

MARGARITA GANZON, PETITIONER AND APPELLANT, VS. MARIA LIMSON, RESPONDENT AND APPELLEE.*G. R. No. 9982. October 20, 1915*

Ponente: TORRES, J.

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This is an appeal filed in the special proceedings for the settlement of the intestate estate of the deceased Jacoba Abella, by Margarita Ganzon, administratrix, from the judgment of October 28, 1914, in which the honorable trial judge ordered that first a division be made of all the property that appeared in the said intestate estate; that the portion thereof that belonged to the deceased Eleuterio Ganzon and his wife, the said Jacoba Abella, should be determined; and that, after this had been done, a division be made of the property left by Eleuterio Ganzon to his children, the result thereby obtained to be the basis of the rights of Maria Limson to the portion that corresponded to her deceased husband, Victorino Ganzon. In order that the terms of the judgment might be complied with, Leonardo Ganzon and Crispulo Consuji were appointed commissioners and directed to effect the said divisions within thirty days. The administratrix, Margarita Ganzon, was ordered to file with the court all the muniments of title and other documents pertaining to the lands, to the end that the commissioners might examine them and make the partition. Margarita Ganzon, Josefa Ganzon and the little girl, Melitona Consolacion Delfin Ganzon were declared to be entitled to inherit the private property of the deceased Jacoba Abella; likewise, Margarita Ganzon, Josefa Ganzon, Melitona Consolacion Delfin Ganzon, Apolonio Ganzon and Victorino Ganzon, who survived their father, Eleuterio Ganzon, were declared to be his heirs.

From this judgment an appeal was taken by counsel for the three first-named, to wit, Margarita, Josefa and Melitona, and on the motion for a new trial the judge, in denying it, ordered that the appellant give bond for P1,000, and, after it had been furnished, ordered that the record of the said proceedings be transmitted to the Supreme Court. Margarita Ganzon having been appointed administratrix of the estate of the deceased Jacoba Abella, in the intestate proceedings had with reference thereto, under bond of "P3,000, Maria Limson appeared and set forth in writing: that Victorino Ganzon, her deceased husband, was a son of the married couple Eleuterio Ganzon and Jacoba Abella, then both deceased; that their property was in the possession of Margarita Ganzon as the administratrix of the said intestate estate; that petitioner, as Victorino Ganzon's widow, is his forced heir and by law entitled to share in the property administered by Margarita Ganzon; and that therefore petitioner prayed the court to determine and adjudicate to her that part of the said property which belonged to her.

Counsel for Maria Limson also presented a verbal motion requesting the share, in the inheritance that appertained to Victorino Ganzon. This motion was opposed by counsel for the administratrix on the ground that it was inopportune for the reason that final judgment had not yet been rendered, inasmuch as the administration accounts and the commissioners' report had yet to be filed; that no adjudication of any portion of the estate could be made so long as the administration accounts had not been settled, and that the said motion was also improper as the property in question was that of Jacoba Abella and Eleuterio Ganzon, while, in the motion, claim was made for property that might belong to Victorino Ganzon, and, this being the case, the claim should have been made by

means of an ordinary action. and not in these special intestate proceedings.

In the memorandum presented by the attorney for the administratrix it is noted that Eleuterio Ganzon died about the year 1897 and was survived by his widow, Jacoba Abella, and their children, Margarita, Victorino, Josefa and Engracia, the latter being- the mother of Consolacion Delfin. Victorino married Maria Limson and died without issue about the year 1899 and before his mother, Jacoba Abella.

All of Eleuterio Ganzon's property passed under the administration of Jacoba Abella as his widow. It was never determined which was the property of Eleuterio Ganzon and which was the patrimonial property of Jacoba Abella. The affairs of the conjugal partnership were never settled nor was the community property ever partitioned, but all these properties were held in common until Jacoba Abella's death.

Counsel for the administratrix and her heirs understand that there no longer exists the right of usufruct claimed by Maria Limson as pertaining to the estate left by claimant's husband, Victorino Ganzon, because the latter was never in possession of the property that pertained to him, and at his death what could have belonged to him passed to his mother, Jacoba Abella, in whom was vested the dominion over all the said properties, therefore the right to the property left by both spouses lies solely in their children, Margarita and Josefa and in Consolacion Delfin, the daughter of the deceased Engracia. In view of the prayer that these last named be declared the heirs of the said spouses, the judge rendered the decision aforementioned.

In the bill of exceptions there appears a copy of a writing presented by Maria Limson, in which she alleges that the property specified in the inventory filed by the administratrix of the intestate estate belonged exclusively to Eleuterio Ganzon, from whom Victorino Ganzon, as one of his heirs, should have inherited a fourth part of his estate; that petitioner, on the death, of her husband, Victorino, acquired usufruct rights over a third part of his estate; and that, as she is the legally appointed administratrix of the estate of her deceased husband, she opposes the petition for declaration of inheritance made by the administratrix in the form in which it is drawn up. Petitioner therefore prays that Victorino Ganzon be included as an heir of a fourth part of the inventoried property, and, in case her petition is disallowed, announces her intention to commence proceedings for the settlement of the intestate estate of the deceased Eleuterio Ganzon, thereby staying all proceedings which might tend to the adjudication requested by the administratrix of the intestate estate.

As seen by the preceding statement of the facts, these proceedings relate to the questions of settling and partitioning the property which the spouses Eleuterio and Jacoba Abella successively left at their death, and as to who are their lawful heirs.

On the death of the husband, Eleuterio Ganzon, apparently without leaving a will, his intestate estate was not opened, no inventory was made of the property thereof nor was any settlement of the community property of the conjugal partnership effected between himself and his wife, Jacoba Abella, who had survived him, nor was any partition of their property had among the children born of their marriage; neither was any settlement of community property, nor any inventory or division of property, subsequently made after the death of his said widow. For these reasons the trial judge in his judgment of October 28, 1914, in making a declaration therein of the heirs of Eleuterio Ganzon and Jacoba Abella, ordered that a division should be made of all the property of the intestate Abella; that the portions thereof which respectively belonged to her and to her deceased husband should be determined; also that the estate which Eleuterio Ganzon left to his children at his death should be divided, the result of which division would determine the portion belonging to one of these children, Victorino Ganzon, and from which his widow, Maria Limson, derives her rights as usufructuary of a part of the property which by inheritance fell to the deceased Victorino Ganzon on the death of his father, Eleuterio. From this finding counsel for Margarita Ganzon appealed.

The appellee confined herself to asking that the said judgment be affirmed; she made no request for a ruling relative to the impropriety of the appeal allowed from that judgment which, though it contains a declaration of heirs, yet orders the making of an inventory, a settlement of affairs of the community property that belonged to the said deceased spouses, and a division of the property of each estate among its respective lawful heirs. It is therefore undeniable that the judgment rendered is not of a final nature, inasmuch as it does not finally dispose of the case, for there would still have to be proceedings for the settlement, inventory and division, first, of the community property corresponding to each deceased spouse, and then a division of the respective property of each one of them among their lawful heirs. It was for this reason that the court appointed two commissioners and charged them to perform these operations within a period of 30 days, and he ordered that Margarita Ganzon, the administratrix of the property of the intestate Jacoba Abella, be notified that she must file with the court all of the property titles and other documents relative to the lands, in order that they might be examined by said commissioners.

Neither the Court of First Instance nor this court can finally decide this case, nor resolve the questions of law and of fact herein raised, although the declaration of heirs made in the judgment appealed from be considered to be in accordance with the law, without the settlements and division therein ordered first having been made and the result thereof known; and for this reason, in order to bring good order and legal methods to the course of the proceedings, it must be held that the appeal was improperly allowed which was filed by the administratrix, Margarita Ganzon, though without express petition by the appellee, because, when the provisions of law relating to legal proceedings are omitted or disregarded, judges and courts are in duty bound to require compliance therewith and to see that the trial take and keep the course prescribed by the law of procedure.

Section 123 of the Code of Civil Procedure provides: "No interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceeding therein pending, but only such ruling, order or judgment as finally determines the action or proceeding; nor shall any ruling, order or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other."

In actions for the settlement of the affairs and the division of the estates of deceased persons an exception may be entered against any judicial ruling or decree therein issued; and, though an exception taken to any ruling of the court in the course of the proceedings must be noted and shown in the record, it, however, cannot delay or stay the course of the trial until the rendition of final judgment after the examination of the record and the report of the commissioners who effected such settlement and partition of the property owned in common by several heirs. (Sees. 41 and 143, Code of Civ. Proc.)

These provisions of the law of procedure now in force are substantially the same as those observed in the Federal courts of the United States and, in their practical application, are confirmed by the decided cases. In the decision rendered by the Supreme Court of the United States in the case of *Green vs. Fisk* (103 U. S., 518), the Honorable Chief Justice Waite, who delivered the opinion, says :

"In partition causes, courts of equity first ascertain the rights of the several persons interested and then make a division of the property. After the division has been made and confirmed by the court, the partition, if in kind, is completed by mutual conveyances of the allotments to the several parties. * * *

"A decree cannot be said to be final until the court has completed its adjudication of the cause. Here the several interests of the parties in the land have been ascertained and determined, but this is merely preparatory to the final relief which is sought; that is to say, a setting off to the complainant in severally her share of the property in money or in kind. This can only be done by a further decree of the court. Ordinarily, in chancery, commissioners are appointed to make the necessary examination and inquiries and report a partition. Upon the coming in of the report, the court acts again. If the commissioners make a division, the court must decide

whether it shall be confirmed before the partition, which is the primary object of the suit, is complete. If they report that a decision cannot be made and recommend a sale, the court must pass on this view of the case before the adjudication between the parties can be said to be ended.

"In this case a partition by sale was asked for because the property was not susceptible of division in kind. That the court has not ordered, and the reference to the master was undoubtedly to ascertain, among other things, whether such a proceeding was in fact necessary in order to divide the property. The master was in everything to proceed under the direction of the court. He had no fixed duty to perform. He was the mere assistant of the court, not in executing its process, but in completing its adjudication of the partition which was asked. There are, still, questions in which the parties have each a direct interest, and they must be determined judicially before the relief has been granted which the suit calls for. * * * Appeal dismissed."

The judgment of the lower court is of a complex character. It contains orders awaiting compliance by the administratrix and by the appointed commissioners and, notwithstanding the nature of the declaration of heirs made therein, it does not completely terminate the suit, for, according to the above cited legal provisions and to the established jurisprudence of the courts, there are still steps and proceedings to be taken before the settlement and partition of the property that belonged to the deceased spouses can be made; and, finally, before the adjudication to each interested party of his or her respective share of the property can be awarded by which last action would be finally terminated. Therefore the trial court should not have allowed the appeal. The same conclusions were reached in the cases of Araullo vs. Araullo (3 Phil. Rep., 567), Toribio vs. Toribio (7 Phil. Rep., 526), and Ron vs. Mojica (8 Phil. Rep., 328.)

This conclusion, however, does not affect the appellant's rights, inasmuch as his appeal may be included, if he so desires, in the bill of exceptions or record of the proceedings to be presented in due course for the review of the case in accordance with law.

For the foregoing considerations it must be held, as we do hereby hold, that the said appeal filed by Margarita Ganzon was improperly allowed. The costs will be taxed against her, and the record shall be remanded to the court below with a certified copy of this decision. So ordered.

Arellano, C. J., Johnson, Carson, and Araullo, JJ., concur.

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