

CONSUELO TAN VDA. DE ZALDARRIAGA, PETITIONER, VS. HON. EDUARDO D. ENRIQUEZ ETC., AND BASILIA F. VDA. DE ZALDARRIAGA, RESPONDENTS.

G.R. No. 13252. April 29, 1961

Ponente: DIZON, J.

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DIZON, J.:

On June 5, 1953 herein respondent Basilia F. Vda. de Zaldarriaga commenced an action in the Court of First Instance of Negros Occidental (Civil Case No. 2705) against Pedro Zaldarriaga, Ernesto Zaldarriaga, in his personal capacity and as Administrator of the Intestate Estate of Jesus Zaldarriaga, Guadalupe and Jesus Zaldarriaga, Jr. for the partition of four parcels of land known as lots Nos. 936, 937, 940 and 941 of the Cadastral Survey of Cadiz, Negros Occidental, for accounting and other reliefs in connection with the sugar quota assigned to said properties and for the annulment of an ex-parte partition of a portion of said properties made by Ernesto, Guadalupe and Jesus, Jr., all surnamed Zaldarriaga, in special proceedings No. 483 of the same court. After the denial of their motion to dismiss the defendants in said case filed their original answer, which was subsequently amended, with leave of court. The record of this case, however, does not disclose the nature of the defenses interposed in said pleadings. After due trial the court rendered judgment, the dispositive part of which reads as follows:

"Wherefore, judgment is hereby rendered as follows:

(1) The order of the Intestate Court in Special Proceeding No. 483 approving the Project of Partition and Declaration of Heirs made by the defendants Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus Zaldarriaga, Jr. is hereby declared null and void, and the sugar quotas listed and recorded in their names as Plantation Audit Nos. 24-468, 28-469 and 28-470 respectively in the Sugar Quota Office should be cancelled.

(2) The sale made by the defendant Pedro Zaldarriaga of his 6/8 portion of Hda. Escolastica with its sugar quota in favor of his three co-defendants, Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus Zaldarriaga Jr. is hereby declared null and void, and the document evidencing said sale is hereby cancelled and declared also null and void.

(3) The defendant Pedro Zaldarriaga is hereby ordered to account for and pay the intestate of Jose Zaldarriaga or his heirs represented by the plaintiff-administratrix the amount of P94,586.00 representing rentals, profits and other claims.

Provisions of the rentals and profits corresponding to the forthcoming crop years 1957-58, etc. is hereby made and defendant Pedro Zaldarriaga is hereby ordered to pay the intestate of Jose Zaldarriaga or his heirs the amount of P3,794.00 as rentals and P500.00 as profits every crop year until this case is finally closed and terminated.

(4) Partition and distribution of Hda. Escolastica consisting of Lots Nos. 936, 937, 940 and 941 of the Cadastral Survey of Cadiz, Occidental Negros, with its sugar quota is hereby made and it is hereby adjudicated

as follows:

(a) To Pedro Zaldarriaga 6/8 of said parcels of land (Lots Nos. 936, 937, 940 and 941) or 172.68 hectares. To Pedro Zaldarriaga 3/5 of the entire sugar quota of Hda. Escolastica for A Sugar (export to U.S.) or 4479 piculs of a sugar and 3/5 of the entire sugar quota of Hda. Escolastica for B and C sugar to be determined by the Sugar Quota Office every year due to the flexibility of this quota.

(b) To the Intestate of Jose Zaldarriaga or his Heirs 28.78 hectares of said parcels of land (Lots Nos. 936, 937, 940 and 941). To the Intestate of Jose Zaldarriaga or his Heirs 1/5 of the entire sugar quota of Hda. Escolastica for A Sugar or 1493 piculs of A Sugar (Export to U.S. and 1/5 of the entire sugar quota of Hda. Escolastica for B and C sugar to be determined by the Sugar Quota Office every year due to the flexibility of this quota.

(c) To the defendants Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus Zaldarriaga Jr. as legitimate heirs of Jesus Zaldarriaga 28.78 hectares of said parcels (Lots Nos. 936, 937, 940 and 941).

To the defendants Ernesto Zaldarriaga, Guadalupe Zaldarriaga, and Jesus Zaldarriaga Jr., 1/5 of the entire sugar quota of Hda. Escolastica for A Sugar or 1493 piculs of A Sugar (export to U.S.) and 1/5 of the entire sugar quota of Hda. Escolastica for B and C Sugar to be determined by the Sugar Quota Office due to the flexibility of this quota every year.

(d) In view of the fact that the boundaries of the respective share of each co-owner in the land is not yet delineated and marked, this Court hereby appoints Messrs. Jose Azcona, Clerk of Court of First Instance of this province and Segundo Hipolito as commissioners (sec. 3, Rule 71, Rules of Court) to make an equitable separation, delineation and partition of the respective share of the land pertaining to each co-owner in accordance with this decision taking into consideration the provision of Article 1085 of the New Civil Code. The commissioners shall make full and accurate report to this Court of all their proceedings as to partition.

5. The defendant Pedro Zaldarriaga is hereby sentenced and ordered to pay the intestate of Jose Zaldarriaga or his heirs the amount of Fifteen Thousand (P15,000.00) Pesos as moral damages, and the amount of Ten Thousand (P10,000.00) Pesos as exemplary or corrective damages.

6. The defendants Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus Zaldarriaga Jr. are hereby sentenced and ordered to pay the intestate; of Jose Zaldarriaga or his heirs the amount of Five Thousand (P5,000.00) Pesos as moral damages and the amount of Five Thousand (P5,000.00) Pesos as exemplary or corrective damages.

7. All the defendants are hereby ordered to pay the intestate of Jose Zaldarriaga or his heirs the amount of Ten Thousand (P10,000.00) Pesos as attorney's fees.

8. The counterclaim of the defendants is hereby dismissed as without merit.

9. The defendants are hereby ordered to pay the costs of this suit."

Notice of the above decision was served on Atty. Eleuterio J. Gustilo, attorney of record of the defendants in said case, on April 16, 1957. On May 3 of the same year he filed a motion for reconsideration and new trial which, after proper hearing, was denied by the court on July 24, 1957. A copy of the order of denial was served on Atty. Gustilo on July 31 of the same year.

On May 29, 1957—two months before notice of the order of denial above mentioned—defendant Pedro Zaldarriaga died, of which fact the court was duly informed. On August 7, 1957, in Special Proceedings No. 4476 of the Court of First Instance of Negros Occidental, petitioner Consuelo Tan Vda. de Zaldarriaga was appointed Special Administratrix ad litem to represent the Intestate Estate of the deceased Pedro Zaldarriaga in the action for partition, Civil Case 2705, and thereafter she filed an urgent motion dated August 9, 1957 for court leave to substitute the deceased defendant Pedro Zaldarriaga. It was only on October 5, 1957, however, that the court

approved said urgent motion and notice of the order to that effect was served on the Special Administratrix ad litem only on October 12 of the same year.

On August 12, 1957, that is, almost two months prior to the approval of the urgent motion for substitution above referred to, petitioner filed an urgent motion on behalf of the Intestate Estate of the deceased Pedro Zaldarriaga praying that she be given an extension of five days to be counted from receipt of the order approving the urgent motion for substitution, to perfect an appeal from the decision of the court. Said motion was immediately acted upon by the court favorably. On August 10, 1957 the other defendants in the case filed their cash appeal bond, and on the 12th of the same month they filed their notice of appeal and record on appeal, which were approved by the court on October 9, 1957.

On October 15, 1957, that is, within the five days' extension granted by the court to herein petitioner within which to perfect her appeal on behalf of the Intestate Estate of Pedro Zaldarriaga, she filed a pleading entitled NOTICE OF APPEAL, APPEAL BOND and RECORD ON APPEAL in which she prayed (1) that the record on appeal filed by her co-defendants be approved "with respect to the deceased defendant Pedro Zaldarriaga" and (2) that the aforesaid record on appeal be forwarded to the Supreme Court only after their approval for the purposes of the appeal interposed on behalf of the Intestate Estate of the deceased Pedro. Zaldarriaga. In view of the opposition filed by respondent Basilia F. Vda. de Zaldarriaga the lower court issued its order of October 19, 1957 whereby, instead of allowing the herein petitioner, as Special Administratrix ad litem, to adopt the record on appeal filed by the other defendants, she was given an additional period of 20 days from October 19, 1957 within which to file a separate record on appeal. On November 6, 1957, that is, well within the said period of 20 days, petitioner filed a separate record on appeal. However, on October 29, 1957, that is, prior to the filing of said separate record on appeal, respondent Basilia F. Vda. de Zaldarriaga filed a motion to dismiss the appeal of the Intestate Estate of the deceased Pedro Zaldarriaga upon the ground that the Special Administratrix ad litem had not filed a record on appeal and an appeal bond, neither within the 30-day reglementary period from notice of judgment, nor within the extension of five days granted by the court, which expired on October 17, 1957, it appearing that what said Special Administratrix had done was merely to file a motion asking for leave to adopt the appeal bond and the record on appeal filed by the other defendants in the case. Notwithstanding the petitioner's opposition, the court sustained the motion to dismiss and declared the decision final as far as the Estate of the deceased Pedro Zaldarriaga was concerned. The court also denied the motion for reconsideration of said order timely filed by petitioner herein.

While upon the facts above stated, the respondent court, in our opinion, erred firstly, in not allowing petitioner to adopt the appeal bond and the record on appeal filed by the other defendants and which the court had already approved, and secondly, in sustaining the motion to dismiss filed by respondent Basilia F. Vda. de Zaldarriaga, because (a) the appeal bond and record on appeal filed by the other defendants were sufficient for the purposes of the appeal interposed by the herein petitioner, and (b) because the latter filed her separate record on appeal within the extension granted by the lower court itself, still we are constrained to deny the present petition for mandamus to compel the respondent court to give due course to petitioner's appeal, for the reason that the decision from which she and her co-defendants are appealing is not final but interlocutory (*Fuentebella vs. Carrascoso*, G. R. No. 48102, May 27, 1942). It is true that in *Africa vs. Africa*, 42 Phil., 934 and other cases it was held—contrary to the rule laid down in *Ron vs. Mojica*, 8 Phil., 328; *Rodriguez vs. Ravelan*, 17 Phil., 63—that in a partition case where defendant relies on the defense of exclusive ownership, the action becomes one for title and the decision or order directing partition is final, but the ruling to this effect has been expressly reversed in the *Fuentebella* case which, in our opinion, expresses the correct view, considering that a decision or order directing partition is not final because it leaves something more to be done in the trial court for the complete disposition of the case, namely, the appointment of commissioners, the proceedings to be had before them, the submission of their report

which, according to law, must be set for hearing. In fact, it is only after said hearing that the court may render a final judgment finally disposing of the action (Rule 71, section 7, Rules of Court). Precisely in accordance with this procedure the decision from which petitioner and her co-parties intend to appeal provides for the appointment of the Clerk of Court and Segundo Hipolito as Commissioners "to make an equitable separation, delineation and partition of the respective share of the land pertaining to each co-owner, etc."

Wherefore, the petition under consideration is denied, but with instructions to the respondent court to proceed in Civil Case No. 2705 in accordance with this decision and the procedure provided in Rule 71 of the Rules of Court.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera and Paredes, JJ., concur.

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