

INTESTATE ESTATE OF JACINTO BAUN, DECEASED. SIMPLICIO BAUN, ADMINISTRATOR AND APPELLEE, VS. HEIRS OF THE DECEASED JACINTO BAUN, OPPOSITORS AND APPELLANTS.

G.R. No. 30750. October 24, 1929

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an appeal from an order of the Court of First Instance of Tarlac, dated September 12, 1928, sustaining the validity of the sale made by the administrator of the estate of Jacinto Baun, of a piece or parcel of land together with the machinery and building thereon belonging to said estate, and denying the motion of the heirs to set aside said sale.

The following facts are not in dispute:

(1) On May 31, 1928, the administrator of the estate filed a motion, requesting authority to sell personal and real properties of the estate, in order to pay its debts. The motion alleged (a) that the estate was indebted to the Asociacion Cooperatives del Credito Rural de Tarlac in the sum of P1,000, with interest at 10 per cent from February 11, 1925; (b) that it was also indebted to Manuel Urquico in the sum of P7,412.22, with interest at 12 per cent from November 1, 1927; and (c) that the estate was without sufficient funds to meet said obligations.

(2) On June 1, 1928, the heirs of the estate, with the exception of Damiana Manankil, widow of the deceased, filed their written conformity to the proposed sale of the only real property of the estate described in the inventory, consisting of a parcel of land and the machinery and building thereon. They also stated that Genara Pineda offered P20,000 for said property and that they considered said offer as most advantageous and beneficial to their interest. Said written conformity was signed by Alejandro Calma in his own behalf and as guardian of the minors Guillermo and Simeona Calma, and by Celedonia Baun, with the consent of her husband Lorenzo Mallari.

(3) On June 15, 1928, the court appointed Jose P. Fausto, an attorney at law, as guardian ad litem of the minors Guillermo and Simeona Calma, heirs of Jacinto Baun, with special reference to the proposed sale of the real property of the estate.

(4) Some time thereafter said guardian ad litem filed his report, recommending favorably the proposed sale of the land and the machinery and building thereon to Genara Pineda at the price offered by her.

(5) On June 29, 1928, the court authorized the administrator of the estate to sell the property of the deceased in the form and manner most advantageous to the estate. The pertinent part of the order of the court said: "Tor la presente queda autorizado el referido administrador para vender los bienes del aludido finado en la forma que crea procedente y ventajosa para los fines arriba indicados."

(6) On July 6, 1928, Simplicio Baun, the administrator of the estate, filed a petition requesting approval by the court of the sale of said real property to Pedro Santos for the sum of P22,000. The administrator sold the property to said vendee, who gave a better price than that offered by Genara Pineda, which was for P20,000

only, as above stated.

(7) On July 7, 1928, the court approved said sale, and on July 10, 1928, ordered the vendee Pedro Santos to immediately deliver to the administrator of the estate the price of the property amounting to P22,000.

(8) On July 16, 1928, the heirs of the estate filed a motion praying that the sale of the property as well as the decree of the court approving the same be set aside on the following grounds: (a) That the administrator sold the real property of the estate without having first sold the personal property; (b) that Damiana Manankil, the widow of the deceased, who was also an heir of the estate, did not give her conformity or consent to said sale; (c) that no notice of the hearing of the application for authority to sell the property of the estate was served upon the heirs, either personally or by publication, as required by section 722, paragraph 3, of the Code of Civil Procedure; and (d) that no hearing was held on said application of the administrator.

The administrator filed his answer to the motion, alleging (1) that said real property was sold because the personal property of the deceased was insufficient to meet the obligations of the estate; (2) that the real property of the estate was sold upon the initiative and with the written consent of the heirs and consequently they are now estopped from attacking the validity of said sale; (3) that notice of the hearing of the application for authority to sell the property of the estate was not necessary inasmuch as the requirements of the law had been virtually satisfied by the written consent of the heirs to the sale; and (4) that the written consent of all of the heirs was not necessary because the law does not specifically require the consent in writing of all of the heirs.

Upon the foregoing facts and the issue raised by the motion and answer as above stated, the Honorable Cayetano Lukban, judge, on September 12, 1928, issued an order sustaining the validity of the sale to Pedro Santos of said land and the machinery and building thereon for the sum of P22,000, and denied the motion of the heirs to set aside said sale. The pertinent parts of said order read as follows:

"El administrador aqui nombrado, enterado de que se le autorizaba vender bienes del intestado, entre ellos el susodicho inmueble, en la forma que era procedente y ventajosa, dando pruebas de lealtad a sus obligaciones como tal, en lugar de proceder automaticamente a la venta, busco compradores con mejores ofertas. En efecto, encontro al referido Pedro Santos, de Porac, Pampanga, quien ofrecio mejor precio. Se otorgo la venta a favor de este senor. Previa recomendacion favorable del curador ad litem, dicha venta fue aprobada por el Juzgado, y consecuentemente, se pago en su totalidad el precio de la venta, depositandose parte en la Escribania de este Juzgado, y parte en el Banco Postal de Ahorros.

"Consta ademas en los inventarios presentados por el administrador y los comisionados de avaluo y reclamaciones nombrados en esta actuacion que el presente intestado carece de suficientes bienes muebles que puedan ser vendidos para el pago de las obligaciones de este intestado. Tales obligaciones devengaban intereses que, con el tiempo y sumados al capital caso de no efectuarse oportunamente su pago, importarian lo bastante para acabar con todos los bienes de este intestado y no dejar nada a los herederos.

"Teniendo en cuenta estas circunstancias, y sobre todo, la conformidad de los herederos; el Juzgado es de opinion que carece de importancia la contention de que la alegada viuda no haya dado su conformidad a la venta. Porque, aun cuando la misma hubiese opuesto, su oposicion no hubiera podido prosperar o prevalecer frente a la conformidad a la venta por parte de los herederos y del curador ad litem.

"Por todas estas consideraciones, no ha lugar a la petition formulada por dichos herederos, al efecto de que se anule o rescinda la referida venta."

The case is now before us on appeal by the heirs from said order.

The appellants now submit a number of propositions in which they attempt to show that the lower court erred in not declaring said sale null and void. One of said propositions is:

"That the provisions of the Code of Civil Procedure, regulating the sale of the estate of the deceased and prescribing certain formalities, were not complied with in the sale of the real property in question, and consequently the sale is null and void."

In this jurisdiction, by virtue of the provisions of articles 657 and 661 of the Civil Code, the heirs succeed to all the rights and obligations of the decedent "by the mere fact of his death." The rights to the succession of a person are transmitted from the moment of his death." In other words, the heirs succeed immediately to all the rights and obligations of the ancestor by the mere fact of the death of the ancestor. From the death of the ancestor the heirs are the absolute owners of his property, subject to the rights and obligations of the ancestor, and they cannot be deprived of their rights thereto except by the methods provided for by law.

The only law providing for the sale of the property which formerly belonged to the deceased and prescribing the formalities antecedent to said sale, is found in sections 714 and 722 of the Code of Civil Procedure. Said sections read as follows:

"SEC. 714. Realty may be sold or encumbered though personalty not exhausted.—When the personal estate of the deceased is not sufficient to pay the debts and charges of administration without injuring the business of those interested in the estate, or otherwise prejudicing their interest, and where a testator has not otherwise made sufficient provision for the payment of such debts and charges, the court, on application of the executor or administrator with the consent and approbation, in writing, of the heirs, devisees, and legatees, residing in the Philippine Islands, may grant a license to the executor or administrator to sell, mortgage or otherwise encumber for that purpose real, in lieu of personal estate, * * *

"SEC. 722. Regulations for license to sell.—When an executor or administrator considers it necessary or beneficial to sell real or personal estate, in cases provided by law, he may make application to the court having jurisdiction of the estate, and such court may grant license, when it appears necessary or beneficial, under the following regulations:

"1. The executor or administrator shall present to the court his petition in writing, setting forth the amount of debts due from the deceased, with charges of administration, the value of the personal estate, situation of the estate to be sold, or such other facts as show that the sale is necessary or beneficial;

"2. In case where the consent of heirs, devisees, and legatees is required, the executor or administrator shall produce to the court their assent in writing, and signed by such heirs, devisees, or legatees, or by the guardians of such as are minors or otherwise under guardianship;

"3. The court shall thereupon appoint a time and place of hearing for deciding upon such application, and shall require notice to be given of such application, and of the time and place of hearing to the persons interested; which notice shall state the nature of the application and the reason for the same, the time and place of hearing, and shall be published three weeks successively previous thereto, in a newspaper of general circulation in the neighborhood of those interested, to be designated by the court; and the court may order such further notice as is adjudged proper. If personal notice is given to the persons interested, the public notice may be dispensed with;

* * * * *

"5. If the proof produced satisfies the court and if the regulations in the first four subdivisions of this section are complied with, the court may, by decree, authorize the executor or administrator to sell such part of the estate as is deemed necessary, either at public or private sale, as would be most beneficial to all parties concerned, and furnish the executor or administrator with certified copy of such license or order of sale;"

From the foregoing provisions of law, in relation with the facts of the present case, we are of the opinion that the requisites of the law were not complied with in the sale in question. Section 714 and paragraph 2 of section 722 of

the Code of Civil Procedure require "the consent and approbation, in writing, of the heirs, devisees and legatees, signed by such heirs, devisees or legatees."

In the instant case the written consent of the widow Damiana Manankil, who was also an heir of the deceased, to the application of the administrator for authority to sell the property of the estate, was not obtained. We are of the opinion that the consent of all of the heirs is necessary because each and every one of them is interested in the estate and because the law does not state that the consent of the majority of the heirs is sufficient to bind all of the heirs. The phrase "the consent and approbation, in writing, of the heirs, devisees and legatees," used in section 714 of the Code of Civil Procedure, cannot be susceptible of any other interpretation than that the consent of all the heirs, etc. is necessary.

Furthermore, the widow Damiana Manankil was not notified of the application of the administrator for authority to sell the property of the estate, neither was said application set for hearing as required in paragraph 3 of section 722 of the Code of Civil Procedure. Paragraph 5 of section 722 requires a compliance with the formalities as to written consent of heirs, notice of hearing of the application, and hearing of the application before a decree authorizing the sale may be issued. Therefore, the decree of the lower court of June 29, 1928, authorizing the sale of the property in question is not in conformity with the provisions of sections 714 and 722 of the Code of Civil Procedure, because (1) the written consent of all of the heirs was not obtained, (2) the heirs were not notified of the hearing on said application, and (3) no hearing was held on said application; and, consequently, the sale of the property of the estate, effected by the administrator in pursuance of said decree of the court, is null and void. The appellee contends that those requirements of the law apply only to testate succession. We are of the opinion that they are applicable to both testate and intestate successions, because in both cases the heirs are entitled to be given an opportunity to be heard and to protect their rights and interest in the estate.

The appellee contends that the appellants are estopped from questioning or attacking the validity of the sale in question, inasmuch as said sale was made with their consent. This contention cannot be sustained. We have already shown that one of the heirs did not consent to the sale and that the lower court failed to comply with the formalities of the law.

It will be remembered that the property in question belongs to the heirs absolutely, subject to the payment of the debts of the ancestor. Sections 714 and 722 of Act No. 190 provide for the sale of the property belonging to the heirs. We are of the opinion that the procedure prescribed by said sections for the sale of property under these conditions must be strictly construed. When the jurisdiction of a court over the land of a decedent exists only for the purpose of sale upon certain conditions, these conditions must be present before the court can act. (*Root vs. McFerrin*, 37 Miss., 17 [75 Am. Bee., 49].) So that, if the order of the court for the sale of the land of a decedent is made when the circumstances do not exist, which must concur as the basis of the order, there is lack of jurisdiction and the sale is therefore illegal. Sections 714 and 722 of Act No. 190 expressly provide the conditions under which the sale of the property of the heirs may be made. Such statute must be followed strictly. (*Doe vs. Roe*, 48 Am. Dec., 216.)

The Supreme Court of the United States, in the case of *Thatcher vs. Powell* (6 Wheaton, 119, 123) said: "That no individual or public officer can sell and convey a good title to the land of another, unless authorized so to do by express law, is one of those self-evident propositions to which the mind assents without hesitation; and that the person invested with such a power must pursue with precision the course prescribed by law, or his act is invalid, is a principle which has been repeatedly recognized in this court." (*Black vs. Nygren*, 8 Phil., 205.)

From the foregoing authorities we must conclude that inasmuch as the lower court failed to comply strictly with the procedure marked out by the law, the sale of the property in Question is illegal and null and void.

It being true that the heirs succeed to the property of the ancestor with the obligations of the ancestor against it, they cannot refuse to give their consent to the sale of the property for the purpose of paying said obligations and thereby defeat their payment; and when said obligations are properly allowed against the estate, such property may be subjected to their payment. The heirs cannot defeat the payment of the obligations and still retain the property. If they insist upon retaining the property, they must pay the existing obligations against the estate. The property belongs to them subject to the payment of the obligations, and they are bound to pay the indebtedness existing against the estate. (Sec. 731, Act No. 190.) The heirs cannot, by any act of their own, or by agreement among themselves, impair the right of the creditors to recover their claim from the estate. The hereditary property remains liable for the debts of the decedent, and the heirs and distributees may be compelled to pay the same in proportion to the share received by them from the estate. (*Pavia vs. De la Rosa*, 8 Phil., 70; *Lopez vs. Enriquez*, 16 Phil., 336; *Fabie vs. Yulo*, 24 Phil., 240.)

In the present case it is true that the heirs, after the sale of the property in pursuance of the order of the court, and after said sale had been approved by the court, made a deposit with the clerk of a sum of money sufficient to pay the existing indebtedness. We are at a loss to understand why the lower court did not even then accept the offer made by the heirs to pay the indebtedness and thereby save the estate from the further expense of litigation, in accordance with the provisions of the law. Had that been done, the long litigation which has followed would have been rendered unnecessary, at a great saving of expense to the estate.

The heir legally succeeds the deceased, from whom he derives his right and title, but only after the liquidation of the estate, the payment of the debts of the same, and the adjudication of the residue of the estate of the deceased; and in the meantime the only person in charge by law to attend to all claims against the estate of the deceased debtor is the executor or administrator appointed by the court. (*Pavia vs. De la Rosa*, 8 Phil., 70.)

Therefore, in view of what precedes, the order appealed from is hereby reversed, the sale is hereby declared null and void; and the record is hereby remanded to the lower court with direction that, after a citation of all of the heirs including Catalina Tejeiro and all of the other creditors and Pedro Santos, and after giving them an opportunity to be heard, it issue such orders in harmony with this decision as will, in equity and justice, protect the interest of all parties concerned, to the end that the estate of Jacinto Baun may be finally settled and terminated. The appellants are also hereby ordered to deposit with the lower court such additional amount as may be found necessary to pay in full all the indebtedness and obligations of the estate, including the interest thereof; or, otherwise, the court shall proceed to sell the property of the estate for the purpose of paying said indebtedness. And without any finding as to costs, it is so ordered.

Avanceña, C. J., Street, Villamor, Johns, and Villa-Real, JJ., concur.

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