

SABINA LEJARZO ET AL., PLAINTIFFS AND APPELLEES, VS. CIAR, DEFENDANT AND APPELLANT.*CA-No. 490. April 30, 1946*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/38357eb246b6/>**PERFECTO, J.:**

On June 28, 1937, a complaint was filed for the partition of the properties left by the deceased Ciriaco Ciar. Plaintiff

Sabina Lejarzo is the widow of the deceased in his third marriage. Plaintiff Paciano Ciar is the only issue in the first marriage of the deceased with Juana Capuno, and defendant Rosario Ciar is the only issue in the second marriage of the deceased with Damasa Guevara.

There are eleven properties involved in the case, described in paragraphs 4 and 4-a of the complaint as follows (adding to each one of them a correlative number to facilitate discussion);

"1-A. Una casa de materiales fuertes y el solar donde se halla enclavada en el casco de la poblacion de San Pablo, Laguna, de 70.44 metros cuadrados bajo el Tax No. 53307, al N. P. Paterno St.; al E., Aguedo Artificio; al S., Manuel Katigbak, y al O., Regino Urgena.

"2-B. Un terreno cocal con 66 ponos de coco, 3,506 metros cuadrados situado en el barrio Del Remedio, San Pablo, Laguna, comprado de Leonila Velasco, Tax No. 52603, amillarado en P2,050 y lindante al N. con un camino vecinal; al S. Ricardo Ciar; al E. Claro Sahagun, y al O. Eugenio Evangelista y Hermenegildo Rivera.

"3-C. Otro terreno cocal tambien comprado de Leonila Velasco, con 91 arboles de coco, 10,000 metros cuadrados situado en el barrio Del Remedio, San Pablo, Laguna, Tax No. 8634; valor amillarado P180, lindante al N. con Josefa Tolentino; al S. con Ciriaco Ciar; al E. con Pedro Exconde y Juan Sahagun, y al O. con Ricardo Ciar.

"4-D. Otro terreno situado en el barrio Del Remedio, San Pablo, Laguna, de 2,110 metros cuadrados bajo el Tax No. 8633, avalorado en P400, y lindante al N. con un callejon; al E. Ricardo Ciar; al S. Isidro Vecino, y al O. carretera provincial.

"5-E. Otro terreno en el barrio Del Remedio, San Pablo, Laguna, de 3,256 metros cuadrados bajo el Tax No. 8636, avalorado en P250 y lindante al N. y E. con Macaria Evangelista; al S. con un camino vecinal y al O. con Juana Tolentino.

"6-F. Un cocal adquirido de Andrea Briones, con 80 ponos de coco situado en el barrio de San Juan, San Pablo, Laguna, bajo el Tax No. 68264, a nombre de Francisco Deriquito, avalorado en P420, y lindante al N. y E. con Felix Evangelista; al S. con Leon Deriquito; y al . con Macaria Evangelista y Macario Belen.

"7-G. Otro terreno cocal con 100 ponos de coco de 5,093 metros cuadrados comprado de Tomasa Ciar, bajo el Tax No. 844, avalorado en f500, situado en el barrio de San Lucas, San Pablo, Laguna, y lindante al N. con Eulogia Javier; al S. y E. con Tolentino Marinio, y al O. con Ciriaco Pasco.

"8-H. Otro terreno cocal con 100 ponos de coco y 5,000 metros cuadrados proxicamente en el barrio Del

Remedio, San Pablo, Laguna, adquirido de Hermenegildo Rivera y Maria Catarin esposos, bajo el Tax No. 52603, avalorado en P2,050, lindante al N. con Marta Belarminio y Francisco Deriquito; al S. y O. con Hermenegildo Rivera y Maria Catarin, y al E. Rufina Alcantara.

"9-1. Otro terreno cocal de 12,412 metros cuadrados con 186 ponos de coco frutales, comprado de Emilia Vecina avalorado en Pl,070 bajo el Tax No. 55108, situado en el barrio Del Remedio, San Pablo, Laguna, y lindante al N. con Rufino Alcantara y Hermenegildo Rivera; al E. con Potenciana Belarmino y Cristeto Ticzon; al S. con Hospicio Velasco, y al O. con Rufino Alcantara.

"10-A. Un terreno cocal situado en el barrio Del Remedio, San Pablo, Laguna, 10,572 metros cuadrados, bajo el Tax No. 8638, con valor de Pl,280, lindante al N. con Catalino Bienvenida y Laureana Barcenias; al E. con Florentino Evangelista; al S. con Esteban y Laureana Barcelona Barcenias, y al O. con Rufina Evangelista y Laureana Barcenias.

"11-B. Otro terreno cocal situado en el barrio Del Remedio, San Pablo, Laguna, bajo el Tax No. 3769, avalorado en P550 y lindante al N. con un callejon; al E. con Juan Sahagun; al S. Gaudencia Bisco, y al O. con Ricardo Ciar."

Plaintiffs allege that the last two properties are private properties of the deceased Ciriaco Ciar, while the nine others are conjugal properties of the deceased and Sabina Lejarzo. The answer alleges that plaintiffs and defendant, being the only heirs of the deceased Ciriaco Ciar, who died without leaving debts, executed an extra-judicial deed of partition on February 3, 1937, by virtue of which they had taken possession of the parcels of land adjudicated respectively to each of them.

Defendant alleges also that parcels 1-A, 4-D and 5-E are private properties of the deceased. Plaintiffs admitted the allegation as to parcels 4-D and 5-E, limiting the controversy to parcel 1 —A.

Defendant also alleges that parcel 11-B was the paraphernal property of her deceased mother Damasa Guevara.

According to the evidence, the parties executed a deed of partition on February 3, 1937, which is respectively marked as Exhibit C of plaintiffs and Exhibit 1 of defendant.

The said deed of partition comprehends alone six (6) parcels of land which are agreed upon as conjugal properties of the deceased Ciriaco Ciar and the widow Sabina Lejarzo. In said deed of partition the parties agree to adjudicate an undivided half of the six parcels to Sabina Lejarzo and the remaining undivided half to Paciano Ciar and Rosario Ciar in equal parts, Sabina Lejarzo waiving any right she may have in the undivided half adjudicated to Paciano and Rosario Ciar, and the latter two waiving their right to any right they may have in the other half adjudicated to Sabina Lejarzo.

As the properties remained undivided, it is evident that any one of the parties may initiate an action for the actual division and partition of the properties.

In proceeding with the actual partition of the properties mentioned in the deed, the parties, of course, are duty bound to abide by the mutual waiver of rights agreed upon in the document. The widow cannot claim any more her usufructuary right in the properties comprehended in it. Not so, in the properties left by deceased Ciriaco Ciar which are not included therein. These properties must be also partitioned; but respecting the widow's usufruct.

Appellant maintains that the property 1-A is private property of the deceased, thus questioning the correctness of the lower court's finding, declaring it as belonging to the conjugal partnership of Ciriaco Ciar and Sabina Lejarzo.

The evidence on this question does not give enough basis for a conclusive pronouncement. Plaintiff testified that the property was bought in 1918 and the marriage of Sabina Lejarzo with the deceased took place in 1911.

Defendant testified that the property belonged to her father alone. The lower court declared that the plaintiffs were able to trace the origin of the property and that their testimony was supported by the deed of sale Exhibit B, while the defendant was not able to explain satisfactorily how and when her father acquired it. The appellant impugns the lower court's action on Exhibit B, alleging that said exhibit, being but a simple copy of a document of sale, the due execution of which was not duly proved and its genuineness expressly denied by defendant, should not be admitted, and that although the attorney for plaintiffs was allowed to present a certified copy of the original document, no such certified copy has ever been presented. We agree with appellant that the lower court erred in taking into consideration said Exhibit B, when it never had in this case the standing of a competent evidence properly admitted.

Sabina Lejarzo testified, regarding this property, that she and her husband bought it from Alejandro Jose in 1918, that the house standing thereon was built by them, that they both lived there until Ciriaco Ciar died, and that she continued living in the place. Defendant, on her own part, testified simply that the property is the absolute property of Ciriaco Ciar, that it is not conjugal, that the land was bought by her father from Alejandro Jose, but does not know when, that the house on the land was built when she was about eight or ten years of age, that is, way back in 1915 or 1917, considering that defendant was 35 years old in 1942, the year when she testified.

We believe that the testimony of Sabina Lejarzo is more worthy of credence than that given by defendant Rosario Ciar. Both agree that the land was bought from Alejandro Jose, but defendant cannot specify when; while plaintiff said that it was in 1918, seven (7) years after her marriage with Ciriaco Ciar. In 1918, defendant was of too tender age to acquire a precise knowledge of such an important and complex transaction as the purchase of a piece of land. She was then only about eleven (11) years of age. Defendant testified that she was about eight (8) or ten (10) years of age when the house was built, and that must be, if we accept her testimony, around 1915 or 1917. But then Sabina Lejarzo was already several years' the wife of Ciriaco Ciar. The testimony of Sabina Lejarzo is specific as to facts while that of defendant is vague and indefinite.

It having been established by a preponderance of the evidence that lot 1-A was acquired during the marriage, it is presumed to be conjugal property, in the absence of satisfactory proof to the contrary. (Ramirez vs. Bautista, 14 Phil., 528; Sy Joe Lieng vs. Sy Quia, 16 Phil., 137; Sison vs. Ambalada, 30 Phil., 118; Staples-Howe Printing Co. vs. Manila Building and Loan Association, 36 Phil., 417.)

Appellant contends that the property 11-B is a paraphernal property of her deceased mother Damasa Guevara and that the lower court erred in declaring it as a privative property of Ciriaco Ciar.

On this question we quote from the lower court's decision the following: "Re parcel B, paragraph 4-A of the complaint: "Rosario Ciar alleged that this parcel of land was bought by her mother Damasa Guevara from Rafaela Vecina but the deed of sale was delivered to Attorney Ticzon in 1937, and destroyed when Attorney

Ticzon's house was burned in 1941. The said document, according to her, was written in Spanish and, according to the one

who translated it to her, it purported to be a document of sale by Rafaela Vecina to her mother when the latter was single; that this land was not administered by her father but by her, and that it is bounded on the west by the land of Ricardo Ciar. Ricardo Ciar alleged that this parcel of land belonged to Damasa Guevara who donated it to Rosario Ciar when the latter married in 1926.

"The alleged donation which dealt with real property, was not reduced in writing. According to Lorenzo Vecina and Isidoro Vecina, parcel B of paragraph 4-A of the complaint and the land of Ricardo Ciar on the west, originally belonged to Julia Ciar and Fausta Belen from whom Ricardo Ciar and Ciriaco Ciar inherited; that

Damasa Guevara did not own this land by purchase from Rafaela Vecina because the latter did not own it, as in fact the only land she had was sold to Macaria Evangelista; and that the land in question was possessed by Ricardo Ciar and Rosario Ciar only from the death of Ciriaco Ciar. Isidoro Vecina did not only possess a house near the land, but even worked for Ciriaco Ciar and for Sabina Lejarzo when these were in possession thereof. Pedro Pasco, the carter driver of Ciriaco Ciar strengthened the testimony of these two, by stating that said Ciriaco Ciar was in possession of the land and not Rosario Ciar.

From these testimonies it is evident that this parcel of land indicated by letter B, paragraph 4-a of the complaint, was a privative property of the deceased. We cannot give much weight to the testimony of Rosario Ciar that the contents of the lost document was a sale made by Rafaela Vecina to Damasa Guevara, because Rosario Ciar could not read or understand Spanish, and the one who translated the document to her did not testify, so that Rosario Ciar's testimony in this respect, would only be hearsay. No interest was shown why Lorenzo Vecina, Isidoro Vecina and Pedro Pasco should testify against the defendant. Attorney Ticzon alleged that a document and the inventory of the properties were delivered to him by Rosario Ciar, but they were burned in January, 1940. He did not, however, state what the nature of said document was." (See Record on Appeal, pp. 17, 18.)

Upon the evidence, the lower court's pronouncement is well taken, and we don't see any reason why we should disturb it.

The fourth and last assignment of error of appellant is completely without merit. In this assignment defendant claims the sum of P300 as damages, premised on the theory that plaintiff's action is unwarranted. The premise is unfounded, and no damages have been proved. Under the same assignment defendant claims for costs of suit. The claim is equally untenable.

For all the foregoing, we conclude that: (a) property 1-A belongs to the conjugal partnership of Ciriaco Ciar and Sabina Lejarzo; (b) property 11-B is a privative property of Ciriaco Ciar; (c) the extra-judicial deed of partition dated February 3, 1937, is binding to the parties, including the waivers contained therein; (d) the partition proceedings should continue not only for the partition of the properties not included in the extra-judicial deed of February 3, 1937, but also for the actual division and partition of the properties mentioned therein. Thus modified, the lower court's decision is affirmed with costs against appellant.

Ozaeta, De Joya, Hilado, and Bengzon, JJ., concur.

Judgment modified.

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