

**EMILIANA BAUTISTA, AS HEIR OF THE LATE MANUEL BAUTISTA
AND EVANGELINE BAUTISTA, PETITIONERS, VS. HON. JUSTICES
CAROLINA C. GRINO-AQUINO, MANUEL T. REYES, AND JAIME M.
LANTIN, IN...**

G.R. No. 79958. October 28, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Can the property of the surviving husband be the subject of an extrajudicial partition of the estate of the deceased wife? This is the singular issue in this petition.

In Civil Case No. 4033-P, petitioners instituted an action in the Court of First Instance of Rizal to declare the deed of extrajudicial partition, deed of absolute sale, Transfer Certificates of Title Nos. 14182, 14186 and 15665 all of Registry of Deeds of Pasay City and Tax Declaration No. 5147, null and void.

On January 6, 1976, the parties submitted an Agreed Stipulation of Facts dated December 15, 1975:

- That both parties admit that the land in question was registered in the name of petitioner Manuel Bautista under T.C.T. No. 2210, and the latter inherited this land from his father, Mariano Bautista;
- Both petitioners and private respondents admit that on Dec. 22, 1966, a Deed of Extrajudicial Partition was executed. Private respondents were signatories to the deed, and the signature of petitioner Manuel Bautista was supposed to appear in that document, although petitioner Manuel Bautista denied having signed that Extrajudicial Partition;
- Both parties admit that upon registration of the Deed of Extrajudicial Partition, T.C.T. No. 2210 was cancelled and in lieu thereof, T.C.T.-T-14182 was issued;
- The parties admit that the private respondents, with the exception of Manolito Bautista, executed a Deed of Absolute Sale in favor of Manolito Bautista of that property;
- Upon registration of the Deed of Sale, T.C.T. T-14182 was cancelled and in lieu thereof, T.C.T. No. T-14186 was issued to Manolito Bautista;
- On August 7, 1969, Manolito Bautista executed a Deed of Sale in favor of the other private respondents and upon registration of said Deed of Sale, T.C.T. Nos. T-15665, T-15666, T-15667, T-15668, T-15669, T-15670, T-15671, were issued to private respondents;
- Parties admit that petitioner Manuel Bautista married his second wife Emiliana Tamayo;
- Parties admit that Manuel Bautista and his second wife, Emiliana Tamayo, had only a child, Evangeline Bautista, born on April 29, 1949;
- That the property in question was the subject matter of extrajudicial partition of property on December 22, 1966, among the heirs of the late Juliana Nojadera, the first wife of Manuel Bautista;

- Manuel Bautista denied participation in the Extrajudicial Partition of Property;
- On August 1, 1974, all the parties agreed to submit to the NBI the questioned signature of Manuel Bautista;
- That the NBI concluded that the questioned document was authentic. (Pp. 37-38, rollo; pp. 2-3 of decision of respondent court)

In a decision of January 14, 1983, the trial court dismissed the complaint with costs against plaintiffs. On appeal, a decision was rendered in due course by the Court of Appeals on August 3, 1987, affirming the decision of the trial court.[1]

Petitioner now seeks a review of said decision alleging the following errors committed by the respondent court -

"A.

THE FINDINGS OF FACTS OF PUBLIC RESPONDENTS ARE MANIFESTLY ABSURD AND MISTAKEN;

"B.

PUBLIC RESPONDENTS AUTHORIZED THE EXTRA-JUDICIAL PARTITION OF FUTURE INHERITANCE IN CLEAR VIOLATION OF ARTICLE 1347 OF THE NEW CIVIL CODE;

"C.

PUBLIC RESPONDENTS AUTHORIZED THE PRETERITION OF PETITIONER EVANGELINE BAUTISTA IN VIOLATION OF THE LAW ON SUCCESSION." (P. 7, petition for review; p. 8, rollo)

The petition is impressed with merit.

The findings of facts of both the trial court and the respondent Appellate Court that the signature of Manuel Bautista in the questioned Deed of Extrajudicial Partition is authentic, as examined by the NBI, can no longer be questioned in this proceeding. Nevertheless, even granting that the signature of Manuel Bautista in the questioned Extrajudicial Deed of Partition is genuine, an examination of the document based on admitted and proven facts renders the document fatally defective.

The extrajudicial partition was supposed to be a partition without court intervention of the estate of the late Juliana Nojadera, first wife of Manuel Bautista, constituting the subject property. In the same document Manuel Bautista appears to have waived his right or share in the property in favor of private respondents.

However, the property subject matter of said extrajudicial partition does not belong to the estate of Juliana Nojadera. It is the exclusive property of Manuel Bautista who inherited the same from his father Mariano Bautista, which was registered in his name under T.C.T. No. 2210.

Under Section 1, Rule 74 of the Rules of Court an extrajudicial settlement of the Estate applies only to the estate left by the decedent who died without a will, and with no creditors, and the heirs are all of age or the minors are represented by their judicial or legal representatives. If the property does not belong to the estate of the decedent certainly it cannot be the subject matter of an extrajudicial partition.

As the subject property does not belong to the estate of Juliana Nojadera, the Deed of Extrajudicial Partition, is void ab initio being contrary to law. To include in an extrajudicial partition property which does not pertain to the

estate of the deceased would be to deprive the lawful owner thereof of his property without due process of law. Only property of the estate of the decedent which is transmitted by succession can be the lawful subject matter of an extrajudicial partition. In this case, the said partition obviously prejudices the right of Manuel Bautista as exclusive owner of the property.

The said partition also effectively resulted in the preterition of the right of Evangeline Bautista as a compulsory heir of Manuel Bautista, daughter of the latter by his second marriage. It is difficult to believe that Manuel Bautista would wittingly overlook and ignore the right of her daughter Evangeline to share in the said property. It is not surprising that he denied signing the said document. Moreover, private respondents knew Evangeline Bautista who is their half-sister to be a compulsory heir. The court finds that her preterition was attended with bad faith hence the said partition must be rescinded.[2]

The court observes that after the execution of said extrajudicial partition and issuance of the title in their names, private respondents except Manolito Bautista in turn executed a deed of absolute sale of the property in favor of the latter in whose name the title was also issued. And yet soon thereafter another deed of sale was executed this time by Manolito Bautista selling back the same property to private respondents in whose names the respective titles were thus subsequently issued. This series of transactions between and among private respondents is an indication of a clever scheme to place the property beyond the reach of those lawfully entitled thereto.

Moreover, such extrajudicial partition cannot constitute a partition of the property during the lifetime of its owner, Manuel Bautista. Partition of future inheritance is prohibited by law.[3]

As said Extrajudicial Partition dated December 22, 1966, of property belonging exclusively to petitioner Manuel Bautista, is null and void ab initio it follows that all subsequent transactions involving the same property between and among the private respondents are also null and void.

Prescription cannot be invoked in this case as the petitioners' right to sue their co-owners for partition of the property is imprescriptible.[4] And even assuming that the present action may prescribe as ruled by the respondent court, petitioners Emiliana Bautista and Evangeline Bautista who are not parties to the said instrument asserted that they discovered the same only soon before they filed the complaint in court. Certainly, the action has not prescribed.

WHEREFORE, AND IN CONSIDERATION OF THE FOREGOING, the Decision dated August 3, 1987, of respondent Court of Appeals in CA-G.R. CV No. 03631 and the Resolution of September 11, 1987, in the same case, are hereby reversed and set aside; and a new one is rendered declaring the Deed of Extrajudicial Partition dated December 22, 1966, as null and void ab initio, nullifying and cancelling T.C.T. Nos. T-14182, T-14186; T-15665, T-15666, T-15667, T-15668, T-15669, T-15670, T-15671, and Tax Declaration No. 5147, restoring and reviving T.C.T. No. 2210, in the name of Manuel Bautista, with costs against private respondents. Let a copy of this decision be furnished to the Registry of Deeds of Pasay City for implementation.

This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, and Medialdea, JJ., concur.
Grino-Aquino, J., no part.

[1] Penned by then Presiding Justice Carolina C. Grino-Aquino, now member of this Court, and concurred in by Justices Manuel T. Reyes and Jaime M. Lantin.

[2] Articles 1080 and 1102, Civil Code.

[3] Article 1347, Civil Code.

[4] Cordova v. Cordova, L-9936, Jan. 14, 1958, 102 Phil. 1182; De Guzman v. Court of Appeals, 148 SCRA 75; Tero v. Tero, 131 SCRA 100; and Inting v. Bernaldez, 64 SCRA 383.

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