7 Phil. 151

[G.R. No. 2803. December 07, 1906]

DAMASA ALCALA, PLAINTIFF AND APPELLEE, VS. FRANCISCO SALGADO, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

Juan Banatin died on the 23d of April, 1897, leaving surviving him his widow the plaintiff, to whom he had been married fourteen years, and as his only heirs at law seventeen nephews and nieces. On the 13th of June, 1897, the widow and the nephews and nieces made a partition among themselves of ail the property left by the deceased. This partition appears by a written instrument signed by the parties thereto. By the terms of that instrument it was agreed that the house which is in question in this suit, situated in Calamba in the Province of La Laguna, should remain undivided and that the defendant, Francisco Salgado, who was one of the nephews, should administer the property, collecting the rents thereof, and should divide the same, paying one half to the widow and the other half to the nephews and nieces. In the document itself it is stated that the defendant accepted the administration of the house and thereby assumed charge thereof. He has since that time collected the rents but, instead of paying one-half of the same to the plaintiff, has paid all thereof to the nephews and nieces. This action is brought by the plaintiff to recover one-half of the rents from the date of the agreement to the present time.

The principal defense set up is that the contract of partition was void because it was not signed by all the parties interested in the estate, and evidence was introduced to show that one of the persons whose name appears to have been signed thereto; Juan Banaybanay, was a prisoner in Manila at the time it was executed. It was proved that another one of the nephews, Tranquilino Banatin, refused to sign the agreement. To the document of partition is annexed a paper stating this fact and stating that the other heirs had agreed that the part which belonged to Tranquilino should be delivered to another one of the heirs, Procopio

Pabalan, for Tranquilino, Not only was the original document of partition signed by the defendant, but this second document was also signed by him.

In view of these facts we do not think that the failure of Tranquilino Banatin to sign the agreement of partition, or the fact that Juan Banaybanay did not do so, can relieve the defendant of the obligation which he voluntarily assumed thereunder. There is no doubt that he took possession of the property by virtue of this agreement of partition and he did so knowing that one, at least, of the parties had not signed the same. Having voluntarily assumed the obligation to collect the rents and pay one-half thereof to the widow, he can not now. say that he is not bound by that obligation. He would have no right to retain the rents in his own hands and refuse to pay them to anyone on the ground that two of the parties had not signed the partition. He was under no obligation to assume this duty. When he knew that one of the heirs was not a party to the partition, he should have refused to assume charge of the property if he did not wish to be bound by the agreements therein stated. But having assumed such charge, he is bound to comply with the duty imposed upon him by the contract.

It is to be observed, moreover, that in the absence of. any partition whatever, he would be legally bound to pay the plaintiff one-half of the rents received from this property. Article 837 of the Civil Code is as follows:

> "If the testator should leave neither legitimate ascendants nor descendants, the surviving spouse shall be entitled to one-half of the estate also in usufruct."

The case at bar falls directly within the provisions of this article.

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the case bo remanded to the court below for proper action. So ordered.

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

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

Date created: May 05, 2014