

MARIA GUERRERO ET AL., PLAINTIFFS AND APPELLEES, VS. JOSE DE LA CUESTA, CRISTINA MINA ET AL., DEFENDANTS AND APPELLANTS.

G. R.No. 39696. February 08, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

The principal issue in this case, the only one of importance raised by appellants, is, does the filing of a motion for reconsideration within thirty days after notice of a decision, rendered by a Court of First Instance, prevent that decision from becoming final in case no action is taken thereon before the expiration of thirty days, when such motion is based on any of the causes, materially affecting the legitimate rights of the petitioner, appearing in section 145 of the Code of Civil Procedure?

The herein plaintiffs and defendants are relatives, all being direct descendants of the spouses Hilarion de la Cuesta and Valentina Zumel both of whom died intestate, Hilarion in 1873 and Valentina in 1921. The original complaint in this case filed July 24, 1923 was for the partition of 199 parcels of land. On March 19, 1925, the herein parties presented for approval of the court an agreement of partition of 185 of the parcels in litigation. The remaining 14 parcels described in the amended complaint, filed July 5, 1932, were not included in said agreement due to irreconcilable differences arising among the parties. In this amended complaint the plaintiffs pray that the remaining 14 parcels of land be divided among all the parties herein in the same proportion and manner adopted in the partition agreement above-mentioned; that that agreement be approved and that defendants be ordered to turn over to plaintiffs the products of these 14 parcels, or in lieu thereof that they be ordered to pay plaintiffs the sum of P10,920.

In the original decision of the trial court, which is dated August 24, 1932, it was held that the defendant Jose de la Cuesta, who had received, by way of gift from his mother Valentina Zumel, parcels 2, 3, 4, 5 and 6 of the amended complaint, should collate said parcels, and not their value at the time of the gift, for the purpose of the partition among all of the parties.

The defendant Jose de la Cuesta was notified of this decision August 29, 1932, and on September 9, 1932, he filed the following motion:

"Comes now the defendant Jose de la Cuesta, through the undersigned attorney and to this Honorable Court respectfully prays for the reconsideration of that part of the decision which disposes that parcels 2, 3, 4, 5 and 6 in the above entitled case be distributed into four equal parts.

"That this Honorable Court likewise modify that part of the decision giving three months time within which the parties may submit a project of repartition of the five abovementioned parcels.

"This reconsideration is requested in view of the following reasons:

"Article 1045 of the Civil Code provides :

"The same things bestowed as a gift or given in dowry need not be brought to collation and division, but only their value at the time of the gift or dowry, even though they should not have been appraised at the time.

"Their subsequent increase or decrease in value and even their total loss or destruction, whether casual or intentional, shall be for the account and risk or for the benefit of the donee.'

"The above provisions of the Civil Code together with the commentaries of Manresa are very clear on the point: that the donee can in no case be compelled, to collate the same things donated in view of the fact that what was really donated at the time was only their value. What Manresa really says is that in the French Civil Code the coheir may demand not only the fictitious but also the material collation of real property. But in this jurisdiction the project of the Civil Code in 1851 in its article 887 and finally embodied in article 1045 of the present Civil Code radically departed from this viewpoint and made it simpler in the sense that whether the property donated is real or personal there shall be only fictitious collation.

"In view of the foregoing, it is respectfully prayed that the decision be reconsidered accordingly."

All of the parties were duly notified of the hearing of this motion.

On October 20, 1932, the trial court dictated the following order:

"Se pide por el demandado Jose de la Cuesta en su mocion registrada en 9 de septiembre ultimo, por medio de su abogado, la reconsideracion y modification de la parte de la decision recaida en esta causa, que ordena la partition de las parcelas de terreno 2a., 3a., 4a., 5a. y 6a. descritas en la demanda enmendada entre las partes, en el sentido de que el valor de las citadas parcelas al tiempo de su donacion sea el que debe traerse a colation, y repartirse entre las partes, en vez de las mismas parcelas segun dispone el articulo 1045 delCodigo Civil.

"El Juzgado, vista la mocion no halla terminos habiles para modificar su decision en el sentido que se pide, sin ordenar nueva vista, porque en autos no hay ninguna prueba que demuestre el valor de los terrenos en cuestion al tiempo de su donacion al demandado Jose de la Cuesta, porque la cuestion del valor de los mismos no se ha suscitado en los escritos de alegaciones.

"Para que puedan cumplirse las disposiciones del articulo 1045 delCodigo Civil, por el presente se ordena que se deje sin efecto la decision y sentencia recaida en esta causa y que se celebre nueva vista para que las partes presenten pruebas sobre el valor de los citados bienes, y para ello se seiala el 2 de noviembre, 1932, a las 8 a. m. Asi se ordena."

The plaintiffs and the other defendants noted their exceptions to this order.

On November 2, 1932, all of the herein parties filed an agreement in writing to the effect that the value of parcels 2, 8, 4, 5 and 6 was P350, Philippine currency, in 1900, the year Jose de la Cuesta received these parcels from his mother.

On November 11, 1932, the trial court, in what is termed a "Decision Adicional" held that, under article 1045 of the Civil Code, the five parcels of land in question need not be brought to collation and division; but that Jose de la Cuesta should pay to the persons, indicated therein, their respective portions of P350, the value of these parcels at the time of the gift. With this modification the original decision was approved.

The plaintiffs did not appeal from this decision, but the other defendants noted an exception and moved for a new trial. This motion was denied; an exception to the order of denial was noted and a notice of appeal was given. A bill of exceptions was presented in due time and approved by the trial court.

The appellants allege, in their brief, that the trial court committed the following errors:

"El Juzgado inferior err6:

"1.º Al no resolver la peticion de los demandados de apellido Mina, presentada el 19 de octubre de 1932 (P. de E. pa?., 17), para que se ejecute la sentencia y se nombren comisionados repartidores.

"2.º Al dictar su auto de fecha 20 de octubre de 1932, estimando la mocion de reconsideracion presentada por el demandado Jose de la Cuesta y disponiendo con arreglo a dicha mocion que se reciban pruebas sobre el valor de los terrenos, dejando sin efecto con tal motivo su decision, cuando esta ya habia quedado firme e irrevocable.

"3.º Al dictar su decision adicional de fecha 11 de noviembre de 1932.

"4.º Al disponer en dicha decision adicional que se repartan, no los mismos terrenos como se ha dispuesto en la decision original, sino su valor.

"5.º Al denegar la mocion de nueva vista presentada por los demandados de apellido Mina."

The position of the appellants is, in substance, to the effect that although the motion for reconsideration was filed on September 9, 1932, eleven days after Jose de la Cuesta received notice of the original decision, that from that date to October 20, 1932, the date the court acted favorably on said motion, forty-one (41) days had elapsed and therefore the original decision had become final and that the trial court had lost all control over said decision.

The pertinent parts of section 145 of the Code of Civil Procedure read as follows:

"New Trial.—Within thirty days after notice of a decision rendered by a Court of First Instance, the judge thereof may at the petition of the party aggrieved, and after due notice to the adverse party, set aside the judgment and grant a new trial, provided the petition is based on any of the following causes materially affecting the legitimate rights of the petitioner:

* * * * *

"3. Because the judge has become satisfied that excessive damages have been awarded, or that the evidence was insufficient to justify the decision, or that it is against the law."

It is clear that the motion for reconsideration in question is based squarely on one of the causes mentioned in the above section, i. e., "that it is against the law". When the trial court held that Jose de la Cuesta should collate the five parcels of land received by him as a gift from his mother instead of their value at the time the gift was made, that decision was clearly contrary to the provision of article 1045 of the Civil Code. The court realizing this fact treated the motion for reconsideration as a motion for a new trial and granted a new trial.

"Para que puedan cumplirse las disposiciones del articulo 1045 delCodigo Civil, por el presente, se ordena que se deje sin efecto la decision y sentencia recaida en esta causa y que se celebre nueva vista para que las partes presenten pruebas sobre el valor de los citados bienes, y para ello se sehala el 2 de noviembre, 1932, a las 8 a. m."

We conclude that the trial court did not err in granting a new trial in this case in view of the fact that the motion for reconsideration was based upon one of the causes for granting a new trial set forth in section 145 of the Code of Civil Procedure. Neither did that court err in modifying its original decision, in part, in order to bring it into harmony with the provisions of article 1045 of the Civil Code.

The fact that the trial court kept this motion under consideration until October 20, 1932, did not result in the original decision becoming final. It was essentially a motion for a new trial.

In view of the foregoing we find that the contention of the appellants is not well founded.

The decision of the trial court is affirmed without costs. So ordered.

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

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