

**ROSAURO M. TANINGCO AND SIMPLICIA RAMOS, PETITIONERS, VS.
REGISTER OF DEEDS OF LAGUNA, RESPONDENTS.***G. R. No. L-15242. June 29, 1962*

Ponente: MAKALINTAL, J.

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On August 10, 1958 the spouses Rosauro M. Taningco and Simplicia Ramos took a mortgage, for a loan of P9,000 extended by them to Nieves Mediarito, on all the "rights, interests, and participation" of the latter in six parcels of land registered in the land records of Laguna as conjugal properties of herself and her husband Salvador Roxas, then already deceased. The properties were under judicial administration in the corresponding intestate proceeding and had not yet been liquidated and partitioned between the widow and the heirs. The deed of mortgage was duly signed by the mortgagor and otherwise appears to have been executed with the requisite formalities. When presented to the Register of Deeds for Laguna, however, it was denied registration on two grounds, of which only the first is now in issue, namely, that "mortgagor Nieves Mediarito, the surviving spouse of Salvador Roxas, alienated her one-half (1/2) conjugal share without previous liquidation of the conjugal properties." The matter was elevated en consulta by the mortgagees to the Land Registration Commissioner, who sustained the action taken by the Register of Deeds by resolution dated November 22, 1958. A motion for reconsideration was subsequently denied, and petitioners have come to this Court on appeal from both the resolution and the order of denial.

The Land Registration Commissioner does not question the legality or validity of the mortgage, but excepts to its registrability because the mortgagor "does not appear yet to be the registered owner of the property being mortgaged." The suggestion is that there must first be a settlement and distribution of the conjugal estate because before then the interest of the wife therein is merely inchoate. The premise of the reasoning is inaccurate. The interest of the wife is registered, the titles to the lands being in the names of the spouses. After the dissolution of the conjugal partnership, as by death of the husband, this interest ceases to be inchoate and becomes actual and vested with respect to an undivided one-half share of the said properties. It is one thing to say that the widow's share, being undivided, does not consist of determinate and segregated properties and an entirely different thing to consider her interest as still inchoate. The partnership having been dissolved, if the deceased husband leaves heirs other than the wife, as in this case, the properties come under the regime of co-ownership among them until final liquidation and partition. In the language of Chief Justice by the death of one of the spouses, ceases to belong to the legal partnership and becomes the property of a community, by operation of law, between the surviving spouse and the heirs of the deceased spouse, or the exclusive property of the widower or the widow if he or she be the heir of the deceased spouse." Article 484, Civil Code. And as provided in article 493 of the same Code, each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, although the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. The application of this article, which was taken from article 399 of the old Civil Code, has been elucidated in the case of *Maria Lopez vs. Magdalena Gonzaga Vda. de Cuaycong, et al.*, 74 Phil. 601. Citing *Manresa*, Volume 3, pp.

486-487, 3rd. ed., this Court said:

"Each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract, because until the division is effected, such share is not concretely determined. The rights of the co-owners are, therefore, as absolute as dominion requires, because they may enjoy and dispose of the common property, without any limitation other than that they should not, in the exercise of their right, prejudice the general interest of the community, and possess, in addition, the full ownership of their share, which they may alienate, convey or mortgage: which share, we repeat, will not be certain until the community ceases. The right of ownership, therefore, as defined in Art. 348 of the present Civil Code, with its absolute features and its individualized character, is exercised in co-ownership, with no other differences between sole and common ownership than that which is rightly established by the Portuguese Code (Arts. 2175 and 2176), when it says 'that the sole owner exercises his rights exclusively, and the co-owner exercises them jointly with the other co-owners'; but we shall add, too each co-owner pertains individually, over his undivided share, all the rights of the owner, aside from the use and enjoyment of the thing, which is common to all the co-owners.' (Italics supplied.)"

In the case at bar the mortgage sought to be registered by appellants does not refer to any specific portions of the six parcels of land described in the mortgage instrument but to the mortgagor-wife's rights, interest and participation therein—whatever they may actually turn out to be upon liquidation and partition. If such mortgage is legal and valid, as the law says it is, there can be no justifiable reason why it should not be registered, registration being an essential requirement in order that the mortgage may be validly constituted. Article 2125, Civil Code. The registration will in no way affect the rights of the deceased husband's creditors, if any, or of his heirs, for their interest is limited to the husband's half of the estate not covered by the mortgage. As far as the debts, if any, of the conjugal partnership are concerned, their payment is provided for by law before the one-half share of the wife-mortgagor is finally determined, and therefore would not be affected by the mortgage. Articles 182 and 185.

A roughly analogous case is *Gotuaco & Co. vs. Register of Deeds of Tayabas*, 59 Phil. 756, where a levy of execution was sought to be inscribed in the registry against the share of a judgment debtor in several tracts of land registered in the name of a deceased of whom he was one of the heirs. The inscription was denied by the register of deeds; the question was elevated en consulta to the Fourth Branch of the Court of First Instance of Manila and then appealed therefrom to the Supreme Court. In ordering the acceptance of the levy of execution for inscription in the Registry, this Court said that "although the value of the participation of the (judgment debtor) in the estate of the (decedent) was indeterminable before the final liquidation of the estate, nevertheless, the right of participation in the estate and the lands thereof may be attached and sold, the real test being, as laid down in *Reyes vs. Grey*, 21 Phil. 73, 76, whether or not the judgment debtor holds such a beneficial interest in the property that he can sell or otherwise dispose of for value."

Wherefore, the resolution and the order appealed from are set aside and respondent-appellee Register of Deeds of Laguna is ordered to register the document in question upon compliance with the legal requisites concerning the payment of taxes and registration fees. No pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion. Barrera, Paredes, Dizon and Regala, JJ. concur.

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