34 Phil. 232

[G.R. No. 8092. March 14, 1916]

RUFINA BONDAD ET AL., PLAINTIFFS AND APPELLANTS, VS. VENANCIO BONDAD ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

ARELLANO, C.J.:

Rufina Bondad had two brothers and two sisters, respectively named Venancio, Placido, Maria, and Paula. The last named died leaving four children: Eleno, Estanislao, Raymundo, and Pedro, all surnamed Emlano.

On May 6, 1911, Rufina Bondad brought suit against her said brothers, sisters, and nephews to secure the partition of the property left to these defendants by their father or grandfather, respectively, Crisanto Bondad, upon his death on March 17,1902. She designates the lands to be divided, which are those specified in the complaint under the letters (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), and (*j*).

Documentary and parol evidence was introduced, and the Court of First Instance of Laguna decided the case by dismissing the complaint and absolving defendants therefrom, with the costs against the plaintiff.

The latter appealed, and upon a hearing of her appeal we find:

(1) That a person who alleges a hereditary right in any specified real property, must, like any other person who seeks to recover possession, prove the ownership of his predecessor-in-interest; otherwise "the possessor by virtue of ownership has in his favor the legal presumption that he holds possession by reason of a sufficient title and he cannot be forced to show it." (Art. 448, Civ. Code.) The plaintiff did not try to prove her father's ownership in the property she describes as left by him at his death. She did no more than present two witnesses whose testimony will be duly considered hereinafter.

(2) That a person who alleges a hereditary right will be relieved from proving his predecessor-in-interest's ownership only when the defendant in possession admits having received the ownership or possession he enjoys from that predecessor; but in that case plaintiff must prove how he came into the possession and ownership of the thing he claims.

(3) That, in the case at bar, defendants admit that the real property, specified in the complaint under the letters (*a*), (*d*), (*e*), (*h*), (*i*), and (*j*), was derived from that source, but allege that it was equitably and proportionally partitioned between the plaintiff and the defendants in 1903.

(4) That they deny that the parcels of land B, C, F, and G belonged to the intestate estate of the predecessor-in-interest, Crisanto Bondad, and were derived from this latter, wherefore it is incumbent upon the plaintiff, and not upon the defendants, to prove such ownership; and that without this proof the defendants cannot be disturbed in their possession.

(5) That Lorenzo Suarez, one of the two witnesses presented by plaintiff, testified that the said parcels of land, as the others, were inherited some by Crisanto Bondad, others by his wife Gliceria Alcantara, while still others were purchased by both of them, but witness did not specify the origin or the title of ownership of each individual parcel, and it is no proof of the ownership of real property to state the title of origin of the whole, without specifying the title of ownership of each of its parcels, especially in the case of a double marriage as it appears that Crisanto Bondad was married at least twice, once to Gliceria Alcantara and the second time to Emilia del Rosario. The other witness, Aniceto Devanadera, specifies only one piece of realty as having been purchased by Crisanto Bondad, and the rest as having been inherited by the same.

(6) That, on the other hand, while there was no need of exhibiting titles to possession, they were nevertheless exhibited by: Venancio Bondad who holds by purchase from Juan Martinez, by virtue of a notarial instrument of September 12, 1908, the lands specified in the complaint under letter (*c*), with the identical area, the identical number of planted coconut trees and the identical boundaries; the same Venancio Bondad who holds by purchase from the surviving widow Emilia del Rosario, by virtue of a notarial instrument of September 30, 1907, the land specified in the complaint under letter (*b*), with identical area, the identical number of coconut trees and the identical boundaries; Placido Bondad who holds by purchase from Ceferino Alcantara, by virtue of a notarial instrument of May 28, 1911, the land specified in the complaint under letter (*f*), with nearly the identical number of coconut trees, boundaries and area; and the same Placido Bondad, who holds by purchase from Margarita Bondad, by virtue of a notarial instrument of May 27, 1911, the land specified in the complaint under letter (*g*), with almost the identical number of coconut trees and boundaries.

(7) That the plaintiff, in describing under letter (*h*) in her complaint the coconut land planted with 200 fruit-bearing coconut trees, says in regard to its boundaries: "On the south, by the land of the late Crisanto Bondad, now in the possession of *Rufina Bondad* * * *" She says that she has been in possession of this property for the past ten years; that such possession was only acquired by adjudication; and that the adjudication was the result of a partition.

It can be shown, as the lower court found, that the partition has already been made.

In the decision rendered in the case of Ilustre *vs*. Alaras Frondosa (17 Phil. Hep., 321), this court said:

> "Under the provisions of the Civil Code (arts. 657 to 661), the rights to the succession of a person are transmitted from the moment of his death; in other words, the heirs succeed immediately to all of the property of the deceased ancestor. The property belongs to the heirs at the moment of the death of the ancestor as completely as if the ancestor had executed and delivered to them a deed for the same before his death. In the absence of debts existing against the estate, the heirs may enter upon the administration of the said property immediately. If they desire to administer it jointly, they may do so. If they desire to partition it among themselves and can do this by mutual agreement, they also have that privilege. The Code of Procedure in Civil Actions provides how an estate may be divided by a petition for partition in case they cannot mutually agree in the division. When there are no debts existing against the estate, there is certainly no occasion for the intervention of an administrator * * * The property belonging absolutely to the heirs, in the absence of existing debts against the estate, the administrator has no right whatever to intervene in any way in the division of the estate among the heirs * * *."

It has been repeatedly shown in the record that there are no debts outstanding against either succession, and the complaint itself so states.

The plaintiff makes the following citation from the end of the decision above referred to: "If there are any heirs of the estate who have not received their participation, they have their remedy by petition for partition of the estate." But the plaintiff has received her share in the land, which, together with 200 coconut trees, she testifies she has held for the past ten years.

If, at the present time or in the future, some creditor should come forward with a claim, or if debts of either or both of the two intestate estates should appear, prescription after two years could not be set up against such creditors or against such debts, because the date *from which* the beginning of the two years should be counted, could not be determined. This is the risk that is incurred in a partition of these intestate estates and hence the need of making the partition in writing, that is, so that it would not prejudice any third person; but among themselves the heirs must abide by the terms upon which they have agreed.

There is however one fact in the record which has not been wholly explained and which forms the fifth error assigned by appellant, to wit, that relative to the land designated under letter (*b*) in the complaint. The lower court decided that this land, planted with 300 coconut trees, belonged to Venancio Bondad inasmuch as he proved its purchase by the document Exhibit 2. Venancio Bondad maintains that he purchased it of Emilia del Rosario on September 30, 1907. But it is shown that on August 26, 1911, Emilia del Rosario, the surviving widow, executed the document Exhibit D, in which she sets forth that she delivered the possession and right of enjoyment of apparently the same land to Venancio Bondad, Placido Bondad, Maria Bondad, and *Rufina* Bondad, and that in exchange for it they paid her the sum of ₱110.

This document, if authentic, as it appears to be, having been confirmed by the property assessment declaration thereof filed by Venancio Bondad (Exhibit A), reveals that there exists a coownership in said land between the four above mentioned heirs, including the plaintiff Rufina Bondad. This, however, does not militate against the partition in question, but rather confirms it. An action for the division of coownership, which is different from that for partition of a hereditary succession, always lies in behalf of the interested parties.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Moreland, Trent, and *Araullo, JJ.,* concur.

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