

TIRSO T. REYES, AS GUARDIAN OF THE MINORS, AZUCENA, FLOR-DE-LIS AND TIRSO, JR., ALL SURNAMED REYES Y BARRETTO, PLAINTIFF-APPELLANT, VS. LUCIA MILAGROS BARRETTO-DATU, DEFENDANT-A...

G.R. No. 17818. January 25, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal from a Judgment of the Court of First Instance of Bulacan, in its Civil Case No. 1084, dis-missing the complaint of appellant Tirso T. Reyes and ordering the same to deliver to the defendant-appellee, Lucia Milagros Barretto Datu, the properties received by his deceased wife under the terms of the will of the late Bibiano Barretto, consisting of lots in Manila, Rizal, Pampanga and Bulacan, valued at more than P200,000.

The decision appealed from sets the antecedents of the case to be as follows:

"This is an action to recover one-half share in the fishpond, located in the barrio of San Roque, Hagonoy, Bulacan, covered by Transfer Certificate of Title No. T-13734 of the Land Records of this Province, being the share of plaintiff's wards as minor heirs of the deceased Salud Barretto, widow of plaintiff Tirso Reyes, guardian of said minors.

It appears that Bibiano Barretto was married to Maria Gerardo. During their lifetime they acquired a vast estate, consisting of real properties in Manila, Pampanga, and Bulacan, covered by Transfer Certificates of Title Nos. 41423, 22443, 8858, 32989, 31046, 27285, 6277, 6500, 2057, 6501, 2991, 57403 and 12507/T-337.

When Bibiano Barretto died on February 18, 1936, in the City of Manila, he left his share of these properties in a will to Salud Barretto, mother of plaintiff's wards, and Lucia Milagros Barretto and a small portion as legacies to his two sisters Rosa Barretto and Felisa Barretto and his nephew and nieces. The usufruct of the fishpond situated in barrio San Roque, Hagonoy, Bulacan, above-mentioned, how-ever, was reserved for his widow, Maria Gerardo. In the meantime, Maria Gerardo was appointed administratrix. By virtue thereof, she prepared a project of partition, which was signed by her in her own behalf and as guardian of the minor Milagros Barretto. Said project of partition was approved by the Court of First Instance of Manila on Nov-ember 22, 1939. The distribution of the estate and the delivery of the shares of the heirs followed forthwith. As a consequence, Salud Barretto took immediate possession of her share and secured the cancellation of the original certificates of title and the issuance of new titles in her own name.

Everything went well since then. Nobody was heard to complain of any irregularity in the distribution of the said estate until the widow, Maria Gerardo died on March 5, 1948. Upon her death, it was discovered that she had exe-cuted two wills, in the first of which, she instituted Salud and Milagros, both surnamed Barretto, as her heirs; and, in the second, she revoked the same and left all her pro-perties in favor of Milagros Barretto alone. Thus, the later will was allowed and the first rejected. In rejecting the first will presented by Tirso Reyes, as guardian of the children of Salud Barretto, the lower court held that Salud was not the daughter of the decedent Maria Gerardo by her husband Bibiano Barretto. This ruling was appealed to the Supreme Court,

which affirmed the same.[1]

Having thus lost this fight for a share in the estate of Maria Gerardo, as a legitimate heir of Maria Gerardo, plaintiff now falls back upon the remnant of the estate of the deceased Bibiano Barretto, which was given in usufruct to his widow Maria Gerardo. Hence, this action for the recovery of one-half portion thereof.

This action afforded the defendant an opportunity to set up her right of ownership, not only of the fishpond under litigation, but of all the other properties willed and delivered to Salud Barretto, for being a spurious heir, and not entitled to any share in the estate of Bibiano Barretto, thereby directly attacking the validity, not only of the project of partition, but of the decision of the court based thereon as well.

The defendant contends that the Project of Partition from which Salud acquired the fishpond in question is void AB-INITIO and Salud Barretto did not acquire any valid title thereto, and that the court did not acquire any jurisdiction of the person of the defendant, who was then a minor."

Finding for the defendant (now appellee), Milagros Barretto, the lower court declared the project of partition submitted in the proceedings for the settlement of the estate of Bibiano Barretto (Civil Case No. 49629 of the Court of First Instance of Manila) to be null and void ab initio (not merely voidable) because the distributee, Salud Barretto, predecessor of plaintiffs (now appellants), was not a daughter of the spouses Bibiano Barretto and Maria Gerardo. The nullity of the project of partition was decreed on the basis of Article 1081 of the Civil Code of 1889 (then in force) providing as follows:

"A partition in which a person was believed to be an heir, without being so, has been included, shall be null and void."

The court a quo further rejected the contention advanced by plaintiffs that since Bibiano Barretto was free to dispose of one-third (1/3) of his estate under the old Civil Code, his will was valid in favor of Salud Barretto (nee Lim Boco) to the extent, at least, of such free part. And it concluded that, as defendant Milagros was the only true heir of Bibiano Barretto, she was entitled to recover from Salud, and from the latter's children and successors, all the properties received by her from Bibiano's estate, in view of the provisions of Article 1456 of the new Civil Code of the Philippines establishing that property acquired by fraud or mistake is held by its acquirer in implied trust for the real owner. Hence, as stated at the beginning of this opinion, the Court a quo not only dismissed the plaintiffs' complaint but ordered them to return the properties received under the project of partition previously mentioned as prayed for in defendant Milagros Barretto's counterclaim. However, it denied defendant's prayer for damages. Hence, this appeal interposed by both plaintiffs and defendant.

Plaintiffs-appellants correctly point out that Article 1081 of the old Civil Code has been misapplied to the present case by the court below. The reason is obvious: Salud Barretto admittedly had been instituted heir in the late Bibiano Barretto's last will and testament together with defendant Milagros hence, the partition had between them could not be one such had with a party who was believed to be an heir without really being one, and was not null and void under said article. The legal precept (Article 1081) does not speak of children, or descendants, but of heirs (without distinction between forced, voluntary or intestate ones), and the fact that Salud happened not to be a daughter of the testator does not preclude her being one of the heirs expressly named in his testament; for Bibiano Barretto was at liberty to assign the free portion of his estate to whomsoever he chose. While the share (1/2) assigner to Salud impinged on the legitime of Milagros, Salud did not for that reason cease to be a testamentary heir of Bibiano Barretto.

Nor does the fact that Milagros was allotted in her father's will a share smaller than her legitime invalidate the institution of Salud as heir, since there was here no preterition, or total omission, of a forced heir. For this reason, *Neri vs. Akutin*, 72 Phil. 322, invoked by appellee, is not at all applicable, that case involving an instance of

preterition or omission of children of the testator's former marriage.

Appellee contends that the partition in question was void as a compromise on the civil status of Salud in violation of Article 1814 of the old Civil Code. This view is erroneous, since a compromise presupposes the settlement of a controversy through mutual concessions of the parties (Civil Code of 1889, Article 1809; Civil Code of the Philippines, Art. 2028); and the condition of Salud as daughter of the testator Bibiano Barretto, while untrue, was at no time disputed during the settlement of the estate of the testator. There can be no compromise over issues not in dispute. And while a compromise over civil status is prohibited, the law nowhere forbids a settlement by the parties over the share that should correspond to a claimant to the estate.

At any rate, independently of a project of partition which, as its own name implies, is merely a proposal for distribution of the estate, that the court may accept or reject, it is the court alone that makes the distribution of the estate and determines the persons entitled thereto and the parts to which each is entitled (Comia vs. Reyes, 63 Phil. 629, 643; Act 190, Section 750; Rule 90, Rules of 1940; Rule 91, Revised Rules of Court), and it is that judicial decree of distribution, once final, that vests title in the distributees. If the decree was erroneous or not in conformity with law or the testament, the same should have been corrected by opportune appeal; but once it had become final, its binding effect is like that of any other judgment in rem, unless properly set aside for lack of jurisdiction or fraud.

It is thus apparent that where a court has validly issued a decree of distribution of the estate, and the same has become final, the validity or invalidity of the project of partition becomes irrelevant.

It is, however, argued for the appellee that since the court's distribution of the estate of the late Bibiano Barretto was predicated on the project of partition executed by Salud Barretto and the widow, Maria Gerardo (who signed for herself and as guardian of the minor Milagros Barretto), and since no evidence was taken of the filiation of the heirs, nor were any findings of fact or law made, the decree of distribution can have no greater validity than that of the basic partition, and must stand or fall with it, being in the nature of a judgment by consent, based on a compromise. Saminiada vs. Mata, 92 Phil. 426, is invoked in support of the proposition. That case is authority for the proposition that a judgment by compromise may be set aside on the ground of mistake or fraud, upon petition filed in due time, where petition for "relief was filed before the compromise agreement a proceeding, was consummated" (cas. cit. at p. 436). In the case before us, however, the agreement of partition was not only ratified by the court's decree of distribution, but actually consummated, so much so that the titles in the name of the deceased were cancelled, and new certificates issued in favor of the heirs, long before the decree was attacked. Hence, Saminiada vs. Mata does not apply.

Moreover, the defendant-appellee's argument would be plausible if it were shown that the sole basis for the decree of distribution was the project of partition. But, in fact, even without it, the distribution could stand, since it was in conformity with the probated will of Bibiano Barretto, against the provisions whereof no objection had been made. In fact, it was the court's duty to do so. Act 190, section 640, in force in 1939, provided:

"SEC. 640. Estate, How Administered.—When a will is thus allowed, the court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration, shall extend to all the estate of the testator in the Philippine Islands. Such estate, after the payment of just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue, if any, shall be disposed of as is provided by law in cases of estates in these Islands belonging to persons who are inhabitants of another state or country." (Emphasis supplied)

That defendant Milagros Barretto was a minor at the time the probate court distributed the estate of her father in 1939 does not imply that the said court was without jurisdiction to enter the decree of distribution. Passing upon a

like issue, this Court ruled in *Ramos vs. Ortuzar*, 89 Phil. Reports, pp. 741 and 742:

"If we are to assume that Richard Hill and Marvin Hill did not formally intervene, still they would be concluded by the result of the proceedings, not only as to their civil status but as the distribution of the estate as well. As this Court has held in *Manolo vs. Paredes*, 47 Phil. 938, 'The proceeding for probate is one in rem (40 Cyc., 1265) and the court acquires jurisdiction over all persons interested, through the publication of the notice prescribed by section 630 C.P.C.; and any order that may be entered therein is binding against all of them.' (See also in re *Estate of Johnson*, 39 Phil. 156.) 'A final order of distribution of the estate of a deceased person vests the title to the land of the estate in the distributees.' (*Santos vs. Roman Catholic Bishop of Nueva Caceres*, 45 Phil. 895.) There is no reason why, by analogy, these salutary doctrines should not apply to intestate proceedings.

The only instance that we can think of in which a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence. Even then, the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action the effect of which, if successful, would be, as in the instant case, for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of."

It is well to observe, at this juncture, as this Court expressly declared in *Reyes vs. Barretto Datu*, 94 Phil. 446 (Am'd. Rec. Appeal, pp. 156,157), that:

"* * * It is argued that Lucia Milagros Barretto was a minor when she signed the partition, and that Maria Gerardo was not her judicially appointed guardian. The claim is not true. Maria Gerardo signed as guardian of the minor. (Secs. 3 and 5, Rule 97, Rules of Court.) The mere statement in the project of partition that the guardianship proceedings of the minor Lucia Milagros Barretto are pending in the court, does not mean that the guardian had not yet been appointed; it meant that the guardianship proceedings had not yet been terminated, and as a guardianship proceedings begin with the appointment of a guardian, Maria Gerardo must have been already appointed when she signed the project of partition. There is, therefore, no irregularity or defect or error in the project of partition, apparent on the record of the testate proceedings, which shows that Maria Gerardo had no power or authority to sign the project of partition as guardian of the minor Lucia Milagros Barretto, and, consequently, no ground for the contention that the order approving the project of partition is absolutely null and void and may be attacked collaterally in these proceedings."

So that it is now incontestable that appellee Milagros Barretto was not only made a party by publication but actually appeared and participated in the proceedings through her guardian: she, therefore, can not escape the jurisdiction of the Manila Court of First Instance which settled her father's estate.

Defendant-appellee further pleads that as her mother and guardian (Maria Gerardo) could not have ignored that the distributee Salud was not her child, the act of said widow in agreeing to the oft-cited partition and distribution was a fraud on appellee's rights and entitles her to relief. In the first place, there is no evidence that when the estate of Bibiano Barretto was judicially settled and distributed appellants' predecessor, Salud Lim Boco Barretto, knew that she was not Bibiano's child; so that if fraud was committed, it was the widow, Maria Gerardo, who was solely responsible, and neither Salud nor her minor children, appellants herein, can be held liable therefor. In the second place, granting that there was such fraud, relief therefrom can only be obtained within 4 years from its discovery, and the record shows that this period had elapsed long ago.

Because at the time of the distribution Milagros Barretto was only 16 years old (Exhibit 24), she became of age five years later, in 1944. On that year, her cause of action accrued to contest on the ground of fraud the court decree distributing her father's estate and the four-year period of limitation started to run, to expire in 1948 (Section 43, Act 190). In fact, conceding that Milagros only became aware of the true facts in 1946 (Appellee's

Brief, p. 27), her action still became extinct in 1950. Clearly, therefore, the action was already barred when in August 31, 1956 she filed her counterclaim in this case contesting the decree of distribution of Bibiano Barretto's estate.

In order to evade the statute of limitations, Milagros Barretto introduced evidence that appellant Tirso Reyes had induced her to delay filing action by verbally promising to reconvey the properties received by his deceased wife, Salud. There is no reliable evidence of the alleged promise, which rests exclusively on the oral assertions of Milagros herself and her counsel. In fact, the trial court made no mention of such promise in the decision under appeal. Even more: granting *arguendo* that the promise was made, the same can not bind the wards, the minor children of Salud, who are the real parties in interest. An abdicative waiver of rights by a guardian, being an act of disposition, and not of administration, can not bind his wards, being null and void as to them unless duly authorized by the proper court (*Ledesma Hermanos vs. Castro*, 55 Phil. 136, 142).

In resume, we hold (1) that the partition had between Salud and Milagros Barretto in the proceedings for the settlement of the estate of Bibiano Barretto, duly approved by the Court of First Instance of Manila in 1939, in its Civil Case No. 49629, is not void for being contrary to either articles 1081 or 1814 of the Civil Code of 1889; (2) that Milagros Barretto's action to contest said partition and decree of distribution is barred by the statute of limitations; and (3) that her claim that plaintiff-appellant guardian is a possessor in bad faith and should account for the fruits received from the properties inherited by Salud Barretto (nee Lim Boco) is legally untenable. It follows that the plaintiffs' action for partition of the fishpond described in the complaint should have been given due course.

Wherefore, the decision of the Court of First Instance of Bulacan now under appeal is reversed and set aside in so far as it orders plaintiff-appellant to reconvey to appellee Milagros Barretto Datu the properties enumerated in said decision, and the same is affirmed in so far as it denies any right of said appellee to accounting. Let the records be returned to the court of origin, with instructions to proceed with the action for partition of the fishpond (Lot No. 4, Plan Psu-4709), covered by TCT No. T-13734 of the Office of the Register of Deeds of Bulacan, and for the accounting of the fruits thereof, as prayed for in the complaint. No costs.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] *Reyes vs. Barretto*, G. R. No. L-5831, Jan. 31, 1956.

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