

ANTONINO GARCIA, PLAINTIFF AND APPELLANT, VS. JUSTO TOLENTINO ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 8560. August 20, 1913*

Ponente: ARELLANO, C.J.

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Eulalia Flores died on July 18, 1899. On the 19th of July, 1911, exactly twelve years and one day after her death, it was brought to the cognizance of the courts that she had died intestate, judicial administration was requested of the property left by her, and it was demanded that the possession of some of it be taken away from certain grandchildren of the deceased who had been holding the same quietly and peaceably during all that length of time. Antonino Garcia is the administrator named, and it is he who presented this complaint on the date last named. Eulalia Flores had five children, two of whom survived her: Irene Tolentino and Bonifacio Tolentino. By another son, named Alejandro, she had three grandchildren; one of these is named Eulogio, is a witness in this case and, together with his aunt, Irene Tolentino, appears to be the principal plaintiff. By still another son, Lucio, she also had a granddaughter, named Gregoria; and, finally, from the son already mentioned, Bonifacio Tolentino, who subsequently died, three years afterwards it appears, there descended the grandchildren, six in number, who are the herein defendants.

The object of the suit is to obtain a judicial declaration that the fourteen parcels of land alleged to be in the possession of these six descendants of Eulalia Flores belong to the latter's intestate estate and must be returned thereto, doubtless in order that such land may be the subject of division through special intestate proceedings.

The defendants deny holding all the parcels of land specified in the complaint, and those that they have they claim to hold through a division already made and as an inheritance from their father and predecessor in interest, Bonifacio Tolentino. Such are the essential facts of the case at bar which has come before us on appeal, through denial of the plaintiffs' claim by the Court of First Instance of Ilocos Sur.

Eulogio Tolentino, a man 42 years of age and a son of Alejandro Tolentino, testified that the land concerned in the complaint was in the defendants' possession; that he, his aunt, Irene Tolentino, and the daughter of the deceased Lucio, named Gregoria Tolentino, also shared in the estate left by Eulalia Flores and continued to hold the lands which were apportioned to them respectively, but that Bonifacio Tolentino and his children kept those they wanted and "we were left," witness said, "those they rejected."

Irene Tolentino, the surviving daughter of Eulalia Flores, testified that at the latter's death, Bonifacio, the brother of the witness, administered their mother's estate and gathered the crops, and then "took such of the lands as he liked best, and those that were left were divided among us;" that the lands he kept were of greater value; that he took such lion's share because he was the eldest, and they consented because they respected him. Witness was asked whether she was present when Eulalia Flores' property was divided, and she replied that she was.

Without need of examining the testimony of the defendants nor the documentary evidence adduced by them, and merely from a perusal of the testimony given by the plaintiffs, Eulogio Tolentino and Irene Tolentino being

classed as such, it is very evident that a division was made of the property that belonged to Eulalia Flores and that what the real plaintiffs seek, through special intestate proceedings, is a rescission of the division made, because in it they received property of less value than that which the defendants' predecessor in interest had awarded to himself, whereby they claim to have been injured. The action prosecuted is really a rescissory one of division, and not an action for partition of inheritance.

In order that an action for rescission of partition made may lie, the lesion must exceed the fourth part of the value of the property awarded and the action must be brought within four years counting from the time the division was made. (Civil Code, arts. 1074 and 1076.)

Such are the real grounds upon which the plaintiff's claim was denied, and it is also upon them that the judgment appealed from is hereby affirmed, with the costs of this instance against the appellants. So ordered.

Torres, Johnson, Carson, Moreland, and Trent, JJ., concur.

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