

JUANITA LOPEZ GUILAS, PETITIONER, VS. JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA AND ALEJANDRO LOPEZ, RESPONDENTS.

G.R. No. L-26695. January 31, 1972

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

It appears from the records that Jacinta Limson de Lopez, of Guagua, Pampanga was married to Alejandro Lopez y Siongco. They had no children.

On April 28, 1936, Jacinta executed a will instituting her husband Alejandro as her sole heir and executor (pp. 20-21, rec.).

In a Resolution dated October 26, 1953 in Sp. Proc. No. 894 entitled "En el Asunto de la Adopcion de la Menor Juanita Lopez y Limson" (pp. 92-94, 103, rec.), herein petitioner Juanita Lopez, then single and now married to Federico Guilas, was declared legally adopted daughter and legal heir of the spouses Jacinta and Alejandro. After adopting legally herein petitioner Juanita Lopez, the testatrix Doña Jacinta did not execute another will or codicil so as to include Juanita Lopez as one of her heirs.

In an order dated March 5, 1959 in Testate Proceedings No. 1426, the aforementioned will was admitted to probate and the surviving husband, Alejandro Lopez y Siongco, was appointed executor without bond by the Court of First Instance of Pampanga (Annexes "A" and "B", pp. 18-23, rec.). Accordingly, Alejandro took his oath of office as executor (Annex "C", p. 24, rec.).

Nevertheless, in a project of partition dated March 19, 1960 executed by both Alejandro Lopez and Juanita Lopez-Guilas, the right of Juanita Lopez to inherit from Jacinta was recognized and Lots Nos. 3368 and 3441 (Jacinta's paraphernal property), described and embraced in Original Certificate of Title No. 13092, both situated in Bacolor, Pampanga – Lot 3368 with an area of 68,141 square meters and Lot 3441 with an area of 163,231 square meters, then assessed respectively at P3,070.00 and P5,800.00 (Annex "D", pp. 27-36, rec.) – were adjudicated to Juanita Lopez-Guilas as her share free from all liens, encumbrances and charges, with the executor Alejandro Lopez binding himself to free the said two parcels from such liens, encumbrances and charges. The rest of the estate of the deceased consisting of 28 other parcels of lands with a total assessed valuation of P69,020.00 and a combined area of 743,924.67 square meters, as well as personal properties including a 1953 Buick car valued at P2,500.00, were allotted to Don Alejandro who assumed all the mortgage liens on the estate (Annex "D", pp. 25- 37, rec.).

In an order dated April 23, 1960, the lower court approved the said project of partition and directed that the records of the case be sent to the archives, upon payment of the estate and inheritance taxes (Annex "E", p. 38, rec.).

Upon ex-parte petition of the adjudicatees Alejandro Lopez and Juanita Lopez-Guilas dated August 25, 1961

(Annex "F", pp. 39-40.), the lower court in an order dated August 28, 1961, approved the correction of clerical errors appearing in the project of partition (Annex "G", p. 41, rec.).

On April 10, 1964, herein petitioner Juanita Lopez-Guilas filed a separate ordinary action to set aside and annul the project of partition, which case was docketed as Civil Case 2539 entitled "Juanita Lopez-Guilas vs. Alejandro Lopez" in the Court of First Instance of Pampanga, on the ground of lesion, preterition and fraud, and pray further that Alejandro Lopez be ordered to submit a statement of accounts of all the crops and to deliver immediately to Juanita lots nos. 3368 and 3441 of the Bacolor Cadastre, which were allocated to her under the project of partition (p. 132, rec.).

Meanwhile, in Testate Proceedings No. 1426, Juanita filed a petition dated July 20, 1964 praying that Alejandro Lopez be directed to deliver to her the actual possession of said lots nos. 3368 and 3441 as well as the 1,216 cavans of palay that he collected from the ten (10) tenants or lessees of the said two lots (Annex "H", pp. 42-44, rec.).

In his opposition dated August 5, 1964 to the said petition, Alejandro Lopez claims that, by virtue of the order dated April 23, 1960 which approved the project of partition submitted by both Alejandro and Juanita and directed that the records of the case be archived upon payment of the estate and inheritance taxes, and the order of December 15, 1960 which "ordered closed and terminated the present case," the testate proceedings had already been closed and terminated; and that he ceased as a consequence to be the executor of the estate of the deceased; and that Juanita Lopez is guilty of laches and negligence in filing the petition of the delivery of her share 4 years after such closure of the estate, when she could have filed a petition for relief of judgment within sixty (60) days from December 15, 1960 under Rule 38 of the old Rules of Court (Annex "I") citing *A. Austria vs. Heirs of Antonio Ventenilla*, L-10018, Sept. 19, 1956 (pp. 45-48, rec.).

In her reply dated November 17, 1965 to said opposition, Juanita contends that the actual delivery and distribution of the hereditary shares to the heirs, and not the order of the court declaring as closed and terminated the proceedings, determines the termination of the probate proceedings (citing *Intestate estate of the deceased Mercedes Cano, Timbol vs. Cano*, 59 O.G. No. 30, pp. 46-37, April 29, 1961, where it was ruled that "the probate court loses jurisdiction of an estate under administration only after the payment of all the taxes, and after the remaining estate is delivered to the heirs entitled to receive the same"); that the executor Alejandro is estopped from opposing her petition because he was the one who prepared, filed and secured court approval of, the aforesaid project of partition, which she seeks to be implemented; that she is not guilty of laches, because when she filed on July 20, 1964, her petition for the delivery of her share allocated to her under the project of partition, less than 3 years had elapsed from August 28, 1961 when the amended project of partition was approved, which is within the 5 year period for the execution of judgment by motion (Annex "J", pp. 49-52, rec.).

In its order dated October 2, 1964, the lower court after a "pre-trial" stated that because the civil action for the annulment of the project of partition was filed on April 13, 1964, before the filing on July 2, 1964 of the petition for delivery of the shares of Juanita Lopez, "the parties have agreed to suspend action or resolution upon the said petition for the delivery of shares until; after the civil action aforementioned has been finally settled and decided," and forthwith set the civil action for annulment for trial on November 25, and December 2, 1964 (Annex "K", pp. 53-54, rec.).

On June 11, 1965, Juanita filed an amended complaint in Civil Case 2539 (pp. 78-110, rec.), where she acknowledges the partial legality and validity of the project of partition insofar as the allocation in her favor of the Lots Nos. 3368 and 3441, the delivery of which she is seeking (pp. 106-107, rec.).

In her motion dated November 17, 1965, Juanita sought the setting aside of the order dated October 2, 1964 on the ground that while the said order considered her action for annulment of the project of partition as a prejudicial question, her filing an amended complaint on June 11, 1965 in civil case No. 2539 wherein she admitted the partial legality and validity of the project of partition with respect to the adjudication to her of the two lots as her share, rendered said civil case No. 2539 no longer a prejudicial question to her petition of July 20, 1964 for the delivery of her share (Annex "L", pp. 55-59, rec.).

Alejandro filed his opposition dated December 1, 1965 to the aforesaid motion of Juanita to set aside the order dated October 2, 1964 (Annex "M", pp. 60-61, rec.), to which Juanita filed her rejoinder dated December 6, 1965 wherein she stated among others that pursuant to the project of partition, executor Alejandro secured the cancellation of OCT No. 13093 covering the two parcels of land adjudicated to her under the project of partition and the issuance in his exclusive name on August 4, 1961 TCT No. 26638-R covering the said Lots Nos. 3368 and 3441 of the Bacolor Cadastre (Annex "N", pp. 62-71, rec.).

In an order dated April 27, 1966, the lower court denied Juanita's motion to set aside the order of October 2, 1964 on the ground that the parties themselves agreed to suspend resolution of her petition for the delivery of her shares until after the civil action for annulment of the project of partition has been finally settled and decided (Annex "O", p. 72, rec.).

Juanita filed a motion dated May 9, 1966 for the reconsideration of the order dated April 27, 1966 (Annex "P", pp. 73-77, rec.), to which Alejandro filed an opposition dated June 8, 1966 (Annex "Q", pp. 112-113, rec.).

Subsequently, Alejandro filed a motion dated July 25, 1966 praying that the palay deposited with Fericsons and Ideal Rice Mill by the ten (10) tenants of the two parcels in question be delivered to him (Annex "R", pp. 114-116, rec.), to which Juanita filed an opposition dated July 26, 1966 (Annex "S", pp. 117-121, rec.).

In an order dated September 8, 1966, the lower court denied the motion for reconsideration of the order dated April 27, 1966, and directed Fericsons Inc. and the Ideal Rice Mills to deliver to Alejandro or his representative the 229 cavans and 46 kilos and 325 and 1/2 cavans and 23 kilos of palay respectively deposited with the said rice mills upon the filing by Alejandro of a bond in the amount of P12,000.00 duly approved by the court (Annex "T", pp. 122-127, rec.).

Hence, this petition for certiorari and mandamus.

The position of petitioner Juanita Lopez-Guilas should be sustained and the writs prayed for granted.

The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. The finality of the approval of the project of partition by itself alone does not terminate the probate proceeding (*Timbol vs. Cano*, 1 SCRA 1271, 1276, L-15445, April 29, 1961; *Siguiong vs. Tecson*, 89 Phil., pp. 28-30). As long as the order of the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated (*Siguiong vs. Tecson*, supra.); because a judicial partition is not final and conclusive and does not prevent the heir from bringing an action to obtain his share, provided the prescriptive period therefor has not elapsed (*Mari vs. Bonilla*, 83 Phil., 137). The better practice, however, for the heir who has not received his share, is to demand his share through a proper motion in the same probate or administration proceedings, or for re-opening of the probate or administrative proceedings if it had already been closed, and not through an independent action, which would be tried by another court or Judge which may thus reverse a decision or order of the probate or intestate court already final and executed and re-shuffle properties long ago distributed and disposed of (*Ramos vs. Ortuzar*, 89 Phil., 730, 741-742; *Timbol vs. Cano*, supra.; *Jingco vs. Daluz*, L-5107, April 24, 1953, 92 Phil., 1082; *Roman Catholic*

vs. Agustines, L-14710, March 29, 1960, 107 Phil., 445, 455, 460-461).

Section 1 of Rule 90 of the Revised Rules of Court of 1964 as worded, which secures for the heirs or legatees the right to "demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession," re-states the aforecited doctrines.

The case of Austria vs. Heirs of Ventenilla (99 Phil. 1069) does not control the present controversy; because the motion filed therein for the removal of the administratrix and the appointment of a new administrator in her place was rejected by the court on the ground of laches as it was filed after the lapse of about 38 years from October 5, 1910 when the court issued an order settling and deciding the issues raised by the motion (L-10018, September 19, 1956, 99 Phil., 1069-1070). In the case at bar, the motion filed by petitioner for the delivery of her share was filed on July 20, 1964, which is just more than 3 years from August 28, 1961 when the amended project of partition was approved and within 5 years from April 23, 1960 when the original project of partition was approved. Clearly, her right to claim the two lots allocated to her under the project of partition had not yet expired. And in the light of Section 1 of Rule 90 of the Revised Rules of Court of 1964 and the jurisprudence above cited, the order dated December 15, 1960 of the probate court closing and terminating the probate case did not legally terminate the testate proceedings, for her share under the project of partition has not been delivered to her.

While it is true that the order dated October 2, 1964 by agreement of the parties suspended resolution of her petition for the delivery of her shares until after the decision in the civil action for the annulment of the project of partition (Civil Case 2539) she filed on April 10, 1964; the said order lost its validity and efficacy when the herein petitioner filed on June 11, 1965 an amended complaint in said Civil Case 2539 wherein she recognized the partial legality and validity of the said project of partition insofar as the allocation in her favor of lots Nos. 3368 and 3441 in the delivery of which she has been insisting all along (pp. 106-107, rec.).

WHEREFORE, judgment is hereby rendered:

1. Granting the writs prayed for;
2. Setting aside the orders of the respondent court dated October 2, 1964 and April 27, 1966 as null and void; and, without prejudice to the continuance of Civil Case No. 2539, which, by reason of this decision, involves no longer Lots 3368 and 3441 of the Bacolor Cadastre,
3. Directing
 - a) the Register of Deeds of Pampanga to cancel TCT No. 26638-R covering the aforesaid lots Nos. 3368 and 3441 of the Bacolor Cadastre and to issue a new Transfer Certificate of Title covering the said two lots in the name of herein petitioner Juanita Lopez Guilas; and
 - b) the respondent Alejandro Lopez

(1) to deliver to herein petitioner Juanita Lopez Guilas the possession of lots Nos. 3368 and 3441;

(2) to deliver and/or pay to herein petitioner all the rents, crops or income collected by him from said lots Nos. 3368 and 3441 from April 23, 1960 until the possession of the two aforementioned lots is actually delivered to her, or their value based on the current market price; and

(3) to pay the costs.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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