

[ G.R. Nos. 8765 and 10920. March 24, 1916 ]

**PEDRO DIMAGIBA, JUDICIAL ADMINISTRATOR OF THE DECEASED VERONICA TAPANG, PLAINTIFF AND APPELLEE, VS. ANSELMO DIMAGIBA, JUDICIAL ADMINISTRATOR OF THE DECEASED TEODORO DIMAGIBA, DEFENDANT AND APPELLANT.**

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

**TORRES, J.:**

The record in this case has come before us on appeal by bill of exceptions filed by defendant's counsel from the judgment of April 13, 1912, which judgment, on appellant's petition and notwithstanding appellee's opposition, was set aside by a resolution of August 5, 1913, whereby it was directed that the record and exhibits be remanded to the judge of the Court of First Instance of Bulacan; that a new trial should be held, wherein it would not be necessary to again take the evidence already presented; but the court should proceed to hear such new evidence as the parties might submit to prove the falsity or genuineness of said exhibits, and, on both the old and the new evidence, render such final judgment as the law required.

When the record, together with a certified copy of the resolution, was received by the Court of First Instance of Bulacan, the new trial was commenced. Counsel for plaintiff therein challenged the genuineness of the documents (pp. 259 to 268) presented by defendant but they were admitted by the court, plaintiff duly excepting. At the close of the trial and after due consideration of the evidence already of record, on January 31, 1915, the court rendered a decision sustaining his former one of April 13, 1912. Defendant's counsel excepted and moved for a new hearing, alleging that the evidence did not warrant the second judgment and that it was contrary to law. His motion being denied, he announced his intention to file a bill of exceptions for the purposes required by law. It is to be noted that appellant excepted to the order overruling his motion for a new trial based on the prior judgment of April 13, 1912.

On April 21, 1911, counsel for Pedro Dimagiba, judicial administrator of the estate of the deceased Veronica Tapang, filed a written complaint against Anselmo Dimagiba, judicial administrator of the estate of the deceased Teodoro Dimagiba, alleging that said Veronica Tapang died in the municipality of Malolos, Bulacan, on April 5, 1883, leaving her property in possession of her son, Teodoro Dimagiba, who, as administrator thereof, continued to keep in his possession his deceased mother's estate until he died; that on the death of Teodoro Dimagiba, he was succeeded by his son Anselmo, as judicial administrator of his deceased father in the administration of the estate of his deceased grandmother Veronica Tapang, which consisted of real and personal property, minutely described in the complaint; that said property was erroneously considered by defendant as having belonged exclusively to the deceased Teodoro Dimagiba, and that he disregarded the rights that might appertain to the estate of the deceased Veronica Tapang, to whom the property specified in his complaint had belonged. He therefore prayed that judgment be rendered in behalf of the plaintiff administrator of said decedent's estate, and that the defendant administrator of the estate of the deceased Teodoro Dimagiba be ordered to make an accounting and restore to the intestate estate of said Veronica Tapang all the property described in his complaint, together with the products thereof collected from April 5, 1883, up to the present time, and that the costs of the suit be assessed against defendant.

The demurrer to the aforementioned complaint having been overruled, defendant excepted and in his answer prayed that he be absolved from the complaint, with the costs against plaintiff. To this end he made a general and specific denial of each and all of the facts alleged in the complaint and not admitted in his answer. In special defense he set forth that the facts alleged in the complaint do not constitute a cause of action; that the lands and other property specified in the complaint had belonged exclusively to the deceased Teodoro Dimagiba, with the exception of some personal property which had not come into his possession; that the property left by the deceased Veronica Tapang was not that specified in the complaint; that it had already been apportioned among her children, one of whom was Pantaleon Dimagiba, plaintiff's father; that the property adjudicated to the latter during his lifetime had been sold to different persons by his wife Severina Reyes, and his son; and that, upon the death of Veronica Tapang, intestate proceedings were in due course commenced in the Court of First Instance that existed in Bulacan during the former sovereignty.

After a hearing of the case on October 12, 1911, and an examination of both the parol and documentary evidence introduced by both parties, the judgment of April 13, 1912, was rendered. Later, after a new hearing, that of January 31, 1915, was pronounced, from both of which defendant appealed to this court.

The question herein to be decided is whether the property which personally belonged to Veronica Tapang and which she left at her death was or was not partitioned among her heirs, and if not, whether it is true that it now belongs to the heirs of the late Teodoro Dimagiba, her eldest son.

Veronica Tapang died on April 6, 1883, intestate, and on the 8th of the same month intestate proceedings were commenced. After all the persons interested had been summoned, an inventory was made of all the various kinds of property pertaining to the estate. Later, the decedent's eldest son, Teodoro Dimagiba, by a written petition of December 17 of the same year, 1883, asked for himself and in the name of the other persons interested in the estate that a parcel of land situated in Longos be excluded from the inventory because it was the subject of litigation with Leon Limcuando; that said inventory be made to include a lot in the sitio of Mangahan, barrio of San Juan, pueblo of Malolos; that there be also included therein debts owing by Marcelo Caluag consisting of ₱451 due to Miguel Zulueta, of ₱566 to Teodoro Dimagiba, of ₱51 to Vicente Fernandez, and of "P37 to Mariano de la Cruz; with these changes he prayed that the inventory be approved. After the inventory was certified by petitioners, by an order of December 20th of the same year it was approved in conformity with law. (Record, pp. 20, back of 21, and 22 to 29.) The credits and debts and the lot aforementioned were included and the parcels of land designated by the numbers 25 and 37 were stricken out of the said inventory. The petitioners were notified of this order.

As the proper legal steps had been taken already, on petition of Teodoro Dimagiba himself, by a decree of July 17, 1886, the heirs of the dead Veronica Tapang were declared to be: (1) The said Teodoro Dimagiba, her only living son; (2) testatrix's grandchildren named Maria Consuelo, Maria Amparo, and Nicolas, children of Tomas Dimagiba (also a son of the dead Veronica Tapang); (3) the testatrix's other grandchildren named Isidro, Casto, and Pedro Pablo, children of Pantaleon Dimagiba, another son of the dead Veronica Tapang; (4) her other granddaughter, Juana Balbina Zulueta, a daughter of Liberata Dimagiba who was a daughter of the dead Veronica Tapang, without prejudice to any *third* person who might have a similar or better right. (Record, pp. 120 to 122, back.)

At the instance of the said Teodoro Dimagiba, Juan Dimagiba and Saturnino Buendia were, by an order of July 20, 1886, appointed as expert appraisers of the inventoried property and they proceeded with the appraisal thereof; and, finally, on petition of the same Teodoro Dimagiba, and of Miguel Zulueta, Maria Calayag, widow of Tomas Dimagiba, and of Severina de Lara, widow of Pantaleon Dimagiba, Monica Estrella, and Bibiano San Pedro

were appointed to divide the deceased Veronica Tapang's inventoried estate; but after the parties had been notified of this order, the proceedings apparently came to a halt, for the record does not show that the persons appointed to make the division executed their commission nor is there any document in the record to show that any division or partition was made of the inventoried property among the lawful heirs of the deceased owner thereof.

Although mention is made in the record that the said partition was made and that each heir entitled to a share in the estate of the deceased Veronica Tapang had already received his respective legitime, nevertheless the record offers no positive proof of these points; on the contrary, it shows that Veronica Tapang during her lifetime had lived with her eldest son, Teodoro Dimagiba; that it was he who had managed and administered his deceased mother's estate; that Juan Dimagiba, husband of the deceased Veronica Tapang, had died in 1874, and that a few months after his death a division was made between the widow of the deceased Juan Dimagiba and the legitimate children of these spouses, of the private and the community property belonging to each of the latter. So that while Veronica Tapang was still living, her surviving children and her grandchildren, the children of her own deceased children, being duly represented, apportioned among themselves the estate left by Juan Dimagiba at his death, each of the latter's heirs receiving his respective legal share *per capita* and *per stirpes* in representation of his respective predecessor in interest, according to the right they each had in the estate of the deceased Juan Dimagiba.

It appears, then, from the proceedings had, that the estate of the father Juan Dimagiba has already been divided among his legitimate heirs; but under the alleged facts it cannot be affirmed that the estate which Veronica Tapang left at for the evidence, especially the record of the intestate proceedings Exhibit A, shows in a positive and certain manner that such property is still undivided and is held by the administrator of the estate of Teodoro Dimagiba, and that the heirs of the deceased Veronica Tapang have not received their respective portions in the manner prescribed by law.

Pedro Dimagiba, judicial administrator of the estate of the deceased Veronica Tapang, prays in his complaint that Anselmo Dimagiba, son of the deceased Teodoro and administrator of his father's estate, be ordered to restore to the intestate estate of Veronica Tapang certain property specified in the complaint, together with the products thereof collected from April 5, 1883, up to the date of its delivery. Defendant denies the facts alleged in the complaint and avers that the lands and other property specified therein exclusively belonged to the deceased Teodoro Dimagiba; that such property was not that left by Veronica Tapang at her death, inasmuch as the latter's estate had already been divided among her children, one of

whom was Pantaleon Dimagiba, plaintiff's father, and that this property had been sold by plaintiff and his wife to different persons. Defendant concludes by praying that he be absolved from the complaint with the costs against plaintiff.

From the evidence furnished by the record in the intestate proceedings commenced in 1883 in the Court of First Instance of Bulacan during the previous sovereignty, and from plaintiff's testimony, it is concluded that the property left by Tapang at her death remained in possession of Teodoro Dimagiba, who was managing during her lifetime and continued to administer it after her death. These facts are affirmed by several witnesses who were residents of the locality, some of whom were owners of lands adjoining those belonging to Veronica Tapang. These witnesses positively testified that after the latter's death Teodoro Dimagiba continued in possession of her said lands. Such evidence induces the absolute conviction that during his lifetime Teodoro Dimagiba retained said property, still undivided among his coheirs, and that after his death his heirs continued in possession thereof. Consequently the judicial administrator of the estate of the deceased Teodoro Dimagiba must render an account of said property and restore it to the intestate succession of the deceased Veronica Tapang for distribution among the heirs lawfully entitled to share in her estate.

Satisfactory evidence has not been produced to prove that the property specified, with exception of the personal property and the two parcels of land, belong exclusively to the deceased Teodoro Dimagiba, son of Veronica Tapang; on the contrary, the property claimed by the administrator of Teodoro Dimagiba's estate is the same that appears as inventoried in 1883 in the proceedings to settle the intestate estate of Veronica Tapang, and this inventory was made with the knowledge and intervention of all the interested parties, especially of Teodoro Dimagiba, who was the one that asked the court to approve it in accordance with law; to have two experts appraise the said property; and to order two other expert accountants to proceed with its partitions, though it is not shown that this partition was made. Meanwhile the inventoried property continued at the disposal of Teodoro Dimagiba, who held it during his lifetime and it is now held by his heirs, and the fact has not been proven that it was divided among his coheirs. The expert accountants were appointed in July, 1886, but the record does not disclose that the partition of the property has been made up to the present time.

The three certified copies of possessory information titles, presented as Exhibits 1, 2, and 3, do not constitute proof of the possession as owner, which plaintiff alleges his predecessor in interest, Teodoro Dimagiba, enjoyed during his lifetime, of the several parcels of land to

which these three documents refer, notwithstanding that said titles were registered in the property registry in January, February, and May, respectively, of the year 1897, because it was not proven that the parcels of land mentioned in said possessory information titles are the same as those claimed by plaintiff as belonging to the intestate succession of Veronica Tapang. And even though they were the same, it must be borne in mind that the possession enjoyed by Teodoro Dimagiba during his lifetime was that of coheir, in the name and representation of the other heirs of Veronica Tapang, and therefore such possession could not be exclusive; neither he nor his successors in interest could set up prescription of the action which might have been brought by any of the other heirs of the deceased Tapang, his nephews.

Article 1965 of the Civil Code prescribes:

“Among coheirs, coowners, or proprietors of adjacent estates, the action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties does not prescribe.”

Defendant has not proven that his predecessor in interest, Teodoro Dimagiba, acquired the inventoried property, that had belonged to the deceased Veronica Tapang, by any title that would transfer the dominion. Therefore, as the record shows that defendant, as the administrator of the estate of the deceased Teodoro Dimagiba, has in his possession or now possesses said property, strict justice requires that he return it to the intestate estate of its deceased owner in order that it may immediately be distributed among the persons interested in the estate, still undivided, of the deceased Veronica Tapang.

In the decision of the case of *Wolf son vs. Reyes* (8 Phil. Rep., 364) this court reaffirmed the rule that—

“It is a well known legal principle that a coheir, lessee, agent, or anyone else having possession of a thing which is placed in his charge by the owner thereof, shall under no circumstances acquire any prescriptive rights therein, because of lack of title and good faith, for the reason that he holds possession on behalf of the lawful owner.”

In a similar decision in the case of *De Castro vs. Echarri* (20 Phil. Rep., 23), this court

enunciated the following principle:

“The action among coheirs or coowners for the partition of a succession or the division of a fund, to which article 1965 of the Civil Code applies, is distinct from the action for recovery involving ownership *pro solido* of the same fund, and really the question is one relating to the recovery of an inheritance or part of an estate in common, and not one of partition; the prohibition in said article is not applicable.”

And in another decision of this court, in the case of *Fernandez vs. Tria* (22 Phil. Rep., 603), the following rules were laid down:

“When it has been clearly proved that a person received, instead of his father who had already died, all the property left to the latter by his grandfather and that only one-half of such property belonged to such person, the other one-half belonging to his father’s other heirs, such occupancy of his father’s hereditary property does not constitute possession as owner, but merely as coowner.

“Possession as coowner can never be exclusive or give title of ownership. Against it an action for the recovery of possession does not lie, as in the case of an adverse possession by a stranger, but an action for the partition of the inheritance, called *familiæ erciscundæ*; and, when the coownership is derived from a testamentary succession, to obtain a partition of the hereditary property, section 753 of the Code of Civil Procedure, in the absence of agreement between persons of legal age, must be complied with.

“An issue concerning possession having been raised between the administrator of the hereditary succession of the father and the administrator of the hereditary succession of one of the children, who had possessed himself of all of the father’s property, inasmuch as the paternal inheritance has not yet been divided, the preference is in favor of the administrator of the father’s succession, by priority of time, order, and occurrence; possession held by the son at his father’s death can be no obstacle thereto, because this possession did not constitute, in his favor, a status of rights that might preclude, even by the lapse of time, the force and effect of an action for partition, through special judicial proceedings between

the heirs, as distinguished from the possession of a third party, which, being adverse, can not be the subject of special procedure but must be determined by a regular trial in an appropriate action.”

So that the said possessory information titles cannot be relied upon to weaken or invalidate the right of action allowed by law to petition the courts for the partition of undivided hereditary property.

In all other respects the two judgments of April 13, 1912, and January 31, 1915, appealed from, are in agreement with the law and the merits of the case.

For the foregoing reasons, whereby the errors assigned to said judgments are deemed to have been refuted, the judgments appealed from should be, as they are hereby, affirmed, with the costs against the appellant, without prejudice to the commencement in due season and in accordance with law, of an action for the partition among her lawful heirs, of the hereditary property which Veronica Tapang left at her death. So ordered.

*Johnson, Trent, and Araullo, JJ.*, concur.

*Moreland, J.*, reserves his vote.