7 Phil. 296

[G.R. No. 3314. January 03, 1907]

ANSELMO CHINGEN, PLAINTIFF AND APPELLANT, VS. TOMAS ARGUELLES AND WIFE ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

TORRES, J.:

On the 25th of October, 1905, the plaintiff, Anselmo Chingen, by his attorney, Claro Reyes, filed a complaint in the Court of First Instance of the city of Manila, praying for judgment against the four defendants herein for one-half of the jewels therein mentioned and the rent of the property referred to therein, to wit, 4,170 pesos, or a half of 8,340 pesos received by the defendants since the date they took possession of the legacies left by the deceased Raymunda Reyes in her will—that is to say, since the 29th of May, 1900—which said legacies consisted of a house numbered 8, 10, 12 and 14 Calle Claveria, district of Binondo, two combs set with diamonds and pearls, respectively, a gold ring set with three diamonds, a pair of gold earrings set with three diamonds each, and a gold ring set with one large and several small diamonds, the defendants having refused to pay half of the earnings derived from the property left by the testatrix and the legacies referred to belonging to him as the surviving husband of the deceased, who died without legitimate heirs, ascendants or descendants, all efforts to collect the sum thus claimed having failed. The plaintiff further prayed that the defendants be required to pay the costs, and for such other and further relief as the court might deem just and equitable.

The defendants, by their attorney, Teodoro Gonzalez, after the demurrer to the complaint had been overruled, filed an answer wherein they prayed that the action be dismissed with the costs against the plaintiff, admitting all the allegations of the complaint except such as were expressly or tacitly denied in their special answer, wherein they alleged that the legacies referred to in the complaint were unconditional legacies, specific and definite of property belonging to the testatrix, the value of which legacies did not exceed the one-half of the estate of which she could freely dispose, and therefore were not subject to the right of

usufruct which ordinarily would belong to the plaintiff; that the testatrix made a partition of her property which became irrevocable, it not having been contested within the time prescribed by law by the widower plaintiff, the only one who could have maintained an action for the rescission of such partition, the said plaintiff having alienated a considerable part of the personal property assigned to him; and that the property bequeathed in these legacies was delivered to the defendant legatees by the plaintiff, who was the executor of the will.

The plaintiff filed a reply to the said answer, admitting all the facts alleged therein in paragraphs A, B, and C thereof, except in so far as it was asserted that the right of usufruct did not extend to the property embraced in the legacies; that the value of such property had not been included in the property of the estate and for this reason it was impossible to determine with certainty the value of one-half of the entire estate; and that if the value of the said legacies was not included in the estate the right of usufruct which the surviving husband had upon one-half of the property left by the testatrix would be jeopardized; and denying the consequences of paragraph C and the allegations contained in paragraphs D and E.

After hearing the evidence introduced by both parties, the court entered judgment on the 6th of March, last, in favor of the defendants and against the plaintiff, dismissing the complaint with the costs to the defendants, from which said judgment the plaintiff excepted, and after his motion for a new trial was overruled excepted thereto.

Article 837 of the Civil Code provides:

> "If the testator should leave neither legitimate ascendants or descendants, the surviving spouse shall be entitled to one-half of the estate also in usufruct."

The object of the action brought by the plaintiff was to recover one-half of the jewels mentioned in his complaint and one-half of the rent accruing from a certain property, which said property, as well as the jewels in question, were delivered as part of their legacies to the legatees, Carmen Reyes, Jose Reyes, and Pedro Reyes, under the will of the deceased Raymunda Reyes.

The plaintiff in his brief presented on appeal in this case seems to insist upon his original petition, for he claims that his object is to recover the remainder of the property which

belonged to him in usufruct under the law as the surviving spouse of the testatrix, citing to this end article 815 of the Civil Code.

The main reliance of the plaintiff is that his deceased wife, the testatrix, did not assign to him in her will the entire portion which belonged to him; that is to say, one-half of the estate in usufruct.

In addition to this, the plaintiff should also have stated that he was one of the executors of the will in question, the first among those designated in clause 17 of the will; and that he, the plaintiff, and the minor Lamberto Reyna are the only heirs under the said will. This will account for the testatrix's silence as to the usufructuary portion pertaining to the husband.

The testatrix left no legitimate descendants or ascendants. Her surviving husband was therefore entitled to the usufruct of one-half of the estate. Where the surviving husband is also an heir under the will, as happens in the present case, the undivided portion assigned to him as such heir in accordance with the terms of the will shall be considered as an integral part of the one-half of the estate subject to the right of usufruct of such husband for the reason that the latter's right, even though he may be also an heir under the will, is not superior, and he is not entitled to greater privileges than other coheirs. The object of the law is to equalize the condition of the heirs and that of the surviving spouse who received nothing in addition to his usufructuary portion, and the plaintiff is entitled to a share of the estate property, not as surviving spouse, but as an heir, which share he has already received and accepted.

It is not just that the plaintiff, Anselmo Chingen, after receiving the property to which he was entitled as such testamentary heir of his deceased wife, should be also entitled to the usufruct of the other half of the estate in which the property so received by him was not included.

The property of the estate of his deceased wife having been divided in two equal parts, the property to which the plaintiff was entitled as an heir under the will should have been taken out of the one-half, subject to the usufruct of the surviving spouse. This done, the usufruct, of course, is extinguished *ipso facto* by the merger of such right of usufruct and ownership in the same person, as provided in paragraph 3 of article 513 of the Civil Code.

It is absurd and contrary to all justice that the plaintiff should receive his share as an heir under the will from one-half of the estate and be further entitled to the usufruct of the other half to the prejudice of his coheir and the various legatees under the will. There is no law or

article of the code which authorizes such an iniquitous privilege.

In any event the portion of the estate subject to usufruct must be claimed from the heir or heirs in due time, and in the manner and form prescribed by law.

It appears from the record that the property of the estate was liquidated, distributed, and apportioned among the heirs and legatees under the will, the plaintiff, as the executor and heir of his deceased wife, and attorney Nazario Constantino, guardian *ad litem* of the minor heir, Lamberto Reyna, being the only ones who took part in the proceedings had in the settlement of the estate, which said proceedings were duly approved by the court. (Original bill of exceptions, pp. 15-23.)

It appears from the proceedings in question that there were assigned to the plaintiff, Anselmo Chingen, the surviving husband of the deceased, as his share of the community property and his usufruct, property to the value of 9,740.12 pesos and 13,000 pesos as testamentary heir.

According to the will, a copy of which appears on pages 7 to 13 of the record, there were twelve legatees and some substitutes who were entitled to various classes of property described in detail in the said will, and, if it is true as contended by the executor, now the plaintiff in this case (pp. 13-15), that he has already complied with the will of the testatrix by delivering to the various legatees the property bequeathed to them by his deceased wife, it may be said that the liquidation, partition, and distribution of the rest of the estate having been made between the only two heirs, the plaintiff one of them, the estate is finally and definitely settled, for the partition of an estate puts an end to the undivided condition of the same, and confers upon each of the heirs the exclusive ownership of the property assigned to him. (Article 1068 of the Civil Code.)

The plaintiff, as has been said before, claims half of the jewels bequeathed to the legatees, and one-half of the rents accruing from a certain house also bequeathed to the defendants, as his, the plaintiff's, usufructuary portion. He has failed, however, to state the total value of the estate and the value of the one-half of the property to which he claims to be entitled in usufruct. He has said absolutely nothing as to the nature and value of the property assigned to him in the partition of the estate, either as an heir or as a surviving spouse of the deceased.

The plaintiff does not seek to have the aforesaid partition set aside, nor can he ask such a thing, for the partition of the estate was made exclusively by him and the guardian *ad litem*

of his coheir. However, the property of the estate having been distributed, and the plaintiff having disposed of some of the most valuable property awarded to him in said partition, as he himself admits (p. 14), and the property having been actually delivered to the respective legatees, a new liquidation or settlement of the estate can not be had, and the partition made under the exclusive direction of the plaintiff as executor of the will of the deceased can not be set aside, since the same is expressly prohibited by the provisions of article 1078 of the Civil Code. Moreover, it has not been shown that the property bequeathed to the defendant legatees was included in the one-half of the estate settled as aforesaid, subject to the usufruct of the husband. The mere fact that the plaintiff delivered the said property to the legatees absolutely and unconditionally, shows conclusively that his right of usufruct is intact and has not been injured in any way.

Finally, it should be borne in mind that the legacy to which this action relates consists of a house and certain jewels and is according to the will, an unconditional legacy without any fixed period, and that the property thus bequeathed is specified in the said will and described as being of the exclusive ownership of the testatrix, so that the legatees were entitled to the property thus bequeathed to them from the death of the testatrix, and as owners of such property were also entitled to the fruits and earnings and any increase thereof, as well as liable for any loss or impairment thereof. (Arts. 881, 882, Civil Code.)

For the reasons hereinbefore set out and those contained in the judgment appealed from in so far as they conform with this decision, we are of the opinion that that judgment should be affirmed, and the defendants are hereby absolved of the complaint of the plaintiff, Anselmo Chingen, with the costs against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the Court of First Instance for execution. So ordered.

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

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