

EUSEBIO QUIZON AND FLORDELIZA QUIZON, PETITIONERS, VS. MODESTO CASTILLO, JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS, ET AL., RESPONDENTS.

G.R. No. 49286. August 16, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

Petitioners seek the annulment of two orders of the Court of First Instance of Batangas, issued on July 26 and August 18, 1944.

In the first one, the lower court, acting on a petition for the execution of the decision in special proceeding No. 3906, intestate of Gregorio Mayo Villapando, dated October 25, 1943, declaring all the parties therein heirs of the deceased and dividing all the estate into three parts, one to each of three sets of heirs, ordered petitioners to deliver one-third of the estate to Josefa Mayo Villapando, unless they should post a bond in the amount of P2,000 pending the decision of the Supreme Court on the appeal interposed against the lower court's decision of the petition. Said order is as follows:

"Nang maisa-alang-alang ang munkahi ng manananggol Jose Mayo Librea, kumakatawan kay Josefa Mayo Villapando, na ilagda ang utos na pagpapatupad ng naging pasiya sa usap na ito at ang sagot doon ng manananggol Pedro M. Katigbak, at dahilan sa ang mga pagaaring pinagtatalakayan ay nasa pagiiingat nina Eusebio at Flordeliza Quizon at ang mga ito din ang siyang nakikinabang sa mga iyon ay iniuutos sa kina Eusebio at Flordeliza Quizon na ibigay sa naulit ng Josefa Mayo Villapando ang ganang ikatlong bahagi ng mga nasabing pinakikinabang liban na lamang kung ang mga ito ay makapaglagak ng halagang P2,000 ipinanagot doon samantalang hindi na pasisiyahan ng Kataastaasang Hukumang pinaghahabulan ng usaping ito.

"Siyang ipinagutos.

"Batañgan, Batañgan, Hulyo 26, 1944.

"MODESTO CASTILLO

"Hukom"

The order issued on August 18, 1944, amended the first one to the effect that petitioners should deliver two-thirds of the estate to Josefa Mayo Villapando, and Amando, Ciriaco, David and Jose Morada, unless they should file a bond in the amount of P2,000, pending the decision of the Supreme Court, Said second order is as follows:

"Matapos maisa-alang-alang ang kahiliñgan ng manananggol Federico A. Blay na may bilang ika 2 ng kasalukuyan buwan at ang tutol doon ng manananggol Pedro M. Katigbak, sa palagay ng Hukuma'y iyo'y may sapat na katwirang pinagbabatayan, kaya't binabago ang pasiyang inilagda noon ika 26 ng nakaraang buwan, at iniuutos kina Eusebio at Flordeliza Quizon na ibigay sa kina Josefa Mayo Villapando, Amando, Ciriaco, David at Jose Morada ang ganang dalawang-ikatlong bahagi ng mga pinakikinabang sa mga lupang pinaguusapan

liban na lamang kung ang mga iyo'y, Eusebio at Flordeliza Quizon, makapaglagak ng halagang P2,000, ipananagot doon samantalang hindi napasisiyahan ng Kataastaasang Hukuman pinaghahabulan ng usaping ito.

"Ito ang ipinaguutos.—Batañgan, Batañgan, Agosto 18, 1944.

"MODESTO CASTILLO

"Hukom"

With supporting papers from special proceeding No. 3906, accompanying their petition, petitioners allege under oath that, after being notified of the decision of declaration of heirs dated October 25, 1943, they moved for new trial and, upon denial, filed their notice of appeal, and, on December 4, 1942, the record on appeal, with the petition to the court to approve the appeal bond of P60. On December 6, respondent judge fixed the appeal bond at P2,000, and on December 20, disapproved the record on appeal. On January 12, 1944, petitioners filed with the Supreme Court a petition for certiorari, attacking the legality of the appeal bond of P2,000. The Supreme Court declared said bond as excessive and arbitrary.

Ten days before the decision became final, on May 9, Josefa Mayo filed a motion for execution upon the ground that the appeal bond at P2,000 having been rejected, her share in the fruits of the estate was left without guarantee. The petition was filed without notice to petitioners. On May 19, petitioners filed their amended record on appeal as well as the appeal bond of P60. On May 24, Josefa Mayo filed a petition, also without notice to petitioners, praying that the hearing on the amended record on appeal be suspended until after her motion for execution be acted upon, and the lower court issued an order on the same day, setting for hearing the motion for execution sometime after June 15. On June 6, petitioners moved for the reconsideration of the order of May 24, upon the ground that the motion for execution should not have been acted upon as it was filed without notice in violation of section 2 of Rule 39, besides having been filed during the efficacy of the resolution of January 14, 1944, issued by the Supreme Court, suspending all proceedings in the intestate of Gregorio Mayo Villapando, case No. 3906, and that the amended record on appeal is, the only valid pleading then pending and should be acted upon before anything else.

On July 3, the respondent judge issued an order setting for July 18 the hearings on the motion for execution, on the amended record on appeal and on the motion for reconsideration. On July 14, petitioners filed their opposition to the motion for execution alleging, among other reasons, that the lower court had no power or authority to order the execution during the time for perfecting the appeal and that said decision, being declaratory in nature could not be executed. On August 2, the Morada brothers presented a motion to amend the order of July 26, which was opposed to by petitioners because, being in reality a motion for execution, it was filed days after the amended record on appeal was approved on July 31, and that the presentation of said motion was in violation of section 2 of Rule 39.

The dispositive part of the decision of October 25, 1943, sought to be executed through the orders of July 26 and August 18, 1944, complained of by petitioners simply makes a declaration as to who are the heirs of Gregorio Mayo Villapando, adding that Josefa Mayo is entitled to one-third, petitioners to another third, and the Morada brothers to the last third.

The facts in this case show that the respondent judge acted in excess of its jurisdiction when he issued the orders of July 26 and August 18, 1944. Said orders, purportedly to execute the decision of October 25, 1943, provided for the delivery, at first, of one-third of the estate to Josefa Mayo and later of two-thirds of the estate to Josefa Mayo and to the Morada brothers, unless petitioners should file bond in the amount of P2,000. No law nor legal authority has been mentioned in respondent's answer in support of said orders and none can be cited. The decision of October 25, 1943, provided only for the declaration of heirs and of the shares each set of heirs was entitled to.

Nothing was provided in said decision as to the delivery of shares from one person to another. The orders of July 26, and August 18, provided for the execution of something supposed to be executed by the decision of October 25, 1943, which in fact is not provided therein.

Besides, it was premature to order the delivery of shares to the heirs, when no project of partition has as yet been filed and approved.

The orders of respondent judge dated July 26 and August 18, 1944, are set aside with costs against respondents.

Paras, Pablo, Hilado, Bengzon, Padilla, and Tuason, JJ., concur.

Moran, C.J., and Feria, J., concur in the result.

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