

SERAPIN SANSON, PLAINTIFF AND APPELLANT, VS. ISABEL ARANETA, ALFREDO SANSON, AND EVA SANSON, DEFENDANTS AND APPELLEES.

G. R. No. 43482. July 28, 1937

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DIAZ, J.:

The plaintiff brought this action on August 23, 1932, for the rescission of the agreement of partition entered into by him and the defendants on June 10, 1927, to terminate the testamentary proceedings of the deceased Roque Sanson, civil case No. 1055 of the Court of First Instance of Iloilo.

The plaintiff and the defendants Alfredo Sanson and Eva Sanson, the latter married to Antonio Yusay; are brothers and sister, all of them being children of the deceased Roque Sanson and the defendant Isabel Araneta.

After due hearing, the court decided the case in favor of the plaintiff, ordering, as a consequence thereof, the rescission of the agreement of partition in question by reason of lesion exceeding the fourth part suffered by him. This decision was later affirmed by this court to which the case had been brought, on appeal taken therefrom by the defendants (G. R. No. 39697)[1].

In the decision, the defendant Isabel Araneta was ordered, among other things, to file within thirty days a complete inventory of all the real and personal properties, furniture, jewelry, credits and actions left by the deceased Roque Sanson, together with the respective values thereof, and to present within said period a project of partition of said properties among the heirs.

Inasmuch as the defendant had failed to present the inventory of property and the project of partition required of her, the ones presented by her on December 3, 1934, not having been satisfactory to the plaintiff, the latter, on January 3, 1935, asked for the appointment of a receiver to take charge of the custody and administration of the properties in question, which was granted by the court on the 21st of said month and year. Sabas Gustilo, the plaintiff's father-in-law was appointed. After the receiver had entered upon the performance of his duties, he encountered many difficulties in discharging them due to the defendants' refusal to turn over to him the properties which formed part of the estate left by the deceased Roque Sanson. On February 12, 1935, the court, upon motion of the plaintiff, ordered the defendants to turn over the properties in question to the receiver within the period of four days. Inasmuch as the defendants did not comply with this order, the defendant Isabel Araneta having confined herself to presenting, on the 14th of said month and year, an amended but incomplete inventory of the properties left by the deceased Roque Sanson, the receiver, Sabas Gustilo, on February 18, 1935, petitioned that they be required to appear before the court to show cause, if any, why they should not be punished for contempt of court, for disobedience of an order thereof. Before his petition could be acted upon, the receiver filed another on February 27, 1935, praying the court this time to expressly order the appearance of the defendant Alfredo Sanson to show cause, if any, why he should not be declared guilty of contempt of court, for having ordered his tenants and farm hands not to turn over to him the fruits of the lands in their possession. The court, acting upon the receiver's last petition, ordered the defendant Alfredo Sanson to appear before it on March 4, 1935, to be

heard in connection therewith. However, before the day set for said defendant's appearance arrived, that is, on February 28, 1935, the court issued another order appointing the provincial sheriff of Iloilo as judicial receiver in substitution of Sabas Gustilo, in view of the difficulties which the latter was encountering in the discharge of his duties as such receiver, Sabas Gustilo asked for the reconsideration of this last order but the court, instead of directly deciding his motion, one way or another, issued the order of March 15, 1935, (a) denying said motion for reconsideration; (b) considering the incident relative to the appointment of a receiver as terminated; (c) approving the amended inventory filed by the defendant Isabel Araneta on February 14, 1935, and (d) ordering the parties to submit on April 1, 1935, the names of persons qualified for appointment as commissioners to proceed with the partition of the properties stated in the inventory. The plaintiff appealed from both this last order and that of February 28, 1935, appointing the provincial sheriff of Iloilo as judicial receiver in lieu of Sabas Gustilo, attributing to the lower court the seven alleged errors assigned by him in his brief.

The plaintiff contends, by means of the first two errors assigned by him, that the lower court erred in appointing the provincial sheriff of Iloilo as judicial receiver in lieu of Sabas Gustilo, and in setting aside, without any hearing, the appointment of said Sabas Gustilo.

By means of the 3d, 4th, 5th and 6th assignments of error, the plaintiff contends that the lower court erred: (1) In approving the amended inventory presented by the defendant Isabel Araneta on February 14, 1935, without taking into account: (a) that property exclusively belonging to the deceased Roque Sanson has been stated therein as conjugal partnership property of said deceased and the defendant; (b) that several parcels of land subject to partition, being conjugal partnership property of said spouses, have been omitted therefrom; (c) that the jewelry referred to in Exhibits M and N has likewise been omitted therefrom; and (d) that the inventory in question fails to state not only the proceeds of the sale of lands belonging to the conjugal partnership of the deceased and the defendant Isabel Araneta, which were sold by the latter and her co-defendants, but also the fruits of the lands actually in the possession of the three; (2) in failing to order the defendant Isabel Araneta to again amend the inventory presented by her on February 14, 1935, for the purpose of including therein all other properties of the deceased Roque Sanson, subject to partition; and (3) in failing to order the defendants to bring to collation a part of the properties turned over to them as inheritance.

By means of the 7th error, the plaintiff contends that the court erred in failing to order the sale at public auction of all the properties left by the deceased Roque Sanson to facilitate the partition thereof among the heirs, notwithstanding the fact that it had been so agreed upon by all the interested parties.

The first two errors attributed to the court are unfounded. Under sections 173 and 174 of the Code of Civil Procedure, the appointment of a receiver lies within the sound discretion of the court, it not being a matter of strict right to ask for and obtain it, nor an imperative duty to grant it when it is sought (*Sanson vs. Barrios*, 63 Phil., 198). It follows from the foregoing that the judge who has made the appointment may very well set it aside, as was done by the respondent judge, when in his opinion it is not justified by the facts and circumstances of the case. The respondent judge, in acting as he did, was undoubtedly guided by the consideration that the properties sought to be placed in the hands of a receiver were already in the possession of the defendants and the plaintiff himself; that it would be of no benefit to them to place the properties in the hands of a receiver inasmuch as in case of lesion, there is the remedy of collation provided for by the Civil Code; that the greater part of said properties consists in real estate which cannot be easily lost; and that the parties could very well protect their respective rights by merely recording in the registry of deeds of notice of lis pendens, in accordance with the provisions of section 401 of the Code of Civil Procedure.

As to the 3d, 4th, 5th and 6th errors, the record shows that the respondent judge really erred in approving the amended inventory presented by the defendant Isabel Araneta on February 14, 1935, because he failed to take into

consideration: (1) That said defendant stated therein that the land appearing in the record as lot No. 1525 is conjugal property belonging to her and the deceased Roque Sanson, when it is very clear, according to Exhibit F, No. 1, that it exclusively belongs to the deceased Roque Sanson, so much so that it is stated in the original certificate of title No. 2538, covering it, that it belongs to Roque Sanson, married to Isabel Araneta; (2) that lots Nos. 3, 4, 5, 6, 7, 13, 14, 21, 25, 26, 30, 32, 36 and 38 of plan 11-12490, more particularly described in original certificate of title No. 28970 issued in the name of Isabel Araneta and her children Alfredo Sanson/Serafin Sanson and Eva Sanson, who are the same parties litigant, have not been stated in said inventory; since, although it is alleged in Exhibit F, page 10, that said original certificate of title was later cancelled and substituted by transfer certificate of title No. 8044 issued in the name of Isabel Araneta and Eva Sanson, by order of the court, it does not mean that the plaintiff and the defendant Alfredo Sanson have lost their right to participate in said properties, it being admitted by the litigants that they constitute part of the conjugal partnership property of the defendant Isabel Araneta and of the deceased Roque Sanson. Furthermore, the alleged transfer of the lots in question made by the defendant Isabel Araneta in favor of Eugenio Badilla, is neither evidenced by any document nor authorized by the court and it appears from Exhibit F that a notice of lis pendens affecting them was recorded in the registry of deeds from the beginning; (3) that lots Nos. 22, 23 and 27 described in original certificate of title No. 28970 and in transfer certificate of title No. 8044 have been stated in the inventory as properties subject to partition, when it appears from Exhibit E that they had been sold for the sum of P30,000 to Delfin Mahinay on December 16, 1933, and it does not conclusively appear that such sale has been rescinded for failure of Mahinay to pay the stipulated price. Said price, which must be in the possession of the defendant Isabel Araneta, must at least be stated in the Inventory to be distributed among the litigants; (4) that lot No. 461, described in transfer certificate of title No. 8157, has been stated in the inventory as sold to Herminio Maravilla for the sum of P12,000 and therefore not subject to partition, when such transfer was declared fictitious and null and void by the lower court in a judgment rendered in this same case on March 3, 1933, and in a judgment rendered by this court in case G. R. No. 39697. Said land should be included in the inventory; (5) that the lands referred to in tax declarations Nos. 3849, 3850 and 3851 (Exhibits A, B and C), have not been stated in the inventory, since the only mention made of them, therein is that they are in the possession of Alfredo Sanson, having been allotted to him in the partition, but this is no reason for not including them because, as the agreement of partition by virtue of which Alfredo Sanson took possession of said properties was rescinded, they should necessarily be included in the inventory so that they may be taken into account when the partition is carried out; (6) that neither have the lands referred to in tax declarations Nos. 3434, 3740 and 3743 been stated in the inventory, the only mention made therein of the land referred to in the first declaration being that it was stated in the original inventory presented on December 3, 1934, which cannot now be taken into consideration because it was substituted by the amended one of February 14, 1935; (7) that the sum of P3,000 representing the selling price of the two parcels of land described in Exhibit U, has not been stated in the inventory as assets subject to partition; (8) that neither have the 17 parcels of land situated in the municipality of Banate of the Province of Iloilo, valued at P9,000, which constitute part of the conjugal partnership property of the deceased Roque Sanson and the defendant Isabel Araneta, been stated in the inventory, the only mention made thereof in said inventory being that they were sold by the defendant Isabel Araneta to one Victoriano Arroyo for the sum of P4,500 on May 21, 1924; and while it is true that said sale was made, it has not been authorized by the court, and is therefore null and void; (9) that neither has the proceeds of the sale of several parcels of land sold by the defendant Isabel Araneta to Evaristo Cuenca, amounting to P6,000 been stated in the inventory, which amount should be included in the inventory because it forms a part of the assets subject to partition; (10) that neither have the various sums amounting to P12,500 admitted by the defendant Isabel Araneta to have been collected by her from Domingo Arcosa as rents of certain lands belonging to the deceased Roque Sanson (t. s. n., pages 341, 342), been stated in the inventory; and (11) that neither have the income and fruits of the lands which are in the possession of the parties litigant by virtue of the rescinded

agreement of partition, been stated in the inventory. At least the products and fruits of said properties, received by each of the parties from the time they were notified of the judgment rescinding their agreement of partition, should be stated in the inventory for purposes of the collation which will be made in due time, it being clear that those derived prior thereto should not be included therein, because fruits received by possessors in good faith become their own, until their good faith ceases (article 451, in connection with article 483 of the Civil Code), and the parties were, theretofore, possessors in good faith.

The plaintiff contends that the jewelry referred to in Exhibits M, N, O, P and R should have been and should even now also be included in the inventory. This court has reviewed the evidence relative to this question and is of the opinion that the explanations given by the defendant Isabel Araneta are entirely satisfactory. Between the plaintiff's averment and that of said defendant, this court chooses to believe the latter's because her explanations are convincing. Many of the jewels in question, as those indicated by Nos. 1, 4, 9, 10, 14, 15, 16, 17 and 18 in Exhibit M, 21, 22, 23, 25, 26, 28, 30, 31, 32, 34, 36 and 38 in Exhibit N, the necklace and the rings described in Exhibit O, the crown, the necklace and the bracelets described in Exhibit P, and the jewels described in Exhibit R, do not belong to her. Others, as those indicated by Nos. 3, 7, 11, 12, 13 and 19 in Exhibit M, 20, 27 and 37 in Exhibit N, the bracelet described in Exhibit O, and the bird-shaped necklace, the bracelet without diamonds and the bracelet with a diamond cluster described in Exhibit P, exclusively belong to her. The rest, some of which have already been distributed among the heirs, belong to her conjugal partnership (Nos. 2, 5, 6 and 8 of Exhibit M, 24, 29, 33 and 35 of Exhibit N, and the three solitaire rings and the ring with a diamond cluster described in Exhibit P),

With respect to the last error attributed to the lower court, it should be said that, taking into consideration the circumstances to be stated hereinafter, the agreement entered into by the parties, allegedly approved by said court on February 25, 1935, to sell all the properties left by the deceased Roque Sanson at public auction for the purpose of distributing the proceeds thereof among themselves, is not of the nature of a compromise having a binding force under the provisions of the Civil Code (articles 1809 et seq. of the Civil Code). The lower court, in issuing the appealed order of March 15, 1935, failed to order the sale of said properties, as agreed upon by the parties, for the purpose of facilitating the distribution thereof, which proves that the court revoked the approval thereof given by it on February 25th of said year. On the other hand, the partition of the properties left by the deceased Roque Sanson may be made without necessity of selling them at public auction; and to so sell them would be to openly disregard the orders of the deceased contained in his probated will.

In view of all the foregoing, the order appealed from is modified by affirming it in so far as it sets aside the appointments of the receivers Sabas Gustilo and the provincial sheriff of Iloilo, and reversing it in so far as it approves the amended inventory of February 14, 1935, presented by the defendant Isabel Araneta; and said defendant is ordered to present, within the period of thirty days, a new inventory of all the properties left by the deceased, whether or not they be in her possession or in that of the other litigants, stating therein the respective values thereof and their income and fruits from the time each and every one of said litigants, including the defendant herself, was notified of the judgment rescinding said agreement of partition. Said properties are those stated in the aforesaid amended inventory of February 14, 1935, which were not the subject matter of an opposition upheld by the court, plus those omitted therefrom which are no other than the ones expressly enumerated in this decision. It is ordered, furthermore, that as soon as the required inventory is presented, and unless said defendant and the other litigants present a project of partition satisfactory to everybody, the lower court should proceed with the appointment of partition commissioners, in accordance with the provisions relative thereto contained in Act No. 190; and when said partition takes place, the necessary collations and compensations should be made in order that it may be the most equitable and just possible, in conformity with the provisions of the will of the deceased Roque Sanson. Let the costs be taxed against the appellees. So ordered.

Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

[1] Samson vs. Araneta, 60 Phil., 27.

RESOLUTION ON MOTION FOR RECONSIDERATION

September 8, 1987

DIAZ, J.:

The defendants and appellees have filed in two separate pleadings a motion for reconsideration of the decision rendered in this case, alleging: (1) That there is no evidence of record to the effect that Delfin Mahinay has paid to the defendant and appellee Isabel Araneta the sum of P30,000 for parcels 22, 23 and 27 described in original certificate of title No. 28970 and in transfer certificate of title No. 8044; (2) that neither is there evidence in support of the court's conclusion that the parcels of land described in tax declarations Nos. 3849, 3850, 3851, 3740 and 3743 were not included in the amended inventory presented by the defendant-appellee Isabel Araneta; (3) that neither is there evidence in support of the court's finding that Isabel Araneta did not sell the 17 parcels of land situated in the municipality of Bariate, Province of Iloilo, to Victorians Arroyo, for the sum of P4,500, and that at all events, what should be done is to. order the inclusion of the P4,500 in the inventory to form part of the assets subject to partition.; (4) that while the new partition ordered by the court is not carried out the heirs are entitled to continue in the possession of the lands turned over, to them and,, consequently, to receive the fruits thereof, invoking therefor the provisions of article 1077 of the Civil Code; and (5) that the court should order the deduction of the sum of P19,463, advanced;by the defendant and appellee Isabel Araneta while she was administratrix of the testate estate.of the deceased Roque; Sanson, from the various sums which ought to be included in the inventory to be prepared by virtue of the decision rendered in the case.

- The first allegation of the defendants is contradicted by Exhibit E, which is a certified copy of a notarial certificate the validity of which has never been questioned. Said document shows that on December 16, 1933, the defendants and appellees Isabel Araneta and Eva Sanson, and the latter's husband named Antonio Yusay, sold parcels 22, 23 and 27 described in plan 11-42490 and in transfer certificate of title No. 8044, to Delfin Mahinay for the sum of P30,000 which they admitted to have received as follows: P21,112.40 upon the execution of said document, and the assumption by said Delfin Mahinay of the obligation to pay to the Philippine National Bank a certain loan in the sum of P8,887.60, for which said properties were mortgaged. Consequently, the contention that this court should not have declared that the price thereof had been paid because, according to Isabel Araneta's testimony, she received only about P4,000 from Mahinay (t. s. n., page 303), is unfounded. Isabel Araneta as one of the makers of the notarial deed of transfer could not and cannot impugn it except under the circumstances prescribed in section 285 of Act No. 190, which are certainly not those which were present herein (Weidman vs. Macasero, G. R. No. 24505, December 28, 1925, not reported). The fact that, subsequent to the promulgation of the decision of this court, Alfredo Sanson agreed with the purchaser Mahinay to rescind the contract of sale Exhibit E, according to Annex I of the motion for reconsideration, cannot alter said decision, much less set aside said contract. Neither can Annex I nor the documents and promissory notes attached to said motion for reconsideration as Annex B, G, D, E, F, G and H be taken into consideration, because neither are they new evidence which may be admitted with the formalities required by law, nor have they been previously admitted as such, nor is the first one (Annex I) subscribed by all the parties who executed the deed of sale sought to be affected thereby, that is Exhibit E. They apparently have all the earmarks of having been intentionally prepared solely to support the motion for reconsideration. It was well settled in the decision that the sum of P80,000, and not parcels 22, 23 and 27, should have been and should be stated in the inventory to be subject to partition.

- As to the second proposition of the defendants and appellees, it should be stated that, with the exception of(their allegations contained on pages 20 and 21 of their brief to the effect that the lands described in tax declarations Nos. 3434, 3740 and 3743 have been consolidated to form the parcel described in tax declaration No. 3844, there is nothing of record to prove such fact. What the evidence clearly shows is that said lands and those described in tax declarations Nos. 3849, 3850 and 3851 belonged to the conjugal partnership of the deceased Roque Sanson and Isabel Araneta. Such being the fact, there is no doubt that they should be included in the new inventory to be presented in accordance with the decision, inasmuch as the contract by virtue of which Alfredo Sanson took possession thereof has been rescinded.

- The third proposition is untenable. If the 17 parcels in question were not sold, it is just that they be included in the new inventory in order to form part of Roque Sanaon's hereditary estate subject to partition. The alleged proceeds of their sale (P4,500) should not be stated in the inventory in lieu thereof, because said amount is less by one-half than the value given by the same defendant Isabel Araneta in the inventory submitted by her to the court while she was administratrix of the testate estate of Roque Sanson, and because to do so would be equivalent to sanctioning¹ an act which could not have been approved by the court.

- With respect to the fourth proposition, it should be stated that, as the agreement of partition under consideration was declared rescinded by this court, the parties were bound to return the properties which were the subject matter of the partition, with all their fruits and income or the equivalent thereof in money (article 1295, Civil Code), in conformity with the provisions of articles 451, and 433 to 436 of said Code, from the date of the rescission.

- As to the last proposition, this court holds that the matter referred to therein is a question that must be submitted to the consideration of the lower court, which will be the one to determine how and to what extent the set-offs will have to be made when it orders the partition of the properties subject thereto.

For all the foregoing considerations, this court decides to deny as it hereby denies the defendant's motion for reconsideration. So ordered.

Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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