

IN THE MATTER OF INTESTATE ESTATE OF THE DECEASED JUANA SERVANDO. JOSE P. TINSAY, ADMINISTRATOR AND APPELLEE, VS. JOVITA YUSAY AND PETRA YUSAY, HEIRS AND APPELLANTS.*G.R. No. 23126. March 17, 1925*

Ponente: OSTRAND, J.

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It appears from the record that one Juan Yusay died some time before the year 1909, leaving a widow Juana Servando and five children, Candido, Numeriana, Jovito, Jovita and Petra. As far as the record shows his estate consisted of his interest in a tract of land situated in the town of Iloilo, divided into two lots by Calle Aldeguer and which was community property of his marriage to Juana Servando. In 1909 Jovito Yusay purchased the interests of Candido and Numeriana in the land, thus acquiring a three-fifths interest in the same.

Jovito Yusay appears to have died some time between the years 1909 and 1911, leaving a widow, Perpetua Sian, and five minor children, Juana, Elena, Aurea, Elita and Antonia Yusay. In 1911 Perpetua Sian for herself and in representation of her children entered into an agreement in writing (Exhibit 1) with Jovita and Petra Yusay which purported to provide for the partition of the land mentioned and whereby Perpetua Sian and her children were to occupy the portion to the northeast of Calle Aldeguer and Jovita and Petra were to have the portion or lot to the southwest of this street.

The document is very imperfectly drawn and is in some respects somewhat ambiguous in its terms but it is, nevertheless, quite clear that in its final clause Jovita and Petra Yusay expressly relinquish in favor of the children of Jovito Yusay any and all rights which they, Jovita and Petra, might have in the land assigned to Perpetua Sian and her children in the partition.

Subsequently a cadastral survey was made of the section of Iloilo in which the land in question is situated. In this survey the portion allotted to Perpetua Sian and her children was designated as lot No. 241, with a narrow strip set aside for the widening of Calle Aldeguer and described as lot No. 713. The portion which under the partition of 1911 fell to the share of Jovita and Petra Yusay was given the lot number 283; a narrow strip of the same portion along Calle Aldeguer is numbered 744.

At the trial of the cadastral case lots Nos. 241 and 713 were claimed by Perpetua Sian on behalf of her children and the lots were adjudicated to the latter without opposition. Lots Nos. 283 and 744 were claimed by Jovita and Petra and adjudicated to them, also without opposition.

Shortly thereafter, on August 10, 1915, Juana Servando filed a petition in the cadastral case asking for the reopening of the case as to lots Nos. 241 and 713 on the ground that she was the owner of a one-half interest in said lots, but that at the time of the trial of the case Perpetua Sian had falsely lead her to believe that a claim had been presented in her behalf for her interest in the land. The petition for reopening was granted, the former judgment set aside and the two lots Nos. 241 and 713 were thereupon decreed in favor of Juana Servando and the children of Jovito Yusay in the proportions of an undivided half interest in favor of Juana Servando and the

remaining one-half interest in favor of the children of Perpetua Sian in equal shares, the court holding in substance that Juana Servando not having been a party to the partition made in 1911, her interests were not affected thereby. The case was appealed to this court and the decision of the lower court affirmed.[1]

It may be noted that Juana laid no claim to lots Nos. 283 and 744 decreed in favor of Jovita and Petra Yusay who therefore remained the registered owners of said lots.

On April 12, 1919, after the death of Juana Servando, the appellee Jose P. Tinsay was appointed administrator of her estate. In July and October, 1922, Jovita and Petra Yusay sold lot No. 283 to one Vicente Tad-Y for the sum of P20,000. On March 22, 1924, the administrator of the estate of Juana Servando filed an amended inventory in which the P20,000 received by Jovita and Petra from the sale of lot No. 283 was included as bien colacionable. On the same day a scheme for the distribution of the estate was submitted to the court in which the aforesaid P20,000 were brought into collation with the result that the total value of the estate being only P28,900, according to inventory, no further share in the estate was assigned to Jovita and Petra Yusay.

The scheme of partition was opposed by Jovita and Petra and the matter set down for hearing, at which hearing the opponents introduced in evidence Exhibit A, a certificate of the register of deeds of the Province of Iloilo showing that the deceased Juana Servando was the registered owner of a half interest in lots Nos. 241 and 713 and that Jovita and Petra Yusay were the exclusive registered owners of lots Nos. 283 and 744.

The administrator presented in evidence Exhibits 1 to 6, inclusive. Exhibit 1 is the document of partition between Perpetua Sian and Jovita and Petra Yusay executed in 1911; Exhibits 2 and 3 are deeds executed by Numeriana and Candido Yusay transferring their interests in all of the lots above-mentioned to Jovito Yusay; Exhibits 4 and 5 are the deeds for lot No. 283 executed by Jovita and Petra Yusay in favor of Vicente Tad-Y; and Exhibit 6 evidences a lease from Jovita Yusay of one-half of lot No. 283 in favor of Yap Angching and dated July 29, 1911. The admission of these exhibits was objected to by the opponents and the objections were sustained by the court, to which ruling counsel for the administrator excepted. The result of the exclusion of the exhibits is that there in reality is no evidence for the appellee properly before the court; the introductory statement made by counsel in offering the exhibits and in which he briefly stated their support, is no evidence. In making the foregoing statement of facts we have, however, drawn freely upon all of the exhibits in order to bring the issues involved in the case into clear relief.

The court approved the scheme of partition and declared the proceeds of the sale of lots Nos. 283 and 744 "fictitiously collationable" and held that this being in excess of their share of the inheritance, Jovita and Petra Yusay could claim no further participation in the other property described in the inventory and in the scheme of partition. In the same order the court declared Exhibits 4 and 5 admissible notwithstanding the fact that they had been ruled out at the hearing, but maintained its original ruling in regard to Exhibits 1, 2, 3 and 6. From this order Jovita and Petra Yusay appeal.

The appellants make seven assignments of error and in their brief the discussion has taken a rather wide range. The matter in controversy may, however, be reduced to very simple terms. It is, of course, clear that the court below erred in taking into consideration in its decision evidence which it had ruled out at the trial of the case; if, after the close of the trial, the court upon more mature reflection arrived at the conclusion that some of its rulings were erroneous, it should have reopened the case before reversing them. We are also of the opinion that it was error to exclude Exhibits 1, 2 and 3. Exhibit 6 may be of some value to show the interpretation given Exhibit 1 by the parties and might properly have been admitted in evidence.

We also agree with counsel for the appellants that the case involves no question of the kind of colacion provided for in articles 1035-1050 of the Civil Code, nor are we here dealing with advancements to lineal heirs under

section 760 of the Code of Civil Procedure in force at the time of the execution of Exhibit 1. As far as we can see, the appellee must rest his case upon entirely different principles.

The decision appealed from being based on evidence not properly before the trial court, must be reversed, but inasmuch as the errors committed by that court are of such a character as to have worked what amounts to a mistrial, it will be necessary to remand the case for a new trial.

For the guidance of the court as well as of counsel at this new trial, we shall briefly state our view of the principles upon which, in our opinion, the controversy must be determined in the hope of saving further appeals.

Juana Servando not being a party to the partition agreement Exhibit 1, the agreement standing alone was, of course, ineffective as against her. The attempt to partition her land among her heirs, constituting a partition of a future inheritance was invalid under the second paragraph of article 1271 of the Civil Code and for the same reason the renunciation of all interest in the land which now constitutes lots Nos. 241 and 713 made by the appellants in favor of the children of Jovito Yusay would likewise be of no binding force as to the undivided portion which belonged to Juana Servando, But if the parties entered into the partition agreement in good faith and treated all of the land as a present inheritance, and if the appellants on the strength of the agreement obtained their Torrens title to the land allotted to them therein, and if Perpetua Sian in reliance on the appellants' renunciation of all interest claimed by her on behalf of her children in the cadastral case refrained from presenting any opposition to the appellants' claim to the entire fee in the land assigned to them in the partition agreement and if the appellants after the death of Juana Servando continued to enjoy the benefits of the agreement refusing to compensate the heirs of Jovito Yusay for the latter's loss of their interest in lots Nos. 283 and 744 through the registration of the lots in the name of the appellants and the subsequent alienation of the same to innocent third parties, said appellants are now estopped from repudiating the partition agreement of 1911 and from claiming any further interest in lots Nos. 241 and 713. There is, however, no reason why they should not be allowed to share in the distribution of the other property left by Juana Servando.

We may say further that if a case of estoppel should not be established, the appellants might still, under article 1303 in relation with article 1073 of the Civil Code, be compelled to restore to the estate of Juana Servando one-half of the amount received by them from the sale of lots Nos. 283 and 744, unless it is shown that Juana's interest in the lot was transferred to them either by sale or by valid donation. The registration of land does not necessarily extinguish obligations of that character.

For the reasons stated, the order appealed from is reversed and the case remanded to the court below for a new trial upon the issues herein suggested. No costs in this instance. So ordered.

Johnson, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

[1] Government of the Philippine Islands vs. Sian and Servando R. G. No. 12025, promulgated August 8, 1918, not reported.

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