

MATEO LABIANO, IN THE DOUBLE CAPACITY OF HEIR AND ADMINISTRATOR OF THE ESTATE OF DOMINGO LAMADRID, DECEASED, PETITIONER, VS. W. E. MCMAHON, JUDGE OF FIRST INSTANCE OF THE MOUNTA...

G.R. No. 9679. October 06, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition for a writ of certiorari to review a judgment made by the Court of First Instance of the Mountain Province.

The court, when it performed the act complained of, was engaged in the determination of the ownership of certain real property which had been disposed of under a will duly probated in that court. During the settlement of the estate there was presented to the court a petition alleging that one-half of the real estate which the testator had attempted to dispose of by the will was not his property but belonged to his brother; that, therefore, the testator was the owner of only one-half of the property thus sought to be devised; that the petitioner was the daughter of the brother of the testator and, the brother having died, she was the owner of one-half of the property disposed of by the will. The petitioner, after other appropriate allegations, prayed that the court adjudge and decree that the petitioner was the owner of one-half of the real estate described in the will and that that portion be excluded from its dispositions.

The court made an order denying the petition and adjudging that all the real estate described in the will was owned by the testator. This decree was made and entered through a misunderstanding resulting from a bad translation to the court of the statement of the parties in interest made in open court, by virtue of which the court was led to believe that the parties agreed that such a decree should be made and entered. After ascertaining its mistake, the court set aside the decree and made in place thereof the following:

"When this case was called for trial on the 2d day of May, 1913, the court understood that the parties had come to an agreement by which all the property should be awarded to the legatee in the will, as was interpreted to the court. But the parties have now explained to the court that there was misunderstanding. The court therefore revokes the order dictated on May 2, 1913, adjudging all the property to the legatee, and will turn this case over to a commissioner to examine the land and witnesses and to report the matter in thirty days. The court names for this purpose Mr. E. de Mitkiewicz, lieutenant-governor of Amburayan, who shall determine what property, if any, in the inventory, belongs to the opponent, Antonia Lamadrid, and in case he shall find any of it to belong to her he shall state that fact and shall adjudge such part to her; but in case he shall not find any to belong to her he shall adjudge all the property to the legatee, Mateo Labiano.

"It is agreed between the parties through their attorneys in open court that the decision of the commissioner shall be final with respect to who is the owner of the land."

In pursuance of this order the commissioner named therein viewed the land in question, took the testimony of

witnesses for and against the claim of petitioner, and, after duly considering the case upon the merits, wrote an opinion setting forth the facts as found by him from the testimony of the witnesses, discussed them therein at some length, investigated and considered the questions of law applicable thereto, and arrived at a decision in the following words:

"From the above evidence, which was all that was available, it appears that Antonia Lamadrid, daughter of the deceased Juan Lamadrid, is entitled to the share of the land which constituted part of her father's estate, but in view of the fact that her uncle Domingo assumed charge of the estate for her, after the death of his brother, the father of Antonia, I have decided as follows:

"For the administrator one-half (1/2) of the estate, and a further one-tenth (1/10) of the estate for reimbursement for taxes, improvements, etc., making his share three-fifths (3/5), and to the claimant the remaining two-fifths (2/5)."

Sometime prior to the coming in of this decision the executor of the will, who was also sole devisee and who was opposing the petition referred to, having learned, as he says, that a commissioner had been named by the court for the determination of the questions raised by said petition and that such commissioner had been appointed upon the theory that the parties in interest had appeared in open court and consented thereto, made an application to set aside that order and to declare without force or effect the naming of the commissioner and praying that the court refuse to accept or act upon his report in the matter. This motion was based upon the ground that the said executor and devisee had not knowingly consented in open court or elsewhere to the appointment of the commissioner but, on the contrary, had always insisted that the cause be tried before the court itself. Upon the hearing of this motion the court made the following order:

"This case was called before the court on a motion of the attorney for the executor, Mateo Labiano, asking the court to set aside a former order naming E. de Mitkiewicz commissioner to determine who was the owner of the land in question in this case and how it should be divided between the parties entitled thereto. These parties with their attorneys came into court and made a solemn agreement, in fact, asked the court to name the said commissioner in order that he might go out on the ground in question and see and hear the witnesses and decide the case. The court thereupon dictated an order in Tagudin dated May 3, 1913. Now it appears that one of the parties through his attorney comes in and asks the court to annul his former order because he does not wish to abide by his agreement mentioned in that order.

"The court denies the petition because that agreement was entered into by all parties on their own volition and they should abide by the same. The report of the commissioner is hereby approved and the administrator will divide the property between the interested parties according to said report of the commissioner."

The proceeding in this court for the writ of certiorari is brought upon the theory that the appointment of the commissioner was in violation of law, and therefore illegal and void, and that all that the commissioner did under such appointment, including the judgment which he rendered, is also unauthorized, illegal, and void and can have no force or effect; that a Court of First Instance, in a case of this character, has no authority to name a referee or commissioner except as provided by section 135 of the Code of Civil Procedure, and that the appointment in any other manner is without force or effect and void.

It is undoubted that the Organic Law relative to the Courts of First Instance of the Philippine Islands lays upon them the duty of hearing and deciding cases themselves. It is the duty, primarily, of a Court of First Instance to take the testimony presented in the case and to have before him the witnesses who declare. One of his duties is to see and hear the witnesses as they testify that he may form a correct conclusion as to the degree of credit which should be accorded them. While in certain cases and under certain conditions the parties may waive presentation of witnesses and present evidence in some other form, that does not relieve the court from the obligation, without

that consent, to hear the case himself, to give it his personal attention, to consider it independently, and to form his own judgment as to the merits.

Except by express provision of law, courts cannot delegate their functions and where there is a provision permitting such delegation it must be made in the form and manner prescribed.; (Hards vs. Burton, 79 111., 504; Vandercook vs. Williams, 106 Ind., 345; Wilkins vs. State, 113 Ind., 514; Chandler vs. Nash, 5 Mich., 410; State vs. Jefferson, 66 N. C., 309; Van Slyke vs. Trempealeau, 39 Wis., 390; Cargar vs. Fee, 11.9 Ind., 536; Petty vs. Durall, 4 Green, Iowa, 120.) Section 135 provides that "by written consent of both parties, filed with the clerk, the court may order an action to be referred to one or more referees, to be agreed upon by the parties or to be appointed by the court;" and section 136 provides that "in such case, the clerk shall issue, under the seal of the court, a commission to the referees named, directing them to proceed with the trial of the action and to report the findings of law and fact to the court at or before a time named in the commission." Section 137 provides that "referees, before commencing the performance of their duty, shall be sworn to a faithful and honest performance thereof, and the fact that they have taken such oath shall be certified to on the commission by the authority administering the oath."

None of the conditions prescribed by those sections was complied with in this case. There was no agreement in writing filed with the clerk, no commission issued by the clerk and no oath of office taken by the referee. These being the only provisions of law touching the appointment of a referee, it is clear that, under the admitted facts, the appointment was unauthorized, the person appointed was without authority to act, and his proceedings were consequently without legal effect. As a necessary result the court, when it entered the order approving the report and judgment of the commissioner and dictated the judgment complained of, had nothing before it upon which a judgment could be legally entered and it was, therefore, without force or effect in law.

From the record it would seem that the court did not examine the evidence taken by the referee or form any independent judgment of its own thereon. As we have seen, the court simply approved the report of the referee without consideration of the facts upon which it was based or the conclusions of law which led to the judgment formed, evidently relying upon section 140 of the Code of Civil Procedure which provides that "upon the filing of the report or as soon as conveniently may be thereafter, the court shall render judgment in accordance with the report, as though the facts had been found by the judge himself, unless the court shall, for cause shown, set aside the report, or order it to be recommitted to the referee for further findings."

It results from the record in this case, therefore, that a decision has been rendered affecting interests in real estate by one who is not a judge of a Court of First Instance and to whom authority to act as such was not delegated as the law requires. The parties, therefore, have not had their day in court under the laws of the Philippine Islands and have been deprived of their property in a manner which the law does not sanction.

For these reasons we regard the proceedings relative to the appointment of the commissioner and all the judgments, orders, and decrees based thereon, either by said commissioner or the court, as null and void and of no legal value or effect. The same are, therefore, annulled, vacated, and set aside and the record of said Court of First Instance sent to this court on this proceeding is ordered returned for further. proceedings in pursuance of law.

We desire that it be clearly understood that we are not passing upon the merits relative to the ownership of the real estate involved in the litigation referred to, but simply upon the jurisdiction of the court in making the order complained of. It may well be that the decision of the referee was right upon the merits. As to that, we have nothing to say, as it does not affect the validity of the order before us.

Arellano, C. J., Torres and Araullo, JJ., concur.

Proceedings annulled and record remanded for further proceedings.

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