

FELIX ADAN, PLAINTIFF AND APPELLANT, VS. AGAPITO CASILI AND VICTORIA ADAN, DEFENDANTS AND APPELLEES.

CA-G.R. No. 299. March 18, 1946

Ponente: OZAETA, J.

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OZAETA, J.:

The plaintiff Felix Adan commenced this action in the Court of First Instance of Camarines Sur against his sister Victoria Adan and the latter's husband, Agapito Casili, to secure the judicial partition of the estate left by their deceased mother, Sinrplieia Nepomuceno, alleged to consist of six parcels of land which are specifically described in the complaint. Parcels 1 and 3, however, were subsequently discarded, the first having been sold by the parties to the municipality of Libmanan, Camarines Sur, and the second being admittedly the property of Maria Adan, a half sister of the parties litigant. The remaining four parcels, referred to in the record as lots Nos. 2, 4, 5, and 6, are valued by both parties at P2,783.55.

The defendants interposed the following defense: That the four lots in question were ceded by the deceased Simplicia Nepomuceno to her daughter Victoria Adan as her share of the inheritance; and that the plaintiff has received more than his share consisting of money, livestock, palay, and real property, namely:

Expenses of the plaintiff as a student from 1918 to 1925

P8,000.00

Twelve carabaos received by the plaintiff from his mother, at P30 each

360.00

Three hundred cavans of palay, at P4.20 a cavan

1,260.00

Cash taken by the plaintiff from his mother in 1927

1,110.00

Two parcels of land bought by the plaintiff with money he received from his mother

1,220.00

The trial court found that the alleged donation by the deceased Simplicia Nepomuceno of the four parcels of land in question had not been duly proven, there being no written document to support it, and that therefore the said four parcels of land should be brought into collation. It also found that the alleged receipt by the plaintiff from his mother of P1,110 in cash and of P1,220 with which the plaintiff purchased the two parcels of land mentioned in defendants' answer, had not been satisfactorily proven.

It found, however, that the plaintiff received from his mother during her lifetime various sums aggregating P3,000 for his expenses while studying surveying in Manila, one-half of which, or P1,500, should be brought into collation; that he also received or took from his mother twelve carabaos worth P 30 a head, or P360, and 300 cavans of palay at P4.20 a cavan, or P1,260, all of which amounted to P3,120—more than the value of the four parcels of land now in the possession of the defendants. Hence it absolved the defendants from the complaint without any finding as to costs.

The plaintiff appealed from the judgment of the trial court and makes the following assignment of errors:

"1. The lower court erred in finding that it has been sufficiently and satisfactorily proven (a) that the plaintiff and appellant took from the deceased Simplicia Nepomuceno three hundred (300) cavans of palay worth P4.20 a cavan; (b) that plaintiff and appellant appropriated to himself twelve carabaos belonging to said deceased the price of which is P30 per head; and (c) that plaintiff and appellant received the amount of three thousand pesos (P3,000) to support his studies in Manila as surveyor from 1918 to 1926.

"2. The lower court erred in not giving any credit to the testimony of the witness for the plaintiff and appellant concerning the fruits or produce of one of the parcels, described as lot No. 4, of the estate in question.

"3. The lower court erred in not declaring that the parcel described as lot No. 4 produced eight hundred (800) cavans of palay yearly.

"4. The lower court erred in not including in its computation of the distributable inheritance the fruits or produce of lot No. 4 of the estate in question from the death of the deceased Simplicia Nepomuceno until the date of this suit.

"5. The lower court erred in its determination of the hereditary estate divisible between the plaintiff and appellant and the defendants and appellees herein."

We find from the record that the plaintiff and appellant did not prove his contentions. He was supposed to know the facts of his case better than anybody else, and yet he did not testify in his own behalf. The only witness who testified in chief for the plaintiff was his own lawyer, Cesareo Fabricante, who limited himself to presenting copies of the tax declarations covering the parcels of land in question and to testifying as to the annual produce of lot No. 4, which he claimed was 800 cavans of palay a year.

On the other hand, the defendant spouses both testified in their own behalf, and in addition to their testimony they called another witness named Sisenando Inocencio to corroborate their declaration regarding the appropriation by the plaintiff of twelve carabaos belonging to his deceased mother and of which the said witness was the caretaker.

We find no competent evidence in the record to disprove or impeach the testimony of the defendants to the effect that the plaintiff took and received from his mother during the latter's lifetime P1,110 in cash and 300 cavans of palay in the manner and under the circumstances narrated by the defendant spouses as witnesses in their own behalf. The 300 cavans of palay was taken by the plaintiff from the granary of his mother in 1927. The cash consisting of twenty-peso and five-peso bills and amounting in all to P1,110 was taken by the plaintiff from his mother's trunk on an occasion when she suffered a collapse and when the plaintiff took some money from the

same trunk with which to pay for injections. As we have said, the plaintiff did not testify to deny the testimony of the defendants. It is admitted in the brief for the plaintiff and appellant that the latter took 300 cavans of palay from his mother's granary, but it is claimed that said palay belonged to him. In the absence of plaintiff's testimony to support such claim, there is no basis upon which to sustain it. It was also proved during the trial that the plaintiff took possession of twelve carabaos belonging to his mother and that the value of said animals was P30 a head.

It was also established during the trial that the plaintiff studied surveying in Manila and that during his studies his mother and sister sent him money for his support and expenses, amounting to approximately P500 a year. Although the defendants claim that his studies lasted from 1918 to 1925, we sustain the contention of the plaintiff and appellant in his brief that it took him only two years to finish the course of surveying, because it is a matter of common knowledge that surveying is a two-year course, and it is probable that the rest of the time was spent by him in acquiring a high-school education.

Under article 1041 of the Civil Code, allowances for support, education, attendance in illness, even though unusually expensive, apprenticeship, ordinary equipment, or customary presents are not subject to collation. But article 1042 of the same Code provides that expenses which may have been incurred by the parents in giving their children a professional or artistic career shall not be brought to collation unless the parent so orders or they encroach upon the legitime. It also provides that in cases in which it is proper to collate them, the money which the child would have spent if it had lived in the house and company of its parents shall be deducted therefrom. Since the career of surveyor is a professional one, and since the expenses incurred by plaintiff's mother in giving him that career encroached upon the legitime, it is proper to collate one-half of the amount spent by her for him during the two years he studied surveying, the other half being considered as the amount which the plaintiff would have spent if he had lived in the house and company of his mother.

The claim, of the plaintiff that parcel No. 4 described in the complaint produced 800 cavans of palay a year which he contends should form part of the estate, has not been established by competent evidence. The plaintiff claims that at the rate of 800 cavans a year parcel No. 4 produced from 1938 to 1943 a total of 3,200 cavans, which at P2.50 a cavan amounted to P8,000. Such claim seems to us highly exaggerated, considering that the value of said lot No. 4, as alleged by the plaintiff himself, was only P693.55. It seems to us unbelievable that a piece of land worth less than P700 could produce a net income of P8,000 in five years.

The unfair exaggeration in which plaintiff and appellant indulges may be further noted from the fact that while he in his brief appraises the 300 cavans of palay taken by him at P1.50 a cavan, he values the 3,200 cavans of palay which he claims was produced by lot No. 4 at P2.50 a cavan.

On the other hand, we find that the price of P4.20 a cavan claimed by the defendants for the 300 cavans of palay was also exaggerated. We accept the testimony of Pedro Fabricante, a rebuttal witness for the plaintiff, to the effect that in 1928 the price of palay in Libmanan oscillated from P1.20 to P2.20 a cavan, depending upon the season of the year in which the grain was sold. Since the plaintiff himself claimed that the price of palay in Libmanan was P2.50 a cavan, we accept the maximum price given by the witness Fabricante, to wit, P2.20, as the most reasonable.

Summarizing the evidence, we find that the plaintiff has received from the estate of his mother the following:

Cash

P1,110.00

Twelve carabaos, at P30 a head

360.00

Three hundred cavans of palay, at P2.20 a cavan

660.00

Amount spent by the plaintiff's mother to give him a professional career, to wit, P1,000, of which one-half is collationable

500.00

Total

P2,630.00

The defendant Victoria Adan, on the other hand, received from her deceased mother the four parcels of land in question, the agreed value of which is P2,783.55. It was proven during the trial that she spent P300 for the funeral of the deceased, and deducting that sum from the value of the property she received would leave only P2,483.55 as her net share, which is less than that received by the plaintiff.

Whatever produce the defendants may have obtained from the four parcels of land received by them must have been compensated more or less by the fruit or interest of the money and other property received by the plaintiff.

It will be noted that, by a different process of reasoning, based upon our own independent study of the evidence, we arrive at the same result as that reached by the trial court, namely, that the plaintiff is not entitled to the relief he seeks.

The judgment is affirmed, with costs.

De Joya, Hilado, and Bengzon, JJ., concur.

Judgment affirmed.

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