

GENOVEVA BELTRAN, ET AL., PLAINTIFFS AND APPELLEES, VS. CORAZON AYSON AND FABIAN JIMENEZ, DEFENDANTS AND APPELLANTS.

G.R. No. 14662. January 30, 1962

Ponente: DE LEON, J.

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DE LEON, J.:

This action was commenced on May 16, 1955 principally to set aside a deed of extrajudicial partition registered with the proper Registry of Deeds, pursuant to Section 1, Rule 74, of the Rules of Court (extrajudicial settlement by agreement between heirs), and the Torrens title issued by virtue thereof. In their answer, the defendant spouses interposed the main defense of bar by the statute of limitations. On the day of trial, the parties stipulated on the facts, thus:

"1. That there is no question about the Original Certificate of Title No. 51521 in the name of Macario Beltran;

"2. That a deed of partition was made in the year 1943 by Corazon Ayson and Jose de la Cruz;

"3. That pursuant to the deed of extrajudicial partition, the defendants obtained Transfer Certificate of Title No. 23236;

"4. That the plaintiffs are the nephews and nieces of Macario Beltran, being the children of his brothers and sisters; Leonarda Beltran, sister of Macario Beltran, survived by Bartolome, Mariano, Felipe, Juan, Felix, Marcela, Pilar, all surnamed Jimenez; Marcela died in 1950, survived by her children, Juanita and Gregorio, both surnamed Austria; Genoveva Beltran died survived by Damian, Petra, Dionisio, and Donate, all surnamed De la Cruz, as children;

"5. That the defendant is the widow of Macario Beltran;

"6. That the plaintiffs were not aware of the deed of extrajudicial partition until shortly before the filing of the complaint;

"7. That the plaintiffs admit that the defendants are in possession from 1943 up to the present;

"8. That the parties reserve the right to present certified copy of Original Certificate of Title No. 51521, and the deed of extrajudicial partition made by the defendants with Jose de la Cruz which was used in securing Transfer Certificate of Title No. 23235;

"9. That Transfer Certificate of Title No. 23235 is presented by the defendants as Exhibit 1 and the Tax receipts as Exhibits 2, 2-a up to 2-i, as well as Tax Declaration No. 23396 as Exhibit 3;

"10. That the certified copy of the deed of extrajudicial partition by Jose de la Cruz and the defendant executed in 1943 before Notary Public Onofre Sison Abalos under Document No. 180, Page 88, Book No. X, Series of 1943 is hereby marked Exhibit X by common agreement, and the certified true copy of Original Certificate of Title No. 51521 to be marked as Exhibit Y by common agreement."

On September 19, 1958 the Court of First Instance of Pangasinan handed down a decision, declaring the plaintiffs the co-owners of the land in litigation, subject to the usufruct of defendant Corazon Ayson over one-half of the share of each co-owner, in accordance with Articles 946 and 953 in relation to Article 837 of the former Civil Code, the provisions of law controlling at the time of death of Macario Beltran, and ordering said defendant to execute at the expense of plaintiffs a deed of reconveyance for registration with the Registry of Deeds and the issuance of a new certificate of title in the names of said plaintiffs.

The case having been decided upon a stipulation of facts, the defendants appealed directly to this Court. Appellants invoke Section 4 of Rule 74, which reads:

"SEC. 4. Liability of distributees and estate.—If it shall appear at any time within two years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two years after such distribution, notwithstanding any transfers of this real estate that may have been made."

and contend that the instant action has prescribed for failure of appellees to pursue the remedy pointed out by the Rules within two years after the registration of the deed of extrajudicial partition for the purpose of securing their lawful shares in the property, citing in support of such argument the case of *McMicking vs. Sy Con Bieng*, 21 Phil. 213. This Court has previously ruled out such contention in the similar case of *Sampilo, et al. vs. Court of Appeals, et al.*, 103 Phil., 70; 55 Off. Gaz., 5772., wherein the case of *McMicking vs. Sy Con Bieng*, supra, was also cited by the appellants therein:

"* * * the provisions of Section 4 of Rule 74, barring distributees or heirs from objecting to an extrajudicial partition is applicable only (1) to persons who have participated or taken part or had notice of the extrajudicial partition, and, in addition, (2) when the provisions of Section 1 of Rule 74 have been strictly complied with, i.e., that all the persons or heirs of the decedent have taken part in the extrajudicial settlement or are represented by themselves or through guardians.

"The next contention of appellants is that plaintiff's action is barred by the statute of limitations. The origin of the provision (Section 4, Rule 74), upon which this contention is predicated, which is Section 696 of Act No. 190, fails to support the contention. In the first place, there is nothing therein, or in its sources, which shows clearly a statute of limitations and a bar of action against third persons. It is only a bar against the parties who had taken part in the extrajudicial proceedings, but not against third persons not parties thereto. In the second place, the statute of limitations is contained in a different chapter of Act No. 190, Chapter XL, and if Section 596 of the Act had been meant to be a statute of limitations, it would naturally have been included in the chapter which defines the statute."

In the instant case, both requirements were not complied with, because not all the interested heirs have participated in the extrajudicial settlement, it being admitted that the deceased left, aside from his widow, appellant Gorazon Ayson, and his half-brother, Jose de la Cruz, nephews, nieces and a sister living at tag time of his death, and that the latter heirs were not aware of the deed of extrajudicial partition until shortly before the filing of their complaint (pars. 4 and 6, Stipulation of Facts).

Neither is Section 43, par. 3, of Act 190 (now Article 1146, New Civil Code), also invoked by appellants, applicable to the facts of the case. Assuming that there was fraud as the widow and half-brother of the deceased had declared in the deed of extrajudicial partition that they are the sole surviving and exclusive heirs of the late Macario Beltran, it does not appear that the fouryear period have elapsed when the action was instituted. It is interesting to note that the court a quo rejected the contention of appellees that appellant Corazon Ayson executed the deed of extrajudicial partition fraudulently and in bad faith, while the parties stipulated that the appellees were not aware of the deed of extrajudicial partition until shortly before the filing of their complaint.

Appellant also invokes Article 1076 of the Old Civil Code (now Article 1100 of the New Civil Code), which reads:

"ART. 1076. The action for rescission on account of lesion shall prescribe after four years from the time the partition was made."

The above article is not applicable, for the reason that this is not an action for rescission because the appellees herein were not parties to the extrajudicial partition sought to be annulled. It is true that the prescriptive period for rescission or annulment is the same. But, as has been stipulated by the parties, the appellees became aware of the extra judicial partition only shortly before the filingof their complaint for annulment, and consequently, the prescriptive period of four years should be counted from the date that they became aware of the extrajudicial partition.

Wherefore, the judgment appealed from is hereby affirmed in all its parts, with costs against defendants-appellants.

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

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