

FELICIDAD ABUTON VDA. DE LAGMAN, PETITIONER, VS. HON. COURT OF APPEALS AND HEIRS OF PEDRO ABUTON, NAMELY: PACIENCIA, NORMA, GLORIA, LUZVIMINDA, WILFREDO, HENRY, LETICIA, VENUS A...

G.R. No. 82573. July 31, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is an appeal of the petitioner from the decision of the Court of Appeals dated September 23, 1987 in CA-G.R. CV No. 04196, affirming the decision of the trial court which dismissed, for being premature, the complaint for partition and accounting with damages which the petitioner filed on February 6, 1978 against her step-mother, Paciencia Paler Vda. de Abuton (her father's second wife) and her eight (8) step-brothers and sisters involving the properties left by her father, the late Pedro N. Abuton, who died intestate on June 2, 1975. The petitioner alleged that she has not received her lawful share and participation in the estate of her father which is in the possession of, administered, and enjoyed by her step-mother and her children.

In their answer to her complaint, the defendants denied the allegation that Pedro Abuton left no debts because the truth is that he had borrowed P32,000 from various banks to finance a long litigation over properties of some 166 hectares which he had acquired through a sales patent from the Bureau of Lands. Those lands, bordering the Salug River, were at that time the subject of several cases (filed by several claimants) which had been consolidated and are, according to the defendants, docketed and pending in the Court of Appeals as CA-G.R. No. 56855-R, and otherwise known as the Salug case. The defendants further alleged that the action for partition is premature because on August 5, 1975, Felicidad and Paciencia Paler Vda. de Abuton signed an agreement whereby Felicidad agreed not to demand the delivery of her 1/11 share of her father's estate until after the termination of the Salug case because the income from her father's other properties would be used to pay the expenses of the Salug case as the Salug lands were in the possession of their adversaries. The trial court and the Court of Appeals held that petitioner is bound by that agreement which, "not being contrary to law, morals, good customs, public policy or public order is regarded as the law between the parties thereto (Castro vs. Court of Appeals, 99 SCRA 722; Escano vs. Court of Appeals, 100 SCRA 197)." (p. 20, Rollo.) The Court of Appeals further observed:

"x x x The terms of such contract and rationale behind them being clear, the literal meaning of such stipulations controls and governs (Sy vs. Court of Appeals, 131 SCRA 116). Here, the said provision in question is clear and must govern. The failure of the other co-owners, the children by the second marriage, the herein co-defendants-appellees of their mother, to give their imprimatur to such duly executed contract did not in any way affect its binding effect upon the parties thereto who had signed and acknowledged the same to be their free and voluntary act and deed, such as the appellant herein. Those who have not yet signed said agreement are not, of course, precluded from asking for partition; but to repeat, appellant here who had already inked the same cannot now escape the effects thereof. Under Art. 491, New Civil Code of the Philippines, each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned; but obviously, such right being for the convenience of the co-owner concerned, she may waive or

delay the exercise of the right to ask for partition. So there was nothing illegal or in contravention of law in the agreement entered into by appellant not to partition until after the Salug case shall have come to an end. Only after the termination of the said case may an action for partition be initiated by the appellant. As this case was commenced during the pendency of the Salug case, the trial court was right in ordering its dismissal on the ground of prematurity in the filing thereof." (pp. 20-21, Rollo)

The only issue in this case is whether the Court of Appeals erred in holding that the petitioner's action for partition is premature.

The record shows that on February 9, 1974, a joint decision was rendered in favor of Pedro Abuton by the Court of First Instance of Zamboanga del Sur, Branch I at Pagadian City in the Salug cases (Civil Case No. 751, entitled "Pedro N. Abuton and Paciencia Paler de Abuton vs. Paulina Besanes, et al.;" Civil Case No. 950, entitled "Federico Sagario, et al. vs. Paciencia Paler de Abuton, et al.;" and Civil Case No. 958, entitled "Paulina Besanes Vda. de Watin, et al. vs. Pedro N. Abuton, et al.") The dispositive portion of the judgment provided as follows:

"WHEREFORE, judgment is hereby rendered:

"(1) Dismissing, as they are hereby dismissed, both Civil Cases Nos. 950 and 958, for lack of merit; with costs against the plaintiffs;

"(2) In Civil Case No. 751: ordering all the defendants appearing in the amended complaint of the Abutons, together with their heirs, successors-in-interest, assigns, tenants and privies, except defendants Natividad Manlegro and Flaviano Bercera who are not found to be occupants of the land in question, to vacate the premises respectively occupied by them and to restore possession thereof to the plaintiffs Abutons, immediately upon receipt of this decision.

"(3) Ordering all said defendants, except Natividad Manlegro and Flaviano Bercera, to pay jointly and severally the plaintiffs Abutons, the sum of P45,000.00 representing the value of the net produce of the land which said plaintiffs failed to realize since 1952, after the decision of the Secretary of Agriculture and Natural Resources has become final, up to the date of the filing of the complaint, with six (6%) percent interest per annum until paid.

"(4) Ordering said defendants, except Natividad Manlegro and Flaviano Bercera, to pay the plaintiffs Abutons, jointly and severally, every year since 1964 after the filing of the complaint in this case, the sum of P59,376.00 representing the annual value of the net share of palay and corn of said plaintiffs, until said defendants shall have vacated the premises and restored possession thereof to said plaintiffs.

"(5) Ordering the said defendants, except Natividad Manlegro and Flaviano Bercera, to pay jointly and severally, the plaintiffs Abutons the sum of P6,000.00 as attorney's fees and P1,000.00 as incidental expenses of the case; and to pay the costs." (pp. 230-231, Record on Appeal.)

Hence, when Felicidad commenced her action for partition on February 6, 1978, there was already a decision of the trial court in the Salug case. The defeated parties unsuccessfully appealed to the Court of Appeals. On August 22, 1979, a joint decision was promulgated by the Court of Appeals affirming in toto the decision of the trial court (pp. 18-26, G.R. Nos. 52224-26). The case was elevated to this Court on a petition for review. This Court's Second Division denied the petition in a resolution dated January 9, 1980 "for having been filed late." The motion for reconsideration dated February 24, 1980 was likewise denied on March 26, 1980 and entry of judgment was made by this Court on May 28, 1980.

That fact was admitted by respondent Paciencia Paler Vda. de Abuton in her testimony in the trial court in this action for partition on January 21, 1981, as follows:

"Q (Atty. Acosta) We now come to the several parcels of land at Salug, Zamboanga del Sur; did I get you

correctly that this property was acquired by means of sales patent?

"A (Paciencia Abuton) Yes.

"Q And these properties were acquired during your marriage to Pedro Abuton?

"A Yes.

"Q Did I get you correctly when you informed this Honorable Court that the case involving these properties is appealed?

"A Yes.

"Q And this case is already decided by the Court of Appeals?

"A Yes, but they appealed to the Supreme Court.

"Q The decision of the Court of Appeals was promulgated on August 2, 1979 and the appeal of the opposing parties in the Supreme Court is pending decision by that court?

"A There is already a decision.

"Q And in that decision of the Supreme Court the judgment of the Court of Appeals was affirmed?

"A Yes." (Underscoring supplied; p. 8, t.s.n., Lopez, Jan. 21, 1981; p. 10, Rollo.)

It seems, however, that besides eliciting this admission from Paciencia, Felicidad's counsel did nothing more to prove that the Salug case was finished. It does not appear that the decisions of the trial court, the Court of Appeals and the Supreme Court in the Salug case, and the entry of judgment in this Court, were presented as evidence in the partition case. As observed by the Court of Appeals:

"x x x, plaintiff-appellant has not shown that the Salug case, presently within the jurisdiction of Mahayag, Zamboanga del Sur is over. Therefore, in accordance with the aforesaid agreements (Exhs. A-1 & A-2; Exh. 2), she is not yet entitled to ask for partition of subject properties owned in common." (pp. 18-19, Rollo.)

The trial court may have inadvertently overlooked Paciencia's admission that the Salug case was finished, or, it chose to be technical because Felicidad's complaint for partition was in fact prematurely filed before, not after, the decision in the Salug case became final. For the past ten (10) years, the petitioner has vainly and stubbornly fought all the way to the Court of Appeals and this Court to prove that the trial court erroneously ruled that her action for partition was premature, when what she should have done, after the Supreme Court entered judgment in the Salug case on May 28, 1980, was to amend her defective complaint for partition, or file a new one containing the requisite allegations showing that she had a sufficient cause of action or that it had accrued.

The trial court and the Court of Appeals did not err in dismissing the petitioner's complaint for partition for being premature because when it was filed on February 6, 1978, her cause of action had not yet accrued; at that time the Salug case was still pending in the Court of Appeals. Since the termination of the Salug case was a condition precedent for the filing of said action for partition, non-compliance with that condition affected the existence of her cause of action (*Galuba vs. Laureta*, 157 SCRA 627; *Mendoza vs. CA*, 19 SCRA 756). It rendered her complaint defective and subject to dismissal for lack of cause of action. The defect is not cured by the occurrence of the condition during the pendency of the action.

WHEREFORE, the petition for review is denied for lack of merit. Petitioner should immediately refile her action for partition, accounting and damages in the competent court in Oroquieta City. This decision is immediately executory in the sense that no extension of time to file a motion for reconsideration will be entertained. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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