

**IN THE MATTER OF THE INTESTATE ESTATE OF THE DECEASED
MERCEDES CANO. FLORANTE C. TIMBOL, ADMINISTRATOR AND
APPELLEE VS. JOSE C. CANO, OPPOSITOR AND APPELLANT.***G.R. No. 15445. April 29, 1961*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of First Instance of Pampanga, Hon. Arsenio Santos, presiding, dated August 25, 1958, approving petitions of the administrator Florante C. Timbol dated January 6 and 8, 1958. The order appealed from authorizes the administrator to increase the area of a subdivision to be formed out of the lands under administration from 30 hectares to 41.9233 hectares and approves the plan of such increased area.

The intestate Mercedes Cano died in August, 1945, leaving as her only heir her son Florante C. Timbol then only 11 years old. On September 27, 1946, Jose Cano, brother of the intestate, was appointed administrator. On April 13, 1951 Jose Cano filed a petition, thru his counsel Atty. Filemon Cajator, also an uncle of the minor Florante C. Timbol, proposing that the agricultural lands of the intestate be leased to the administrator Jose Cano for an annual rental of P4,000, this rental to be used for the maintenance of the minor and the payment of land taxes and dues the government. Judge itdilberto Barot, then presiding the court, approved the motion in an order dated April 27, 1951, which reads:

"WHEREFORE, the motion of the administrator and his lawyer dated April 13, 1951, is hereby granted under the conditions therein set forth and the further condition that all previous obligations of the administration including the previous deficits are assumed by said administrator, and that the arrangement will continue only as long as, in the judgment of the Court, the same continues to be advantageous to the heir, Florante C. Timbol." (p. 27, Rec. on Appeal).

On January 14, 1956 the court, upon motion of the administrator and the conformity of the minor heir and his uncles, approved the reduction of the annual rental of the agricultural lands of the intestate leased to the administrator from P4,000 to P2,400 and the conversion of 30 hectares of the agricultural lands into a subdivision.

On April 2, 1957, upon motion of the administrator, a project of partition was approved, designating Florante C. Timbol the sole and exclusive heir of all the properties of the intestate.

On June 6, 1957 Florante C. Timbol was appointed administrator in place of Jose Cano and on January 6, 1958 he presented a motion, which he modified in a subsequent one of January 8, 1958, alleging among other things (a) that the area destined for the projected subdivision be increased from 30 hectares to 41.9233 hectares and (b) that the plan submitted be approved. The motions were approved but the approval was immediately thereafter set aside to give opportunity to the former administrator and lessee Jose Cano to formulate his objections to the motions. Cano's objections are (1) that the enlargement of the subdivision would reduce the land leased to him and would deprive his tenants of their landholdings, and (b) that he is in possession under express authority of the court, under a valid contract, and may not be deprived of his leasehold summarily upon simple petition.

The court granted the motions of the administrator, overruling the objections of Jose Cano, in the order now subject of appeal, which reads:

"The said contract of lease is on all fours illegal. Under article 1646 of the Civil Code of the Philippines,—a new provision—,'the persons disqualified to buy referred to in articles 1490 and 1491, are also disqualified to become lessees of the things mentioned therein', and under article 1491 (3) of the same Code, executors and administrators cannot acquire by purchase the property of the estate under administration.

"If, as already stated, Florante C. Timbol was only appointed administrator on June 6, 1957 and the said contract of lease having been executed on July 9, 1956, the same falls within the prohibition provided by law. However, Jose C. Cano avers that this court, in the instant proceeding's, cannot pass upon the legality of the aforesaid lease contract, but in its general jurisdiction. There is no need for the court to declare such contract illegal and, therefore, null and void as the law so expressly provides.

"Wherefore, in view of the foregoing considerations, the court hereby grants Florante C. Timbol's petitions dated January 6 and 8, 1958, approving the amended plan for subdivision, attached thereto, and overrules Jose C Cano's motion for reconsideration dated May 9, same year." (pp. 151-152, Record on Appeal)

The above order is the subject of the present appeal.

In the first assignment of error appellant claims that the consideration of the motions of the administrator of July 6 and 8, 1958, without due notice to him, who is a lessee is a violation of the Rules of Court. This objection lost its force when the court, *motu proprio*, set aside its first order of approval and furnished copy of the motions to appellant and gave him all the opportunity to present his objections thereto.

In the second and third assignments of error appellant argues that the court below, as a probate court, has no jurisdiction to deprive the appellant of his rights under the lease, because these rights may be annulled or modified only by a court of general jurisdiction. The above arguments are without merit. In probate proceedings the court orders the probate of the will of the decedent (Rule 80, Sec. 5); grants letters, of administration of the party best entitled thereto or to any qualified applicant (*Id.*, Sec. 6); supervises and controls all acts of administration; hears and approves claims against the estate of the deceased (Rule 87, Sec. 13); orders payment of lawful debts (Rule 89, Sec. 11); authorizes sale, mortgage or any encumbrance of real estate (Rule 90, Sec. 2); directs the delivery of the estate to those entitled thereto (Rule 91, Sec. 1). It has been held that the court acts as a trustee, and as such trustee, should jealously guard the estate and see "that it is wisely and economically administered, not dissipated. (*Tambunting vs. San Jose*, 97 Phil., 491.)

Even the contract of lease under which the appellant holds the agricultural lands of the intestate and which he now seeks to protect, was obtained with the court's approval. If the probate court has the right to approve the lease, so may it order its revocation, or the reduction of the subject of the lease. The act of giving the property to a lessee is an act of administration, also subject to the approval of the court. Of course, if the court abuses its discretion in the approval of the contracts or acts of the administrator, its orders may be subject to appeal and may be reversed on appeal; but not because the court may make an error may it be said that it lacks jurisdiction to control acts of administration of the administrator.

In the fourth assignment of error, appellant argues that the effect of the reduction of the area under lease would be to deprive the tenants of appellant of their landholdings. In the first place the tenants know or ought to know that the lands leased are lands under administration, subject to be sold, divided or finally delivered to the heir, according to the progress of the administration of the lands of the intestate. The order appealed from does not have the effect of immediately depriving them of their landholdings; the order does not state so, it only states that the lands leased shall be reduced and subdivided. If they refuse to leave their landholdings, the administrator will

certainly proceed as the law provides. But in the meanwhile, the lessee cannot allege the rights of his tenants as an excuse for refusing the reduction ordered by the court.

In the fifth assignment of error, appellant claims that his rights as lessee would be prejudiced because the land leased would be reduced without a corresponding reduction in the rentals. This would be a matter to be litigated between the administrator and himself before the probate court. But the fact of the prejudice alone cannot bar the reduction of the land leased, because such reduction is necessary to raise funds with which to pay and liquidate the debts of the estate under administration.

The sixth assignment of error merits no attention on our part; it is appellant himself, who as administrator since 1945, has delayed the settlement of the estate.

In the seventh assignment of error, appellant argues that since the project of partition had already been approved and had become final, the lower court has lost jurisdiction to appoint a new administrator or to authorize the enlargement of the land to be converted into a subdivision. This assignment of error needs but a passing mention. 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. In the case at bar the debts had not yet been paid, and the estate had not yet been delivered to the heir as such heir.

We have taken pains to answer all the arguments adduced by the appellant on this appeal. But all said arguments are squarely laid to naught by the declaration of the court that the lease of the agricultural lands of the estate to the appellant Cano, who was the administrator at the time the lease was granted, is null and void not only because it is immoral but also because the lease by the administrator to himself is prohibited by law. (See Arts. 1646 and 1491, Civil Code of the Philippines). And in view of the declaration of the court below that the lease is null and void, which declaration we hereby affirm, it would seem proper for the administrator under the direction of the court, to take steps to get back the lands leased from the appellant herein, or so much thereof as is needed in the course of administration.

The court's order appealed from is hereby affirmed, with costs against the appellant.

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

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