

[G.R. No. 2904. January 11, 1907]

LUIS LIM, ADMINISTRATOR, PLAINTIFF AND APPELLANT, VS. ISABEL GARCIA, WIDOW OF HILARIO LIM, DEFENDANT AND APPELLEE.

D E C I S I O N

CARSON, J.:

This is an appeal from an order of the Court of First Instance of Zamboanga distributing the estate of Hilario Lim, deceased, on the consolidated petition of Luis Lim, administrator, the children of Hilario Lim, deceased, and the defendant Isabel Garcia, his widow.

Hilario Lim died intestate some time in the year 1903, leaving a widow and nine children and an interest in an estate valued at some 50,000 pesos.

The trial court was of opinion that the entire estate as shown in the inventory prepared by the administrator was conjugal property, except a house and lot on Calle Magallanes, Zamboanga, and the sum of 10,000 pesos which, it was admitted, had been brought to the marriage by the said Hilario Lim, and except, furthermore, 700 pesos, the purchase price paid by said Lim for a certain lot which it was also admitted had been brought by him to his marriage, and which was sold in the course of the administration of his estate, together with the improvements made thereon during the period of coverture.

Counsel for the administrator, and for the surviving children, contends that none of the said property should be treated as the property of the conjugal partnership, because, as they allege, the deceased, Hilario Lim, brought to the marriage property worth more than double the amount of the intestate estate, and the defendant, his widow, brought nothing to the conjugal partnership, either at the time of the marriage or at any time thereafter.

The trial court was of opinion that the evidence offered in support of this contention was not sufficient to overcome the presumption established in article 1407 of the Civil Code, which provides that all the estate of the married couple will be considered as conjugal partnership

property (*bienes gananciales*) unless and until it is proven that it is a part of the separate estate of the husband or the wife, and we think after a careful examination of the record that this finding must be sustained.

The setting aside of 700 pesos (which appears to have been taken as the value of the lot sold during the administration) as the separate property of the husband who brought the lot to the marriage, and the treatment of the balance of the price received for this lot, together with the buildings thereon, as conjugal partnership property, it appearing from the record that these buildings were constructed out of conjugal partnership funds, was in entire accordance with the provisions of article 1404, which provides that “the buildings erected during coverture on land belonging to one of the married couple will be considered as conjugal partnership property, after allowing the owner of the land the value thereof.”

The foregoing disposes of all the errors assigned by counsel for the appellant, except the alleged error of the trial court in refusing to order the inclusion in the inventory of the estate of the deceased of three parcels of land, held in the name of the appellee and claimed as her separate estate. It is contended by the appellant that these parcels of land were conveyed to the appellee during the coverture by the said Hilario Lim either as a gift or for valuable consideration, and that in either event such conveyance was void under the provisions of articles 1334 and 1458 of the Civil Code.

It appears from the evidence, however, that these parcels of land were not acquired by the appellee by conveyance from her husband, and that they were in fact conveyed to her by third parties by way of exchange for certain property inherited by her from her father’s estate during the coverture, and they are, therefore, her separate property under the provisions of paragraph 3 of article 1396, which provides that property acquired by exchange for other property belonging separately to one of the married couple is the separate property of the owner of the property for which it is exchanged.

The trial court speaks of this property as dowry of the appellee, but there is nothing in the record which tends to prove that it was acquired as a part of her dowry, and indeed the evidence strongly supports the presumption that it was and continued to be a part of her separate estate (*paraphernalia*) which never acquired the “dotal” character. For the purpose of this decision, however, it is not necessary to determine the precise character of the estate of the appellee in this property because there can be no doubt that it was her separate estate, and whether dowry or paraphernalia, the trial court properly excluded it from the inventory of the property of the deceased which was to be distributed among his legitimate

heirs.

No error was assigned by either party touching the amount of the usufructuary interest in the estate of her husband allowed to the widow by the trial court, and we can not, therefore, review the action of the trial court in this connection.

The judgment of the trial court should be and is hereby affirmed, with the costs of this instance against the appellant. After the expiration of twelve days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.
