

**TESTATE ESTATE OF ZABALA, SALVADOR A. CABALUNA, JR.,
ADMINISTRATOR, PLAINTIFF AND APPELLEE, VS. HEIRS OF
ALEJANDRA CORDOVA, WITH THE EXCEPTION OF EULOGIA DE
LEON, OPPOSITORS AND...**

G.R. No. L-15746. February 29, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

Rev. Mensueto Zabala, died on March 9, 1934, without leaving any ascendant or descendant. Before his death, he executed a will and testament which was duly probated before the war, wherein he designated as his universal heir, Alejandra Cordova, a widow, who died on September 8, 1942, leaving the following legitimate children, all of age, to wit: Emilia Meliton, Jose, Guillermo, Eulogia and Juan, all surnamed De Leon. Atty. Venancio C. Bañares, who was employed by the said Alejandra Cordova as her counsel, in the early stages of the probate of the will, is entitled to one-fifth (1/5) of the properties left by the deceased Fr. Zabala, after all the obligations of the estate, are paid, by virtue of a contract dated May 26, 1934, approved by the Court in Civil Case No. 11266. Salvador A. Cabaluna, Jr. was appointed administrator of the testate estate of Fr. Zabala, to succeed former administrator- Atty. Canuto Damaso. Atty. Fulgencio Vega is the lawyer of the heirs of Alejandra Cordova (oppositors), except Eulogia de Leon, who was represented by Atty. Claro Gasendo. The deceased left thirty-one (31) parcels of land and one motor and rice mill without spare parts.

On August 25, 1956, the herein heirs filed a project of partition, dated August 20, 1956, bearing the conformity of all the heirs, including Eulogia de Leon, which was opposed by Atty. Bañares. On October 5, 1956, Atty. Bañares presented a counter-project of partition which was in turn opposed by the heirs.

No evidence had been presented in support of the two projects of partition; instead the lower court, in an order of December 22, 1956, commissioned Atty. Julio Albis, one of the employees of the court, to go over all the projects of partition and prepare a tentative project of partition "which should contain items where the parties are agreed or have a common ground and a separate report on the projects of partition where the parties disagree, and submit his recommendations thereon."

The lower court on January 8, 1957, issued the following order:

"The Commissioner, Atty. Julio V. Albis having submitted his report dated January 5, 1957, is hereby ordered to prepare a partial project of partition involving all the lots not litigated or encumbered. The properties should be divided into five parts in similar pattern as that submitted by Atty. Yenancio C, Banaros. The share of each heir including Atty, Bañares, will be drawn by lots in the office of the Commissioner Atty. Albis, five (5) days after the approval of the partial project of partition. The Commissioner should sum up all the palay taken by all the parties who are entitled to the inheritance and divide the total of said palay into six parts. Atty. Bañares, who is only entitled to his share in the estate will not participate in the produce of the lands. After having divided the total of the palay drawn by the parties into six equal parts, any heir who has overdrawn his or her aliquot share should deliver the excess to the heirs who had underdrawn his or her aliquot share in order that

each of the heirs should receive equal share. The Commissioner should submit his partial project of partition within ten (10) days from, the receipt of copy of this order. The administrator is hereby ordered to pay the inheritance and estate tax within one (1) month from the receipt of copy of this order.”

On January 18, 1957, Commissioner Albis filed his partial project of partition. And on January 24, 1957, the lower court ordered "that the raffling or sharing of lots take place on February 4, 1957 at nine a.m. in the office of the said Commissioner, and that if the parties had any objection or comment in the grouping of the properties for the purpose of drawing lots, they might file their opposition or comment, not later than January 31, 1957."

On January 30, 1957, the heirs filed their opposition to the partial project of partition, asking its disapproval and praying that a date be set aside for the reception of evidence for the approval or non-approval of the project of partition presented by the heirs and the Judicial Administrator, so that the proceedings could be terminated soon. On her part, the heir Eulogia de Leon, on January 12, 1957, filed a motion praying that Commissioner Albis be ordered to divide the properties not drawn in the lot on February 4, 1957, into six equal parts and a date be set for the drawing of the lot by the six heirs, which was opposed on February 14, 1957 by the heirs herein, on the ground that " the drawing of the lots scheduled on Feb. 4, 1957, is embodied as one of the recommendations in said project of partition which the Court did not adopt and of which the parties were not duly notified".

In an order dated February 16, 1957, the trial court instructed Commissioner Albis to "prepare a tentative project of partition by dividing the remaining 4/5 of the estate into six parts pertaining to the heirs of Alejandra Cordova", taking into account the opposition of the other heirs represented by Atty. Vega. The Commissioner, as instructed, submitted a partial project of partition of the properties of the estate, to be drawn by lots by the six heirs or for direct distribution to each of them, for which the trial court on April 22, 1957 issued an Order, setting the drawing of lots on April 27, 1957. The heirs, thru Atty. Vega, however, notified the Commissioner that they did not like to take part in the drawing of lots, for the reasons stated in their opposition dated February 14, 1957. The date for the drawing was moved to May 11, 1957, of which the heirs were notified, but again the heirs manifested that they would not take part in the drawing for the reasons stated in. their opposition dated February 14, 1957, and "that it was their intention to have the counter project of partition submitted by the present Judicial Administrator approved, by allowing and permitting thorn to present their evidence in support thereof, and in case of disapproval, they would appeal therefrom to a superior court."

On May 15, 1957, the trial court ordered the distribution of the properties to the heirs, in accordance with the result of the drawing of lots and further ordered the Administrator to deliver the possession of the properties to the heirs, and that the inheritance and estate taxes be paid by the administrator within one week from receipt of the copy of said Order.

Dated May 22, 1957, Atty. Vega, filed a motion reciting in their chronological order, the various steps taken by the parties, and ending with the statement that the heirs he represented "are not agreeable to the partial project of partition submitted by the Commissioner and approved by the Honorable Court, and therefore, it is reiterated that the counter-project of partition filed by the Judicial Administrator dated August 20, 1956, with the conformity of all the heirs, be approved after the reception of evidence presented by the heirs in support of its legality," and praying that "date be set for the reception of evidence in support of the counter-project of partition dated August 20, 1956, with the conformity of all the heirs." On June 8, 1957, Atty. Bahares filed his opposition to the last motion which was denied by the trial court on the same date.

The case is now before us for a review of the orders heretofore mentioned. The oppositor-appellants, heirs of Alejandra Cordova, with the exception of Eulogia de Leon, allege that the trial court erred:

- (1) In not setting a date for the reception of evidence in support of the project of partition submitted by the

Judicial Administrator dated August 20, 1956, with the conformity of the heirs.

(2) In ordering the drawing by lots of the shares that should correspond to each of the heirs as recommended by the Commissioner over the objection of the heirs.

(3) In approving the project of partition submitted by the Commissioner in accordance with the lots drawn, "without the assistance and concurrence of the heirs, herein appellants; and

(4) In not requiring the heirs to submit evidence to show the legality and sufficiency of the project of partition submitted by the Commissioner.

It thus appears that the project of partition submitted by the Judicial Administrator Atty. Gabaluna, Jr. bore the conformity of the heirs, with the exception of Atty. Bañares. The said heirs, with the exception of Eulogia de Leon filed a motion dated May 22, 1957, requesting, among others, that a date be set for the reception of evidence in support of the said project of partition of August 20, 1956, but the trial court denied the same on June 8, 1957. Neither has the trial court set for hearing the project of partition submitted by Commissioner Albis, in which the appellants did not take part, because they did not like to enter into a raffle or in the drawing of dots. In their pleading of January 30, 1957, the said heirs, with the exception of Eulogia de Leon, opposed the partial project of partition filed by Commissioner Albis, dated January 18, 1957, on the following grounds: that several lots which have been sold or mortgaged by the individual heirs or lots on which considerable improvements were already made and occupied by the heirs, which the corresponding heirs expected to receive as their shares, were not adjudicated or assigned to them, in the grouping; that while in the grouping, each of the four groups had practically the same area or the same number of square meters, and the same assessed value, the "inherent" value (quality) of the properties were not taken into account; that Atty. Bañares not having rendered full service, his share should be reduced or diminished; and that Atty. Bañares should not be given the first chance to draw, as recommended by the Commissioner. In said opposition, the said heirs prayed that the partial project of partition, dated January 18, 1957, be disapproved and that a date be set for the reception of evidence for the approval or disapproval of the two counter- projects of partition, presented by the heirs and the judicial administrator.

With the facts gathered from the pleadings, manifestations and counter-manifestations of the parties, it would not seem fair and just, to compel the herein oppositors-appellants to participate in the drawing by lots of the properties, grouped in accordance with the value of the lands, arbitrarily and unilaterally, fixed by the Commissioner, including properties already disposed and/or sold, and make them accept as final, the grouping of said lots effected by the said Commissioner, without giving them the opportunity to show with competent proofs, their fair market value, (not merely the assessed value) location, productivity, the class (rice or corn land, irrigated or unirrigated, good or poor lands), the area of the lots, the correct amounts or value of the allowances and advances each heir had received and to determine whether Atty. Bañares is entitled to the products of the estate, the indebtedness of the estate, such as taxes and mortgages; the number of lots which the heirs wanted to be divided pro-indiviso; those to be sold and the purchase price to be divided; the number of lots which each heir desired to be allotted or assigned to himself or herself, etc. It is also contended by appellants that, as per agreement, one-fifth (1/5) of the estate, should be given to Atty. Bañares, only after he shall have rendered full service to the heirs, up to and including the preparation and approval of a project of partition, and that not having done so, he is entitled to less than 1/5. As things stand now, except the pleadings and manifestations and counter-manifestations of the parties, there are no concrete facts proven, for none had been permitted to be adduced, by which the trial court, much less an appellate Court, could base a conclusion as to which project of partition is the most just, equitable and fair for all the parties concerned. Herein oppositor-appellants should not be deprived of their legitimate shares, in the properties of the decedent, without due process of law.

WHEREFORE, the several Orders issued by the trial Court, approving the partial project of partition and

distributing the properties in question by lot, submitted by Commissioner Julio Albis, are hereby set aside, and the case is remanded to the lower court for reception of evidence, with a view of determining the legality and sufficiency of any project of partition, duly submitted or to be submitted to said Court, and to render judgment accordingly. Without costs.

Padilla, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Barrera, Dizon, and Regala, JJ., concur.

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