

ANDREA CORDOVA VDA. DE MAÑALAC, ETC., PETITIONER, VS. BUENAVENTURA OCAMPO, ETC., ANA MAÑALAC AND LAUREANO MAÑALAC, RESPONDENTS.*G.R. No. 48753. August 31, 1942*

Ponente: MORAN, J.

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Petitioner, Andrea Cordova Vda. de Mañalac, in her capacity as heir of her deceased husband, Laureano Manalac, and administratrix of his estate, filed on September 10, 1940, a petition in the probate court, praying that the properties "La Joyeria El Diamante" and "La Agencia El Diamante" be, among the others enumerated therein, included in the inventory of his estate. Respondents Ana Manalac and Laureano Manalac, jr., heirs of the deceased, opposed the petition, and on September 2, 1941, the probate court, after hearing, issued its resolution declaring, among others, that the pro per ties, aforementioned do not pertain to the conjugal partnership of the deceased and the petitioner. Notice of this resolution was served upon the parties on the following day, September 3, 1941. Ana Mañalac moved on September 11, 1941, for reconsideration praying that said declaration be included in the dispositive part of the resolution, but on September 23, 1941, the court denied the motion on the ground that the declaration may in itself be considered as part of the dispositive portion of the resolution. Parties were notified of this order of denial on September 24, 1941. On October 8, 1941, petitioner moved for reconsideration of the resolution of September 2, 1941, and the order of September 23, 1941 praying that the finding of the probate court as to the ownership of "La Joyeria El Diamante" and "La Agencia El Diamante" be omitted, as any finding to such effect was beyond its probate jurisdiction. On October 18, 1941, respondent court denied this motion for reconsideration upon the ground that, as petitioner's first motion for reconsideration did not partake of the nature of a motion for new trial, it did not suspend the running of the period for the perfection of an appeal and that, the resolution of the court of September 2, 1941, had already become final and could not thus be modified. Parties were notified of this denial on October 21, 1941. Petitioner thereupon instituted the present certiorari proceeding, praying that the finding of the probate court in its resolution of September 2 and September 23, 1941, regarding the ownership of the properties "La Joyeria El Diamante" and "La Agenda El Diamante," be declared null and void because in excess of its jurisdiction; otherwise, that said resolution of September 2, 1941, be declared not final.

We hold that the resolution of September 2, 1941, is valid, the probate court having jurisdiction to render the same. As a general rule, a question as to title to property cannot be passed upon in testate or intestate proceedings (Bauermann vs. Casas, 10 Phil., 386; Devesa vs. Arbes, 13 Phil., 273; Franco vs. O'Brien, 13 Phil., 359; De Ion Santos vs. Jarra, 15 Phil., 147; Guzman vs. Anog, 37 Phil., 61; Lunsod vs. Ortega, 46 Phil., 664; Santiago vs. Court of First Instance, 55 Phil., 62; Adapon vs. Maralit, 40 Off. Gaz., 6th Sup., 84; Pascual vs. Pascual, G. R. No. 48140, May 4, 1942), except where one of the parties prays merely for the inclusion in or exclusion from the inventory of the property, in which case the probate court may pass provisionally upon the question without prejudice to its final determination in a separate action (Garcia vs. Garcia, 40 Off. Gaz., 1st Sup., 65; Marcelino

vs. Antonio, 40 Off. Gaz., 8th Sup., 221; Guing-guing vs. Abuton, 48 Phil., 144,147). When, however, the interested parties are all heirs, it is optional to them to submit to the probate court a question as to title to property, and when so submitted, said probate court may definitely pass judgment thereon, the reason being that questions of collation or of advancement are generally inevitably involved therein which are proper matters to be passed upon in the due course of administration (Pascual vs. Pascuai, G. It. No. 48140, May 4, 1942; Guingguing vs. Abuton, 48 Phil., 144, 147; Rule 91, section 2, Rules of Court).

In the instant case, the interested parties are all heirs of the deceased. Since the question of ownership of "La Joyeria El Diamante" and "La Agenda El Diamante" hag, by motion, been submitted by the widow herself, she cannot thereafter be permitted to complain if the court, after examination of the evidence presented by both parties, adjudges the question against her.

Petitioner prays that the resolution of the probate court if adjudged to be valid be declared not to be final so that an appeal may still be interposed therefrom. In the ordinary procedure, a prayer of this kind is not proper in a certiorari proceeding before this Court. Notwithstanding the order of the probate court of October 18, 1941, declaring its resolution aforementioned to have become final, petitioner should have perfected her appeal within the time provided by the Rules of Court, and if her appeal be dismissed she may apply here for a writ of mandamus. We are not inclined, however, to require her to follow this procedure under the circumstances of the case since she is here on a like proceeding and we may very well pass upon the question by her raised to avoid further litigation and in the interest of prompt administration of justice.

It should be observed that notice of the resolution of September 2," 1941, was served upon the parties on September 3, 1941. In the dispositive part of this resolution ordering certain properties to be included in the inventory, there was absolutely no declaration in connection with "La Joyeria El Diamante" and "La Agencia El Diamante." For this reason, on September 11, 1941, Ana Mañalac filed her motion for reconsideration, which was denied on the ground that in the resolution, in a paragraph immediately preceding the dispositive part, there is an express statement to the effect that "La Joyeria El Diamante" and "La Agencia El Diamante" did not belong to the conjugal partnership of the deceased and the petitioner, which statement could be considered as a sufficient disposition of the question regarding said properties. Practically, by this order, the paragraph therein mentioned was made a portion of the dispositive part contained in the resolution, and, therefore, it was only after this order was issued that there was a judgment regarding the two properties, from which the petitioner could appeal. The parties were notified of such order on September 24,1941. From this date to October 8,1941, when petitioner filed her motion for reconsideration, 14 days had elapsed. When, therefore, the probate court on October 18, 1941 denied the motion filed by the petitioner declaring that its resolution of September 2, 1941, had become final, only 14 days of the 30-day period for perfecting an appeal had elapsed. The days following the order of October 18, 1941 cannot be counted against petitioner's right to appeal since such order may be treated as a virtual refusal to allow her appeal. Consequently, petitioner had still 16 days within which to perfect her appeal. The resolution of the probate court of September 2,1941, is accordingly hereby held to be valid but has not yet become final thereby permitting petitioner, if she so desires, to appeal therefrom within 16 days after this judgment has become final. Without costs.

Yulo, C. J., Ozaeta, and Bocobo, JJ., concur.

CONCURRING AND DISSENTING

PARAS, J.,

This case involves a simple question of procedure. In the testate proceedings of the deceased Laureano Manalac, Case No. 53544 of the Court of First Instance of Manila, the petitioner, as heiress, filed a motion praying that, among other properties, the jewelry business "El Diamante" be included in the inventory. The motion was opposed by the respondent Ana Manalac, and after several hearings during which evidence was presented, the respondent Judge promulgated his resolution of September 2, 1941, reading in part as follows;

"Andrea Cordova, conyuge supirstite del finado Uureano Manalac, Sr., alega que la joyerfa y la agencia dc empeiiios 'El Diamante' eran de la sociedad de ganancialea mencionada.

"Por su parte. Ana Manalac, una de los hijos del finado, contiene que la joyerla y agencia dc empeñoa 'El Diamante' nunca pertenecieron a la citada sociedad de gananciales; que fueron de la sociedad colectiva 'Mañalac Brothers'; que por la muerte de uno de sus dueños, Nicolas Manalac, su onico heredero forzoso, Laureano Mañalac, en vida, llegd a ser dueno de los intereses de aquel en el negocio 'El Diamante,' que valian unos P5.000; que este negocio ya se ha vendido por el administrador de esta testamentaria a favor de Telesfora S. Santiago, cuya venta la aprobo el Juzgado en su orden de fecha 30 de junio de 1939, que ha quedado firme e inapelable; que por este motivo Andrea Cordova no puede ahora suscitar ninguna cuestion sobre dicho negocio.

"Exammadas las pruebas prewntadas por las partes en apoyo de sus respectivas pretension, el Juzgado llega a la conclusion de que la preponderancia de las mismas imlita en favor de Ana Manalac. Resulta de autos que sobre el negocio 'El Diamante' se ha dictado en el intestado del finado Nicolas Manalac (causa civil No. 33673, Juzgado dc Primers Inatancia de Manila) una orden de fecha 25 de julio de 1928 (Exhibit C) que demuestra que el finado Laureano Mañalac, Sr. en vida heredo de su difunto hijo Nicolas Manalac la Participacion de eate en la sociedad regular colectiva 'Mañalac Brothers' que valia P5,000, ademas de sus ganancias devengadas. Resulta tambien de autos que en esta testamentaria se ha dictado una orden de fecha 30 de junio de 1939 (Exhibit E-2), aprobando la venta del negocio 'El Diamante' a favor de Telesfora S. Santiago por la suma de P11,221.32, y que una copia de esta orden ae envio a Andrea Cordova Vda. de Manalac, el 6 de julio de 1939, por conducto de su madre. Resulta igualmente de autos que en la escritura enmendatoria de la sociedad colectiva Mañalac Brothcra' aparece como uno de los firmantes el finado Laureano Manalac, Sr. a quien se ha traspasado los derechos y privilegios que el difunto Nicolss Manalac tenia en el negocio 'El Diamante' (Exhibit D). Estos hechos, a juicio del Juzgado, establecen plenamente que el negocio 'El Diamante' nunea pertenecio a la sociedad conyugal formada por el finado Laureano Manalac, Sr. y su conyuge superatite Andrea Cordova. Si algun derecho tuvo dicho finado sobre este negocio, era el derecho que a habia heredado de su difunto hijo Nicoiaa Mañalac, consiatente en 1/6, equivalentes a P5,000, y esta cantidad debe consideraree tomo de la exclusiva propiedad del repetido finado Laureano Manalac (art. 396 del Codigo Civil).

"Ademas, habiendo ya el Juzgado declarado en su citada orden de fecha 30 de junio de 1939, dictada en esta causa, que la partieipacion que tenia el finado Laureano Manalac, Sr. en el negocio 'El Diamante' era (esta participation debiera ser 1/6), y teniendo en cuenta que esta orden tiene fuerza de una sentencia y ha adquirido caracter firme, la pretension de dicha Andrea Cordova de que el referido negocio 'El Diamante' pertenecia a la sociedad conyugal mencionada ha venido muy tarde y fuera de tiempo. Es una cuestion ya decidida y por tanto constituye una cosa juzgada.

"Y aunque se admita por un momento que la repetida orden de fecha 30 de junio de 1939 no tiene fuerza de una sentencia, con todo, la pretension de Andrea Cordova Vda. de Manalac de que el negocio 'El Diamante' era de la citada sociedad conyugal, es insostenible, puesto que no esta sostenido por pruebas concluyentes. Las pruebas presentadas por ella con respecto a este particular, son todas indiciarias que no desvirtuan el valor probatorio de los exhibits C, D, E-1, y 9 que justifican concluyentemente que el derecho que ha tenido el

finado Laureano Manalac, Sr. sobre el negocio 'El Diamante' derivó solamente de su difunto hijo Nicolas Manalac.

"A la luz de estas consideraciones, el Juzgado declara que el negocio 'El Diamante' no pertenció a la aludida sociedad de gananciales.

"Por todo lo expuesto, se ordena a los administradores que incluyan en el inventario de los bienes relictos del finado Laureano Manalac, Sr. las siguientes propiedades:

"1. Una parcela de terreno con una extensión superficial de 1,500 metros cuadrados aproximadamente con una casa de materiales fuertes construida en la misma, en o hacia el año 1926, por valor de P7,000, en la calle General Calenton, Municipio de Mandaluyong, Rizal;

"2. Mil acciones por valor de P1,000, poco más o menos, en la Philippine Racing Club, Inc., Manila; y

"3. Viente y cinco acciones de la Levy Hermanos, Inc., Manila."

Copy of this resolution was received on September 3, 1941 by the petitioner who, on October 7, 1941, filed a motion praying that it be reconsidered by omitting any finding as to the ownership of the jewelry Store and pawnshop "El Diamante," which motion was denied by the respondent Judge on the ground that it was filed out of time.

I concur in the proposition that the respondent Judge had jurisdiction to issue the resolution of September 2, 1941, but dissent from the pronouncement that the petitioner can still appeal therefrom. The latter's failure to perfect an appeal within thirty days from September 3, 1941 completely precludes said right, by reason of the provisions of section 3, Rule 41, of the Rules of Court which should be enforced with consistent fixity if we are interested in providing the parties with rules that they can confidently follow in the conduct of their cases. Any decision of this Court at variance with such rules virtually constitutes an amendment effected out of the ordinary course. If the rules can be so changed and, as changed, be given retroactive application, it will not be surprising if litigants, already divested of certain procedural rights, should habitually come to this Court for such relief as is herein granted.

Whether or not the petitioner understood the meaning of the order is out of the question. Even so, I am sure that the petitioner, and especially her attorney, knew that the business "El Diamante" was not one of the properties ordered to be included in the inventory; and this was the only important information essential to their purpose. That the petitioner entertained no doubt as to the meaning of the order is further conclusively shown by her failure to ask for any clarification.

The petitioner's contention that the filing by the respondent Ana Mañalac of a motion for reconsideration on September 10, 1941 suspended the running of the period for appeal is correct in so far as Ana Mañalac is concerned, but not as to the petitioner who, by her silence, must be deemed to have agreed to the assailed order. It cannot be said that the petitioner impliedly availed herself of the motion of Ana Manalac, for the simple reason that it sought to obtain what the petitioner wanted to avoid. Section 3 of Rule 41 of the Rules of Court, which provides that "the time during which a motion to set aside has been pending shall be deducted," refers to the motion filed by the appealing party, and this in effect was our ruling in *Gil vs. Vera*, G. R. No. 46005, decided by resolution of February 26, 1938.

In addition to what has been stated, as the order in question has reference to inclusion of properties in the inventory, the same would seem to be unappealable, if we are to follow the decision of this Court in *Heirs of Gregoire vs. Baker* (51 Phil., 75, 79), wherein it was held that "orders made by a court with reference to the inclusion of items of property in the inventory or the exclusion of items therefrom are manifestly of a purely

discretionary, provisional, and interlocutory nature and are subject to modification or change at any time during the course of the administration proceedings" and "such orders are not conclusive of the rights of any one, and * *

* not final in the sense necessary to make it appealable."

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