

MIGUEL ALBANO, ET AL., PLAINTIFFS-APPELLANTS, VS. FERMIN RAMOS, ET AL., DEFENDANTS, PERPETUA D. COLOMA, PETITIONER-APPELLEE.

G.R. No. 20426. May 24, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioner-appellee, Atty. Perpetua D. Coloma, was counsel for plaintiffs-appellants in their litigation with defendants Fermin Ramos, et al., Civil Case No. 4147 of the Court of First Instance of Ilocos Norte. By agreement her professional fees were on a contingent basis: 1/3 of whatever lands and damages might be awarded to her clients in the case; nothing if the case was lost. The judgment gave plaintiffs one-fourth (1/4) of the lands in litigation and damages subsequently assessed at P17,009.60.

Upon petitioner's motion the lower court, in an order dated November 17, 1951, declared her fees to be a lien on the judgment for damages but not on the judgment for recovery of the lands, and ruled that to claim her one-third share in the latter she should file a "proper" action. Plaintiffs appealed from that order, but it was subsequently affirmed by the Court of Appeals, and the judgment of affirmance has since become final.

Petitioner thereafter took steps to obtain execution against plaintiffs' properties for the satisfaction of her fees. After protracted proceedings the Court issued the following order on October 4, 1957:

"IN VIEW OF ALL THE FOREGOING, this Court hereby reconsiders its order, subject-matter of the motion for reconsideration at bar in so far as is inconsistent herewith and the plaintiffs are hereby ordered to pay Atty. Perpetua D. Coloma her lien of five thousand six hundred sixty nine pesos and eighty centavos (P5,669.80) on the damages, or in lieu thereof, to pay her the excess of P3,285.00 which they have already collected, leaving Atty. Coloma to collect from the defendants the balance of P2,384.80, and to segregate one-third (1/3) portion due on her share in all the lands won by her for the plaintiffs, and in case the segregation cannot be done amicably between the parties, the petitioner and the respondents, who are the original plaintiffs in Civil Case No. 4147, are hereby enjoined to propose the names of those who shall be appointed commissioners on partition for the purpose of effecting the segregation sought for in the petition within thirty (30) days counted from their receipt of their copies thereof."

The foregoing order, with particular reference to that part concerning the recoverable amount in cash, is based on the court's finding that plaintiffs had already collected on the judgment the sum of P13,624.80 (out of an entire amount of P17,008.60), which was "P3,285.00" in excess of the 2/3 share corresponding to them. Actually this computation is erroneous, because two-thirds of P17,008.60 is approximately P11,339.60, and therefore beyond this amount plaintiffs collected only an excess of P2,285.00.

In this appeal plaintiffs assign three errors: (1) in the computation made by the trial court, as already indicated; (2) in the failure of said court to rule on their motion to quash the execution levy on their properties and to suspend or cancel the auction sale thereof; and (3) in ordering a partition of the lands adjudicated to plaintiffs in the main

case for the purpose of segregating the one-third (1/3) portion thereof pertaining to petitioner as her professional fees.

We first rule on the third assignment of error, which is undoubtedly well-taken. The question of how petitioner may recover her share in the lands awarded to plaintiffs is a closed one, and was settled by the Court of Appeals in its decision of August 30, 1965, affirming the order of the court a quo of November 17, 1951, to the effect that the recovery of such share should be the subject of a separate action.

Under the first assignment of error, plaintiffs contend that there is no sufficient evidence as to how much they have actually collected on the judgment for damages against defendants. The matter, however, involves a question of fact, and hence the lower court's finding thereon is no longer subject to review in the present appeal. But as pointed out by plaintiffs, the order appealed from "suffers from vagueness and indefiniteness as to render it incapable of execution." For indeed, against whom may such execution issue? Against plaintiffs, for the entire share of petitioner amounting to P5,669.80 in the damages assessed against defendants; or against plaintiffs for P2,285.00 (the excess collected by plaintiffs over their 2/3 share) and against defendants for the balance of P2,384.80, to complete petitioner's share of 1/3? And who has the right to choose which alternative to follow for execution purposes? Furthermore, we believe that neither alternative is equitable, nor does it conform with the agreement concerning petitioner's fees. The first is unfair to plaintiffs, for it makes them in effect liable to petitioner for the latter's whole share, irrespective of the amount they may have actually collected from defendants. By the same token, the second alternative is unfair to petitioner, because it gives her less than her 1/3 share in the sum already collected by plaintiffs, and leaves it to her to recover the balance directly from defendants, who may or may not be able to pay the same.

In justice to both parties here, plaintiffs should pay petitioner one-third of P13,624.80, which they have already collected from defendants, or the sum of P4,541.60, plus one-third of whatever other amount may have been collected thereafter by plaintiffs. In case of plaintiffs' failure to pay, execution may issue against their properties, including their 2/3 share in the lands adjudicated to them in the main case against defendants. Whatever balance there may be in favor of petitioner should be collected from defendants under the judgment for damages against them, by execution or otherwise, since petitioner's claim is a lien on said judgment; provided that any amount thus collected shall be divided between plaintiffs and petitioner in the proportion of two-thirds and one-third, respectively.

WHEREFORE, the order appealed from is reversed and set aside insofar as it directs the partition of the lands recorded by plaintiffs from defendants, without prejudice to petitioner's right to file a separate action for that purpose, and modified as above indicated insofar as petitioner's share in the judgment for damages is concerned. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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