

TIMOTEO AFRICA ET AL., PLAINTIFFS AND APPELLEES, VS. BENITO AFRICA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 15031. March 15, 1921

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The motion for reconsideration having been denied on November 17th, without prejudice of writing an opinion containing our reasons therefor, the plaintiffs filed another motion for reconsideration on the 30th of the same month, alleging that the case concerns a continuing and subsisting trust in which prescription does not lie.

This gives us an opportunity to enlarge upon our decision rendered in this case on September 29th of last year.[1]

Judgment having been entered by this court on September 29, 1920, reversing the judgment appealed from, the appellees filed on October 6, last, a motion asking for the reconsideration of said decision. It was alleged in the motion: (1) That no partition has been effected of the properties in question either before or after the death of the parties' predecessors in interest, for the properties given to the heirs were delivered to them merely as advances upon account of their shares of the inheritance, said predecessors in interest themselves having prohibited the partition of their estate during the lifetime of either of them, but who made an unjust partition or distribution prejudicial to the hereditary rights of the heirs; (2) that this court has no jurisdiction to take cognizance of this appeal because it is premature; (3) that the properties delivered to them were subject to collation; and (4) that the defendants have illicitly acquired by prescription the ownership of the property delivered to them.

The party seeking reconsideration bases his motion on the seventh clause of the will which says: "No partition of any kind whatever can be made of our aforesaid properties so long as either one of us is alive, so that whoever of us shall survive shall have the administration of such properties described in the inventory from number one to number four and of those mentioned in numbers seven and eight, as have not been delivered to each one of them; and we ratify the deliveries made during our lifetime to each of them."

To what does the phrase "our aforesaid properties" refer? Evidently it refers to the property mentioned in the sixth clause of the will which the testators themselves had distributed among their heirs and prohibited any other partition and ratified the delivery of property which the testators, in their lifetime, had made to each of the heirs. There is a conflict of opinion between the parties as to the interpretation of the paragraph quoted from the seventh clause of the will, for while counsel for the plaintiffs contends that by virtue of the prohibition contained therein no partition of the properties in question could have been effected, the attorneys for the defendants, on the contrary, maintain that said prohibition refers exclusively to a new partition during the lifetime of the testators of the properties assigned in the will to the heirs.

To this end, the defendants, in their answer to the first motion for reconsideration, state the following: "Giving these provisions of the will a reasonable and even a literal interpretation, it results: (1) That when the testators executed the will, they had already delivered to their children the greater portion of their estate; (2) that by virtue of the will said cession was fully confirmed and ratified; (3) that on the date of the execution of the will there

were also other properties not as yet delivered to the heirs; (4) that by virtue of the seventh clause of the will, these properties were adjudicated to the heirs therein mentioned; (5) that as to the properties thus ceded or adjudicated, the testators prohibited a new partition during their lifetime, because they had already made said partition in their will; (6) that the only properties left undisposed of were those described in numbers 1 to 4 and 7 and 8 of the inventory; and (7) that these last properties should be administered by the surviving spouse until his or her death."

We are inclined to accept this last construction. Considering the different provisions of the will, we are of the opinion that what was prohibited was a partition different from that which the testators ordered in the sixth clause, where they say: "We order that the partition that shall be made of our said properties be in the following manner."

The will describes in this clause the kinds of property that should be delivered to the heirs. And at this point the question arises whether the estate was or was not partitioned in accordance with the provisions of this clause. According to the evidence in the record, the provisions of the will were complied with. The testimony of the defendant Benito Africa testifying as a witness for the plaintiffs, proved the manner in which the distribution of said hereditary property was made. Another witness for the plaintiffs, Wenceslao Reyes, clearly states in his testimony (p. 85, S. N.) that the properties which they claim are those described in paragraphs C, D, and E of the complaint. These are his own words: "These parcels C, D, and E are what we claim." And to whom were these parcels given?

Parcel C described in number six of the inventory was partitioned among the brothers Francisco, Lino, and Benito, in accordance with clause six of the will; parcel D described in number seven of the inventory was allotted to Benito Africa in conformity with clause six of the will; and parcel E, number eight of the inventory, the products of which were destined to be spent for masses, was sold by Da. Valentina Macarandang, wife of D. Galo. Africa, to her daughter Guillerma Africa, to defray her personal expenses, said parcel having passed later on to a daughter of Guillerma named Salustia Solis.

As to parcels A, B, F, G; H, I, and J, it appears from the testimony of Benito Africa that about 1887, in accordance with clause six of the will, they were distributed among some heirs in addition to what each had previously received, and since then the heirs have been in possession, as owners of the properties allotted to them, some of which were alienated by them to third persons, as shown by the documents of conveyance introduced in evidence.

With regard to the properties mentioned in numbers 1, 2, 3, 4, 7, and 8 of the inventory, and which according to clause seven had not been included in the partition, it likewise appears from the uncontradicted testimony of Benito Africa: (1) That the palay was consumed by the widow and the croppers on shares, it being unknown whether the money advanced to the latter has been returned by them; (2) that almost all of the cattle and horses died of rinder-pest; (3) that the lot and the four parcels of irrigable land in Rosario and the land planted to bamboos were delivered by Galo Africa to his daughter Guillerma (p. 42, S. N.) and the latter's heirs sold them afterwards to other; (4) that the coffee land of 130 cavanos of seed area in Tanguay was partitioned among his children Juan, Maria, Francisca, Dorotea, Ignacia, and Guillerma (p. 27, S. N.); (7) that the coffee land of 20 cavanos of seed area was delivered to Benito Africa; and (8) that the parcel of 7 cavanos of seed area was sold by Valentina Macarandang to her daughter Guillerma and is at present in the possession of her daughter Salustia Solis (p. 39, S. N.).

All of which shows that the defendants are right in their contention that in this case there is nothing to be partitioned, for everything has already been partitioned among the heirs in accordance with the will.

In denying the partition that took place and the delivery of the properties to the heirs, the movers urge the injustice which their predecessors in interest committed in granting to some heirs lands of greater area than to others. It

seems that what plaintiffs seek is a rescission of the partition already made, in order to reduce the portions adjudicated which they consider inofficious, and if so the action which they have instituted comes too late and is extemporaneous.

As to the second ground of the motion, the movers argue that, as the present case relates to partition of property, the decree of the court ordering the partition is interlocutory and unappealable, as it does not definitely settle the controversy and, therefore, this court is without jurisdiction to take cognizance of this appeal.

This argument begs the question. The defendants having denied the pro indiviso character of the properties in dispute, the principal question at issue is whether or not there has been a partition. Of the several defendants, Benito Africa and the children of the deceased Lino Africa only appeared, and they state that parcels B, D, I, and H of the complaint are the properties adjudicated to them in the partition of the inheritance left by their predecessor, D. Galo Africa. The court decided that these hereditary properties left by the spouses Galo Africa and Valentina Macarandang are still pro indiviso wherefore it ordered that they be partitioned in accordance with the bases provided in the will. It is now claimed by the movers that this decision of the court is interlocutory and not being appealable, this court is without jurisdiction to take cognizance of this appeal.

This contention is true in so far as it refers to special proceedings, testate or intestate, had in accordance with the Code of Civil Procedure, in which the existence of an unsettled inheritance is taken for granted. In such cases the order issued by the court, after the settlement of all the claims against the estate, being interlocutory, is unappealable, as has been repeatedly declared by this court. This is based on the fact that it is not the order of partition, but the final decree or judgment approving the partition made by the heirs themselves or the commissioners appointed by the court that finally settles the case, and for that reason the latter kind of order is appealable.

The complaint filed in the present case was entitled an action of partition but, properly speaking, it is one for the recovery of property and not for the rescission of a partition. In the case of *Bargayo vs. Camumot* (40 Phil., 857), this court said:

"It must be borne in mind that in an action for partition the plaintiff's right over an aliquot part of the thing held in common is not in issue; said thing is taken for granted as owned in common by the parties. But from the moment that one of the co-owners, at least, claims that he is the absolute and exclusive owner of all the community properties and denies the others any share therein, the question then involved is no longer one of partition but of ownership, although, if the community of property is proven, the consequent partition thereof be afterwards performed. In such a case, the action then is one of partition of inheritance if it is between coheirs, an action similar to the recovery of realty to which in no way can article 1965 of the Civil Code be applied.

"This same interpretation, which, strictly speaking, is not properly an interpretation but a mere exposition of what the aforementioned article clearly and plainly says, is supported by Spanish authorities and decisions. Thus, the eminent commentator Manresa, in discussing the provision of this article, says: '* * * the imprescriptibility of the action to demand the division of a succession known in Roman law as *familise erciscundæ*, cannot be invoked when one of the coheirs has possessed the inheritance as owner and for a period sufficient to acquire it by prescription, because such action necessarily arises from the possession in common or pro indiviso of the inheritance * * *.' It is evident that the said commentator, a luminary of Spanish juridical science, holds the doctrine that a coheir can acquire an inheritance by prescription and says that an action for partition of an inheritance arises from the possession in common, i. e., it presupposes the possession in common or pro indiviso, or what amounts to the same thing, that in an action for the partition of an inheritance it is presumed, it is admitted, that the contending parties are co-owners."

The court decided that the properties which the defendants claim to be their own, because they had been adjudicated to them in the partition of the properties of their common predecessors, should now be partitioned. In other words, the court decided that the properties in the possession of the defendants, as their own, should be returned by them and partitioned among the heirs. This decision is final with respect to the claim of the defendants. Whether this decision is acquiesced in or affirmed, the defendants would have no alternative but to suffer the loss of what they claim is their property, because, accepting the theory of the defendants, the subsequent partition proceedings would merely serve the purpose of determining the share to which each heir is entitled. The judgment appealed from is not a mere interlocutory order like that decreeing the partition of an estate in special proceedings, testate or intestate, in which the undivided character of the property is admitted. The judgment appealed from holding that there has been no partition, that the partition made by the testators should be rescinded, and that the defendants should renounce the ownership of the property that was allotted to them in order that it may be partitioned again among the heirs, finally settles the questions raised in the case. From which it follows that the cases cited by the movers are not applicable to the present case, because the three cases were true partition cases in which the undivided character of the estate was an admitted fact. Thus, in the case of Montemayor vs. Cunanan (14 Phil., 454), and of Rustia Ponce vs. Heirs of Ponce (R. G. No. 16426, resolution of August 26, 1920, not reported) cited by the movers, the question in the first case related to a partition of conjugal property and the second case involved the partition of property, administered by one of the coheirs under the court's orders. In the case of Ron vs. Mojica (8 Phil., 328), also cited by the movers, the decree appealed from held that the plaintiffs had the right to ask the partition of the properties described in the complaint, and consequently ordered the partition thereof, designating the persons who should share therein. The essential feature that distinguishes this case from the case at bar is that in the former it was not claimed nor proved by the defendant Mojica that, prior to the filing of the complaint, due partition of the property claimed had been made among the heirs. It is evident that the decision appealed from was not final and in view of section 123 of the Code of Civil Procedure this court decided that the appeal was improperly taken.

In the instant case the decision of the court ordering the partition is in fact a declaration of ownership in favor of the plaintiffs over a portion of the litigated property and a negation of the exclusive ownership that the defendants claim to have over the property now in their possession, and such a decision can not be likened to an order rendered in a special probate proceeding in which the undivided nature of the inheritance property is always taken for granted. An order of this nature does not settle any question of ownership, but merely describes the procedure; while a decision ordering a partition like the case under consideration, in which the existence of the community property is denied, finally settles the principal question, that is, the ownership claimed by the defendants. Hence we are of the opinion, and so hold, that the decision of the court below rendered in this case is final and, therefore, appealable, and this court has jurisdiction to take cognizance of this appeal and to decide the controversy upon its merits.

The arguments advanced in support of the other grounds of the motion, namely, the susceptibility to collation and imprescriptibility of the ownership of the properties in question, and the existence of a continuing and subsisting trust, are based upon the supposition that the hereditary estate had not been partitioned among the heirs. In view of our conclusion in discussing the first ground of relief, we deem it unnecessary further to discuss the question to show that the arguments adduced have no bearing in the present case, as upon the evidence before us, we are of the opinion that the distribution of the property left by the deceased spouses D. Galo Africa and Da. Valentina Macarandang, and its delivery to their successors in interest, effected nearly a quarter of a century ago, have been completely performed.

Wherefore, the motion for reconsideration filed by the plaintiffs-appellees dated November 30, 1920, is hereby denied. So ordered.

Araullo, Street, Malcolm, and Avancena, JJ., concur.

Motion denied.

[1] See decision, page 902, ante.

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