

CUNEGUNDA LEAÑO, PETITIONER AND APPELLANT, VS. JOAQUIN LEAÑO, NORBERTA ALVANO, AND SINFOROSO ALVANO, OPPONENTS AND APPELLEES.*G.R. No. 7711. September 05, 1913*

Ponente: JOHNSON, J.

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This proceeding was commenced in the Court of First Instance of the Province of Ilocos Norte, for the probation of the last will and testament of Doña Paulina Ver. The proceedings cover a period of from some time in the month of November, 1902, until the 1st of September, 1911, before a final judgment was rendered in said court. It is difficult, from an examination of the record brought to this court, to understand why a period of practically nine years should have been consumed in the conclusion of the settlement of the estate.

It appears that on the 11th of October, 1902, Doña Paulina Ver executed her last will and testament. Doña Paulina Ver died on or about the 1st day of November, 1902. Her will was presented for probation in the Court of First Instance on or about the 10th of November, 1902. No order was made with reference to the probation of said will, so far as the record shows, until the 16th of August, 1904. We find on said latter date an order signed by Dionisio Chanco, judge, admitting said will to probate, and declaring the same to be the last will and testament of the said Doña Paulina Ver. While there is nothing in the record to show that an administrator of said estate had been appointed, we find that on the 27th of January, 1909, Isias G. Clemente and Bartolome Pasis presented an inventory of said estate, signing the same as administrators.

On the 10th of August, 1910, an order was made by the judge of the court appointing Florencio Lagasca and Santiago Mata as commissioners for the purpose of dividing the estate of Doña Paulina Ver among her heirs and legatees. Said commissioners made their report which shows that the estate had been divided among the various heirs and legatees on the 29th of August, 1910, which report was confirmed by the judge on the 2d of September, 1910.

Objections having been made to the partition of the said commissioners, Florencio Lagasca and Santiago Mata, an order was made on the 28th of January, 1911, annulling the said partition and appointing Isias G. Clemente as commissioner for the purpose of making a new partition of the estate among the heirs. The said Isias G. Clemente later made his report as to the partition of said estate, to which an objection was made on the part of some of the heirs, and on the 20th of January, 1911, said partition was annulled and Don David Flor was appointed as a commissioner, for the purpose of making another partition of said estate among the heirs. The said Don David Flor concluded his partition of said estate on the 5th of May, 1911, which report was presented to the court on the 11th of July, 1911.

Finally, on the 1st of September, 1911, we find that the Honorable Dionisio Chanco rendered a judgment finally disposing of the cause. The final judgment was as follows:

"The case deals with the testamentary estate of the deceased Paulina Ver, and the attempt is now made therein

to approve the partition made by the commissioner of the property of the said deceased.

"Clotilde Pasis, Bartolome Pasis, and Bonifacia Alvano object to said approval.

"It appears from the case that, after the death of the late Paulina Ver, which occurred on November 1, 1902, and on or about the 10th of the same month and year, when the petition for the probate of her will was presented to the court, the heirs voluntarily and on the initiative of Cunegunda Leano divided the property of the deceased, each one assuming ownership, possession and enjoyment therein of the part that fell to him in the partition, with exclusion of anybody else, to the extent that some of them have sold their respective shares to other persons. This is understood, for otherwise those who made the sales would have been unable to do so, if the lands had remained pro indiviso, or, if they had made the sales despite the nonpartition, those who are now asking for judicial partition would have raised a cry to heaven. But that was not the case, for they have let six years elapse and only when they have become ambitious have they presented the motion for the partition.

"Naturally the partition made by the heirs voluntarily and spontaneously must produce and has produced a legal status, which cannot be annulled merely for the caprice of one person. And it cannot be said that, because the partition was not made in accordance with the will, if such be the case, the latter has to be annulled, for by voluntarily and spontaneously concurring therein they implicitly renounced the effects of said will, of which they were aware.

"Therefore, and because the property divided by the commissioner among the heirs is the same as that already divided extrajudicially among them about ten years ago, the court decides this case by holding that the extrajudicial partition made by the heirs was proper and that there is no occasion for approval of the one made by the commissioner; without express finding as to costs."

From that judgment Cunegunda Leño appealed to this court and made several assignments of error. The principal assignment of error is that the lower court committed an error in deciding that the heirs and legatees of the estate of Doña Paulina Ver had voluntarily divided the estate among themselves. The appellees contend that the judge committed no error in reaching that conclusion. The record has been examined in vain to find any proof whatever upon the question further than the mere statement of the parties. It would appear that many things transpired in relation to the cause in the lower court which are not made of record. In view of the positive finding of the judge of the lower court that there had been a voluntary partition of the estate among the heirs and legatees and in the absence of positive proof to the contrary, we must conclude that the lower court had some evidence to support his conclusion. If the heirs and legatees had voluntarily divided the estate among themselves, then their division is conclusive, unless and until it is shown that there were debts existing against the estate which had not been paid. No claim is made whatever by third parties nor objections of any character are made by others than the heirs against said partition. We see no reason why the heirs and legatees should not be bound by their voluntary acts.

For all of the foregoing reasons, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, Moreland, and Trent, JJ., concur.

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