

**IN THE MATTER OF THE INTESTATE ESTATE OF THE DECEASED
MARCELO DE BORJA. CRISANTO DE BORJA, ADMINISTRATOR AND
APPELLEE, FRANCISCO DE BORJA ET AL., HEIRS AND APPELLEES,
VS. JULIAN...***G.R. No. L-1259. April 27, 1949*

Ponente: MORAN, C.J.

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According to appellant Juliana de Borja, "this case has been pending in court for more than twenty years now, and at various times before the outbreak of the Pacific war, different plans of partition were submitted by the heirs in this case. The heirs, however, were not able to agree on one particular project or plan of partition until finally the court was constrained to appoint commissioners to partition the considerable mass of property of the present intestate among the four heirs in this case." And this is confirmed by one of the appellees, the estate of Crisanta de Borja, in whose brief it is said that—"Sometime in the year 1927, Marcelo de Borja, the richest man in Pateros, Rizal, died intestate. Immediately, the above-entitled proceeding was filed In the Court of First Instance, and, for more than twenty years, the estate has remained unliquidated and undivided. The two of the four heirs died during the most crucial stage of the trial and the other two are now passed the age of seventy. However, no negligence can be attributed to anybody. On the contrary, year in and year out the parties, ably assisted by the best lawyers in Manila, fought tenaciously to finish it, but in vain. What has completely prevented its early termination is ambition, intolerance and selfishness. At last in 1940, the Court was able to make a step very close to its end when it declared that the deceased Marcelo de Borja left four legitimate heirs, namely: Francisco de Borja, Quintin de Borja, deceased, Juliana de Borja, and Crisanta de Borja, likewise deceased. Consequently, the Court required the administrator and the heirs to submit a project of partition. Various plans were submitted and duly heard in countless hearings and trials but there never was one scheme which met the approval of all the heirs. The constant wrangling of the parties exasperated the Court and in order to settle it once and for all, the two commissioners were appointed to draw up a project of partition and then to submit it to the court for its approval. The Court, then, appointed Mr. Saturnino David, the Provincial Treasurer, and ex-officio Assessor of Rizal, and Mr. Severo Abellera, the Clerk of Court. Their appointment was highly approved by the parties because they were men of proven honesty and integrity."

On February 8, 1944, the commissioners submitted the project of partition which, with the opposition of the herein appellant Juliana de Borja, and, after due hearing, was wholly approved by the court. And, as if the case had not yet been sufficiently delayed, Juliana de Borja interposed her appeal and upon flimsy grounds.

She complains, for instance, that she had never been afforded an opportunity to be heard by the commissioners when they were proceeding to the division of the properties among the heirs. But this supposed grievance has never been pleaded in the Court of First Instance when the project of partition was being heard therein. It any rate, appellant has been afforded all the opportunities she might desire to substantiate all her grounds, of objection against the project of partition before the same was approved by the lower court. As a matter of fact, she filed a

detailed opposition against that project, which was supported by exhaustive arguments, none of which was found to be meritorious by the court below.

Appellant also maintains in her brief that some portions of the project of partition are contrary to the terms of an understanding had among the heirs and that, therefore, the lower court should have ordered the parties to introduce evidence as to what that understanding was. This however, appears to be at variance with what appellant herself stated at the beginning of her brief, to the effect that the heirs "were not able to agree on one particular project or plan of partition until finally the court was constrained to appoint commissioners", and that, for that reason, there could have been no final understanding among them on any particular term of partition.

The other grounds of objection alleged by appellant are likewise unmeritorious. For instance, she impugns the partition made of a building composed of six apartments, which was awarded to three of the heirs with the exclusion of appellant. She states emphatically that she can not understand why she was excluded, and what specific property was awarded to her in exchange of her exclusion. The award is, however, clearly founded on convenience of the heirs themselves. The building is composed of six apartments and is awarded to three of the heirs so that each one of them, independently of the others, may have two apartments, thus avoiding any status of community which is the cause of friction among them. Had this building been divided among the four heirs, two of the apartments would have remained under co-ownership unless recourse is had to a sale which is detrimental to the parties. As to what specific property had been awarded to appellant in lieu of her share in this building is something that may be easily found in the general mass of property awarded to her in the partition. In the project of partition, she was given properties valued at P80,595.05 which is more than the value of the properties awarded to each of the other heirs with the exception of Crisanta de Borja who received the same value as that of appellant. In a partition, it is not necessary to show what specific property is given to one heir in exchange of the share that is not given him in another property. It is sufficient if the result of the partition shows that all the heirs have received substantially equal shares.

Before closing, we wish to reiterate what we have once said in the case of *Cosme de Mendoza vs. Pacheco and Cordero*, 64 Phil., 134:

"We cannot encourage a practice that trenches violently upon the settled jurisprudence of this Court that the policy and purpose of administration proceedings is ' * * * to close up, and not to continue an estate * * * ' (*Lizarraga Hermanos vs. Abada*, 40 Phil. 124, 133), and that ' * * * the State fails wretchedly in its duty to its citizens if the machinery furnished by it for the division and distribution of the property of the decedent is so cumbersome, unwieldy and expensive that a considerable portion of the estate is absorbed in the process of such division. Where administration is necessary, it ought to be accomplished quickly and at a very small expense; and a system which consumes any considerable portion of the property which it was designed to distribute is a failure.' "

The policy of the court on this matter is embodied finally in Rule 89, section 15, which reads as follows:

"SEC. 15. Time for paying debts and legacies fixed, or extended after notice, within what periods.—On granting letters testamentary or administration the court shall allow to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased, which shall not, in the first instance, exceed one year; but the court may, on application of the executor or administrator and after hearing on such notice of the time and place therefor given to all persons interested as it shall direct, extend the time as the circumstances of the estate require not exceeding six months for a single extension nor so that the whole period allowed to the original executor or administrator shall exceed two years."

From all the foregoing, the order appealed from is affirmed with costs against appellant.

Paras, Feria, Pablo, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

PERFECTO J.:

We concur in the affirmance of the appealed order. We disagree with the pronouncement that negligence in the delay can not be attributed to anybody. The excessive delay in this case must have been due principally to the negligence of the presiding judges of the trial court.

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