

CIRILO T. JAVELOSA, PETITIONER, VS. CONRADO BARRIOS, JUDGE OF FIRST INSTANCE OF ILOILO, ET AL., RESPONDENTS.*G.R. No. 46096. August 12, 1938*

Ponente: CONCEPCION, J.

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We are asked to order, through a writ of mandamus, the judge of the Court of First Instance of Iloilo to allow the petitioner, being the vendee of the share of certain heirs, to intervene in the testate proceedings of the deceased Florencio Jagunap (civil case No. 1478). The following are the facts of the case:

In his duly probated will of January 21, 1926, Florencio Jagunap made a partition of his properties in favor of his children from his three successive marriages and ordered that his third wife, Flora Jagna-an, and six children born of this marriage should inherit various parcels of land among which are lots 2850 and 2877 described in certificate of title No. 8053. His widow, Flora Jagna-an, who was appointed judicial administratrix of his properties, obtained a personal loan in the year 1931 from the Chinese Uy Khia which became the subject of a litigation wherein said widow was sentenced to pay to the plaintiff the sum of P3,400. In order to prevent the execution of the judgment, Flora Jagna-an borrowed from the herein petitioner the sum of P4,600, and she and her children Loreto Jagunap and Maria Jagunap sold in favor of the petitioner, on October 26, 1935, their respective shares, or a total of nine-fourteenth parts, in the two lots mentioned, with right of repurchase within the period of one year. The petitioner prayed in the testate proceedings of said deceased Jagunap for the approval of the sale, notice of the hearing of his motion being sent to Manuel F. Zamora, attorney for the judicial administratrix and other heirs of said deceased, and to Ramon T. Jimenea, attorney for Filar Jagunap, another daughter and heir of the deceased. There being no objection, the court approved said sale by order of November 21, 1936 and, on motion of the petitioner and by order of December 12th of the same year, directed the clerk to send him notice of any proceeding in the above-mentioned testate case. The attorney for the administratrix filed with the court for approval a project of partition dated May 18, 1937, and inasmuch as in said project the interest acquired by the petitioner in lots 2850 and 2877 was not adjudicated to him, nor was any mention made of the sale executed in his favor, the petitioner filed an objection to the approval of said project of partition. Whereupon, for the first time, the aforesaid widow, Flora Jagna-an, and her children Loreto and Maria Jagunap objected to the intervention of the petitioner in said proceedings on the ground that the latter was neither an heir nor a creditor of the deceased. The court disallowed by order of December 7, 1937 the intervention of the petitioner in said testate proceedings, in view of the opposition of the administratrix and other heirs and on the ground—so it states—that the shares of the vendors Flora Jagna-an and the heirs Loreto and Maria Jagunap have not been fixed and they merely sold the rights, interests and participations which they might have in lots 2850 and 2877 of the Santa Barbara cadastre, with the result that the purchaser Cirilo T. Javelosa lacks personality to intervene in these proceedings, though he might bring the proper action against the vendors. Upon denial of the motion for the reconsideration of the order, the instant petition for mandamus was filed.

In the answer to the petition the respondents contend that the deed of sale executed in favor of the petitioner is

null and valueless.

According to article 1056 of the Civil Code:

"If the testator makes the partition of his property by an act inter vivos or by a last will, it shall be accepted in so far as it does not prejudice the legitime of the forced heirs."

In the case of *Montañano vs. Suesa* (14 Phil., 676), this court held:

"* * * With respect to the partition of the inheritance, there is the definite provision of law that when the testator makes such partition by an act inter vivos or by a last will, it shall be accepted in so far as it does not prejudice the legal portion of the heirs by force of law. (Art. 1056, Civil Code.)

"From this it follows that, as the testator, Montanano, had by his will partitioned his property and assigned to his son Catalino, as his portion, the lands in question herein, the said testamentary provision, being binding on the heirs, constitutes prima facie evidence that the said lands were actually inherited by Catalino, and not by the plaintiff herein; other property was assigned to her in payment of her legal portion. * * *" (Page 680.)

Consistently with the provisions of article 1056 of the Civil Code and with the doctrine just cited, it is indubitable that the partition effected by Florencio Jagunap in his will, in the absence of any allegation that it impairs the legitime of his heirs, is valid and binding both upon his widow and his children, and one of the legal effects of said partition is that Flora Jagna-an and her children Loreto and Maria Jagunap acquired full ownership of the shares sold by them to the petitioner, after the will of their grantor had been duly probated, for the reason that according to article 1068 of the Civil Code:

"A partition lawfully made confers upon each heir the exclusive ownership of the property awarded to him."

Wherefore, neither the heirs nor the widow Flora Jagna-an and her children Loreto and Maria Jagunap can contest the validity of the sale-executed in favor of the petitioner on the ground of lack of consent of all the heirs, because such consent was not necessary, Flora Jagna-an and her two children having disposed of what was exclusively theirs.

Said sale is the more unassailable, since it was approved by the court without any objection on the part of the widow or any of the heirs to the corresponding motion, filed by the petitioner, notice of the hearing of which having been sent to the attorney for the administratrix and other heirs of Florencio Jagunap and to the attorney for Pilar Jagunap, another heir. The allegation in the respondents' answer to the contrary is consequently not true.

It is stated in the order of the court of December 7th that the testate estate of the deceased Jagunap has not yet been liquidated, and in the respondents' answer it is for the first time alleged that there were many debts to pay. These averments are not consistent with the fact that the attorney for the administratrix filed a project of partition dated May 18, 1937, and the latter notified the petitioner that on the 13th of the same month it would be submitted to the court for approval. The presentation of a project of partition gives rise to the presumption that there are neither debts nor a plan to pay existing-debts, for the reason that according to the provisions of section 753 of the Code of Civil Procedure, distribution of the estate among the heirs may be proceeded with after payment of the debts, funeral expenses, etc.

At any rate the mere allegation, made for the first time in this court, that there are unpaid debts, is not sufficient to invalidate the partition ordained by Florencio Jagunap in his last will, in the absence of any intimation that it is necessary to set aside said partition in order to pay existing debts. In other words, it is not alleged that to enable the payment of those supposed debts, it would be necessary to nullify the partition as regards the properties adjudicated in favor of the widow and the children of the third marriage.

It does not appear from the pleadings that the project of partition filed with the court for approval contains the same distribution made by Jagunap in his last will, or that it is an entirely or partly different partition effected through mutual agreement of all the heirs. If it be the latter case, the widow and the heirs of Jagunap cannot disregard the sale executed in favor of the petitioner, as it was a legal act validly done under a partition likewise validly made by the deceased Jagunap in his last will and which had already commenced to produce all legal effects from the moment said will was duly probated.

In view of what has been said, a writ of mandamus will issue directing the Court of First Instance of Iloilo to allow the petitioner's intervention in the testate proceedings of the deceased Florencio Jagunap, civil case No. 1478 of said court, in order that the petitioner may protect his interest, title or participation in the lots above-mentioned. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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