

CONCEPCION NAVAL, ET AL., PLAINTIFFS AND APPELLEES, VS. DOLORES JONSAY, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-13664. May 30, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

This appeal stemmed from a decision of the Court of Appeals, promulgated on September 30, 1954, the pertinent portion of which reads:—

"In view of the foregoing, we are with the trial court in holding that the land in question belongs to the second conjugal partnership, so that one-half of it should pertain to Elias Naval's second wife, while the other half, which corresponds to the deceased Elias Naval, should be divided equally among his surviving children; Francisco, Concepcion, Serafin and Jose, all surnamed Naval. And it being understood that the shares of the children shall be subject to the usufruct of the surviving spouse as provided by law, the judgment appealed from is affirmed, without special pronouncement as to costs."

The surviving spouse is Dolores Jonsay, defendant-appellant. In order to execute the judgment, the trial court on September 26, 1956, appointed Pantaleon Panelo as Commissioner to partition the property in question. Panelo, a duly certified Surveyor, made a survey of the property litigated, and submitted a report containing three "positions" (Rec. on Appeal, pp. 3-12), from which the parties and/or the Court might choose for the usufruct in favor of Dolores Jonsay. On March 8, 1957, after the Commissioner had rendered the report, the defendant Dolores Jonsay thru counsel, filed the following manifestation:—

- That these portions chosen by the widow is in accordance with the concept and purpose of usufruct intended by law.
- That portions designated on the first and second positions of the Commissioner's Sketch are without any improvements and are unproductive, hence to give any of these portions to the widow as her usufruct would not serve the purpose intended by law in giving usufruct to the widow a portion of the property of her deceased husband, where she could maintain or support herself during widowhood.
- That out of about 120 or more fruit-bearing coconuts found on the portions selected by the widow, only 80 trees are inside her portion and 40 trees are within the portions designated for the plaintiffs.
- That since the 120 fruit-bearing coconut trees were planted by the widow during her conjugal life with the father of the plaintiffs, it is but just that the portions where the 80 trees are found be given to her in usufruct."

The plaintiffs presented a counter-manifestation of the following tenor:—

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That if the portion to be given to the widow in usufruct be that which is indicated in the first position, it will be to the best advantage of the parties and will be just to both of them;

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That in accordance with this first position, the portion to be given to the widow in usufruct adjoins the portion adjudicated to her in ownership;

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That on the contrary, if the third position is followed, plaintiffs will be sandwiched between the portion adjudicated to the widow in ownership and that to be adjudicated to her in usufruct; and this is very disadvantageous to the plaintiffs aside from the fact that it may be a source of friction between them;

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That the portion which is being adjudicated to the widow in ownership is already the best portion of the whole parcel of land and to give her in usufruct that portion which is indicated in the third position, will be giving her double advantage over the plaintiffs;

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That in fact, if the plaintiffs previously agreed to give to the widow the portion adjudicated to her in ownership, it was premised on a condition that the widow would renounce her usufruct, taking into consideration that the said portion adjudicated to her in ownership is, as we have already mentioned, the best and the most productive portion;

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That it is not true that the portion being adjudicated in usufruct to the widow in accordance with the first position is unproductive because while there are no coconut trees thereon, the same is being dedicated to the planting of palay and in fact, the widow has, since the death of her husband until at present, been planting there and benefiting by the products thereof."

In her manifestation, it would appear that the defendant Dolores Jonsay preferred and chose the portions appearing in the Commissioner's report, designated as "third position", reasoning out that it was more in keeping with the concept and purpose of usufruct intended by law and it would be more beneficial to her. It would also appear that the plaintiffs in their counter-manifestation, claimed that the portions designated as first position in the Commissioner's report would be advantageous, beneficial and just to both parties.

On March 14, 1957, the lower court, without giving reasons therefor, promulgated an Order, giving as usufruct to Dolores Jonsay the portions of the land in question, marked as first position in the Commissioner's report. A motion for reconsideration was duly filed by Jonsay, pointing therein that the portions awarded to her are unproductive and at the same time intimated that she would present evidence in support of her contention anent the unproductiveness of the said portions. On March 28, 1957, this motion was denied, and an appeal was taken by defendant Jonsay to the Court of Appeals, which certified the same to this Court.

Appellant Dolores Jonsay alleges that the trial court erred: (1) In disregarding the choice made by her of the portion designated as third position in the Commissioner's report, as her usufruct; (2) in decreeing to her as her usufruct the portion designated on the sketch of the Commissioner as first position in the said report; and (3) in not giving her the opportunity to present evidence to prove that the portion decreed to her as her usufruct was unproductive and not beneficial to her.

In a nutshell the alleged errors converge on only one issue, that is, the legality of the trial court's order awarding to appellant Jonsay that which the appellees wanted, and not what she (appellant) had chosen.

The case was conducted solely on the plane of pleadings, motions and manifestations. No formal hearing was held; and no testimonial or documentary proofs were produced or presented by the parties, except the

Commissioner's report. It is thus seen that before the trial court could properly determine which portion should be given or awarded to the appellant widow as her usufruct, the parties should have been given opportunity to present evidence, to support their respective contentions, specially on the allegation of appellant Jonsay that the portion designated as first position given to her was not advantageous, beneficial and just, because it was unproductive and it violates the concept and purpose of usufruct intended by law for her, more so when the said defendant-appellant had asked for an opportunity to do so.

Considering, therefore, that the decision of the trial court should be based upon facts proven therein, and not upon conflicting manifestations, the truth of which can not be ascertained without the adduction of proofs, the Orders dated March 14, 1957, and March 28, 1957, respectively, are hereby reversed, and another entered, remanding the case to the trial court for further proceedings. With costs to the plaintiffs-appellees.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Dizon, De Leon, and Natividad, JJ., concur.

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