

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT, VS. FLORENCIO SERAFICA ET AL., PETITIONERS AND APPELLANTS.*G. R. No. 39641. December 22, 1934*

Ponente: IMPERIAL, J.

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In cadastral case No. 5 of the municipality of Asingan. Province of Pangasinan, G. L. R. O. Record No. 8694, final decree No. 30S05 and certificate of title No. 7154 to lot No. 2246 were issued in favor of the brothers and sister, Aniceto, Jose and Gregoria Abalos, declaring each of them to be the owner of an undivided third of the land in question, together with the improvements thereon. Aniceto Abalos died leaving as his heirs his widow Fulgencia Sales and his children Paulino, Emiliana and Veronica, the last named being two years of age. Gregoria Abalos, a widow, likewise died, without issue. Her husband Cipriano Balila died before her. On January 20, 1928, Jose Abalos, by means of a public document, sold his share in the said land, consisting of one-half, to the spouses Florencio Serafica and Laureta Samson. On April 28, 1931, the actual owners ordered the subdivision of the land in question. A plan thereof was drawn up which was approved by the Director of Lands and lot No. 2246 was divided into lots Nos. 2246-A and 2246-B. It was understood that the former lot was adjudicated to the Serafica spouses and the latter lot, in equal and undivided portions, to the Abalos children Paulino, Emiliana and Veronica.

Instead of instituting intestate proceedings of the deceased Aniceto Abalos and Gregoria Abalos, the said actual owners resorted to the cadastral case, and, in accordance with the provisions of section 112 of Act No. 496, filed a petition praying that certificate of title No. 7154 be cancelled and that, upon payment of the lawful fees of the register of deeds, the court order the issuance of new certificates of title: to lot No. 2246-A in favor of the Serafica spouses, and to lot No. 2246-B in favor of the aforesaid Abalos children Paulino, Emiliana and Veronica, in undivided and equal shares.

After hearing the petition to which no opposition had been filed, notwithstanding the notices issued, the court on February 28, 1933, entered an order denying the petition on the ground that the Cadastral Act, the Land Registration Act and the Code of Procedure in Civil Cases and Special Proceedings do not permit of a declaration of heirs and the partition of the estate of a deceased in cadastral or registration cases, adding that the heirs of the original owners thereof should have instituted proceedings for the summary settlement of the said estate and obtained the corresponding orders of the probate court. The motion for reconsideration, wherein the appointment of Fulgencia Sales as guardian ad litem of her minor daughter Veronica was also prayed for, having been denied, all the petitioners appealed.

The appellants contend that the order appealed from violates the provisions of section 112 of Act No. 496 which afford the remedy prayed for by them under any of the circumstances therein stated, one of which is when the right or interest of a registered owner has ceased to exist by reason of the transfer thereof to other persons. The section in question reads as follows:

"SEC. 112. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a

certificate of title or of a memorandum thereon and the attestation of the same by the clerk or any register of deeds, except by order of the court. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married; or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: Provided, however, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.

"Any petition filed under this section and all petitions and motions filed under the provisions of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered." The first question that arises is whether or not the petition falls within the scope of the provisions of section 112 above quoted. According to the said provisions, "* * * any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; * * *." The provision is so extensive and clear in its scope that this court does not hesitate to answer in the affirmative the question raised. Upon the death of Aniceto and Gregoria Abalos, who were the registered co-owners thereof, their rights and all their interest and participation in the registered land in question were, by operation of law, transmitted to their coheir Jose Abalos from whom the Serafica appellants derived their title, and to the coheirs of Gregoria Abalos, and consequently, the rights of the said original co-owners were extinguished giving rise to new ones belonging to the said Serafica spouses and the coheirs of Gregoria Abalos. These two cases of extinguishment of rights and birth of new ones are precisely among those provided for in the section above quoted and do not appear upon the original certificate of title which is sought to be cancelled, whence this court does not see any good reason to justify the conclusion that the petition in question is not entirely within the scope of the provisions of the aforesaid section 112. In the case of *Castillo vs. Valdez* (53 Phil., 120 et seq.), wherein Zambrano had filed a petition for the registration of his right acquired through purchase of the land registered in the name of Francisca Valdez, and the issuance of another certificate in his name, upon cancellation of the original certificate of title, this court correctly held that such petition had been filed in accordance with the provisions of section 112.

The next point to be considered is whether or not section 112 is applicable to cadastral cases, the case at bar being of the same nature. An affirmative answer is given by section 11 of Act No. 2259, as amended, which provides, among other things, that except as otherwise provided in the aforesaid Cadastral Act, all of the provisions of said Act No. 496, as well as those amendments thereto, shall be applicable to cadastral cases.

Another fundamental question to be decided is whether or not a petition of the nature of the one now under consideration may be filed in the case in which the final decree of registration and the original certificate of title were issued. There is not the least doubt in the mind of this court that the last paragraph of section 112 of Act No. 496 definitely decides the question in the affirmative. Said paragraph expressly provides that petitions of such nature shall be filed and entitled in the original case in which the decree of registration was entered.

However, it is contended that by virtue of the provisions contained in sections 89 to 98 of Act No. 496, lands

registered under the Torrens system or under the provisions of the Cadastral Act may not, in case of the death of the registered owner thereof, be apportioned nor divided among his heirs or the assignees of the latter, except by means of the institution of testate or intestate proceedings of the said deceased according as whether he died testate or intestate.

In the case of a registered owner who died testate, the settlement of his estate should, of course, be made in accordance with his last will, which would not be possible unless his will is first probated. But should he die intestate, there is no reason why it would be necessary to resort to the probate court and institute proceedings for his intestate succession. This proposition is all the more clear because, in this jurisdiction at least, it is an already well established doctrine that when all the heirs are of lawful age and their predecessor in interest has left no pending obligations, the said heirs may apportion and divide the estate among themselves without proceedings in court (section 596 of the Code of Civil Procedure). Whenever the gross value of the estate of a deceased person does not exceed P6,000, his heirs may likewise summarily apportion and divide it among themselves even when some of the said heirs are minors and there are debts pending payment. In case an heir has unduly been omitted or an outstanding debt left unpaid, the said heir or creditor may enforce his rights within two (2) years from the date of the order directing such settlement (sections 597 and 598 of the same Code). And the same heirs, as co-owners or joint holders, may, independently of the provisions of sections 596 and 597, institute an action for partition prescribed by sections 181 et seq. of the said Code of Civil Procedure.

The theory advanced to the effect that in accordance with section 89 of Act No. 496, upon the death of the registered owner, title to the property absolutely passes in all cases to his legal representative or judicial administrator, so much so that in case he dies intestate the institution of his intestate proceedings is inevitable, cannot be sustained. The said section reads as follows:

"SEC. 89. Lands and any estate or interest therein registered under this Act shall, upon the death of the owner, go to the executor or administrator of the deceased in like manner as personal estate, whether the owner dies testate or intestate, and shall be subject to the same rules of administration as if the same were personalty, except as otherwise provided in this Act, and except that the rule of division shall be the same as in the descent of real property, or as shall be provided by will."

In discussing the proposition just stated, we shall, of course, leave out those cases in which the registered owner shall have died leaving a will, because then the institution of his testamentary proceedings would be necessary for the purpose of making a settlement of his estate in accordance with his last will. However, when the registered owner died intestate or in case he died testate his will is annulled upon any ground, this court reiterates the opinion that even under the provisions of section 89 it is not necessary to proceed to the institution of his intestate proceedings nor to the appointment of a judicial administrator.

It will be noted that section 89, in providing that lands and any estate or interest therein registered shall, upon the death of the owner, go to the executor or administrator, at the same time includes the saving clause "except as otherwise provided in this Act", thus making it understood that although the said provision is mandatory, it is not absolute in all cases, particularly when under the provisions of the said Act the appointment of a judicial administrator, which in substance is provided for therein, may be dispensed with. In other words, although the rule is mandatory in its terms, it is not, however, inflexible nor invariable. The expression just quoted cannot mean otherwise. In reality it constitutes an exception of the said law itself, which permits that in cases which may be heard and decided under the provisions of section 112, the appointment of an administrator is not absolutely necessary and may be dispensed with.

Act No. 496 was promulgated after Act No. 190 and it is to be assumed that the Legislature, in formulating sections 89 et seq., had in mind the provisions of sections 181, 596 and 597 of the Code of Civil Procedure then in

force, which permit the apportionment and division of the estate of a deceased person without the necessity of resorting to the appointment of an administrator. Undoubtedly, it is for this reason that it inserted the aforesaid exception in order to make possible and practicable the distribution and adjudication of property registered under the Torrens system as well as that not registered thereunder whenever the case falls under the provisions of section 112. This court is of the opinion that it was not the intention of the Legislature to subject registered real property to more intricate and cumbersome proceedings than unregistered property merely because the former was registered under a system of recent creation. It cannot be contended that the institution of intestate proceedings and the appointment of a judicial administrator afford greater security than extrajudicial or summary settlements, because in either case the rights of every person who may have an interest therein are invariably safeguarded and duly protected. Under the procedure authorized by section 112, the court taking cognizance of a petition acquires complete jurisdiction to determine all the questions raised therein and renders no decision until after notice has been served upon all parties who might have an interest therein. For this reason this court cannot see any substantial difference between the decision rendered under section 112 and that which may be rendered in an intestate proceeding instituted solely for the purpose of determining who are the heirs of the registered owner and to what share each is entitled. These steps may likewise be taken in the proceedings authorized and followed under section 112.

From the foregoing considerations it may be inferred: that the petition filed by the appellants is entirely within the scope of the provisions of section 112 of Act No. 496; that this section is applicable to the Cadastral Act, No. 2259, under whose provisions certificate of title No. 7154, which is sought to be cancelled, was issued; that in passing upon a petition of this nature, the court which takes cognizance thereof exercises complete jurisdiction to determine all questions that may arise therefrom, provided those questions do not involve the review or reopening of the final decree of registration entered in the case; that in order to determine the shares of the co-owners and coheirs there is no necessity of a previous declaration of heirs by a probate court, and, lastly, that neither is there any necessity of instituting intestate proceedings of the deceased Aniceto and Gregoria Abalos so that the person who may be appointed administrator may take charge of the land in question.

However, the Justices who concur in this decision are of the opinion that, in order to better safeguard the rights of those who may have an interest in the land, the trial court should proceed to the publication of the petition in the manner provided in section 597 of the Code of Civil Procedure and that a guardian ad litem should first be appointed to legally represent the minor Veronica Abalos. If after the said publications and the subsequent hearing, the material and essential allegations of the petition appear to have been proven, then the said court shall grant the said petition, approve the subdivision plan, cancel original certificate of title No. 7154 and require the register of deeds to issue new certificates of title to the new lots in favor of the respective actual owners thereof.

Wherefore, the appealed order is hereby set aside and the case remanded to the court a quo so that it may appoint a guardian ad litem for the minor Veronica Abalos, order the publication of the petition in the manner prescribed in section 597 of the Code of Civil Procedure, and, if the essential allegations thereof are proven at the hearing, grant the said petition, approve the subdivision plan, cancel certificate of title No. 7154 and order the register of deeds, upon payment of his lawful fees, to issue new certificates of title, to lot No. 2246-A in favor of the Serafica spouses, and to lot No. 2246-B in favor of the heirs of Aniceto Abalos, pro indiviso and with a statement of their respective shares, without special pronouncement as to costs of this instance. So ordered.

Avancena, C. J., Street, Malcolm, Villa-Real, Abad Santos, Hull, Vickers, Goddard, and Diaz, JJ., concur.

BUTTE, J.:

I concur in the result.

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