

**JOSE JAVELLANA, ET AL., PLAINTIFFS AND APPELLANTS, VS.
FELICIDAD JAVELLANA, ET AL., DEFENDANTS AND APPELLEES,**

G.R. No. L-12286. August 31, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an action filed in the Court of First Instance of Iloilo for the recovery of certain properties alleged to be subject to "reserva viudal" under the old Civil Code. The action having been dismissed by the lower court on the ground that the properties were not reservable, plaintiffs took the present appeal.

The pertinent facts of the case are not disputed. Julio Javellana, father of herein plaintiffs, was married three times. His first wife was Maria Joseliva, with whom he had several children all of whom are now deceased. After the death of Maria Joseliva, he married. Sofia Jalandoni, became a widower a second time, and subsequently married Apolinaria Ledesma. He had several children in the second marriage, five of whom are surviving and are the plaintiffs herein, while his third and last marriage was childless.

On May 14, 1924 Julio Javellana died testate leaving considerable personal and real properties belonging to him exclusively situated in the provinces of Iloilo and Negros Occidental and in Manila. After his will and two codicils had been duly probated, two-thirds of said properties, constituting the legitime, were distributed among his forced heirs, namely, his grand-daughter by the first marriage and his children in the second. To his widow Apolinaria Ledesma, Julio Javellana bequeathed certain real and personal properties from the free portion of his estate. Following a project of partition signed by the deceased's heirs and legatees on February A, 1925, which was duly approved by the probate court, Apolinaria Ledesma took possession of the properties bequeathed and adjudicated to her. Not long thereafter, she had the Torrens titles covering said properties cancelled and new ones issued in her name.

On October 20, 1952 Apolinaria Ledesma died testate in the city of Iloilo, without contracting a second marriage or having an acknowledged natural child. For the probate of her will and codicil, proceedings were instituted in the Court of First Instance of Iloilo. Included in the estate left by her were the properties which she inherited from her husband Julio Javellana.

On May 14, 1956 herein plaintiffs filed the present action against Felicidad Javellana, the judicial administratrix of Apolinaria Ledesma's estate, claiming that the properties which the latter inherited from their father were subject to reservation ("reserva viudal"). In their complaint, plaintiffs prayed that the properties be returned to them and to the children of their deceased sister Juliana Javellana de Montinola, who were made defendants because of their refusal to be joined as plaintiffs.

Before trial, the parties entered into a stipulation of facts and after hearing was had on defendants' counterclaim, the lower court on December 24, 1956 rendered its decision dismissing plaintiffs' complaint. Hence, this appeal.

The appeal is without merit. Article 968 of the old Civil Code cited by plaintiffs themselves in support of their

claim, provides:

"Art. 968. Beside the reservation imposed by Article 811, any widower or widow who contracts a second marriage shall be obliged to reserve for the children and descendants of the former marriage the ownership of all the property he or she may have acquired from the deceased spouse by will, intestate succession, gift, or by other lucrative title, but not his or her half of the profits of the conjugal partnership."

From the above provisions, it is apparent that only the children begotten in the marriage with the widow or widower, are entitled to reservation. The children of the deceased spouse begotten in a former or earlier marriage are, therefore, not entitled to reservation, since they are not the common children of the deceased and the surviving spouse. (See Scaevola 166-167; 6 Sanchez Roman 1877; 7 Manresa 244, 247.) Plaintiffs in this case not being the children of the deceased Julio Javellana and the widow Apolinaria Ledesma, now also deceased, it follows that they are not entitled to reservation and therefore have no valid claim to the properties in question.

Moreover, under the applicable provisions of the old Civil Code, the obligation to reserve arises only when the widow or widower remarries (Art. 968), or has an acknowledged natural child, in case he or she does not remarry. (Art. 980). In the present case, it is not disputed that the widow Apolinaria Ledesma never contracted any subsequent marriage. Neither did she have any acknowledged natural child during her widowhood. The necessary requisites of the law having failed to concur, the properties claimed by plaintiffs are consequently not reservable. (Macasa vs. Heirs of Garcia, 49 Phil., 698).

In view of the foregoing, the decision appealed from is affirmed, with costs against plaintiffs-appellants.

Paras, C. J., Bengzon, Labrador, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

Padilla, J., took no part.

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