

INTESTATE ESTATE OF CONCEPCION GERONA. IGNACIO ARROYO, PETITIONER AND APPELLEE, VS. JACOB A GERONA ET AL., MOVANTS AND APPELLANTS.

G.R. No. 33023. September 16, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In the course of the intestate proceedings of the estate of Concepcion Gerona, Ignacio Arroyo filed an application on September 5, 1928, alleging that Victor, Jacoba, Patricia, Ciriaca, and Clara, surnamed Gerona, being all of age, executed an agreement of partition and adjudication of the estate of Concepcion Gerona by virtue of which they assigned to the applicant all the estate of the late Concepcion Gerona, renouncing whatever rights they had or might have thereafter to said property in favor of the applicant, in consideration of other property ceded to them by said agreement. For which reason Ignacio Arroyo prayed the court to declare him to be the sole assignee or successor and heir of the late Concepcion Gerona.

On October 8, 1928, the court issued an order declaring the following as sole heirs of the late Concepcion Gerona: Ignacio Arroyo, Victor, Jacoba, Patricia, Ciriaca, and Clara, also surnamed Gerona; and in view of the agreement of partition and adjudication of the estate, Exhibit A, executed by said heirs who were all of age, together with the express waiver made in favor of Ignacio Arroyo with respect to the property assigned thereby, particularly one-half of lot No. 255 and lot No. 1175, and, furthermore, in view of the fact that the late Concepcion Gerona left no debts nor claims against her estate, the court ratified and approved said agreement Exhibit A, in respect to the adjudication made therein in favor of each of said heirs who signed it, and particularly that of lot No. 1175 and one-half of lot No. 255 in favor of the heir Ignacio Arroyo, according to the terms therein set forth; and, lastly, the court declared the proceeding closed and at an end pursuant to section 596 of the Code of Civil Procedure.

On December 1, 1928, Ignacio Arroyo submitted to the court the receipt of the "Inheritance Tax Returns" together with the communication of the Collector of Internal Revenue, annexes A and B.

On July 6, 1929, the court, considering that Maria Gerona had not signified her acquiescence in the ratification of the deed of partition of June 13, 1913, stayed the approval of that stipulation pending the personal acquiescence of said interested party Maria Gerona.

The stipulation referred to by the court reads as follows:

"Come now Ignacio Arroyo, in his own behalf, and the heirs of Victor Gerona, through the undersigned counsel, and to the honorable court respectfully states:

"That on October 8, 1928, this court declared the following to be the sole heirs of the late Concepcion Gerona: Ignacio Arroyo, Victor, Jacoba, Patricia, Ciriaca, and Clara, surnamed Gerona.

"That in accordance with the agreement of partition and adjudication dated June 13, 1913, Ignacio Arroyo paid Victor Gerona, in addition to certain parcels of land, the sum of one thousand pesos (P1,000).

"That when Victor Gerona died, his children Maria and Bias Gerona inherited his estate.

"That in consideration of the amount of ten thousand pesos (P10,000) paid to them by the other heir, Ignacio Arroyo, in three installments, to wit:

"Four thousand pesos (P4,000) at the time this agreement is signed, three thousand pesos (P3,000) on the 1st of July, 1930; and the remaining three thousand pesos (P3,000) on July 1st, 1931,

"In consideration, then, of ten thousand pesos (P10,000) paid as described in the foregoing paragraph, and of the amount of money which their late father Victor received of Ignacio Arroyo, together with some parcels of land in virtue of the agreement of June 13, 1913, Maria and Blas, surnamed Gerona, do hereby renounce whatever right, title, and interest they have or might have in the estate of Concepcion Gerona.

"That both parties do hereby ratify the deeds executed on June 13, 1913, and on the 27th of September, 1928.

"That both parties accept this agreement as executed and signed by Ignacio Arroyo and the attorney for the heirs of Victor Gerona.

"Iloilo, July 5, 1929.

(Sgd.) "Ignacio Arroyo

(Sgd.) "Jose C. Zulueta

"Attorney for the heirs of Victor Gerona

"We agree:

(Sgd.) "Blas Gerona

(Sgd.) "Maria Gerona

(Sgd.) "Toribio Garingalao"

On the 9th of July, 1929, counsel for Jacoba, Ciriaca, Clara, and Patricia, surnamed Gerona, petitioned the court, for the reasons stated, to annul the deed of June 13, 1913, as being contrary to the law, and that of September 27, 1928, as having been surreptitiously and fraudulently executed, thereby rendering nugatory the order issued on October 8, 1928, permitting the summary partition of the estate of the deceased Maria Concepcion Gerona; and that a judicial administrator be appointed for said estate of the late Maria Concepcion Gerona, the supplicants proposing Luis Servando, upon furnishing a bond, the amount of which to be fixed by the court, taking into consideration the fact that all the estate is in the form of realty, and that Ignacio Arroyo claims an interest therein adverse to the heirs of the decedent Concepcion Gerona. Counsel for Ignacio Arroyo objected to the petition upon the grounds set forth in a memorandum filed on July 19, 1929.

On September 18, 1929, the court ruled itself incompetent to grant the petition filed by Ciriaca, Jacoba, Clara, and Patricia, surnamed Gerona, and dismissed the motion, without passing upon the validity of the agreements entered into on June 13, 1913, and on September 27, 1928, which were left for decision in an ordinary suit.

On October 12, 1929, counsel for the movants petitioned for the reconsideration of the former ruling, which the attorney for Ignacio Arroyo opposed on the 17th of October, 1929. On October 29, 1929, the court denied the motion for reconsideration. Exception was taken to the orders of September 18 and October 29, 1929, and, upon filing a five-hundred peso bond, the record on appeal was submitted for approval.

The only question raised by this appeal is: Can the court that approved the agreement of partition dated June 13, 1913, annul said agreement and vacate the order approving it on the ground of fraud?

The court below held that in the course of the intestate proceedings of Concepcion Gerona, it could not entertain a petition for the annulment of the agreements made on June 13, 1913, and on September 27, 1928, attached as annexes A and B to the appellee's brief, for the reason that the question of the nullity of the deed of partition comes within the jurisdiction of the ordinary and not the probate court.

We are of opinion that the court which possessed jurisdiction to approve said agreement of partition may disapprove or annul it. An agreement of partition made by heirs who are all of age, certainly binds all of them, especially when judicially approved. This court so held in *Centeno vs. Centeno* (52 Phil., 322, 339):

"While it is true that the partition agreement was made by all the heirs extrajudicially, in submitting it to the court for approval, and in being approved by the latter after having announced the hearing through publication in the newspapers, said extra judicial agreement of partition became judicial, and the order of the court approving it and declaring the respective testamentary proceedings involving the estates of the deceased spouses closed, became final and absolute, and binding upon all the parties who took part in the said partition agreement, and acquiesced therein. * * *." (Text of the decision.)

But this does not mean that none of the participants may thereafter ask for the annulment or rescission of the agreement upon discovering that fraud, deceit, mistake, or some other defect has vitiated the consent given, provided the action is brought within the statutory period. Of course, if the estate has passed to the heirs by virtue of the agreement of partition, there is nothing to administer and the intestate proceedings must be deemed terminated. But if the agreement of partition be successfully impugned, if it be shown that fraud was practiced in the compromise between the parties, then an administrator may properly be appointed to take charge of the estate with a view to its just distribution in accordance with the law.

Section 598 of the Code of Civil Procedure provides:

"Sec. 598. Liability of Distributees.—But if it shall appear, at any time within two years after the settlement and distribution of an estate in accordance with the provisions of either of the preceding sections of this chapter, that there are debts outstanding against the estate which have not been paid, or that an heir or other persons has been unduly deprived of his lawful participation in the estate, any creditor, heir, or other such person, may compel the settlement of the estate in the courts in the manner hereinafter provided, unless his credit or lawful participation in the estate shall be paid, with interest. The court shall then appoint an administrator who may recover the assets of the estate for the purpose of paying such credit or lawful participation; and the real estate belonging to the deceased shall remain charged with the liability to creditors, heirs or other persons for the full period of two years after such distribution, notwithstanding any transfer thereof that may. have been made." (As amended by Act No. 2331.)

It should be borne in mind that the appellee was appointed guardian of the person and estate of the late Concepcion Gerona, and was by law deemed the administrator of said estate, the subject matter of the agreements in question which, it is alleged, were fraudulently procured. On October 8, 1928, the court issued an order closing the intestate proceedings of the late Concepcion Gerona, pursuant to section 596 of the Code of Civil Procedure. But the record shows that on the 6th of July, 1929, the court withheld its approval of the stipulation ratifying the partition agreed upon dated June 13, 1913, pending the consent of the interested party, Maria Gerona, which was given on the 5th of said month of July. Up to this date, then, the court had control of the proceedings. Three days later, on July 9, 1929, the instant motion was filed by the appellants, which originated this appeal.

The motion, then, was filed within the statutory period prescribed in section 598 of the Code of Civil Procedure.

Taking up the question of jurisdiction of the court to entertain the appellants' motion filed on July 9, 1929, it must be remembered that in *Benedicto vs. Javellana* (10 Phil., 197), this court held that all demands and claims filed by any heir, legatee, or party in interest to a testate or intestate succession, shall be acted upon and decided in the

same special proceedings, and not in a separate action, and the judge who has jurisdiction over the administration of the inheritance, and who, when the time comes, will be called upon to divide and adjudicate it to the interested parties, shall take cognizance of all such questions.

In our opinion, the court that approved the partition and the agreement in ratification thereof may annul both whenever, as it is here alleged, the approval was obtained by deceit or fraud, and the petition must be filed in the course of the intestate proceedings, for it is generally admitted that probate courts are authorized to vacate any decree or judgment procured by fraud, not only while the proceedings in the course of which it was issued are pending, but even, as in this case, within a reasonable time thereafter.

In 11 Cyc, page 799, we come upon the following:

"* * * where equitable powers are possessed in probate matters orders for allowances may be set aside, after the term, for fraud or mistake (*Schlink vs. Maxton*, 48 111. App., 471). So the court may pass upon the nullity or rescission of its own decrees or judgments (*Darse vs. Leaumont*, 5 Rob. [La.], 284; *Harty vs. Harty*, 8 Mart., N. S. [La.], 518) and may within a reasonable time revoke or correct an order of ratification of a sale procured by honest mistake or by deceit (*Montgomery vs. Williamson*, 37 Md., 421). So the power exists independent of the statute to revoke letters testamentary or of administration when issued without jurisdiction, or irregularly, illegally, or for a special cause which has ceased to exist. (*Morgan vs. Dodge*, 44 N. H., 255; 82 Am. Dec, 213.) And the surrogate, in court or out of court, has power to open, vacate, modify, or set aside, or to enter as of a former time, a decree or order of his court; or to grant a new trial or a new hearing for fraud, newly discovered evidence, clerical error, or other sufficient cause."

In the case of *Estate of Leavens* (65 Wis., 440), the Supreme Court of Wisconsin held:

"The county court, sitting as a probate court, may, at any time, in furtherance of justice, revoke an order which has been irregularly made or procured by fraud.' The propriety of that determination by this court, as limited in the case of *Betts vs. Shotton*, supra, has never been questioned, and it has been reiterated in the opinions of this court in the several cases above cited. (See *In re Fisher*, 15 Wis., 511; *Betts vs. Shotton*, 27 Wis., 667; *Archer vs. Meadows*, 33 Wis., 166; *Baker vs. Baker*, 51 Wis., 538, 548; *Brooks vs. Chappell*, 34 Wis., 405.) A like rule has been adopted for the probate courts of New York (see *Campbell vs. Thatcher*, 54 Barb., 382, 386; *Pew vs. Hastings*, 1 Barb. Ch., 452; *Proctor vs. Wamnaker*, 1 Barb. Ch., 302; *Sipperly vs. Baucus*, 24 N. Y., 46; *Vreedenburgh vs. Calf*, 9 Paige, 128; *Skidmore vs. Davies*, 10 Paige, 316) ; also by the courts of, Massachusetts (see *Waters vs. Stickney*, 12 Allen, 1; *Richardson vs. Hazelton*, 101 Mass., 108). In some courts this proceeding to set aside an order of the probate court which has been irregularly or fraudulently made, is treated as a bill of review in such court. (See, *Mauro vs. Ritchie*, 3 Cranch, C. C, 167.)

"* * * The court, under the authorities cited, certainly has the power to vacate the order procured by the fraud of the administrator; and when that is vacated, there would seem to be no reason why the-administrator may not be required to again render his account, and, when such account is rendered, why another order of distribution may not be made to such persons as shall appear to be entitled to the same." Justice Cassoday, concurring, said: "The enlarged jurisdiction given to county courts by our statute, in matters of probate and the settlement of estates, seems to be sufficient to authorize them to grant relief of the nature here sought." Justice Lyon said:

"I concur in the judgment of the court on the grounds that the county court has ample power to grant the petitioner substantial relief, and that his petition shows he is in a position to attack the validity of the order of distribution, and is entitled to some relief * * *."

In the case of *the City of Chicago vs. Nodeck* (202 111., 257), the Supreme Court of Illinois ruled as follows:

"* * * The rule that a court has no power to set aside its judgment at a subsequent term, is subject to several exceptions. * * * Another exception to the rule is that, where a judgment has been obtained through fraud, such

fact constitutes a sufficient reason for vacating it after the term at which it was rendered. (17 Am. & Eng. Ency. of Law, 2d ed., p. 827; Walker vs. Skreve, 87 111., 474; Chicago Building Society vs. Haas, 111 id., 176; Ward vs. Durham, 134 id., 195; Mitchell vs. Shaneberg, 149 id., 420; Wright vs. Simpson, 200 id., 56.)

"* * * But, even if there were any doubt as to the question whether or not the court had jurisdiction to enter the judgment, there can' be no doubt that the making of the estimate, which included the paving of these approaches to the viaduct, and the passage of the ordinance, which required the property owners to pay for such part of the pavement, amounted to a fraud against the property owners. This element of fraud entered so largely into the judgment itself, that it justified the court in vacating the judgment at a term subsequent to the term, at which it was entered."

In *Montgomery vs. Williamson* (37 Md., 421), the Supreme Court of Maryland stated as follows:

"It seems to have been supposed that as there is no express authority to be found in the statute, the rescinding of the order of ratification would be the exercise of constructive authority which the court is forbidden to exercise. But this objection is fully answered by the Court of Appeals, in the case of *Raborg vs. Hammond* (2 H. & G., 42, 51), in considering the power of the Orphans' Court to revoke letters of administration, when improvidently granted, and where to the exercise of the power, the same objection was urged as to the jurisdiction in this case. The court said: 'But to this it may be answered that we deem the power of revocation, under such circumstances, as necessarily inherent in the Orphans' Courts, and a part and of the essence of the power delegated to them, of granting administration.' In confirmation of which, see 3 Bac. Ab., 50, where speaking of the ecclesiastical tribunals of England, in reference to this power, it is stated that 'it would be absurd to allow a court jurisdiction herein, and at the same time deprive them of the liberty of vacating and setting aside an act of their own, which was obtained from them by deceit and imposition.' "

In view of the foregoing, the orders appealed from are reversed, and let the record be remanded to the court below with instructions to proceed to try the claims set up by the appellants, and thereafter let the proper order be issued in accordance with law and the evidence. Without any pronouncement as to costs. So ordered.

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

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