

IRENE GREGORIO, PLAINTIFF AND APPELLANT, VS. ELENA COSIO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 6311. October 24, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 6th of November, 1906, the plaintiff and appellant commenced an action in the Court of First Instance of the Province of Laguna against the defendants for the purpose of securing the partition of two parcels of land described in the first paragraph of the complaint. It was alleged in the complaint that the plaintiff as well as the defendants were heirs of Celedonio Cosio.

Upon the 10th of December, 1906, the attorney for the defendants presented a motion in which it was stated that there were some other heirs of Celedonio Cosio who were not made parties to the action, and prayed that the said other persons should be made parties to the present action; which motion, upon due consideration, was granted. Some of the additional parties answered, alleging that they had no interest whatever in the partition of the lands in question. Other defendants answered, alleging that all of the property of Celedonio Cosio had been divided among his heirs soon after his death, which occurred in 1866.

On the 25th of November, 1908, the plaintiff presented an amended complaint including Ruperto Salva, Juana Salva, Silvestre Gregorio and Constancia Calacas, as plaintiffs, and Antonio Cosio and Jesus Cosio, as additional defendants, alleging that they were all heirs of the said Celedonio Cosio, and asked for a partition of six parcels of land which were particularly described in paragraph one of the said amended complaint.

Upon the 19th of January, 1909, Mr. Crispin Oben, attorney for the nine defendants, filed an amended answer, in which he alleged that all of the lands in question had been divided among the heirs of Celedonio Cosio, deceased, at the time of his death, and prayed that the defendants be absolved from any liability under the complaint presented in said cause.

After hearing the evidence adduced during the trial of the cause, the Hon. Vicente Jocson, judge, found that the lands in question had been divided in accordance with the contention of the defendants and absolved them from any liability under the complaint, with costs against the plaintiff.

From that judgment the plaintiff appealed and made two assignments of error in this court.

The plaintiff and appellant in his brief in this court admitted that at the time of the death of the said Celedonio Cosio in 1866, or soon thereafter, his property had been divided among his heirs. (See brief of appellant, pp. 3 and 5). There was an attempt made to show that some of the heirs of Celedonio Cosio, or at least one of the said heirs, at the time said partition of the property in question was made, was a minor and that, therefore, said partition was illegal. Even granting that one of the heirs was a minor at the time said partition took place, that minor is the only person who can avail himself of the right to have said partition declared illegal. It is not alleged that the ancestors of the present plaintiff were minors at the time said partition was made.

There was also an attempt made during the trial of the cause to show that some of the persons who shared in the partition of the property of Celedonio Cosio in 1866 were natural children and had never been legitimized. That contention may or may not be true. It is true, however, that all of the persons who shared in the partition of the estate, were treated as brothers and sisters, children of the said Celedonio Cosio. It is also shown that the heirs at the time of the partition of the said estate in 1866, took possession of their respective shares and that they and their descendants have been in possession thereof ever since. This action was commenced in 1906. It seems to us that after the expiration of forty years it is pretty late for common heirs to ask for the partition of an estate, which they themselves admit was divided among the heirs, upon the ground that at the time the partition took place some of them were either minors or were illegitimate, especially when no complaint is made by such minor or his descendants. Upon a full consideration of all of the facts contained in the record, we are of the opinion that the judgment of the lower court should be affirmed with costs. So ordered.

Torres, Mapa, Carson, and Moreland, JJ., concur.

ON MOTION FOR A REHEARING

DECEMBER 15, 1911.

JOHNSON, J.:

In the original decision it was stated that the plaintiff and appellant had admitted in his brief that the property of Celedonio Cosio had been divided among his heirs at the time of his death in 1866, or soon thereafter. The appellant now, in his motion for a rehearing, makes the statement that he did not intend to admit that the property of Celedonio Cosio had been divided among the heirs in 1866, and that a careful reading of his brief will show that no such admission was intended. It is possible that the brief of the plaintiff and appellant is not subject to the interpretation given it in the original decision; we have, therefore, reexamined the evidence for the purpose of determining anew what such evidence shows.

The plaintiff presented several witnesses who swore positively that the partition had not been made. On the other hand, the defendants presented several witnesses who swore just as positively that the partition had been made. In addition to the declarations of the witnesses of the defendants upon this question, they presented some documentary evidence which seems to indicate that a partition of the property in question had taken place. The defendants presented Exhibit 1 (see record, pp. 26-29) which shows that one Ignacio Pamilacan, as judicial administrator of the estate of Tomas Cosio, had brought an action in the Court of First Instance of the Province of Laguna, for the purpose of recovering the possession of three parcels of land located in the barrio of San Juan, in the municipality of Santa Cruz, together with certain personal property, (Tomas Cosio was one of the sons of the said Celedonio Cosio.) In the decision filed in that action by the Hon. Ignacio Villamor, it was said that "The proofs presented by the plaintiff during the trial of the cause demonstrate that the property belongs to the estate of the deceased Tomas Cosio, having been inherited from his deceased father," etc. This action was known as cause No. 420 in the Court of First Instance of the Province of Laguna. It was commenced on the 13th of November, 1905.

The defendants also presented Exhibit 3, in support of their contention that the property of Celedonio Cosio had been divided among his heirs. (Record, pp. 35-37.) By reference to this exhibit, it will be seen that on the 9th day of August, 1905, Maria Cosio presented a petition in the Court of First Instance of the Province of Laguna for the

appointment of an administrator of the estate of Tomas Cosio. In said petition Maria Cosio alleged that the said Tomas Cosio died intestate; that at the time of his death he was possessed of three parcels of land and certain carabaos; that the said lands had been acquired by him by inheritance from his deceased father, Celedonio Cosio, thus indicating that there had been a partition of the property of the said Celedonio Cosio. The said Maria Cosio was a daughter of Celedonio Cosio and a sister of the said Tomas Cosio.

By reference to Exhibit No. 2 (pp. 30-34) it will be seen from the inventory presented by the administrator of the estate of Tomas Cosio, that the lands included therein constituted some of the lands described in the amended petition of the plaintiff herein. (See bill of exceptions, pp. 26, 27.) (See decision of this court in the case of Cosio vs. Pili, (10 Phil. Rep., 72) for facts confirmatory of some of the facts contained in the foregoing exhibits.)

The said Maria Cosio, mentioned in exhibit 3 above, who alleged that the property described in said exhibit had been inherited by Tomas Cosio from his father Celedonio Cosio, was the mother of the plaintiff and appellant herein. (Brief of appellee, p. 4.) The declarations of Maria Cosio in said petition (Exhibit 3) by reason of the fact that she was the daughter of Celedonio Cosio, should be given some credit. There seems to have been no reason for making a false declaration in said exhibit.

The lower court, in its decision, among other things/made the following statements which we believe are supported by the proof:

"(1) The plaintiff has adduced evidence attempting to prove that the property specified in her amended complaint belonged to the deceased Celedonio Cosio, successor in interest of the herein plaintiff and defendants, but this evidence is merely oral testimony, not so sufficiently clear that the court can decide whether it really was not partitioned; because the witnesses themselves have been unable to specify in a clear way the location of this property, in whose possession it is, and the nature of it; but weighing this evidence all together I am inclined to believe that of the property now claimed part is in the possession of persons who have not been made parties to this suit and part is in the possession of Elena Cosio.

"(2) It appears, moreover, by defendant's Exhibit No. 3, that it was Maria Cosio, mother of one of the present plaintiffs in this suit, Irene, who really requested the appointment of an administrator for the deceased Tomas Cosio, and that according to said request all the property owned by Tomas Cosio at his death, among which that now in litigation is included, belonged to said Tomas Cosio by inheritance from his father, Celedonio Cosio (Exhibit No. 3 of the defendants).

"(3) The action taken by Maria Cosio when alive conclusively demonstrates the bad faith of Irene Gregorio, and the latter can not impugn the action taken by her deceased mother, which constitutes a recognition of the ownership of the property of Tomas Cosio that has passed on to his heirs.

"Summing up, then, the plaintiffs' evidence: they have not substantiated their averment that the property they claim was Celedonio Cosio's and that it is still pro indiviso, for some of this property is in the possession of other persons and can hardly be recovered when these persons have not even been sued for it.

"Nor have the plaintiffs succeeded in showing clearly the degrees of relationship of all the defendants, for their testimony in this respect is ambiguous and incomplete, just as it is with reference to the property they say was Celedonio Cosio's, all which argues against the credibility of these witnesses for the plaintiffs."

After a careful reexamination of the facts, with special reference to the allegations made in the motion for a rehearing, we are still of the opinion that the judgment of the lower court should be affirmed, and that the motion for a rehearing should be denied. So ordered.

Mapa, Carson, Moreland, and Trent, JJ., concur.

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