

G. R. No. L-7644

[ G. R. No. L-7644. November 27, 1957 ]

**HENRY LITAM, ETC., ET AL., PLAINTIFFS AND APPELLANTS, VS. MEDIOS R. ESPIRITU, AS GUARDIAN OF THE INCOMPETENT MARCOSA RIVERA, AND ARMINIO RIVERA, DEFENDANTS AND APPELLEES.**

[G.R. No. L-7645. November 27, 1956]

**IN THE MATTER OP THE INTESTATE OP THE DECEASED RAFAEL LITAM. GREGORIO DY TAM, PETITIONER AND APPELLANT, VS. REMEDIOS R. ESPIRITU, IN HER CAPACITY AS JUDICIAL GUARDIAN OF THE INCOMPETENT MARCOSA RIVERA, COUNTER-PETITIONER, ARMINIO RIVERA, ADMINISTRATOR AND APPELLEE,**

**DECISION**

**CONCEPCION, J.:**

This is an appeal from a decision of the Court of First Instance of Rizal in the above entitled case, which were jointly tried.

On May 21, 1952, Gregorio Dy Tam instituted Special Proceeding No. 1537 of said court, entitled "In the matter of the Intestate Estate of the Deceased Rafael Litam". The petition therein filed, dated April 24, 1952, states that petitioner is the son of of Rafael Litam, who died in Manila on January 10, 1951; that the deceased was survived by:

Li Hong Hap .....	40 years
Li Ho .....	37 years
Gregorio Dy Tam .....	33 years
Henry Litam alias Dy Bun Pho .....	29 years
Beatriz Lee Tam alias Lee Giak Ian .....	27 years

Elisa Lee Tam alias Lee Giok Bee .....	25 years
William Litam alias Li Bun Hua .....	23 years
Luis Litam alias Li Bun Lin .....	22 years

Li Hong Hap      40 years  
 Li Ho      37 years  
 Gregorio Dy Tam      33 years  
 Henry Litam alias Dy Bun Pho      29 years  
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 Elisa Lee Tam alias Lee Giok Bee      25 years  
 William Litam alias Li Bun Hua      23 years  
 Luis Litam alias Li Bun Lin      22 years

that the foregoing children of the decedent “by a marriage celebrated in China in 1911 with Sia Khin, now deceased’ ; that “after the death of Rafael Litam, petitioner and h\*8 co-heirs came to know” that the decedent had, during the subsistence of said marriage with Sia Khin, “contracted i\* 1922 in the Philippines • \* \* another marriage with MaJ cosa Rivera, Filipino citizen”; that “the decedent as his property among others, his one-half (y2) share valued at P65,000 in the purported conjugal properties between him and Marcosa Rivera, which \* \* \* pari> nership consisted of the following real property acquired during the marriage between him and Marcosa Rivera, to wit:

(1) “Three (3) parcels of land covered by Transfer Certificate of Title No. 1228 of the Registry of Deeds of the province of Pampanga:

(2) “One (1) parcel of land covered by Transfer Certificate of Title No. 26011 of the Registry of Deeds of the province of Bulacan.”

and that the decedent had left neither a will nor debt. Petitioner prayed, therefore, that, after appropriate pro-ceedings, letters of administration be issued to Marcosa Rivera, “the surviving spouse of the decedent”. Soon there-after, Marcosa Rivera filed a counter-petition: (1) sub-stantially denying the alleged marriage of the decedent to Sia Khin, as well aa the

alleged filiation of the persons named in the petition; (2) asserting that the properties described herein are her paraphernal properties, and that the decedent had left unpaid debts, and certain properties in Bulan and Casiguran, Sorsogon, and in Virac, Catan-duanes, apart from shares of stock in a private corporation known by the name of Litam Co., Inc.; and (3) praying that her nephew, Arminio Rivera, be appointed administrator of the intestate estate of the deceased.

In due course, the court granted this petition and letters of administration were issued to Arminio Rivera, who assumed his duties as such, and, later, submitted an inventory of the alleged estate of Rafael Litam. Inasmuch as said inventory did not include the properties mentioned in the petition, dated April 24, 1952, of Gregorio Dy Tarn, the latter filed, on November 29, 1952, a motion for the removal of Rivera as administrator of the aforementioned estate. This led to a number of incidents hinging on the question the said properties belong in common to the decedent and Marcosa Rivera or to the latter exclusively.

Meanwhile, Remedios R. Espiritu was appointed, in Special Proceeding No. 1709 of the Court of First Instance of Rizal, guardian of Marcosa Rivera, who had been declared incompetent. Thereafter, or on April 20, 1953, Gregorio Dy Tarn and his alleged brothers and sisters aforementioned, filed the complaint in Civil Case No. 2071 of the same court, against Remedios R. Espiritu, as guardian of Marcosa Rivera, and Arminio Rivera. In said complaint, plaintiffs therein reproduced substantially the allegations made in the aforementioned petition of Gregorio Dy Tarn dated April 24, 1952, except that the properties acquired "during the existence of marriage" between Rafael Litam and Marcosa Rivera "and/or with their joint efforts during the time that they lived as husband and wife" were said to be more than those specified in said petition, namely:

"(1) 3 parcels of land situated in the Municipality of Macabebe, Province of Pampanga, covered by Transfer Certificate of Title No. 1228 of the Registry of Deeds for the Province of Pampanga, issued on July 29, 1947;

"(2) 2 Parcels of land, together with all buildings and improvements thereon except those expressly noted in the title as belonging to other persons, situated in the Municipality of Navotas, Province of Rizal, covered by Transfer Certificate of Title No. 35836 of the Registry of Deeds for the Province of Eizal, issued on October 4, 1938;

"(3) 1 parcel of land, situated in the Municipality of Malabon, Province of Rizal,

covered by Transfer Certificate of Title No. 23248-of the Registry of Deeds for the Province of Rizal, issued on June 12, 1933;

“(4) 1 parcel of land situated in Barrio of Kay-Badia, Municipality of Obando, Province of Bulacan, covered by Transfer Certificate of Title No. 21809 of the Registry of Deeds for the Province of Bulacan, issued on May 25, 1939;

“(5) 1 parcel of land (plan psu-93067, swo-16049) situated in Barrio of Quibadia, Municipality of Obando, Province of Bulacan, covered by Transfer Certificate of Title No. 26011 of the Registry of Deeds for the Province of Bulacan, issued on April 9, 1943; “Other properties are located in Bataan province. “All properties total an assessed value of approximately P150,000.00.”

In said complaint, plaintiffs prayed that the judgment be rendered:

“(1) declaring the aforesaid properties as belonging to the conjugal partnership or tenancy in common which existed between the deceased Rafael Litam and the incompetent Marcosa Rivera;

“(2) ordering the defendants to deliver the aforesaid properties to the administration of the estate of the deceased Rafael Litam {Rule 75, section 2, Rules of Court);

“(3) ordering the said defendants further to render an accounting of the fruits they collected from the aforesaid properties and to deliver the same to the administration of the estate of the deceased Rafael Litam;

“(4) ordering the said defendants to pay the administration of the estate of the deceased Rafael Litam damages in double the value of the fruits mentioned in the preceding paragraph which they embezzled; and

“(5) ordering the defendants to pay the costs.

“The plaintiffs further pray for such other remedy as the Court may deem just and equitable in the premises.”

In her answer to the complaint, Marcosa Kivera reiterated, in effect, the allegations in her counter-petition, dated July 12, 1952, in Special Proceeding No. 1537, and set up some

affirmative and special defenses, as well as a counter-claim for attorney's fees and damages in the aggregate sum of P110,000.00.

Owing to the identity of the issue raised in said Civil Case No. 2071 and in the aforementioned incidents in Special Proceeding No. 1537, both were jointly heard. Later on, the court rendered a decision

“(1) Dismissing Civil Case No. 2071, with costs against the Plaintiffs;

“(2) Sentencing the plaintiff in Civil Case No. 2071, under the defendants' counterclaim, to pay jointly and severally each of the defendants the sum of P5,000.00 as actual damages and P25,000.00 as moral damages;

(3) Declaring that the properties in question, namely: the fish-ponds, consisting of three parcels, situated in Macabebe, Pampanga, first Transfer certificate of Title No. 1228 of the land records of Pampanga, one-half undivided portion of the fishponds, consisting of two parcels, situated in Navotas, Rizal, covered by Transfer certificate of Title No. 35836, the parcel of land with the improvements thereon situated in Malabon, Rizal, covered by Transfer Certificate of Title No. 23248, both of the land records of Rizal, and the fishponds, consisting of two parcels, situated in Obando, Bulacan, covered by Transfer Certificates of Title Nos. 21809 and 26011, both of the land records of Bulacan, are the exclusive, separate and paraphernal properties of Marcosa Rivera; and

“(4) Declaring that the plaintiffs in Civil Case No. 2071 (who are the same persons alleged to be children of Rafael Litam in the petition, dated April 24, 1952, filed by the petitioner in Sp. Proc. No. 1537) are not the children of the deceased Rafael Litam, and that his only heir is his surviving wife, Marcosa Rivera.”

The two (2) cases are now before us on appeal taken by the petitioner in Special Proceeding No. 1537 and the plaintiffs in Civil Case No. 2071. The issues for determination are: (1) Are appellants the legitimate children of Rafael Litam? (2) Is Marcosa Rivera the exclusive owner of the properties in question, or do the same constitute a common property of her and the decedent?

The first issue hinges on whether Rafael Litam and Sia Khin were married in 1911, and

whether Rafael Litam is the father of appellants herein. In this connection, the lower court had the following to say:

“\* \* \* the evidence weighs very heavily in favor of the theory of the defendants in Civil Case No. 2071 to the effect that the said deceased Rafael Litam was not married to Sia Khin and that plaintiffs, are not the children of the said decedent. The plaintiffs in Civil Case No. 2071 and the petitioner in Sp. Proc. No. 1537 have utterly failed to prove their alleged status as children of Rafael Litam by a marriage with Sia Khin.

“It appears from the evidence presented by the defendants in civil Case No. 2071 and the administrator and the counter-petitioner in Sp. Proc. No. 1537 that there was no such marriage between the deceased Rafael Litam and Sia Khin and that the plaintiffs named in Civil Case No. 2071 are not children of said deceased. The various official and public documents executed by Rafael Litam himself convincingly show that he had not contracted any marriage with any person other than Marcosa Rivera, and that he had no child. In the marriage certificate, (Exhibit 55) it was clearly stated that he was *single* when he married Marcosa Rivera on June 10, 1922. In the sworn application for alien certificate of registration dated July 7, 1950 (Exhibit 1), Rafael Litam unequivocally declared under oath that he had *no child*. In the several other documents executed by him and presented in evidence, (Exhibits 19, 21, 22, 23, 46 and 46-A) Rafael Litam had consistently referred to Marcosa Rivera alone as *his wife*; he had never mentioned of Sia Khin as his wife, or of his alleged children.

“The witnesses presented by the defendants in Civil Case No. 2071 and the administrator and counter-petitioner in Sp. Proc. No. 1537 positively testified to the effect that they know that Rafael Litam did not have any child, nor was he married with Sia Khin. An impartial and disinterested witness, Felipe Cruz, likewise testified that he has known Rafael Litam even before his marriage with Marcosa Rivera and that said Rafael Litam did not have any child.

“On the other hand, the plaintiffs in Civil Case No. 2071 and the petitioner in Sp. Proc. No. 1537 presented in support of their theory the testimony of their lone witness, Luis Litam, and certain documentary evidence. It is noteworthy that the said plaintiffs and said petitioner *did not present in evidence the marriage*

*certificate* of Rafael Litam and Sia Khin, which in the opinion of the Court, is the competent and best evidence of the alleged marriage between them. No explanation has been given for the non-presentation of said marriage certificate, nor has there been any showing of its loss. *Neither have said plaintiffs and said petitioner presented any competent secondary evidence* of the supposed marriage.

“The testimony of the lone witness, Luis Litam, cannot be given any credence and value at all. His testimony is mostly hearsay, as according to him, he was merely informed by Rafael Litam of the latter’s supposed marriage with Sia Khin. His testimony is uncorroborated. The court noticed that the said witness was *only 22 years old* when he testified, and it appears in the petition filed by the petitioner in Sp. Proc. No. 1537 that said witness is *the youngest of* all the alleged eight children of Rafael Litam. The Court is at a loss to understand why one or some of the older alleged children of Rafael Litam were not presented as witnesses in view of the unreliable testimony of Luis Litam, and considering that older persons are better qualified to testify on the matters sought to be proved which allegedly happened a long time ago.

“The birth certificate presented by the plaintiff in Civil Case No. 2071 and petitioner in Sp. Proc. No. 1537 cannot be given ^ven little consideration, because the name of the father of the children appearing therein is not Rafael Litam, but different persons. It is very significant to note that the names of the father of the persons appearing in said birth certificates are Dy Tham, y1 Tam, Lee Tham, Rafael Dy Tarn, and that said persons were born in different places, some in Amoy, China, another Fukien, “ina, and the other in Limtao, China. It also appears in said birth certificates that the children’s mothers named therein are dif-ferent, some being Sia Khim, others Sia Quien, the other Sia Khun>. and still another Sia Kian. These documents do not establish the identity of the deceased Rafael Litam and the persons named therein as father. Besides, it does not appear in the said certificates of birth that Rafael Litam had in any manner intervened in the-preparation and filing thereof.

“The other documentary evidence presented fey the said plaintiffs and petitioner are entirely immaterial and highly insufficient to prove the alleged marriage between the deceased Rafael Litam and Sia Khin and the alleged status of the plaintiffs as children of said decedent.

“It is, therefore, the finding of this Court that the plaintiffs named in Civil Case No. 2071 are not heirs of the said decedent, his only heir being his surviving wife, Marcosa Rivera.” (Italics ours.)

The findings of fact thus made in the decision appealed from are borne out by the records and the conclusion drawn from said facts is, to our mind, substantially correct.

Appellants' evidence on this point consists of the testimony of appellant Li Bun Lin, who said that he is, also known as Luis Litam; that his co-appellants are his brothers and sisters; that their parents are the decedent and Sia Khin, who were married in China in 1911; and that Sia Khin died in Manila during the Japanese occupation. He likewise, identified several pictures, marked Exhibits I to S, which were claimed to be family portraits, but the lower court rejected their admission in evidence. Although we agree with herein appellants that this was an error, it is clear to us that said pictures and the testimony of Luis Litam, as well as the other evidence adverted to in the above-quoted portion of the decision appealed from, are far from sufficient to outweigh, or even offset, the evidence in favor of the appellees.

It should be noted that the decedent had admittedly married Marcosa Rivera in 1922. In the very petition, of appellant Gregorio By Tarn, in Special Proceeding No. 1537, dated April 24, 1952, he alleged that Marcosa Rivera is “the surviving spouse of the decedent”. In their complaint in Civil Case No. 2071, appellants- specifically admitted and averred “the existence of the marriage between said Rafael Litam and Marcosa Rivera”—which would have been void *ab initio*, and, hence, inexistent legally, if appellants' pretense were true or they believed it to be so—and that they had “lived as husband and wife”. Again, although Gregorio Dy Tarn, asserted, in his afore-mentioned petition, that he and his co-heirs “came to know” about the marriage of the decedent and Marcosa Rivera “after the death of Rafael Litam”, the very testimony of Li Bun Lin, as witness for the appellants, show, beyond doubt, that said appellants knew, during the lifetime of Rafael Litam that he and Marcosa Rivera were living in Malabon, Rizal, openly and publicly, as husband and wife, and regarded her as his lawful wife. Indeed, in the course of his testimony, said Li Bun Lin alluded to her as his “mother”. In other words, aside from the circumstance that the wedding and marital life of Marcosa Rivera and Rafael Litam is undisputed, it is, also, an established fact that they had the general reputation of being legally married and were so regarded by the community and by appellants herein, during the lifetime of Rafael Litam.

Upon the other hand, appellants maintain, in effect, that. Rafael Litam was guilty of the



crime of bigamy; that he had, likewise, willfully and maliciously falsified public and official documents; and that, although appellants and Sia Khin were living in Manila and Marcosa Rivera—whom appellants knew—resided only a few kilometers away, in Malabon, Rizal where Rafael Litam returned daily, after attending to his business in Manila, the decedent had succeeded, for about thirty (30) years, in keeping each party in complete ignorance of the nature of his alleged relations with the other. Apart from the highly improbable nature of the last part of appellants' pretense, it is obvious that the same can not be sustained unless the evidence in support hereof is of the strongest possible kind, not only because it entails the commission by Rafael Litam of grave criminal offenses which are derogatory to his honor, but, also, because death has sealed his lips, thus depriving him of the most effective means of defense. The proof for appellants herein does not satisfy such requirement.

As regards the title to the properties in dispute, the evidence thereon was analyzed by the lower court in the following language:

“It has been established by the evidence that the properties in question were bought by Marcosa Rivera with her separate and exclusive money. The fishponds situated in Obando, Bulacan, covered by Transfer Certificate of Title Nos, 21S09 and 26011, the one-half (V2) Undivided portion of the fishponds situated in Navotas, Rizal with Transfer Certificate of Title No. 35836, and the property situated in Hulong-Duhat, Malabon, Rizal, with Transfer Certificate of Title No. 23248 were all purchased by Marcosa Rivera with the money she earned and accumulated while she was still single; while the fishponds situated in Macabebe, Pampanga with Transfer Certificate of Title No. 1228 were purchased by her with the money she inherited from her late sister, Rafaela Rivera and with the money she received from the proceeds of the sale of the pieces of jewelry she inherited from her father Eduardo Rivera and her sister Rafaela Rivera. The properties in question, having been bought by Marcosa Rivera, although during her marriage with Rafael Litam, with her exclusive and separate money, said properties are undeniably her paraphernal properties. (Art. 1396, Spanish Civil Code, which is the same as Art. 148 of the Civil Code of the Phil.)

“Great importance should be given to the documentary evidence, viz: Exhibits 21, 22, 23, 19, 46 and 46-A, presented by the defendants, in Civil Case No. 2071 and the administrator and counter-petitioner in Sp. Proc. No. 1537, which prove beyond peradventure of any doubt that the properties in question are the

paraphernal properties of Marcosa Rivera. In Exhibit 21, *Rafael Litam* unequivocally declared under his oath that the money paid by Marcosa Rivera for the fish-ponds in Obando, Bulacan was *her exclusive and separate money* which was earned by her while she was still single. In Exhibits 22 and 23, both dated June 16, 1947, same *Rafael Litam*, also under oath, acknowledge the fact that the sums of P13,000.00 and P10,000.00 loaned by Marcosa Rivera to the spouses Catalino Pascual and Juliana Pascual, and to Juliana Pascual, respectively, *are the separate and exclusive money of Marcosa Rivera*, in which money *Rafael Litam* had no interest whatsoever. In Exhibit 19, same *Rafael Litam* acknowledged the fact that he had obtained, before the outbreak of the second world war, from Marcosa Rivera the sum of P135,000.00 which belongs exclusively to the latter, and that after the liberation, or more specifically, on January 4, 1946, he stole from Marcosa Rivera the further sum of P62,000.00, also belonging exclusively to the latter, which amounts, totalling P197,000.00, exclusive of interests, have not, according to the evidence, been paid to her up to the present. In Exhibits 46 and 46-A, it was acknowledged by *Rafael Litam* that he had not given any money to his wife, Marcosa Rivera, and that they have actually adopted a system of separation of property, each of them not having any interest or participation whatsoever in the property of the other. These declarations and admission of fact made by *Rafael Litam* against his interest are binding upon him, his heirs and successors in interests and third persons as well. (Sees. 7 & 29, Rule 123, Rules of Court).

“The finding of this Court that the properties in question are paraphernal properties of Marcosa Rivera, having been bought by her with her separate and exclusive money, is further strengthened by the fact that, as it is clearly disclosed by the evidence *when Marcosa Rivera married Rafael Litam in 1928, she was already rich*, she having already earned and saved money as ‘consignataria’ while she was still single. It also appears that she was born of a rich family, her father, Eduardo Rivera, being the owner of fishponds, commercial and residential lands and buildings, (Exhibits 5 to 18, inclusive), with an assessed value of around P150,000.00 (Exhibits 25 and 42, inclusive), now worth approximately a million pesos, and most of which properties as may be seen from the certificates of title were *acquired by him way back in the years 1916 and 1919*. When Eduardo Rivera died on February 5, 1942, his cash and jewelry were inherited by his eldest daughter, Rafaela Rivera, and when the latter died single on July 2, 1943,

*Marcosa Rivera inherited* her cash amounting to P150,000.00, Philippine currency, and her pieces of jewelry. It is with this amount and with the proceeds of the sale of some of said pieces of jewelry that Marcosa Rivera purchased the fishponds in question, situated in Macabebe, Pampanga.

‘On the other hand, it appears from the evidence that when Rafael ‘-‘itam was on June 10, 1922, married to Marcosa Rivera, he was poor. He had to borrow from Marcosa Rivera, the sum of P135,000.00 begging exclusively to her before the outbreak of the war, and to steal from her further sum of P62,000.00 after the liberation (Exhibit 10). The said amounts totalling P197,000.00, exclusive of the stipulated interests, according to the evidence, have not been paid to Marcosa Rivera up to the present. Rafael Litam did not contribute any amount of money or labor to the properties in question, as he and Marcosa Rivera maintained an absolute separation of property (Exhibits 46 and 46-A). Besides, during his lifetime he used to go his office in Manila everyday.

“Another circumstance which clearly proves that the properties in question belong exclusively to Marcosa Rivera is the established fact that before she became incompetent sometime in the early part of the year, 1953, she had been administering said properties, to the exclusion of Rafael Litam. In fact, as may be seen from the very documentary evidence (Exhibit ‘EE’, same as Nxb. 50) presented by the plaintiffs in Civil Case No. 2071 themselves and petitioner in Sp. Proc. No. 1537, she alone leased the properties in question, situated in Macabebe, Pampanga, and the corresponding lease contract, dated July 13, 1948 was signed by her as lessor and by Rafael Suarez, Jr. as lessees. Furthermore, the properties in question have been declared in the name of Marcosa Rivera alone, and she alone pays the real estate taxes due thereon. (Exhibits 43, 44 & 45.)

“Further strong proofs that the properties in question are the paraphernal properties of Marcosa Rivera, are the very Torrens Titles covering said properties. All the said properties are registered in the name of ‘Marcosa Rivera, married to Rafael Litam.’ This circumstance indicates that the properties in question belong to the registered owner, Marcosa Rivera, as her paraphernal properties, for if they were conjugal, the titles covering the same should have been issued in the names of Rafael Litam and Marcosa Rivera. The words ‘married to Rafael Litam’ written after the name of Marcosa Rivera, in each of

the above mentioned titles are merely descriptive of the civil status of Marcosa Rivera, the registered owner of the properties covered by said titles.

“On the other hand, the evidence presented by the plaintiffs in Civil Case No. 2071 and petitioner in Sp. Proc. No. 1537 in support of their contention that the properties in question are conjugal is, in the mind of the Court, very weak, unreliable, and mostly incompetent, and cannot overcome the clear, convincing and almost conclusive proofs presented by the opposite party. Scant or no consideration at all could be given by the Court to the immaterial, incompetent and unbelievable testimonies of the witnesses presented by the said plaintiffs and petitioners. The disputable presumption of law that the properties acquired during the marriage are conjugal properties, upon which legal presumption said plaintiffs and petitioner mainly rely has been decisively overcome by the overwhelming preponderance of evidence adduced in these cases that the properties in question are the paraphernal properties of Marcosa Rivera.”  
(Italics ours.)

Appellants’ counsel assail the decision appealed from upon the ground that the lower court had been partial to the appellees and had not accorded to the appellants a fair and just hearing.

As above pointed out, His Honor the trial Judge could have been, and should have been, more liberal in the reception of evidence. Appellants’ witnesses (Li Bun Lin, Dominador Gadi, Benigno Musni and Rafael B. Suarez) should have been allowed to testify on the alleged title of Rafael Litam to certain properties and on his alleged reasons for the language used in the public and official documents relied upon by the appellees. However, it is apparent to us that said evidence cannot affect the decision in these cases.

The evidentiary value of the testimony of said witnesses would have depended mainly upon their individual appraisal of certain facts, upon their respective *inferences* therefrom and their biases or view points, and upon a number of other factors affecting their credibility. At best, said testimony could not possibly prevail over the repeated admissions made by the decedent against his own interest in Exhibits 19, 21, 22, 23, 46 and 46-A (adverted to in the above-quoted portion of the decision appealed from), which admissions are corroborated by the fact that the deceased father of Marcosa Rivera was well to do; that aside from her share in his estate, she had, likewise, inherited from a sister who died single and without

issue; that the lands in dispute were registered, and some were, also, leased, in *her* name, instead of hers and that of the decedent; and that the latter lived in her house in Malabon, Rizal

Appellants contend that the transactions covered by said Exhibits 19, 21 to 23 and 46 and 46-A, as well as by the other deeds referred to in the decision appealed from, were caused to be made in the name of Marcosa Rivera, to the exclusion of her husband, in order to evade the constitutional provision disqualifying foreigners from the acquisition of private agricultural lands, except by succession.

Apart from being based, solely, upon a surmise, without any evidentiary support, this pretense is refuted by the fact that said residential property in Hulong-Duhat, Malabon, Rizal, was acquired on April 12, 1933, or *prior to the adoption of our Constitution* (see Exhibits Z and AA). Her transactions subsequently thereto, merely followed, therefore, the pattern of her activities before the drafting of said fundamental law.

This notwithstanding, we do not believe that appellants should be sentenced to pay damages. The petition of Gregorio Dy Tarn in Special Proceeding No. 1537 and the complaint in Civil Case No. 2071 contain nothing derogatory to the good name or reputation of the herein appellees. On the contrary, it may be surmised from said pleadings that Marcosa Rivera had no knowledge of the alleged previous marriage of the decedent to Sia Khin. Moreover, the records do not show that appellants have acted in bad faith.

Likewise, we are of the opinion that the lower court should not have declared, in the decision appealed from, that Marcosa Rivera is the only heir of the decedent, for such declaration is improper in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceeding No. 1537, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition.

Wherefore, with the elimination of the award for damages in favor of the herein appellees, and of said declaration; of heirship, the decision appealed from is hereby affirmed, in all other respects, with costs against the appellants. It: is so ordered.

*Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.*

Date created: June 29, 2010