

IN RE INTERSTATE ESTATE OF THE DECEASED FRANCISCO TORDILLA. GAUDENCIA TORDILLA, PETITIONER AND APPELLEE, VS. MOISES TORDILLA, OPPONENT AND APPELLANT.

G. R. No. 39547. May 03, 1934

Ponente: HULL, J.

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HULL, J.:

This is an appeal from a decision of the Court of First Instance of Camarines Sur providing for the distribution of the estate of one Francisco Tordilla, who died interstate in Naga, Camarines Sur, on December 18, 1925, leaving as his only heirs his widow, legitimate son, the defendant and appellant, and a recognized natural daughter, petitioner and appellee.

It might be said by way of introduction that the record is voluminous and that many questions of fact could have been clearly established by direct means rather than to leave the question in doubt by presenting only circumstantial evidence. This is especially true as to the first and second assignments of error which read:

"I. In including in the partition that residential lot containing 3352 square meters and more fully described as parcel (2) in the decision (69-70 R. A.).

"II. In including ten (10) carabaos and six (6) cattle (Item 8 and 9 in Dec. at pp. 70-71 R. A.) among the properties partitioned and in not holding that said animals do not exist and never came to the possession of the estate."

In a prior proceeding between the deceased and a third party, the third party was given a right to repurchase the land there in question. But the fact, standing alone, does not remove the lot from the properties left by the deceased. The fact is whether or not the third party had exercised his option to repurchase. The fact is whether or not the third party had exercised his option to repurchase. The fact was well known to appellant and was easily susceptible of definite and accurate proof. He has seen fit to leave the record in doubt and, therefore, the finding of the trial court will not be disturbed.

The same remarks are true as to the number of carabaos and cattle that the deceased had at the time of his death.

The contention of appellant in the third assignment of error is that, where a certain value is stated in a deed of donation, the value cannot be questioned when the properties are brought into collation. This is incorrect, as article 1045 of the Civil Code provides for the assessment of the property at its actual valuation at the time of donation. The recital in the deed cannot therefore be controlling. The actual value at the time of the donation is a question of fact which must be established by proof the same as any other fact.

The fourth assignment of error is not well taken. The original testimony was taken by a commissioner, and the report of the commissioner with the evidence was stricken from the files on motion of appellant. Thereafter the parties agreed to submit the case for the decision of the trial court on the evidence taken by the commissioner. Such a procedure waived the erroneous ruling on evidence by the commissioner. The appellant should have reserved the right to introduce additional evidence and should have reserved the right to introduce additional

evidence and should have tendered the proper evidence in the trial court. The trial court, with much experience, and after study of the evidence produced, held that the actual value of one of the properties was greater than that recited in the deed of donation, and also fixed the fruits and interest produced by property subject to collation must be ascertained under article 1094 of the Civil Code. (See *Guinguing vs. Abuton and Abuton*, 48 Phil., 144.) There is some doubt in our mind as to the income from the donated properties. But we cannot state from the fragmentary evidence which has been brought to our attention that the opinion of the trial court is contrary to the weight of the evidence, and, in case those figures are incorrect, what are the correct figures.

On the question of fact dealt with in the fifth and sixth assignments of error, after due consideration, we have determined to be guided by the judgment of the trial court.

The seventh, eighth, and ninth assignments of error refer to the validity of Exhibit H, a contract entered into between the appellee and the appellant in another case and signed shortly before the death of their father. The contract is in the nature of a compromise and conveyed two items, namely, first, the support of the natural daughter which the brother agreed to assume for one year and, second, a proposed division of their future inheritance upon the death of their father. It assumed that appellant has complied with his terms of the contract, and the father died before the obligation of the brother terminated. The second portion of the contract Exhibit H clearly related to the anticipated future inheritance and, therefore, is null and void under the provisions of article 1271 of the Civil Code which reads:

"ART. 1271. All things, even future ones, which are not out of the commerce of man, may be the subject-matter of contracts.

"Nevertheless, no contract may be entered into with respect to future inheritances, except those the object of which is to make a division *intervivos* of the estate, in accordance with article 1056.

"Any services not contrary to law or to good morals may also be the subject-matter of a contract."

The action of the trial court in holding Exhibit H to be uncontroverted and predicating its final action on the terms of that documents was erroneous and predicating its final action on the terms of that document was erroneous and contrary to law.

The tenth assignment of error reads: "In adjudicating to the natural daughter the same share or amount of properties as that adjudicated to the legitimate son." This assignment of error is based on article 840 of the Civil Code which provides:

"ART. 840. When the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one-half of the portion pertaining to each of the legitimate children who have not received any betterment, provided that a sufficient amount remains of the disposable portion, from which it must be taken, after the burial and funeral expenses have been paid.

"The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, at a fair valuation."

Appellee contends that article 840 of the Civil Code has been replaced by the Code of Civil Procedure, based on the statement of this court in *Concepcion vs. Jose* (46 Phil., 809). It is true that in the majority decision in that case it speaks of article 840 being repealed. While, with the question there considered, namely from where the funeral expenses should be taken, the Code of Civil Procedure changed the rule as to those items from what had formerly been in the Civil Code, by reading the whole decision we have no hesitancy in saying that what the court that what the court then had in mind was not repeal of the article but in fact merely a modification thereof. In the case of *In re Interstate Estate of Tad-Y*, found in the same volume (46 Phil., 557), this court, speaking through the

Chief Justice, applied article 840 of the Civil Code in the following language:

"To determine the share that pertains to the natural child is which is but one-half of the portion that in quality and quantity belongs to the legitimate child not bettered, the latter's portion must first be ascertained. If a widow shares in the inheritance, together with only one legitimate child, as in the instant case, the child gets, according to the law, the third constituting the legitime in full ownership, and in the third available for betterment in naked ownership, the usufruct of which goes to the widow. Then the natural child must get one-half of the free third in full ownership, from which third his portion must be taken, so far as possible, after deducting the funeral and burial expenses. * * *."

Our attention has not been called to any case in which this court has treated article 840 as entirely and completely repealed.

We are therefore of the opinion that this case must be disposed of according to the above quotation from the case of *Tad-Y*.

The eleventh assignment of error relates to a matter of accountancy which the court ordered to take place after its original decision had become in force and needs no further discussion at this time.

The decision and orders of the trial court must therefore be reversed and the case remanded for further proceedings consonant with the opinion. Costs against appellee. So ordered.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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