

TESTATE ESTATE OF ALEJANDRO GONZALEZ Y TOLENTINO, DECEASED, MANUEL GONZALES, MOVANT AND APPELLEE, VERSUS MANUELA VDA. DE GONZALES ET AL., OPPOSITORS AND APPELLANTS

G.R. No. L-1254. May 21, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

On July 18, 1932, the will of Alejandro Gonzalez, who died the previous day, was filed with the lower court for probates. On August 27, the will was legalized and Alejandro Gonzalez, Jr., was appointed administrator, replaced by Manuel Gonzalez in March, 1936.

On November 9, 1943, after more than ten years of protracted proceedings where many incidents occurred, some of them unsettled or, partially settled, the parties filed an amicable agreement, reproduced in pages 58-63 of the record on appeal, dated November 5, with the purpose of terminating the proceedings, and where the parties pray "that this stipulation be approved, this case ordered closed and terminated, the shares of the heirs and legatees delivered to them. without pronouncement as to costs." On December 2, 1943, the agreement was approved by the lower court, which ordered full compliance of all stipulations contained therein.

On September 21, 1946, after several further incidents extending for more years, the lower court issued an order wherein, besides providing for compliance with several provisions of the agreement which remained uncomplied with, it considered and set aside the order issued on December 9 1943, the one providing that, in case the administrator should fail to pay all the claims on or before December 31, 1943, the agreement which was approved on December 2, 1943, will become automatically disapproved.

Appeal has been perfected against the order of September 21, 1946, and in the notice of appeal of October 9, 1946, appellants stated: "Esta apelación se funda en que la referida orden de 21 de Septiembre de 1946 reconsiderando la orden de fecha 9 de Diciembre de 1943 y ordena que se atenga a lo dispuesto en la orden de fecha 2 de Diciembre de 1943, aprobando el el es contraria a los hechos establecidos y a la ley." (Page 67, Record on Appeal).

Appellants assign as first error of the lower court the fact that, in setting aside the order of December 9, 1943, it did not follow the provisions of section 3 of Rule 38. Appellee answers that the question has never been raised by appellants in the court below and, therefore, It cannot properly be raised for the first time on appeal, and, as a matter of fact, appellee's motion for reconsideration, dated May 20, 1946, which gave occasion for the lower court to issue the order of September 21, 1946, setting aside the order of December 9, 1943, is not a petition for relief under Rule 38. Appellee alleges that no pretension of fraud, accident, mistake or excusable negligence, as contemplated by Rule 38, was made by appellee, but what he raised was purely a question of law, involving the order of May 10, 1946, although in assailing the legality of it, the validity and enforcement of the orders of December 2 and December 9, 1943, were necessarily dragged into the issue.

The amicable agreement dated November 5 1943, approved by the order of December 2, 1943, is a compromise intended to terminate the judicial controversies involved in the testate of Alejandro Gonzalez, as defined by Article 1809 of the Civil Code, which provides:

"Compromise is a contract by which each of the parties in interest, by giving, promising, or retaining something avoids the provocation of a suit or terminates one which has already been, instituted."

The agreement, therefore, partaking of the nature of a contract, is subject to the same legal provisions providing for the validity, enforcement, rescission or annulment of ordinary contracts. In entering in said compromise, the parties were free to make any stipulation not contrary to law, public interest, or principles of morality, as much as in any other contract.

The fact that the agreement, upon the parties' petition, was approved by the order of December 2, 1943, does not change the essential contractual nature of the agreement. The court's approval has become an indispensable formality in view of the fact that the properties which were the object of the contractual stipulations were in custodia legis in the testate proceedings. Naturally, any disposition regarding said properties, while the proceedings remain to be finally closed, has to be made under the supervision, control and authority of the court. Provided that there is no serious objection to the agreement, such as when it contains contractual stipulations which cannot validly be inclined in an ordinary contract—and the parties did not point out any objectionable provision in the agreement in question—the court cannot deny its approval.

Appellee urges us to declare that the order of December 9, 1943, providing that if the administrator should fail to pay the claims on or before December 31, 1943, the agreement shall be automatically disapproved, is a nullity, as the automatic disapproval provided therein could not have the legal effect of annulling the agreement. He reminds that the grounds for annulling a compromise, according to article 1817 of the Civil Code are error, deceit, violence and forgery of documents, and none of them is asserted by any party nor stated in the order of December 9, 1943, and, at any rate, under article 1817 of the Civil Code, the provisions of article 1263 of the same Code should be followed. There is no need of acceding to appellee's invitation, although, there is no fairness in making the automatic disapproval of the agreement depend on the unilateral course of conduct of the administrator who, without the intervention of all the remaining interested parties, may have chosen to fulfill or not the condition of payment of claims before the deadline set in the order of December 9, 1943. It is enough to consider that said order is interlocutory in nature and, as such, the lower court had the power to set it aside as it did in its order of September 21, 1946, the order complained of. It is not pretended that any injustice has been committed in the last order or that, in issuing it, the lower court committed a grave abuse of discretion.

Appellants impugn the action of the lower court in enforcing the order of December 2, 1943, and in ordering the payment to Manuel Gonzalez of the amount of P11,000 and to Alejandro Gonzalez, the amount of P4,000. Having arrived at the conclusion that the agreement of November 5, 1943, is a valid contract entered into by the parties, which the lower court was bound to approve, as it did approve it on December 2, 1943, the stipulations of the agreement have become the law between the parties and the lower court is bound to enforce it. The payments of the above-mentioned amounts to Manuel Gonzalez and Alejandro Gonzalez, respectively, are among the provisions stipulated in the agreement.

The fourth and fifth assignment of errors made by appellants appear to be not well taken. It is only fair that the widow, the heirs, and legatees should contribute proportionately for the payment of the obligations of the testate and that the administrators should take possession of the products of the haciendas of the testate in order to be able to pay the obligations of the same. At any rate, these questions were not in appellants' mind when they filed their notice of appeal on October 9, 1946, wherein they stated that the purpose of their appeal was to show that the order of September 21, 1946, in setting aside the order of December 9, 1943, and ordering the enforcement of the

order of December 2, 1943, was contrary to the facts and to the law.

The appealed order, dated September 21, 1946, is affirmed, with costs against the appellants. Considering that the testate proceedings of Alejandro Gonzalez had been instituted sixteen years ago, the parties and the lower court are instructed to take steps for its prompt termination.

Feria, Bengzon, and Tuason, JJ. concur.

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