

**FLORENTINA ZAFRA VDA. DE VALENZUELA (DECEASED),
SUBSTITUTED BY SOCORRO Z. VALENZUELA ET AL., PLAINTIFF AND
APPELLANT, VS. IRENE ZAFRA DE AGUILAR, DEFENDANT AND
APPELEE.**

G.R. No. L-2480. August 31, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This case is here on appeal from an order of the Court of First Instance of La Union dated May 27, 1948, dismissing the case after both parties had adduced their evidence and they had submitted the case for decision. This appeal is intimately related to the petition for certiorari instituted by the appellant in G. R. No. L-2262, and the facts and legal considerations pertinent to and necessary to the decision of this appeal are found in the decision of this Court in said certiorari case, which is hereby reproduced and made part of this decision.

"On June 12, 1946, Florentina Zafra Vda. de Valenzuela, the present petitioner, as plaintiff in civil case No. 52 of the Court of First Instance of La Union, filed an amended complaint against her sister Irene Zafra de Aguilar, alleging that they are the only heirs of their mother Agustina del Castillo who died on February 7, 1934, leaving to them three parcels of land described in said complaint and designated as items (a), (b), and (c), and asking for the partition of the said three parcels between them. In addition, she asked for the collection of the sum of P810 said to be owing to her by the defendant, Irene in her answer to the amended complaint asserts that in addition to parcels (a) and (b) described in the complaint, there were other properties left by their mother and therefore owned in common by them and she asks that all of these properties be partitioned including their fruits and earnings. As to parcel (c), Irene claims that it is her exclusive property having been conveyed to her by her mother during her lifetime and consequently, was not subject to partition. Hearings were held on July 17 and November 8, 1947 and on January 6, 1948, on which last date, the parties after having finished adducing their evidence, submitted the case for decision.

"On February 20, 1948, Judge Bernabe de Aquino, then presiding over the Court of First Instance of La Union which received the evidence in the partition case and before whom it was submitted for decision, issued an order of the same date, stating that in going over the evidence for the purpose of pronouncing judgment in the partition case No. 52, he found that there had previously been instituted intestate proceedings known as civil case No. 1993, for the estate of Agustina del Castillo, mother of the parties, involving the same properties included in the complaint for partition, and that plaintiff Florentina Zafra Vda. de Valenzuela had been appointed administratrix in that case. The order cited the parties to appear before the Court on March 3, 1948, in order to inform it of the status of that civil case No. 1993. On the date set, counsel for plaintiff Florentina informed the court that the record of civil case No. 1993 had been lost and there had been no reconstitution; that the administratrix therein was making the inventory and was beginning to make a report, and that in view of the destruction of the record, Florentina filed civil case No. 52 for partition.

"At the request of the court, the clerk of court made an affidavit, undated, entitled 'Information to the Court,' stating that according to his best recollection Florentina Zafra Vda. de Valenzuela had duly been appointed

administratrix in civil case No. 1993; that she duly qualified as such administratrix; that the necessary notice to creditors was published calling on possible creditors to file their claims against the estate of the decedent Agustina del Castillo, but notwithstanding the lapse of several years, no creditor's claim has ever been filed except the claim presented by present defendant Irene Zafra de Aguilar, wherein she contended that a certain parcel listed in the administratrix's inventory as part of the estate of their mother Agustina del Castillo, was no longer part of the intestate estate for the reason that said parcel had already been donated to her by her mother during her lifetime; and that as far as said clerk of court could recall, the administratrix had not yet submitted her final report and accounting and that the properties under administration had not as yet been distributed and that consequently, special proceedings No. 1993 was still pending and unclosed at the time the record was destroyed during liberation.

"Acting upon the information given by counsel for plaintiff Florentina already referred to and upon an authenticated copy of an order dated September 2, 1936, appointing Florentina administratrix in the intestate proceedings, which copy had been presented by her as an exhibit in the partition case, including the affidavit of the Clerk of Court, Judge Bernabe de Aquino issued an order dated May 27, 1948, in the intestate proceedings, civil case No. 1993, allegedly reconstituted and designated as Reconstituted Case No. 11-R, to the effect that the order of the court dated September 2, 1936, appointing the plaintiff administratrix in the intestate proceedings was declared reconstituted, as well as the status of that case at the time of the destruction of the records as certified to, by the Clerk of Court in his affidavit. In the same order, Judge Aquino ordered that the proceedings in said civil case No. 1993 shall continue upon the portion of the records as therein reconstituted, at the same time enjoining the administratrix Florentina Zafra Vda. de Valenzuela within fifteen days from notice to (a) renew her bond in the amount of P500 as fixed in the order of her appointment in 1936; (b) file a new inventory of the estate of her deceased mother Agustina del Castillo; (c) render final accounting as administratrix; and (d) submit a project of partition and distribution of the intestate estate of Agustina del Castillo.

"Dissatisfied with this action of Judge Bernabe de Aquino, Florentina Zafra filed the present petition for certiorari, asking that we require the Court of La Union to certify to this Court among other things, a copy of the record of civil case No. 52, for review, and after due consideration of the petition, that we annul the order of the respondent Judge, dated May 27, 1948, on the ground that in issuing the same, respondent had acted in excess of his jurisdiction and with grave abuse of his discretion.

"On the basis of this order of May 27, 1948, in civil case No. 1993, Judge de Aquino in the partition case, civil case No. 52, issued an order on the same date, May 27, 1948, dismissing said case on the ground that the plaintiff had no cause of action for partition. The reason given was that inasmuch as the proceedings in civil case No. 1993 had been ordered continued on the basis of the reconstitution declared by the court in said case, and because the properties now sought to be partitioned are included in the intestate proceedings, said properties were to be regarded as in the hands of the court and so could not be touched or be subject of an ordinary action, and the plaintiff in the partition case had no right to ask for partition but must await the result of the intestate proceedings. Plaintiff Florentina appealed from said order of dismissal to this Court.

"As a result of said appeal, we now have here before us the record of that civil case No. 52. Consequently, there no longer is any need of requiring the Court of First Instance of La Union to certify to us copy of said record for our review and for purposes of reference in the consideration of the petition for certiorari.

"On the basis of the facts already stated and those to be gathered from the pleadings in this certiorari case, as well as the record of civil case No. 52, we entertain grave doubts as to the legality and propriety of respondent's order of May 27, 1948, ordering the reconstitution of the order of the Court of La Union of September 2, 1936 appointing the plaintiff administratrix civil case No. 1993, as well as reinstating said case as of the time of the destruction of its record in 1945, as certified to by the clerk of court in his affidavit, and ordering the proceedings in said civil case No. 1993 to continue. On September 1, 1945, Judge Antonio G. Lucero of the Court of First Instance of La Union, issued an order advising parties litigant and their attorneys and other

Interested persons of the complete destruction of the judicial records of the Court and giving them six months from the date of the order within which to apply for the reconstitution of said records, otherwise they shall be deemed to have relinquished the reconstitution and may file their action anew. This order was duly published. Then on October 14, 1946, the Supreme Court passed a resolution published in the Official Gazette, Vol. 42, No. 10, page 2446. extending up to June 30, 1947, the time within which petitions for reconstitution of judicial records heretofore destroyed may be filed in any court of the Philippines under Act No. 3110. Despite the order and the resolution aforementioned, the parties interested in the intestate proceedings have failed to ask for the reconstitution of the record of said civil case No. 1993. It is clear that the parties therein had lost all interest in that case. Moreover, instead of filing a new action for intestate proceedings like civil case No. 1993, Florentina Zafra filed an entirely different suit for partition, a sort of short-cut to the goal or objective, namely, distribution of the properties left to her and her sister. And this sister defendant Irene Zafra, far from objecting on the ground of the existence of the intestate proceedings, was perfectly agreeable to the proposed partition. Furthermore, the affidavit made by the Clerk of Court already referred to as to the status; of said civil case No. 1993 based on his recollection can hardly be regarded as reliable and may not bind the parties who aid not intervene in its preparation and had no opportunity to check up on its correctness. Consequently, the record of civil case No. 1993 cannot be considered as validly reconstituted under the terms of Act No. 3110.

"In explanation of his action in ordering the reconstitution of the record of civil case No. 1993 and in ordering its reinstatement, respondent Judge invokes the inherent power of the Court as provided in Rule 124, section 5 (h) of the Rules of Court which reads as follows:

'To authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original, and to restore, and supply deficiencies in its records and proceedings.'

"Deeming it unnecessary at this time to lay down a rule as to when to apply the provisions of Act No. 3110 as regards the reconstitution of a court record that has been completely destroyed and when the court itself, *motu proprio* may and should invoke and exercise its inherent power to restore and supply deficiencies in its records and proceedings, under Rule 124, section 5 (h) of the Rules of Court, we find and hold in the present case that it was the parties that were called upon to reconstitute the lost record and restore the case to its status, and when they failed and did not wish to do so despite the ample opportunity given to them, but instead gave up and ignored said old case and sought a remedy and solution to their problem in an entirely new case (civil case No. 52) which they diligently attended to and prosecuted to its end, and submitted for the court's decision, said court may not correctly and legally invoke and utilize its inherent power on this point and matter.

"We cannot agree to the action of the respondent Judge in ordering the reconstitution of the record of civil case No. 1993, and reinstating said case without any petition or expressed desire therefor by the parties interested. Stripped of all technicalities and non-essentials, the case here may be succinctly described thus: In the year 1936 the plaintiff had commenced intestate proceedings, civil case No. 1993, seeking the administration of the properties left by her mother to her and her sister defendant, the only heirs. She was duly appointed administratrix. We do not know for sure what happened thereafter in relation to said proceedings or what steps were taken in and during her administration, for the reason that the only information on this point is the affidavit of the clerk of court based merely on his recollection, prepared without the intervention of the parties interested and so, from the point of view of the law, unacceptable and unreliable and not binding on the parties interested, in spite of the fact that it was prepared honestly and in good faith. About 9 years later, or rather during the last phase of the last war, on the occasion of the liberation of the provincial capital, the courthouse was burned and all the court records including that of the intestate proceedings were completely destroyed. The parties Interested in said case were given plenty of time and opportunity to petition for the reconstitution of the record of said case both by order of the Court of First Instance and also by a resolution of the Supreme Court. But, they neither took steps nor adopted any measure looking toward said reconstitution. In other words, they evinced no interest whatsoever in

the reinstatement of said case in the court docket. And, instead of instituting another intestate proceedings as contemplated by Act No. 3110, to take the place of civil case No. 1993, whose record had been destroyed and could not be reconstituted, the administratrix in said intestate proceedings filled an entirely new action, one against her sister and coheir for partition, of the same properties included in the intestate proceedings. Said sister making no mention of or reference whatsoever to the previous proceedings, expressed her willingness to the proposed partition. Hearings were held in the partition case; both sisters presented evidence and finally submitted the case for decision. Instead of deciding said partition case, respondent Judge *motu proprio*, and on the basis of a copy of the appointment of the plaintiff in the partition case, as administratrix in the intestate proceedings, which copy he found among the evidence in the partition case, ordered the reconstitution of the said appointment of administratrix in the intestate proceedings and on the basis thereof, as well as of an affidavit made by the Clerk of Court based entirely on his recollection of what had happened in the intestate proceedings case, ordered the reinstatement of said intestate proceedings and its continuance, directing the administratrix therein against her objection to file a new bond and a new inventory of the properties under administration and to render an accounting. And, on the basis of all this, respondent Judge on May 27, 1948, dismissed the case for partition.

"It was neither necessary nor proper for the Court, *motu proprio* to reconstitute the record of civil case No. 1993 and revive the same. We believe and we hold that the intestate proceedings, civil case No. 1993, was dead and non-existent as far as the court and the parties were concerned, and that as a result, the properties subject of the suit for partition are not now in the hands of the Court as erroneously believed by respondent Judge. We find the order of reconstitution and reinstatement of May 27, 1948, to be illegal and improper as having been issued in excess of jurisdiction, and it is hereby declared and ordered annulled. Writ of certiorari granted. No costs."

In view of the foregoing, we find that the lower court committed error in dismissing the case. It should have decided it on the basis of the evidence submitted and with no reference to or consideration, whatsoever of the old intestate proceedings involving the same properties, as discussed in the case for certiorari, G.R. No. L-2262. Reversing the order appealed from, let this case be returned to the lower court for its decision. No pronouncement as to costs.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Padilla, Tuason, and Reyes, JJ., concur.

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