

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

G. R. No. 15031. September 29, 1920

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an action for fte partition of the property of an inheritance worth more than P30,000.

In their amended complaint filed in the Court of First Instance of Batangas on February 1, 1918, the plaintiffs allege that they, and the defendants, are descendants in a direct line of the spouses Galo Africa and Valentina Macarandang, who died on the 25th of April, 1889, and the 17th of June, 1896, respectively; that the properties in question came from said spouses, and that since their death the said properties have been administered by their sons, the defendants Benito and Lino Africa, who have never rendered any account of their administration either to the heirs of the deceased Galo Africa and Valentina Macarandang, or to any court of competent jurisdiction, nor have they made any "just and equitable distribution" of said properties among the heirs of their common predecessors in interest. Wherefore, plaintiffs pray that the defendants be ordered to render a true and proper accounting of their administration, and, under the direction of the court, make a just and equitable distribution of the aforementioned properties among the heirs, and to pay the costs.

Of the defendants, Benito Africa and the heirs of Lino Africa only appeared. They denied all the allegations of the complaint, and, as a special defense, alleged that during the lifetime of the deceased Galo Africa and Valentina Macarandang, all of their property had been partitioned, and the respective shares awarded and delivered to each heir, their predecessors in interest reserving only for their support the parcel of land described in clause (e) of paragraph VI of the complaint which was later sold by Valentina Macarandang to her daughter Guillerma Africa, and that the other heirs have been in possession of their respective shares, as owners, for more than thirty years; wherefore, they prayed that the complaint be dismissed and that plaintiffs action be declared prescribed, with costs against the plaintiffs.

The case having been duly tried, the court, on July 23, 1918, rendered its decision declaring that the properties in question are still undivided, and ordered the defendant Benito Africa: (1) To render an accounting of the administration of the properties left by Galo Africa and Valentina Macarandang; (2) to file an inventory of the said properties within forty-five days after the decision became final; (3) to make the final partition of the aforesaid properties in accordance with the provision of the will (Exhibit 8), but without impairing the legitime of each heir; (4) to submit a tentative partition for the approval of the court; and (5) to deliver to each heir, who has received less than his legitime, either in cash or in kind, whatever amount is necessary to complete it; without finding as to costs.

From that decision defendants appealed and filed the corresponding bill of exceptions. To the order denying their motion for a new trial on the ground that the decision was contrary to the weight of the evidence, defendants duly excepted.

The appellants allege that the lower court erred: (a) In holding that the properties in question were still undivided, and (b) in not holding that the action brought by plaintiffs, as well as any right that they might have had to the said properties, has prescribed.

It appears from the record that on January 21, 1887, the spouses Galo Africa and Valentina Macarandang executed their joint will in Tagalog, containing an inventory of their property, and the said will was duly recorded in the office of the clerk of the court of Batangas on January 22, 1887. In their will the testators declare having delivered to each and every one of their heirs certain portions of their estate as their hereditary share of the inheritance. Galo Africa died on the 25th of April, 1889, and Valentina Macarandang on the 17th of July, 1896.

One year before the death of Valentina Macarandang, the defendant Benito Africa commented possessory information proceedings (Exhibit 11) in the Court of First Instance of Lipa, covering four parcels of land, and those described in the first, third, and fourth paragraphs thereof are the same lands mentioned in clauses (f), (b), and (c) of the complaint. One of the plaintiffs herein, Sixto Africa, signed the record of those proceedings as a sign of conformity to the petition of Benito Africa. Said possessory information was recorded in the registry of deeds of Batangas on April 10, 1895.

Plaintiffs Wenceslao Reyes, Floberto Argiuelles and Primitivo Latorre admit having received certain lands from their greatgrandfather Galo Africa and greatgrandmother Valentina Macarandang, by themselves or through their predecessors in interest, and that the said lands were by them sold, either personally or through their predecessors, to third persons, as evidenced by Exhibits 2, 3, and 4.

Benito Africa testified positively, without having been contradicted, that of the properties described in the complaint, he has in his possession parcels (b), (d), and (f) only and part of (c), all the rest being in the possession of his coheirs, their possession dating back more than thirty years. He named one by one the heirs who had received an allotment of the properties described in the complaint, stating that the same had been delivered to them by their respective deceased parents; and that the fungible property referred to in the will and in the inventory aforesaid have been consumed. Regarding the allotment and delivery of the properties in question to the heirs, no adequate evidence was introduced to rebut the testimony of this defendant.

In view of the foregoing, we conclude that this action of partition cannot be maintained. The properties sought to be partitioned by plaintiffs have already been delivered to the heirs unconditionally and irrevocably, and, therefore, no longer form part of the hereditary estate so that they could be partitioned. (*Segui vs. Segui*, 14 Phil., 102.) The heirs have been in the possession and enjoyment of these properties, as exclusive owners, for more than twenty years and any right that plaintiffs might have had to these properties has prescribed. (*Bargayo vs. Camumot*, 40 Phil., 857.) Plaintiffs' complaint seems to be based on the supposed injustice to them because of the disproportionate and unequal distribution of the estate made by their common predecessors in interest; if so, their action should be for the rescission of the partition, and even then their action also has prescribed on account of the length of time elapsed. (*Garcia vs. Tolentino*, 25 Phil., 102.)

Having come to this conclusion, we are of the opinion that the judgment appealed from should be, and is hereby, reversed, without finding as to costs. So ordered.

Johnson, Araullo, Malcolm, Avanceña and Moir, JJ., concur.

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