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[ G.R. No. 2697. November 27, 1906 ]

**JUSTINIANO MENDIOLA, PLAINTIFF AND APPELLEE, VS. CLAUDIA MENDIOLA, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

Mariano Lamberto died in Tacloban in the Province of Leyte on the 9th day of April, 1889, leaving surviving him his widow, the defendant and appellant, Claudia Mendiola, and his mother as his only heirs. In his will he stated that all the property of which he died possessed had been acquired during his marriage with the appellant and belonged to the conjugal partnership. He left two-thirds of his estate to his mother and an interest in the other third to Justiniano Mendiola, his stepson, the son of the defendant. Voluntary proceedings were commenced in the Court of First Instance of Leyte for a settlement of the estate in accordance with the provisions of the Law of Civil Procedure then in force. While such proceedings were pending, and on the 6th day of November, 1889), the defendant and appellant, the mother, Silveria Melendres, and Justiniano Mendiola, the stepson, made<sup>1</sup> an agreement which appears in a notarial document by which they abandoned the proceeding in the Court of First Instance<sup>1</sup>, settled the estate and divided the property among themselves. YBy the terms of this agreement, tin<sup>1</sup> appellant took possession of all the property, agreeing to pay the debts, and agreed to, and did, pay in the act of execution of the document to the mother, Silveria Melendres, 2,400 pesos, and to Justiniano Mendiola 1,200 pesos. Ever since that time the appellant has been in possession of the property and has paid all the debts of the deceased and of the conjugal partnership. It will be noticed that she was in her own right the owner of one-half of the property, subject to the payment of such debts.

On the 25th of April, 1904, nearly fifteen years after this settlement, Justiniano Mendiola and Juliana Lamberto, the daughter of Silveria Melendres, presented a petition to the Court

of First Instance of Leyte asking that the will of Mariano Lamberto be proved and allowed and that an administrator be appointed to administer the estate of the deceased. Claudia Mendiola appeared and opposed the probate of the will on the ground that the estate had been completely settled and a partition of the property belonging thereto had been made fifteen years before. The court below granted the prayer of the petition and appointed an administrator. From this order Claudia Mendiola has appealed.

Nearly all the evidence in the case and nearly all of the opinion of the court below is devoted to a consideration of the validity of the partition made in 1881). That was practically the only question discussed and determined by the court below, the petitioners and appellees claiming that this partition had been obtained by fraud and misrepresentations on the part of the appellant as to the value of the property left by her husband and as to the debts existing against his estate.

We do not find it necessary to consider the evidence adduced on tin1 question of fraud, nor the findings made by the court below in relation thereto, for we are of the opinion that when it appeared to that court that there had been a partition of the property made by the heirs, all of whom were of age, that lie should have dismissed the proceedings, leaving the parties to litigate the question as to the validity of that contract of partition in an ordinary action brought for that purpose. The proceeding commenced in the Court of First Instance of Leyte in 1889 was a voluntary proceeding. Article 1080 of the Spanish Law of Civil Procedure provided as follows:

“The interested parties may at any stage of the voluntary probate proceedings, terminate them and adopt such measures as they may deem proper.

“For this purpose, beside the heirs and legatees, the creditors who may have instituted the action and the surviving member of the marriage community shall be considered as interested parties.

“If they pray for such termination by common consent, the judge shall order the proceedings terminated and shall place the property at the disposition of the heirs.”

The contract made by the parties in this case states expressly that they abandoned the voluntary proceedings.

That contract contains, moreover the following clause:

“Seventh. As a consequence of the foregoing clause, Silveria Melendres and Justiniano Lamberto do hereby solemnly declare themselves to be entirely satisfied with their share of the estate and waive whatever right they may have to the property of the estate, and by these presents undertake in the most solemn manner not to make any claim in future in respect to the said property, and hereby convey to Claudia. Mendiola whatever property, interest, or rights they may have in the estate of the deceased, she, in turn, agreeing to pay all the debts of the estate as well as all the legacies and bequeathments provided for in the will of the deceased.”

When neither minors nor creditors were interested in the settlement of an estate, no action of the court was necessary, in accordance with the law existing here prior to American occupation. Everything was in the hands of the heirs and legatees and they could dispose of the property as they saw fit. Article 1058 of the Civil Code is as follows:

“Should the testator not have made any division, nor intrusted this power to another, if the heirs should be of age and should have the free administration of their property, they may distribute the estate in the manner they may see fit.”

Where the parties in fact signed an agreement of partition and the partition was in fact made in accordance with that agreement, all proceedings in court for the settlement of the estate of the deceased person were ended. The rights of the parties to the property involved could no longer be discussed nor determined in that proceeding. If it were claimed that the partition was brought about by fraud or that it was void for any other reason, such claims necessarily had to be presented in an ordinary action brought for the purpose of setting aside the partition.

Limiting ourselves to this precise case, we hold that where prior to the adoption of the present Code of Civil Procedure a contract of partition has in fact been made by all the persons interested in the estate of a deceased person, such persons interested being of full age and capacity to contract, no further proceedings can be had for the judicial settlement and administration of that property until the contract of partition has been set aside in an ordinary action brought for that purpose, and that in this case, when it was made to appear

to the court below that such a contract of partition had in fact been signed by the petitioners or their grantors, the court should have dismissed the petition.

The judgment of the court below is reversed and the case remanded to that court with instructions to dismiss the petition, with costs to the appellant, Claudia Mendiola. No costs will be allowed to either party in this court. After the expiration of twenty days, let judgment be entered accordingly, and ten days thereafter the case be returned to the lower court for execution. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

*Johnson, J., did not sit in this case.*