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[G.R. No. L-39532. July 20, 1979]

Testate Estate of Jose M. Valero, FLORA VALERO VDA. DE RODRIGUEZ and ROSIE VALERO DE GUTIERREZ, *petitioners-appellants, vs.* **COURT OF APPEALS and CARMEN VALERO-RUSTIA,** *respondents-appellees.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; PROBATE COURT'S ORDER OF EXCLUSION OF THE PROPERTY FROM THE TESTATOR'S ESTATE IS INTERLOCUTORY; CASE AT BAR.— We hold that the order of exclusion dated August 9, 1973 was not a final order. It was interlocutory in the sense that it did not settle once and for all the title to the San Lorenzo Village lots. The probate court in the exclusion incident could not determine the question of title.

2. ID.; ID.; ID.; POWER OF THE PROBATE COURT TO DECIDE AN ISSUE OF WHETHER OR NOT A CERTAIN PROPERTY SHOULD BE INCLUDED IN THE INVENTORY; RULE.— The prevailing rule is that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties.

3. ID.; ID.; ID.; QUESTION OF COLLATION MUST BE DECIDED BY THE PROBATE COURT WHEN IT IS SEASONABLY RAISED BY THE INTERESTED PARTY.— We found that the proceedings have not yet reached the stage when the question of collation or advancement to an heir may be raised and decided. The numerous debts of the decedents are still being paid. The net remainder (*remanente liquido*) of their conjugal estate has not yet been determined. On the other hand, up to this time, no separate action has been brought by the appellants to nullify Mrs. Rustia's Torrens titles to the disputed lots or to show that the sale was in reality a donation.

Supreme Court E-Library

TEEHANKEE, *J, separate opinion:*

1. CIVIL LAW; SUCCESSION; COLLATION; THERE CAN BE NO COLLATION WHEN THE PERSON WHO ALLEGEDLY RECEIVED THE PROPERTY BY DONATION IS NOT A COMPULSORY HEIR.— The question of collation of said lots is immaterial insofar as respondent and the deceased Jose M. Valero's estate and petitioners are concerned, since respondent is not even an heir of his estate (which he had willed to his two legitimate children, herein petitioners, his second wife Beatriz Bautista having predeceased him in September, 1972). Under Article 1061 of the Civil Code, only a compulsory heir succeeding *with* other compulsory heirs is required to collate whatever property he/she may have received from the decedent during the decedent's lifetime by way of *donation*, or any other *gratuitous* title, in order that it may be computed in the determination of the *legitime* of each heir, and in the account of the partition." There can therefore be no collation here because from the documents of record, respondent Carmen B. Valero-Rustia is not a compulsory heir who received property by donation or gratuitous title from the deceased that would be subject to collation.

2. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE ; WHEN THE PROPERTY HAD BEEN SOLD BY THE DECEASED DURING HIS LIFETIME, THE SAME SHOULD NOT BE INCLUDED IN THE INVENTORY OF HIS ESTATE.— The properties in question had been transferred by deed of absolute sale to said respondent-vendee more than six years before the vendor Jose M. Valero died in October, 1972. The deceased having long divested himself of title to the said properties, they were properly excluded from the inventory of his estate.

APPEARANCES OF COUNSEL

Amboriso Padilla Law Office and *Iglesia & Associates* for appellants.

Angel P. Purisima for respondents-appellees.

Supreme Court E-Library

DECISION

AQUINO, *J.*:

This is supposedly a case about collation. As factual background, it should be stated that the spouses, Beatriz Bautista and Jose M. Valero, did not beget any child during their marriage. In 1951 Beatriz adopted Carmen (Carmencita) Bautista. Jose wanted also to adopt her but because, by his first marriage, he had two children named Flora Valero *Vda. de* Rodriguez and Rosie Valero Gutierrez, he was disqualified to adopt Carmen. Jose manifested in the adoption proceeding that he consented to the use by Carmen of his surname Valero. (See Civil Case No. 12475, Manila CFI; Art. 338[1], Civil Code and Art. 28, Child and Youth Welfare Code.)

On September 18, 1964, Jose M. Valero donated to Carmen B. Valero (who was already married to Doctor Sergio Rustia) his one-half *proindiviso* share (apparently his inchoate share) in two conjugal lots, with the improvements thereon, located at San Lorenzo Village, Makati, Rizal, with an area of 1,500 square meters. His wife, Beatriz, consented to the donation. However, the deed of donation was not registered.

On January 13, 1966, Jose M. Valero, who was then seventy-three years old, executed his last will and testament wherein he enumerated the conjugal properties of himself and his wife, including the two San Lorenzo Village lots. In that will, he did not mention the donation. He devised to his wife properties sufficient to constitute her legitime and bequeathed the remainder to his two children, Mrs. Rodriguez and Mrs. Gutierrez.

About a month later, or on February 15, 1966, the Valero spouses, by means of a deed of absolute sale, conveyed the San Lorenzo Village lots and the improvements thereon to Carmen B. Valero - Rustia for the sum of one hundred twenty thousand pesos. The sale was registered on the following day. Transfer Certificates of Title Nos. 163270 and 163271 were issued to the vendee, Mrs. Rustia.

Supreme Court E-Library

On December 4, 1967 she mortgaged the two lots to the Quezon City Development Bank as security for a loan of fifty thousand pesos (page 204, *Rollo*).

Beatriz B. Valero died intestate on September 12, 1972, survived by her husband and her adopted child. Her estate is pending settlement in Special Proceeding No. 88896 of the Court of First Instance of Manila. Mrs. Rustia was named administratrix of her adopted mother's estate.

More than a month later, or on October 18, 1972, Jose M. Valero died testate, survived by his two children, Mrs. Rodriguez and Mrs. Gutierrez. His will was duly probated in Special Proceeding No. 88677, also of the Court of First Instance of Manila. Lawyer Celso F. Unson, the executor, submitted an inventory wherein, following the list of conjugal assets in the testator's will, the two San Lorenzo Village lots were included as part of the testate estate.

That inclusion provoked Mrs. Rustia, the adopted child of Mrs. Valero, and Mrs. Rodriguez and Mrs.. Gutierrez, the legitimate children of the testator, Jose M. Valero, to file (through Mrs. Rustia's lawyer) in the testate proceeding a motion for the exclusion of the two San Lorenzo Village lots from the testator's inventoried estate.

Adduced as reason for the exclusion is the fact that since February 16, 1966 Mrs. Rustia has been the registered owner of the lots as shown by two Torrens titles, copies of which were attached to the motion.

The executor opposed the motion on the ground that the two lots were donated to Mrs. Rustia and the donation would allegedly involve collation and the donee's title to the lots. The executor revealed that he was informed by Mrs. Gutierrez and Mrs. Rodriguez (supposed movants) that the two lots should be included in the inventory. Thus, the issue of collation was prematurely raised.

The probate court in its order of August 9, 1973 excluded the two lots from the inventory of the testator's estate but with the understanding "that the same are subject to collation."

Supreme Court E-Library

On December 4, 1973 or one hundred twelve days after Mrs. Rustia was served with a copy of that order, she filed a motion for its reconsideration. She insisted that she is the owner of the two San Lorenzo Village lots as indicated in the Torrens titles. No one opposed that motion. At the hearing of that motion, Mrs. Rustia's lawyer apprised the court that the executor informed him over the phone that he was not opposing the motion.

The probate court in its order of December 14, 1973 ruled that the two lots were unconditionally excluded from the inventory of Jose M. Valero's estate, meaning "that they are not subject to collation." That order is the bone of contention in this case.

Mrs. Rodriguez (without being joined by her sister, Mrs. Gutierrez) filed a motion for the reconsideration of the order of December 14, 1973. She alleged that the two San Lorenzo Village lots were really conveyed to Mrs. Rustia by way of donation because the consideration for the sale was allegedly only one-fifth of the true value of the lots. Mrs. Rodriguez further contended that the order of August 9, 1973 was final in character.

In reply, Mrs. Rustia countered that the prior order was interlocutory and that in 1966 the true value of the two lots was around ₱120,000 and that their value increased considerably in 1973 or 1974. Moreover, the relatively low price of the sale could be attributed to the fact that Mrs. Rustia and her husband lived with the Valeros and were taking care of them.

The probate court denied the motion for reconsideration. Mrs. Rodriguez and Mrs. Gutierrez, in their petition for *certiorari* in the Court of Appeals, assailed the probate court's order declaring that the two lots were not subject to collation.

The Court of Appeals held that the order of exclusion dated August 9, 1973 was interlocutory and that it could be changed or modified at anytime during the course of the administration proceedings.

It further held that it was immaterial whether the two lots were donated or sold to Mrs. Rustia as "a mere subterfuge to

Supreme Court E-Library

avoid payment of the donor's and donee's taxes." According to the Appellate Court, it was immaterial because under Article 1061 of the Civil Code, only compulsory heirs are required to make collation for the determination of their legitimes and, under Section 2, Rule 90 of the Rules of Court, only heirs are involved in questions as to advancement and Mrs. Rustia is not an heir of the testator, Jose M. Valero (*Vda. de Rodriguez vs. Valero Rustia*, CA-G. R. No. SP-02944, August 28, 1974, per G. S. Santos, Gaviola, Jr. and De Castro, *JJ.*).

From that decision, an appeal was made to this Court. The appeal was not given due course. However, upon motion for reconsideration and over Mrs. Rustia's opposition, the appeal was later allowed.

The appellants' only assignment of error is that the Court of Appeals should have held that the probate court's order of exclusion dated August 9, 1973 was not interlocutory but was a final and appealable order and that the order of December 14, 1973 modifying the order of August 3 is void.

We hold that the order of exclusion dated August 9, 1973 was not a final order. It was interlocutory in the sense that it did not settle once and for all the title to the San Lorenzo Village lots. The probate court in the exclusion incident could not determine the question of title.

The prevailing rule is that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties (3 Moran's Comments on the Rules of Court, 1970 Edition, pages 448-9 and 473; *Lachenal vs. Salas*, L-42257, June 14, 1976, 71 SCRA 262, 266).

We hold further that the dictum of the Court of Appeals and the probate court that the two disputed lots are not subject to collation was a supererogation and was not necessary to the disposition of the case which merely involved the issue of inclusion in, or exclusion from, the inventory of the testator's estate.

Supreme Court E-Library

The issue of collation was not yet justiciable at that early stage of the testate proceeding. It is not necessary to mention in the order of exclusion the controversial matter of collation.

Whether collation may exist with respect to the two lots and whether Mrs. Rustia's Torrens titles thereto are indefeasible are matters that may be raised later or may not be raised at all. How those issues should be resolved, if and when they are raised, need not be touched upon in the adjudication of this appeal.

The intestate and testate proceedings for the settlement of the estates of the deceased Valero spouses were consolidated, as ordered by the lower court on November 21, 1974, so that the conjugal estate of the deceased spouses may be properly liquidated, as contemplated in Section 2, Rule 73 of the Rules of Court and Act No. 3176 (Pages 223 and 235-6, *Rollo*).

We have examined the *expedientes* of the two cases. We found that the proceedings have not yet reached the stage when the question of collation or advancement to an heir may be raised and decided. The numerous debts of the decedents are still being paid. The net remainder (*remanente liquido*) of their conjugal estate has not yet been determined. On the other hand, up to this time, no separate action has been brought by the appellants to nullify Mrs. Rustia's Torrens titles to the disputed lots or to show that the sale was in reality a donation.

In this appeal, it is not proper to pass upon the question of collation and to decide whether Mrs. Rustia's titles to the disputed lots are questionable. The proceedings below have not reached the stage of partition and distribution when the legitimes of the compulsory heirs have to be determined.

WHEREFORE, we affirm the decision of the Court of Appeals and the orders of the lower court dated August 9 and December 14, 1973, excluding from the *inventory* of Jose M. Valero's estate the two San Lorenzo Village lots now registered in the name of Carmen B. Valero-Rustia, but we delete from that decision and the two orders any ruling regarding collation which is a matter that may be passed upon by the probate

Supreme Court E-Library

court at the time when it is seasonably raised by the interested parties, if it is ever raised at all. No costs.

SO ORDERED.

Fernando, C.J., Makasiar, Antonio, Concepcion Jr., Fernandez, Guerrero, Abad Santos, and *Melencio-Herrera, JJ.*, concur.

Teehankee, J., files a separate opinion.

Barredo, J., I concur, for even assuming that the order of exclusion had become final insofar as the inventory is concerned, said order could not have any final binding effect on the issue of collation.

Santos and *De Castro, JJ.*, took no part.

TEEHANKEE, *J., separate opinion:*

I vote for the unqualified affirmance of respondent appellate court's decision sustaining the exclusion from the inventory of Jose M. Valero's estate of the two San Lorenzo Village lots registered in the name of respondent Carmen B. Valero-Rustia by virtue of the deed of absolute sale thereof executed by him in his lifetime on February 15, 1966 in her favor.

The question of collation of said lots is immaterial insofar as respondent and the deceased Jose M. Valero's estate and petitioners are concerned, since respondent is not even an heir of his estate (which he had willed to his two legitimate children, herein petitioners, his second wife Beatriz Bautista having predeceased him in September, 1972). Under Article 1061 of the Civil Code, only a compulsory heir succeeding *with* other compulsory heirs is required to collate whatever property he/she may have received from the decedent during the decedent's lifetime" by way of *donation*, or any other *gratuitous* title, in order that it may be computed in the determination of the *legitime* of each heir, and in the account of the partition." There can therefore be no collation here because from the documents of record, respondent Carmen B. Valero-Rustia is not a compulsory heir who received property by donation or gratuitous title from the deceased that would be subject to collation.

Supreme Court E-Library

The properties in question had been transferred by deed of absolute sale to said respondent-vendee more than six years before the vendor Jose M. Valero died in October, 1972. The deceased having long divested himself of title to the said properties, they were properly excluded from the inventory of his estate.

The real question between petitioners (children of the deceased vendor) and respondent-vendee (a stranger to the deceased's estate) is not collation, but a question of title and ownership of the properties. The probate court has no jurisdiction over this question and petitioners must bring a separate action if they wish to question respondent's title and ownership. Even granting their claim that the deed of sale should be considered a donation or gratuitous transfer, (because of the allegedly excessively low price), their only recourse would be not collation, but a separate action for reduction of the donation to the extent that they may show it to be inofficious (exceeding that which the deceased may give by will) under the provisions of Articles 750 and 752 of the Civil Code.

FIRST DIVISION

[A.C. No. 913. July 25, 1979]

JOSE B. PEÑA and JUAN B. BAÑEZ, JR., *complainants, vs.* **NESTOR M. ANDRADA,** *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; ATTORNEYS; DISBARMENT; CASE THEREFOR SHOULD BE DISMISSED WHEN THE COMPLAINANTS FAILED TO PROSECUTE.— The complainants, Jose B. Peña and Juan B. Bañez, Jr., by filing this disbarment case which they later failed to prosecute, wasted the valuable time of the Supreme Court and of the Office of the Solicitor General. This practice should be discouraged.