

JULIAN SOLLA ET AL., PLAINTIFFS AND APPELLANTS, VS. URSULA ASCUETA ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 24955. September 04, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

These are two appeals by the plaintiffs and defendants, respectively, from the judgment of the Court of First Instance of Ilocos Sur, the dispositive part of which is as follows ;

"The court finds that the plaintiffs Rosenda Lagmay and Silvestra Sajor are the surviving legatees of the testatrix Maria Solla; that the plaintiffs Julian Solla and Lucia Solla are heirs of Sergio Solla; Ambrosio Lagmay is the heir of the deceased Cayetana Solla; Francisco Serna, 2.º and Juana Baclig of the deceased Josef a Solla; Pedro Serna and Agapita Serna of the deceased Jacinto Serna, and that Pedro Garcia is nephew and heir of the deceased Matias Sevedea.

"That the defendant Ursula Aseueta is the widow of the deceased Leandro Serrano; that the other defendants Simeon, Cesareo, Santiago, Primitiva and Maxima, surnamed Serrano, are the children and heirs of the said Leandro Serrano, who died on August 5, 1921; that Simeon Serrano is the executor of Leandro Serrano and possesses the property claimed by the plaintiffs.

"That Leandro Serrano during his lifetime also possessed and enjoyed the said property up to the day of his death; that this property, the possession or delivery of which is sought by the plaintiffs, should be separated from the estate of Leandro Serrano, with the exception of the parcel of land bought from Matias Sevedea, Exhibit 5; and the defendants, especially Simeon Serrano, are ordered to separate and deliver the same to each and everyone of the plaintiffs together with one-half of the fruits, or the value thereof, from September 5, 1921; that the parcels of land referred to are indicated in Maria Solla's will Exhibit B and more particularly described in plaintiffs' Exhibit A. It is ordered that a partition, in accordance with the law, be made of the land in which the plaintiffs have a participation. It is also ordered that the defendants, especially, the executor Simeon Serrano, deliver to the plaintiffs their respective shares in cash or in other property, as a legacy, with one-half of the costs against each of the two parties. It is so ordered."

In support of their appeal, the defendants-appellants assigned the following supposed errors as committed by the trial court in its judgment, to wit:

- The trial court erred in holding that the lack of appropriate description of each parcel of land claimed is no bar to this action, and that said defect was ignored in the stipulation of facts;
- The trial court erred in holding that at the trial of the case the attorneys for both parties also agreed before the court that the latter might decide the case on Exhibit A as evidence of the plaintiffs, and in holding that said Exhibit A is a correct statement of the property left by the deceased Maria Solla and that the attorney for the defendants admitted it as such;
- The trial court erred in not considering in its judgment Exhibits 1, 2, 3, 4, 5, 6 and 7 of the defendants as

evidence, and in considering the document Exhibit 4 of said defendants as deficient, weak and worthless evidence;

- The trial court erred in not holding that the action of the plaintiffs in this case has prescribed;
- The trial court erred in interpreting and holding that paragraph 3 of Leandro Serrano's will, Exhibit C, ordered the delivery of the legacies left by Maria Solla in her will Exhibit B, to the plaintiffs, and that said paragraph affects each and everyone of the parcels of land in the property deeds of Leandro Serrano, Exhibits 1, 2, 3, 4, 5, 6 and 7, and in holding that the said paragraph 3 of Leandro Serrano's will cancels all of the rights acquired by him, and is the immediate cause of the action brought by the plaintiffs;
- The trial court erred in not holding that the third clause of Leandro Serrano's will, Exhibit C, refers only to the pious bequests specified in Maria Solla's will, Exhibit B;
- The trial court erred in ordering the separation and delivery of the unidentified and undetermined estate of Leandro Serrano, together with half of the fruits or their value from September 5, 1921, and in ordering the partition of the unidentified and undetermined property between the parties without designating the shares;
- The lower court erred in ordering the defendants to separate and deliver the property in question to the plaintiffs, as well as one-half of the fruits of the same from September 5, 1921;
- The lower court erred in not holding that some of the property of Maria Solla was inherited by Leandro Serrano by universal title and some by renunciation and sale by the legatees, which title was further protected and cleared by acquisitive prescription, and in not holding that said property of Maria Solla was merged with the estate which passed into the hands of the universal heir Leandro Serrano ;
- The lower court erred in holding that the property in question does not belong to the estate of Leandro Serrano;
- 11. The lower court erred in issuing the order of December 13, 1924 reinstating Rosenda Lagmay as one of the plaintiffs, and in holding that Lucia Solla is one of the plaintiffs when her name as such plaintiff had been stricken out;
- The lower court erred in not considering the last amendment presented by the plaintiffs to their amended complaint;
- The lower court erred in not considering the amended answer of the defendants of October 14, 1924;
- The lower court erred in denying the motion for dismissal of September 3, 1924; and
- The lower court erred in denying the motion for a new trial filed by the defendants.

On the other hand, the plaintiffs-appellants, in support of their appeal, assign the following supposed errors as committed by the trial court in its judgment, to wit:

(1) The trial court committed an error in holding that the silence of the plaintiffs leads to the belief that they consented to the exclusive enjoyment of the said property by Leandro Serrano; and (2) in not ordering the defendants, as heirs of Leandro Serrano, to render an account to the plaintiffs of the products of the lands of the deceased Maria Solla from the time said Leandro Serrano took possession thereof as executor of the deceased Maria Solla.

The case having been called for trial on October 15, 1924, the parties submitted the following statement of facts and petitioned the court to render judgment thereon:

"AGREEMENT

"Both parties admit the following facts to be true:

"1. Dña. Maria Solla died in June, 1883, in the municipality of Cabugao, Ilocos Sur, leaving a will executed and recorded in accordance with the laws then in force, but which had not been probated in accordance with the Code of Civil Procedure.

"2. There were named in said will, as legatees, Sergio Solla, Cayetano Solla, Josefa Solla, Jacinto Serna, Rosenda Lagmay, Silvestra Sajor and Matias Sevedea, and Leandro Serrano, as universal heir, with their shares given them by the will above-mentioned.

"3. Said legatees or their descendants or heirs did not judicially claim their legacies during the life-time of Leandro Serrano, of which he had taken possession, neither was any testamentary proceeding instituted for the settlement of the estate left by Maria Solla and that Leandro Serrano did not deliver the legacies in question, which he possessed in his name until his death, having declared the property for taxation as his own and collected the income therefrom for himself.

"4. That the plaintiffs Julian Solla, Lucia Solla, Ambrosio Lagmay, Rosenda Lagmay, Francisco Serna, 2.º, Juana Baclig, Pedro Serna, Agapita Serna and Pedro Garcia are the descendants or heirs of some of the original legatees, two of whom are the plaintiffs Silvestra Sajor and Rosenda Lagmay; and the defendants are heirs of Leandro Serrano.

"5. That the said legacies produce 35 uynes of palay net annually, and maguey, which the plaintiffs claim amount to P1,000, as against P300 claimed by the defendants.

"6. That the property of the legacy situated in Cabugao passed into the possession of Simeon Serrano by virtue of Leandro Serrano's will as executor thereof, and that said legacies have been and are mixed with other property of the estate of Leandro Serrano.'

"The plaintiffs present as evidence their Exhibits B and C and the defendants also present as evidence their Exhibits 1, 2, 3, 4 and 5.

"Therefore, both parties pray the Honorable Court to render upon the stipulation of facts, the facts proven by the documentary evidence, and in accordance with law, with the costs against the defeated party.

"Vigan, October 14, 1924.

(Sgd.) "ANTONIO DIRECTO

"Attorney for the plaintiffs

(Sgd.) "Miguel Florentino

"ANT. BELMONTE

"Attorneys for the defendants"

Later in the morning of the same day the parties again appeared before the court, and the following proceedings were had: "A little after ten.

"Court. Attorneys Antonio Belmonte and Antonio Directo again appear and ask the court to receive their respective documentary evidence in this case. Attorney Directo presents Exhibit A, which is a certified copy of the clerk of the court and is made a part of the complaint. Exhibit B is a certified copy of Maria Solla's will and plaintiffs' Exhibit C is a certified copy of Leandro Serrano's will,

"Belmonte. I agree with the stipulation of facts that these documents are integral parts thereof and the court should consider them as such.

"COURT. Have you any objection?

"BELMONTE. There is an agreement between both parties that there will be no objection, that is to say, that all the evidence may be admitted as part of the stipulation.

"COURT. The exhibits mentioned in the stipulation are admitted as part of the same.

"BELMONTE. The defense also presents Exhibit 1, as evidence and as an integral part of the statement of facts, which is a duly registered possessory information; Exhibit 2 is also a duly registered possessory information; Exhibit 4 is a public document wherein the legatees renounced the legacies in question; Exhibit 5 is a deed of sale; Exhibit 6 is a Spanish translation of Exhibit 5; Exhibit 7 is a composition title issued by the State, all of which refer to the land in question.

"COURT. Each and every one of the exhibits presented by Attorney Belmonte also forms a part of the stipulation of facts between both attorneys and are admitted.

"BELMONTE. And with this presentation of evidence we submit the case for the decision of the court."

Exhibit A mentioned by the parties in their second appearance, consists of a list of the property which it is said was left by the deceased Maria Solla.

Exhibit B is the nuncupative will of the said deceased Maria Solla executed on April 19, 1883.

Exhibit C is the will of Leandro Serrano, universal heir of Maria Solla, executed August 22, 1921,

Exhibit 1 is a possessory information proceeding covering 15 parcels of land situated in the municipality of Cabugao, Province of Ilocos Sur, instituted by Leandro Serrano on April 1, 1895 and registered in the registry of deeds on April 25, 1895. Leandro Serrano, in his application, claims to be the absolute owner in fee simple of said 15 parcels. Said petition is supported by the testimony of Julio Solla, Apolonio Solla, Mauro Solla and Juan Solla, children of Sergio Solla, one of the legatees named by the deceased Maria Solla.

Exhibit 2 is another possessory information proceeding covering 36 parcels of land situated in the municipality of Cabugao, Ilocos Sur, instituted by Leandro Serrano on March 20, 1895 and registered in the registry of deeds on May 20, 1895. Leandro Serrano, in his petition, also claims to be the absolute owner in fee simple of the said 36 parcels, and is supported by the testimony of Juan Solla, son of the legatee Sergio Solla.

Exhibit 3 is another possessory information proceeding covering 65 parcels of land situated within the municipality of Cabugao, Ilocos Sur, instituted by Leandro Serrano on March 26, 1895 and registered in the registry of deeds on April 24, 1895. Leandro Serrano, in his petition, claims to be the absolute owner in fee simple of said land.

Exhibit 4 is the record of certain proceedings of the president of the municipality of Cabugao at the instance of Leandro Serrano in which formal renunciation of their respective legacies is made by the legatees named in Maria Solla's will.

Exhibit 5 is a deed of sale made by Matias Sevedea in favor of Leandro Serrano of one parcel of land situated in Cabugao which he had received from Maria Solla as a legacy.

Exhibit 7 is a royal title issued by the Spanish Government in favor of Leandro Serrano to six parcels of land situated in the barrio of Alongong of the municipality of Cabugao of the Province of Ilocos Sur. It also appears from the records that Leandro Serrano took possession of the property left by Maria Solla immediately after her death which occurred on June 11, 1883, and continued in possession of the same until his death, which took place on August 5, 1921, having instituted possessory information proceedings, declared the property for taxation, paid the land tax on the same and enjoyed its products exclusively.

On account of the intimate relation between them, we shall consider the first two assignments of error together.

The defendants-appellants contend that the trial court erred in considering plaintiffs' Exhibit A as a part of the stipulation of facts, disregarding the complete absence of a description of the land which they seek to recover.

From folio 2 of the transcript of the stenographic notes it appears that on the morning of October 16, 1924 the attorney for the defendants, Mr. Antonio Belmonte, agreed to the admission of all the documentary evidence presented at that time as a part of the agreement, among which is found the document Exhibit A, which contains a list of the supposed legacies left by the deceased Maria Solla, to the

predecessors in interest of the plaintiffs, with their respective descriptions, which were the subject-matter of the complaint herein, leaving to the sound discretion of the court to weigh the same. It is true that the court found that six of the parcels described therein were the exclusive property of Leandro Serrano and are covered by the royal title, Exhibit 7 of the defendants, but this does not in any manner mean that the other parcels were not those left by the testatrix Maria Solla to her brothers and nephews. Therefore, the first and second assignments of error are groundless.

In regard to the third assignment of error of the defendants-appellants that Exhibits 1, 2, 3, 4, 5, 6 and (7) having been presented as evidence by the defendants and admitted by the plaintiffs as an integral part of the stipulation of facts, it was an error not to give full weight to said documents.

The fourth assignment of error of the defendants-appellants raises the question of prescription of the plaintiffs' action.

It appears from the stipulation of facts that, aside from the renunciation made by the legatees of their respective legacies, according to Exhibit 4, Leandro Serrano was in possession of the property left by Maria Solla from June 11, 1883 until August 5, 1921, having obtained a possessory information in his favor, which was duly registered in the registry of deeds, exclusively enjoyed the products thereof, declared it as his property for the purpose of taxation and paid the corresponding land tax thereon, without any of the legatees or their successors in interest having formally nor judicially claimed any title thereto or asked for any share of the products, or contributed to the payment of the land tax.

Furthermore, in the possessory information proceedings wherein Leandro Serrano claimed to be the absolute owner of Sergio Solla, one of the legatees of the deceased Maria Solla, testified in support of the petitions.

So that under the provisions of articles 1940 and 1957 of the Civil Code, as well as the provisions of sections 38, 40 and 41 of the Code of Civil Procedure, the plaintiffs have lost by, extinctive prescription, not only all right of action to recover the ownership of the property left to their predecessors in interest, but also whatever right of ownership they may have had to the same because of Leandro Serrano's exclusive, open, peaceful and continuous possession which was adverse to all the world including the legatees and their successors, for the period of thirty-nine years under claim of ownership, evidenced not only by his applications for possessory information, but also by his exclusive enjoyment of the products of said property,—even if it is considered that the legatees have not renounced their part in the legacy—has given him, by operation of law, exclusive and absolute title to the said properties. (*Bargayo vs. Camumot*, 40 Phil., 857, 869.)

The fifth and sixth assignments of error raise the question of the true interpretation of the provisions of the last will of the testatrix Maria Solla in regard to the obligation imposed upon the universal heir named by her, Leandro Serrano, and of the provisions of the last will of the latter in regard to the obligation imposed by him upon his heir, and executor Simeon Serrano, one of the herein defendants- appellants.

The following are the pertinent parts of Maria Solla's will:

"I also desire and order that there be given, in the way of legacies, to my brother Sergio Solla and sisters Cayetana Solla and Josefa Solla, to my nephew Jacinto Serna and to Rosenda Lagmay and Silvestra Sajor whom I have raised, and to my servant Matias Sevedea, distributed in the following manner: * * * I also declare that I have no forced heirs, my parents and my two sons having died, and I am at liberty to name any heir I care to and whom I consider proper. Therefore not having anyone who inspires me with confidence and is willing to comply strictly with my orders and requests in this will, I desire, and hereby name Leandro Serrano, my grandson, as my universal heir who is a legitimate son of my son Modesto Solosa, and is single; and besides I have raised him from infancy, and have not yet given him anything notwithstanding that he has always been with me, always helping me; and I desire him to comply with the obligation to give or deliver to the parish priest of this town a sufficient sum of money necessary for a yearly novena and for an ordinary requiem mass for the first eight days thereof and on the ninth, or last day, a solemn requiem mass, with vigil and a large bier, for these masses are for the repose of my soul and those of my parents, husband, children and other relatives. I repeat and insist that my heir shall execute and comply with this request without fail. And at the hour of his death he will insist that his heirs comply with all that I have here ordered."

The pertinent parts of the will of Leandro Serrano (Exhibit C) are as follows:

"Third. I command my executor to put all of my property in order, separating first the property of his deceased grandmother Capitana Maria Solla, because she directed in her will that her property be distributed strictly in conformity with her wishes and as she earnestly requested the compliance of her bequests I obligate my heirs to comply with the same; for that reason it is my wish and I really should like to deliver it to my granddaughter, Corazon Serrano, my adopted daughter, but as she is already dead, I deliver it to her father Simeon Serrano because among my children he is the only one who is very obedient to me and I hope he will comply with all my orders and those of his grandmother Maria Solla. In fact he is the only one of my children who was able to help me in all my troubles and he is the most obedient one of them all; because, although I became angry with him and threatened him many times, he paid no attention to my reprimands. Such is not the case with my other children, who, when I became a little angry, each time drifted farther away and have never offered me any help, which had caused me much pain, but, nevertheless, they continue to be my children and I do not exclude them.

* * * * *

"Fifth. On account of the fact that all of the property of the deceased Capitana Solla was given to my son Simeon I order him not to forget annually all the souls of the relatives of my grandmother and also of mine and to have a mass said on the first and ninth days Of the yearly novena and that he erect a first class bier.

* * * * *

"I insistently order that the property of my deceased grandmother Capitana Maria be disposed of in conformity with all the provisions of her will and of mine."

As may be seen Maria Solla named her grandson Leandro Serrano in her will as her universal heir to her property and ordered him to strictly comply with her orders and requests and that at the hour of his death to make the same insistence upon his heirs to comply with all that she has ordered.

As may also be seen Leandro Serrano named his son Simeon Serrano, as executor of his will and that he directed him to put all of his property in order and to separate that which came from his deceased grandmother Maria Solla, which he gives to his said son Simeon Serrano and orders that same be disposed of exclusively in conformity with the wishes of his said grandmother, not forgetting the souls of all of his grandmother's relatives and of his own for whose repose nine masses were to be said annually during nine days, with a solemn mass on

the first and last days.

Now, then, what are the orders and requests that Maria Solla wanted the universal heir named by her in her will, Leandro Serrano, to faithfully comply with and to make his heirs comply with, and what are the orders of Maria Solla which Leandro Serrano ordered his executor and heir Simeon Serrano to comply with?

In the first place, there is the distribution of the legacies given in her will to her brothers, nephew, proteges and servant. In the second place, the delivery of a sufficient sum of money to the parish priest of Cabugao for the annual novena, consisting of eight ordinary masses and one solemn requiem mass, together with vigil and bier on the last day for the repose of the soul of the testatrix and her parents, children, husband and other relatives; and in the third place, the order that Leandro Serrano demand, with the same insistence, that his heirs comply with all that she had ordered. Leandro Serrano could have complied with all of these commands and orders during his lifetime, some wholly and others partially. The orders and requests that he could and should have fully complied with during his lifetime were to distribute the legacies and to order his heirs to comply with all her wishes specified in her will. The order or request that he was able to comply with only partially was to deliver to the parish priest a sufficient sum of money necessary for the annual masses for the repose of the soul of Maria Solla and her parents, husband, children and other relatives.

It is not logical to suppose that Maria Solla in ordering Leandro Serrano to insist in his will that his heirs after his death comply with all the requests contained in her said will, referred to the orders and requests that he could and should comply with during his lifetime, because neither is it logical nor reasonable to suppose that she for a moment doubted that the person whom she had named as her universal heir—for, according to her, he was the only person in whom she had any confidence—would comply with her requests. If that is so, Maria Solla could not have referred to other than the pious orders and requests, because, by reason of their nature, they were the only ones which Leandro Serrano could not wholly comply with during his lifetime, but that his heirs would continue to do so. And Leandro Serrano, in complying with the requests of Maria Solla in his will by ordering his son Simeon Serrano, to whom he bequeathed all of the property received from the former, to comply with all of the requests of the same, could not have meant but those requests which Maria Solla wished complied with by the heirs of Leandro Serrano which are those relating to the pious bequests. She confirms this on the fifth clause of her will quoted above, in which she, says: "On account of the fact that all of the property of the deceased Capitana Solla is bequeathed to my son Simeon I order him not to forget the souls of my grandmother's relatives." From this it evidently appears that Leandro Serrano bequeathed all of the property of the deceased Maria Solla to his son Simeon Serrano only in order that he might comply with her pious requests. Furthermore if to ease his conscience it had been Leandro Serrano's desire to deliver the aforesaid legacies to the legatees or to their successors in interest, he would have done so during his lifetime or would have said so clearly in his will and would not have given all of his said property to his son Simeon Serrano.

In order to determine the testator's intention, the court should place itself as near as possible in his position, and hence, where the language of the will is ambiguous or doubtful, should take into consideration the situation of the testator and the facts and circumstances surrounding him at the time the will was executed. (40 Cyc, 1392.) Where the testator's intention is manifest from the context of the will and surrounding circumstances, but is obscured by inapt and inaccurate modes of expression, the language will be subordinated to the intention, and in order to give effect to such intention, as far as possible, the court may depart from the strict wording and read a word or phrase in a sense different from that which is ordinarily attributed to it, and for such purpose may mould or change the language of the will, such as restricting its application or supplying omitted words or phrases. (40 Cyc, 1399.)

In the present case, it clearly appearing that it was Maria Solla's intention, in ordering her universal heir Leandro Serrano in her will at the hour of his death, to insist upon the compliance of her orders by his heirs, that the latter

should comply with her pious orders and that she did not mean her orders concerning her legacies, the compliance of which she had entrusted to Leandro Serrano, we are authorized to restrict the application of the words "all that I have here ordered" used by the said Maria Solla and the words "all her orders" used by Leandro Serrano in their respective wills limiting them to the pious orders and substituting the phrase "in regard to the annual masses" after the words used by both testators, respectively.

The trial court, therefore, committed an error in interpreting the order of Leandro Serrano mentioned in his will as applicable to the provisions of Maria Solla's will relative to the legacies and not to the pious bequests exclusively.

As to the remaining assignments of error, they being merely corollaries of the fifth and sixth, the points raised therein are impliedly decided in our disposition of said two assignments last mentioned.

With respect to the appeal of the plaintiffs-appellants, the two assignments of error made therein are without merit in view of the foregoing considerations and the conclusions we have arrived at with regard to the assignments of error made by the defendants-appellants.

In view of the foregoing, we are of the opinion that the judgment appealed from must be, as it is hereby, reversed in all its parts and the complaint dismissed, without special findings as to costs. So ordered.

Avanceña, C. J., Street, Ostrand, Johns, and Romualdez, JJ., concur.

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