had been kept undivided under the terms of the deed of the extra-judicial settlement. Paulina answered the complaint and objected to the proposed partition on the ground that their mother Victorina

had provided in her will that said properties (rice lands in Bulacan) should be kept undivided for a period of ten years after her death and that the will was then pending probate in the Court of First Instance of Bulacan. At the instance of plaintiffs, Manuel de Jesus was appointed receiver. Paulina vehemently objected to the appointment of the receiver claiming that she was already acting as administratrix of the rice lands in Bulacan held pro indiviso, and so there was no need for a receiver. She presented counter affidavits to support her petition for the discharge of the receivership and offered to file a counterbond. Presumably because her sister and two brothers insisted that a receiver was necessary because they claimed that Paulina had been mismanaging the properties held undivided in Bulacan and had never rendered an accounting of her administration, the Court of First Instance of Manila in an order denied the petition for the discharge of the receivership. To set aside this order of the court, Paulina filed the first petition for certiorari, G. R. No. L-5757.

After the hearing of the petition for probate of the will of Victorina in Bulacan and after the withdrawal of the opposition of Ramon, Pedro and Loreto, Judge Ysip allowed the probate of the will. He however declined to appoint an executor until it was shown that said appointment was necessary. Paulina insisted in her appointment as executrix or administratrix and asked for a reconsideration stating that according to the terms of the will, the rice lands in Marilao, Bulacan, were to be kept undivided by Victorina's four children, and that the products therefrom were to be divided into two equal parts,— $\frac{1}{2}$ for Ramon, Pedro and Loreto and the other half for her children, and that unless an executrix was appointed there would be no one to carry out the terms of the will and to protect the interests of her children as regards their share in the harvests from the rice lands. She also said that under the will she was designated as executrix without bond. The Court of Bulacan denied her motion for reconsideration. To set aside this order of denial she brought the second petition for certiorari and mandamus, G. R. No. L-5892, to compel the Bulacan Court to appoint her executrix or administratrix.

We have here a case of ten parcels of land disposed of in a will in favor of the four children of the testatrix, but with the condition that said parcels were to be kept undivided for a period of ten years after her death, that is to say, from 1947, and the products therefrom were to be divided,—one-half to three of said children and the other half to the children of the fourth child (Paulina). There is no claim that these properties were not at the free disposal of the testatrix. The disposition was therefore valid. If the terms of the will about the pro indiviso character of these properties are to be observed as well as the disposition of their products for a fixed period, it is clear that the appointment of an executor was necessary. We fail to see the necessity or even the advisability of appointing a receiver for said properties specially by a Manila Court. The only reason why the complaint for partition was filed in Manila was that one of the parcels sought to be partitioned is located in Manila. If there is no valid objection to the partition of said lot in Manila, the same might be carried out. But the ten parcels in Bulacan may not yet be partitioned according to the will. As to whether despite her designation as executrix in the will, Paulina under the circumstances and in view of the bitter controversy between her and her sister and brothers, she is the right person to be appointed executrix, that is left to the discretion of the Bulacan Court.

In view of the foregoing, these two petitions for certiorari and mandamus are hereby granted, with costs. The Manila Court will discharge the receiver at least as regards the parcels of land in Bulacan; and the Bulacan Court will proceed to appoint an executrix or administrator to carry out the terms of the will, at least as regards the parcels of land to be kept undivided, preference in the appointment to be given to Paulina de Jesus who was designated as executrix in the will, unless the Court finds her appointment under the circumstances inadvisable.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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