

VIVENCIO LEGASTO, SPECIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF SABINA ALMADIN, PLAINTIFF AND APPELLEE, VS. MARIA VERZOSA ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 32344. March 31, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants, Maria Verzosa et al., from the judgment of the Court of First Instance of Laguna, the dispositive part whereof is as follows:

"Wherefore, the court hereby orders the defendants to deliver to the plaintiff, as administrator of the estate of Sabina Almadin, the parcels of land described in paragraph 7 of his amended complaint (reply) dated January 5, 1929, as said paragraph is amended on pages 4 and 5 of the transcript of the stenographic notes, excluding the lots described in certificates of title Nos. 6557, 6558, and 6559 of the Laguna registry of deeds, which are hereby declared to be the absolute property of Victoria Verzosa, wife to Jose Carasco. Without express pronouncement as to costs."

In support of their appeal, the appellants assign the following alleged errors as committed by the court below in its decision, to wit:

"1. The court below erred in ordering the defendants to make delivery of the property in litigation to the plaintiff as special administrator of the decedent Sabina Almadin's intestate estate.

"2. The court below erred in holding that public instruments 2, 31, 42, and 73, are deeds of gift of the property in litigation made by Sabina Almadin to the defendants.

"3. The court below erred in holding that said donation is void per se, inasmuch as it does not appear upon said documents that the defendants accepted and acknowledged its acceptance to the donor, Sabina Almadin.

"4. The court below erred in denying the defendants' motion for a new trial.

"5. The court below erred in failing to hold that the defendants are the sole and lawful owners of the property in litigation."

The relevant facts proved at the trial which are essential to the solution of the questions raised by the instant appeal are as follows:

On May 13, 1925, Sabina Almadin executed a will (Exhibit A-2), devising certain parcels of land belonging to her, to her four nieces, Maria Verzosa, Oliva Verzosa, Toribia Verzosa, and Ruperta Palma, daughters of her sister Catalina Almadin, designating the parcels to be given to each.

On August 8, 1925, Sabina Almadin partitioned her property among her aforesaid sister and nieces, executing a deed to her niece, Maria Verzosa, assigning and making over to her three parcels of her land therein described (Exhibit 2). On September 23, 1925, Maria Verzosa and Sabina Almadin appeared before the deputy provincial

assessor and municipal secretary of Biñian, Laguna, and made two sworn statements, Exhibits 3 and 5, wherein the former stated that she had purchased the parcels of land described in the assignment Exhibit 2, from Sabina Almadin, and the latter in turn declared that she had sold them to Maria Verzosa, and that said vendee had already claimed them as her property for the payment of the land tax.

On the same day, August 8, 1925, Sabina Almadin executed a deed (Exhibit 31) in favor of her niece Oliva Verzosa, assigning to her two parcels of land described in said instrument, and on October 14, 1925, assignor and assignee appeared before the aforesaid deputy provincial assessor and municipal secretary of Binan, Laguna, and subscribed two sworn statements (Exhibits 32 and 34), the former stating that she had sold the two parcels of land described in the deed of assignment, Exhibit 31, to the latter, and the latter in turn stating that she had purchased of the former the same parcels of land, the ownership of which had already been claimed by Oliva Verzosa by a tax declaration in her own name on September 25, and October 13, 1925, respectively.

On the said day August 8, 1925, Sabina Almadin executed a deed, Exhibit 45, in favor of her niece Toribia Verzosa, assigning to her the four parcels of land therein described; and on September 23, 1925, assignor and assignee appeared before the aforesaid deputy provincial assessor and municipal secretary of Binan, Laguna, and subscribed a sworn statement, Exhibit 48, the former stating that she had sold to Toribia Verzosa the parcel of land described therein (Exhibit 45), bearing tax registry No. 9765, and the latter stating that she had purchased said parcel of the former and declared it to be her own property for the payment of the land tax.

Again on the said day, August 8, 1925, Sabina Almadin executed a deed (Exhibit 73) to her niece Ruperta Palma assigning to her three parcels of land described therein; and on September 23, 1925, assignor and assignee appeared before the deputy provincial assessor and municipal secretary of Binan, Laguna, and subscribed two sworn statements (Exhibits 74 and 76) wherein the former stated that she had sold to the latter the parcels of land described in the deed of assignment (Exhibit 73) and the latter stated that she had purchased said parcels of the former, and had declared them to be her own property for the payment of the land tax (Exhibits 75 and 77).

The assignees, Maria Verzosa, Toribia Verzosa, Oliva Verzosa, and Ruperta Palma, took possession of their respective parcels thus ceded by Sabina Almadin, and have to this day been cultivating them as exclusive owners thereof.

Sabina Almadin passed away on February 22, 1926 and on March 12th of the same year, her sister, Catalina Almadin, represented by Attorney Federico Mariño, propounded her will, Exhibit A-2, mentioned above, for probate. By virtue of the decision rendered by the Court of First Instance of Laguna on December 22, 1926 (Exhibit A-4), affirmed by this court on appeal (Exhibit D), said will was not admitted to probate.[1] Vivencio Legasto, then, the special administrator appointed by said Court of First Instance of Laguna to take charge of Sabina Almadin's estate, filed the complaint which originated this case, claiming the delivery of the parcels of land described in paragraph 7 of his aforesaid complaint as amended.

The first question to decide in the instant appeal is whether the partition made by Sabina Almadin of her property among her nieces, the defendants and appellants herein, was valid and enforceable.

Article 1056 of the Civil Code provides:

"ART. 1056. If the testator should make a partition of his property by an act inter vivos, or by will, such partition shall stand in so far as it does not prejudice the legitime of the forced heirs."

The Supreme Court of Spain, in a decision rendered on June 13, 1903, laid down the following doctrine:

"Considering that the language of article 1056 cannot be interpreted to mean that a person may, by acts inter vivos, partition his property referred to in the section wherein said article is found, without the authority of a

testament containing an expression of his last will, or the authority of law, for, otherwise, a partition thus made would be tantamount to making a will in a manner not provided for, authorized, nor included in the chapter referring to testaments, and especially, to the forms thereof, which is entirely different from the legal consequences of a free disposition made by parents during their lifetime, whereby they give to their children the whole or a part of their property;

"Considering that, inasmuch as the second paragraph of article 1271 makes reference to the aforesaid article, in providing that no contracts may be entered into with respect to future inheritances except those the object of which is to make a division inter vivos of the estate in accordance with article 1056, it is evident that said difference likewise leads to the conclusion that a partition thus made should be on the basis of a testamentary or legal succession and should be made in conformity with the fundamental rules thereof and the order of the heirs entitled to the estate, because neither of the two provisions could be given a wider meaning or scope than that they simply provide for the division of the estate during the lifetime of the owner, which, otherwise, would have to be done upon the death of the testator in order to carry into effect the partition of the estate among the persons interested."

Manresa comments on the same article as follows:

"A distinction must be made between the disposition of property and its division; and the provision of article 1056 authorizing the testator to dispose of his property by acts inter vivos or by last will, must be understood in accordance with this distinction. The idea is to divide the estate among the heirs designated by the testator. This designation constitutes the disposition of the properties to take effect after his death, and said act must necessarily appear in the testament because it is the expression of the testator's last will and must be surrounded by appropriate formalities. Then comes the second part, to wit, the division in conformity with that disposition, and the testator may make this division in the same will or in another will, or by an act inter vivos. With these words the law, in article 1056 as well as in article 1057, which we shall hereafter examine, makes allusion to the forms or manner of making the partition and not to the effects thereof, which means that, for purposes of partition the formal solemnities which must accompany every testament or last will are not necessary. Neither is it necessary to observe the special formalities required in case of donations, because it is not a matter of disposing gratuitously of properties, but of dividing those which already have been legally disposed of."

It is thus seen that both the Spanish Supreme Court and the learned and authoritative commentator, Manresa, are of opinion that a testator may, by an act inter vivos, partition his property, but he must first make a will with all the formalities provided for by law. And it could not be otherwise, for without a will there can be no testator; when the law, therefore, speaks of the partition inter vivos made by a testator of his property, it necessarily refers to that property which he has devised to his heirs. A person who disposes of his property gratis inter vivos is not called a testator, but a donor. In employing the word "testator," the law evidently desired to distinguish between one who freely donates his property in life and one who disposes of it by will to take effect after his death.

Sabina Almadin must have been aware of the necessity of a prior will, since before making the partition of her property among her nieces, the defendants herein, she executed a will giving to each of them the same parcels of land which she later transferred to them gratuitously.

Now, then, section 625 of the Code of Civil Procedure provides:

"SEC. 625. Allowance necessary, and conclusive as to execution.—No will shall pass either the real or personal estate, unless it is proved and allowed in the Court of First Instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution."

As Sabina Almadin's will was disallowed for the reason that it did not contain all the essential requisites provided by law for its validity, can the aforesaid partition of her estate made by said testatrix among her nieces be deemed

valid? Certainly not; for it is an indispensable condition precedent to a testator partitioning his estate inter vivos that" he have made a valid will disposing of said estate among his heirs; and if this will be declared null and void, the partition made by the testator in pursuance of its provisions is likewise null and void, for where these provisions cease to exist, the partition made in conformity therewith also becomes null and void, as the cessation of the cause implies the cessation of the effect.

And since Sabina Almadin's will is null and void for lack of the legal requisites, consequently, the partition which she made of her estate among her nieces the defendants-appellants herein, during her lifetime is likewise null and void.

The second question to be decided is whether or not the conveyances made by Sabina Almadin of the parcels of land in litigation, in favor of her nieces, respectively, by virtue of the instruments Exhibits 2, 31, 47 and 73 can be considered valid and enforceable.

Article 633 of the Civil Code provides that in order that a donation of real property be valid, it must be made by public instrument, in which the property donated must be specifically described, and that the acceptance may be made in the same deed of gift or in a separate instrument, but in the latter case notice thereof should be given the donor in due form, and a note to that effect inserted in both instruments.

There is no question that the documents Exhibits 2, 31, 42, and 73 contain all the requisites for public instruments. However, they do not show the acceptance of the respective donees.

It is contended that the sworn statements Exhibits 3, 5, 32, 34, 48, 74, and 76 signed by Sabina Almadin in which it appears that she has assigned to each of her nieces, respectively, the parcels of land in litigation, and wherein each of said nieces states that she has purchased the same parcels of land from her aunt Sabina Almadin, constitute a gift and an acceptance at the same time.

But it appears that said sworn statements refer to a sale and not to a gift and cannot, therefore, be considered as public instruments of gifts showing the acceptance of the donees.

It is also contended that said sworn statements constitute separate deeds of acceptance; but even if that were so, there is still lacking the legal requisite of notification in due form to the donor of the donee's acceptance, and the annotation thereof in the deed of gift and in the instrument of acceptance. The formal notice calls for the agency of the same notary who authenticated the acceptance and he should under his authority make the annotation of said notice, as indicated (5 Manresa, pp. 120, 121).

Furthermore, the aforesaid sworn statements are not deeds transferring title but mere acknowledgments made under oath of the fact of the transfer, required by the law in order that the provincial assessor may make the proper transfer of the tax declarations of the vendor to the vendee, where the transfer has not been recorded in the registry of deeds.

In view of all the foregoing, we are of opinion and so hold: (1) That the partition made by a testator inter vivos in pursuance of a will which has been disallowed is null and void; and (2) that the gift of realty made in a public instrument which fails to show the acceptance, or wherein the formal notice of the acceptance is either not given to the donor or else not noted in the deed of gift and in the separate acceptance, is null and void.

Wherefore, finding no error in the judgment appealed from, the same is hereby affirmed in its entirety, with costs against the appellants. So ordered.

Avanceña, C J., Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

[1] G. R. No. 27478, Almadin vs. Almadin and Zamora, promulgated November 19, 1927, not reported.

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