

**JESUS ROA Y ROA ET AL., PLAINTIFFS AND APPELLEES, VS.
CONCEPCION ROA ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 28532. March 04, 1929*

Ponente: AVANCEÑA, C.J.

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Don Pio Roa and his wife, Dona Soledad Corrales died leaving ten children, named Amparo, Concepcion, Dolores, Trinidad, Esperanza, Alfredo, Jose, Vicente, Remedios and Soledad. They also left some property, among which were two parcels of land located in the barrio of Bugu, municipality of Tagoloan, Province of Misamis, described in the complaint.

Soledad Roa, one of the ten children, was married to Manuel Roa, whom she bore two sons, named Jesus Roa and Jose Roa. Soledad Roa died, and as the two children Jesus and Jose were minors, their own father, Manuel Roa was appointed guardian. On January 6, 1927 Jesus and Jose Roa, who are now of age, filed an action for the partition of the two parcels of land described in the complaint between themselves, as representing their deceased mother Soledad, and the defendants, who are the other heirs of the spouses Pio Roa and Soledad Corrales.

The evidence shows that after the death of the spouses Pio Roa and Soledad Corrales, and prior to the year 1915, their heirs applied for the registration of these two parcels. And inasmuch as some sixty oppositions were filed to such application, the heirs resolved to reduce the interest in this application to the smallest number possible, and to this end agreed to transfer all their shares to Esperanza.

With respect to Soledad's share, she having already died, Esperanza proposed to purchase it of Manuel Roa, the guardian of the then minors Jesus and Jose Roa, who represented their mother, Soledad Roa. Manuel Roa accepted the proposition, and to effectuate it, petitioned the court for the proper authority, on December 4, 1918. In his petition; he stated that the minors had a parcel of about 15 hectares of land in the municipality of Tagoloan, Province of Misamis, and as he was then living in Cebu, it was very difficult for him to take care of this land, and he deemed it more useful and beneficial for the minors to sell it, investing the proceeds of the sale in some paying enterprise. On the 10th of said month, the court of Cebu empowered Manuel Roa, as guardian of the minors Jesus and Jose, to sell the land described by him in his petition, leaving it to his discretion to choose between a private sale and a public auction. On February 1, 1919, Manuel Roa presented to the court for approval the contract of sale which he had been empowered to make in favor of Esperanza Roa de Ongpin, making over to her one-tenth of the two parcels described in the document. Upon the same date the court approved that sale.

In passing upon this action for partition instituted by Jesus Roa and Jose Roa, the court granted the partition, and from this decision the defendants appealed.

Esperanza Roa de Ongpin having acquired the shares of her other coheirs in the two parcels the partition of which is here sought, she is the only interested party in this case as defendant.

In view of the facts we have related, the action for partition instituted by the plaintiffs depends entirely on whether

the sale of their share, in representation of their mother Soledad, made by their guardian Manuel Roa to Esperanza Roa is valid or not. The court below held it void and therefore granted the partition.

If that sale is valid and effective, and has transmitted to Esperanza the plaintiffs' share in the parcel of land in question, it goes without saying that the latter cannot maintain the present action. In our opinion, after an examination of the evidence, there is absolutely no ground to justify the lower court's judgment holding that sale void. It was made by a guardian with the authorization and later approval of the court. It is true that in the petition presented by Manuel Roa to obtain judicial authorization, it was stated that the area of the land to be sold was 15 hectares and that, in reality, the land afterwards sold by the guardian contained about 50 hectares. But this inaccuracy in the petition respecting the area of the land was later corrected by the approval of the sale, upon petition of the guardian himself. Besides, the petition for the authorization to sell was presented and granted, not so much because of the extent of the land, but because the guardian could not take care of it, for he lived in another province, which reason was present when the sale was approved.

We find no sufficient reason to justify the opinion of the court below that in soliciting the court's approval of the sale, the guardian had not read the document and had not noted that the land sold contained approximately fifty hectares. When his sons Jesus and Jose took the first steps in this action, the former guardian Manuel Roa wrote a letter to Esperanza expressing his regret at the incident, and stating that he had warned his sons not to forget the sale he had made of their share in these lands. And to justify himself in her eyes, he also said in that letter that be the result of these steps his sons were taking what it may, it would not worry him because the sale made was approved by the court,, and for this reason his conscience was clear.

There is still less justification for the court's assertion that the judge who approved the sale had not read the document. The presumption is that the official duty was duly complied with, and there is no evidence to the contrary in this case.

Furthermore, neither do we find that the price paid in this sale was inadequate, considering that it was more or less the same price for which the other interested parties sold their shares to Esperanza.

For the foregoing, the sale of the plaintiffs' share in the two parcels of land in question to Esperanza Roa de Ongpin is held valid and effective, and with the reversal of the judgment appealed from, it is held that the action for partition does not lie, without especial pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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