

DOROTEA DE OCAMPO VDA. DE DELIZO AND HER NINE (9) CHILDREN, NAMED REGINO, CRISPINA, CARMEN, BASILIO, HILARIO, MACARIO, SENDON, MARCIANO AND HERMOGENES, ALL SURNAMED DELIZO Y OCA...

G.R. Nos. L-32820-21. January 30, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

These two cases involve the partition of the conjugal partnership properties of two marriages contracted by Nicolas Delizo. The first, was with Rosa Villasfer, which lasted from April 20, 1891 until Rosa's death on December 7, 1909, or a period of eighteen (18) years; and the second, with Dorotea de Ocampo, which existed for a period of forty-six (46) years, or from October, 1911 until the death of Nicolas Delizo on May 3, 1957 at the age of ninety (90) years. The action for partition was instituted on April 15, 1957 by a daughter and a son of the first marriage, namely, Urbana Delizo and Severino Delizo, and the heirs of Francisco Delizo, another son, who died in 1943, specifically, Rancivillano, Soltrifilo, Josefina, Eufrocina, Aurea, Editra, and Fe, all surnamed Delizo (the last three being minors were represented by their mother, Rosenda Genove) all against their father, Nicolas Delizo, and his second wife, Dorotea de Ocampo, and their nine (9) children, the herein petitioners-appellants, namely Regino, Crispina, Carmen, Basilio, Hilario, Macario, Sendon, Marciano, and Hermogenes, all surnamed Delizo.

The aforesaid defendants opposed the partition, claiming that the properties described in the complaint were those of the second marriage. On May 3, 1957, Nicolas Delizo died and was substituted by his children in the second marriage as party defendants. In the meantime, Special Proceedings No. 1058 (Intestate Estate of the late Nicolas Delizo) was filed by Dorotea de Ocampo on June 3, 1957. Thereafter, or on August 23, 1971, Severino Delizo died intestate and is now represented by his children, namely, Federico, Severina, Angelina, Segundina, Rosalina, and Brigida, all surnamed Delizo. Involved are the properties acquired by Nicolas Delizo, among which are sixty-six (66) hectares of agricultural lands in San Jose City, Nueva Ecija; fifty-eight (58) hectares of riceland in Muñoz, of the same province; and a 150 square meter lot at 1056-58 P. Campa, Sampaloc, Manila. The properties are specifically described as follows:

- (1) Lots Nos. 210, 211, 388, 389, 390, and 407 of the San Jose Cadastre situated in Rizal, San Jose with a combined area of about sixty-six (66) hectares covered by OCT No. 6176-N.E. issued in the name of Nicolas Delizo, married to Dorotea de Ocampo (Exh. F or 11);
- (2) Lot No. 1915 of the San Jose Cadastre with an area of about 1,056 square meters and covered by OCT No. 5783 in the name of Nicolas Delizo, married to Dorotea de Ocampo (Exh. G or 12);
- (3) Lot No. 498 of the San Jose Cadastre with an area of about 3,366 square meters and covered by OCT No. 5622-N.E. issued in the name of Nicolas Delizo, married to Dorotea de Ocampo (Exh. H. or 13);
- (4) A parcel of land in San Jose, Nueva Ecija containing an area of 13.2948 hectares and covered by TCT No.

2985-N.E. (Exh. I or 13-A);

(5) An agricultural land of about 17.4753 hectares situated in sitio Rangayan, Muñoz, and covered by TCT No. 5162 (Exh. J or 14);

(6) A parcel of land in Barrio Caanawan, San Jose, with an area of about 14.0354 hectares and covered by TCT No. 11910 (Exh. K or 10);

(7) A cornland in Barrio Rangayan, Muñoz, Nueva Ecija, of about 1,500 square meters and covered by Tax Declaration No. 5476;

(8) Riceland in Barrio San Andres, Muñoz, of about 5,083 square meters and covered by Tax Declaration No. 7083;

(9) Riceland in Barrio Rangayan, Muñoz, Nueva Ecija, containing an area of about 17.4755 hectares and covered by Tax Declaration No. 812;

(10) Lot No. 847 — a riceland in Barrio Bayan, Muñoz, with an area of about 13.0902 hectares and covered by TCT No. 3585 issued in the name of Nicolas Delizo, married to Dorotea de Ocampo on April 25, 1929 (Exhs. L or 15 & 15-A);

(11) A camarin of strong materials, with galvanized iron roofing in San Jose, Nueva Ecija, about eight (8) meters by twelve (12) meters;

(12) A residential house and lot at Sanchez Street, San Jose, Nueva Ecija;

(13) Lot No. 1790 of San Jose Cadastre of about 2,840 square meters and covered by Original Certificate of Title No. 8131 in the names of spouses Silvestre Batara and Maria Soriano issued on November 16, 1927 (Exh. M or 16), superseded by Transfer Certificate of Title No. NT-29524 issued in the name of Juan T. Gualberto on May 25, 1959 (Exh. N or 17) claimed by the heirs of Nicolas Delizo and Dorotea de Ocampo pursuant to deed of sale (Exh. N-1);

(14) An urban lot and coconut plantation in San Fabian, Pangasinan;

(15) A lot and residential house consisting of a two-door accessoria at No. 1056-58 (formerly 562) P. Campa, Sampaloc, Manila;

(16) A sawmill with accessories, bulldozers, etc. in San Jose, Nueva Ecija (bulldozer is now in Gordon, Isabela in the possession of Regino Delizo and Basilio Delizo); and

(17) Several heads of carabaos.

After trial, the lower court rendered judgment on April 27, 1964, distributing the aforesaid properties as follows: (a) one-half (1/2) pro indiviso to the three (3) children of the first marriage, namely, Urbana Delizo, Severino Delizo, and the heirs of the deceased Francisco Delizo, viz.: Rancivillano, Soltrifilo, Josefina, Eufrocina, Aurea, Edita, and Fe; (b) one-fourth (1/4) pro indiviso to the surviving spouse, Dorotea de Ocampo; and (c) one-fourth (1/4) pro indiviso, in equal shares to the children of both marriages, nine (9) of whom were begotten during the second marriage, or into thirteen (13) parts.

From said judgment, petitioners-appellants appealed to the Court of Appeals. On August 12, 1970, the Appellate Court rendered judgment, affirming with modifications the trial court's decision.

The facts as found by the Appellate Court are as follows:

"As regards the Caanawan lands situated in Caanawan, San Jose, Nueva Ecija, comprising some 66 hectares, defendants capitalize on the undisputed fact that Original Certificate of Title No. 6176 (Exh. F or 11) issued on

August 21, 1924, covering these lands is in the name of Nicolas Delizo, married to Dorotea de Ocampo. Defendants further point out that the testimonies of defendant Dorotea de Ocampo and octogenarian Moises Patricio prove that these lands were acquired during the second marriage.

"However, the fact that the disputed lands situated in Caanawan were registered in the name of 'Nicolas Delizo, married to Dorotea de Ocampo' is no proof that the property is owned by the second conjugal partnership. The phrase 'married to' is merely descriptive of the civil status of Nicolas Delizo (*Gonzales vs. Miller*, 69 Phil. 340; *De Jesus vs. Padilla*, CA-G.R. No. 12191-R, April 19, 1955; *Muñoz & Tan Co., Inc. vs. Santos*, CA-G.R. No. 27759-R, October 3, 1963; *Pratts vs. Sheriff of Rizal*, 53 Phil. 51, 53). Neither is the testimony of Dorotea de Ocampo that the said lands were acquired by her and her spouse, altogether clear and persuasive. For while the admitted fact is that she and Nicolas Delizo were married in 1911, she declared on the witness stand that the aforesaid properties were given by Pedro Salvador to her and her spouse in 1908 (t.s.n., p. 288, March 8, 1963), thereby leading the trial court to infer an admission that these lands were acquired during the first marriage of Nicolas Delizo. It may likewise be noted that as per her testimony, she and her father arrived in Caanawan, San Jose, Nueva Ecija, when Rosa Villasfer was still alive. That would be sometime before 1911. But she admitted that her father then was not able to acquire lands from Pedro Salvador, their grantor, because he had no more lands to distribute to settlers. Accordingly, it is farfetched that after Rosa's death and the subsequent marriage of Nicolas Delizo to Dorotea de Ocampo, Pedro Salvador would still have those 67 hectares which defendants claimed were acquired by the spouses Nicolas Delizo and Dorotea de Ocampo by grant from Pedro Salvador (t.s.n., pp. 459-46, March 15, 1963).

"Moises Patricio tried to confirm the widow, declaring that Nicolas Delizo was married to defendant Dorotea de Ocampo, when he was given lands in Caanawan by Pedro Salvador (t.s.n., p. 493, June 7, 1963). However, he placed the acquisition sometime during the founding of Barrio Sto. Tomas, San Jose, Nueva Ecija (Id., p. 492) which took place some four years after the Spanish-Filipino revolution of 1896 (t.s.n., pp. 548-549, June 21, 1963), or approximately 1900. Therefore, it could not be Dorotea de Ocampo, but Rosa Villasfer, who was admittedly still alive and the wife of Nicolas Delizo at the time of the acquisition.

"Ranged against these unreliable testimonies for the defendants, is the testimony of Lorenzo Delizo, who being a brother of deceased Nicolas Delizo, stands in equal relationship to the plaintiffs, who were Nicolas' children by the first marriage, and the defendants, who were children of Nicolas in his second marriage. His testimony therefore carries great weight. This witness averred that 16 hectares were acquired as homestead by his deceased brother, Nicolas Delizo, from Pedro Salvador and Mauricio Salvador, who were then 'cabecillas' distributing lands to homesteaders in 1905 (t.s.n. p. 12, January 20, 1961); that Nicolas acquired by sale the 16-hectare homestead of Nicolas Dacquel in 1906, another 16-hectare homestead of Mariano Antolin in 1907 and the 16-hectare homestead of Francisco Pascua in 1908 (id., pp. 14-15). Lorenzo's declarations are supported by the testimonies of (1) Urbana Delizo, a daughter of Nicolas by his first marriage and who was already 17 when her mother, Rosa Villasfer, died in 1909 (id., p. 19); (2) Sabiniano Villanueva, a son of one of Nicolas' tenants on the controverted Caanawan lands (id., pp. 93-168) and (3) Raymundo Eugenio, a former clerk in the municipal treasurer's office who used to collect taxes on the land belonging to Nicolas and later became municipal president of San Jose, Nueva Ecija (t.s.n., pp. 367-368, January 31, 1964), although these Caanawan lands cannot be traced back to TD 431, Exhibit P-9 issued in 1906, cited by appellants (see notations at bottom of reverse side of alleged succeeding TDs), aside from the fact that the notations on the reverse side thereof are suspicious (see years when tax commenced and when issued) and the discrepancy between areas (8 Ha. in Exhibit P-9 and 57 Ha. for lots 210 and 211).

"Accordingly, we find with the trial court that the Caanawan lands, comprising lots Nos. 210, 211, 388, 390, 398 and 407 under Original Certificate of Title No. 6176 (Exh. F or 11) were acquired during the existence of the first marriage of Nicolas Delizo to Rosa Villasfer, and there being no affirmative showing that they belonged exclusively to said Nicolas Delizo, should therefore correspond to the first conjugal partnership of Nicolas Delizo and Rosa Villasfer. So with the lot and house at 562 P. Campa St., Sampaloc, Manila, known as

Lot 47, Block 83 covered by TCT No. 9616-Manila which was ceded during the second marriage in payment of, or substitution for, the Caanawan property, because the Asiatic Petroleum Company to which it had been mortgaged as bond for Juan Par as agent foreclosed the mortgage, when the agent defaulted in his obligation to the company, Exhibits 6, 7 and 19 (Art. 153 [formerly, 140], par. 1, new Civil Code).

"However, with regard to the other properties in question, like lot No. 498 of the San Jose Cadastre, under Original Certificate of Title No. 5622, likewise issued in the name of 'Nicolas Delizo, married to Dorotea de Ocampo'; a parcel of land in San Jose, Nueva Ecija under TCT No. 2985 (Exh. 1 or 13) and agricultural land of about 17.4753 hectares in Sitio Rangayan, Muñoz, Nueva Ecija TCT No. 5162 (Exh. J or 14); another parcel of land in Caanawan, San Jose, with an area of about 14.0354 hectares under TCT No. 11910 (Exh. K or 10); a corn land in barrio Rangayan, Muñoz, Nueva Ecija, of about 1,500 square meters under Tax Declaration No. 5476; a riceland in barrio San Andres, Muñoz, Nueva Ecija, of about 5,083 square meters under Tax Dec. 7083; another riceland in Rangayan, Muñoz, of about 17.4755 hectares under Tax Dec. No. 812; a riceland, lot No. 847, of about 13.0902 hectares covered by TCT No. 3585 issued on April 29, 1929 in the name of 'Nicolas Delizo, married to Dorotea de Ocampo' (Exh. L or 15); a camarin of strong materials with galvanized iron roofing in San Jose, Nueva Ecija, about 8 meters by 12 meters; a residential lot at Sanchez Street, San Jose, Nueva Ecija; lot No. 1790 of the San Jose Cadastre, consisting of 2,840 square meters, more or less, under Original Certificate of Title No. 8131 in another name but claimed by the heirs under deed of sale, Exhibit N-1; a sugar cane mill in San Jose, Nueva Ecija and several heads of carabaos (Exh. O); Lots Nos. 495 and 496 of the San Jose Cadastre, possessed by defendants although adjudicated in the name of Marcelo Tomas and Guillermo Cabiso, respectively; lot No. 494-A, of the San Jose Cadastre, adjudicated in the name of Nicolas Delizo and Dorotea de Ocampo (RA, pp. 96-97), — there is no controversy that these were all acquired during the existence of the second marriage of Nicolas Delizo."

On the basis of the foregoing facts, the Court of Appeals rendered judgment as follows:

"But the trial court held that because there was no liquidation of the conjugal partnership property of the first marriage, upon the death of the first wife, 'the conjugal partnership was converted into one of co-ownership between Nicolas Delizo and his children of the first marriage * * *. Hence, all the fruits or increase of the properties acquired thereafter shall belong to such co-ownership.' We cannot agree with this legal conclusion. One-half of the conjugal properties of the first marriage constituted the separate property of the husband at the formation of the second conjugal partnership upon his re-marriage in October 1911 (Art. 145, NCC). Moreover, the fruits of the Caanawan property were acquired through the labor and industry of Nicolas Delizo and Dorotea Ocampo; and indeed, two witnesses for the plaintiffs admitted that at the time of the death of Rosa Villasfer, only about 20 hectares of the Caanawan property had been cleared and cultivated (pp. 22-23; 113, 117, 383-4, t.s.n.). This property was practically virgin land, and the rest thereof or about 47 hectares were therefore cleared and cultivated only during the marriage of Nicolas Delizo and Dorotea Ocampo. This impliedly admitted in plaintiffs' complaint that 'from the time of death of the said Rosa Villasfer, the defendants * * * have WORKED upon, TILLED and CULTIVATED, or otherwise offered in tenancy the whole of the agricultural lands described' (par. 2). The Caanawan property left to itself could not produce any fruits for they did not have any permanent improvements thereon. What was produced according to the evidence was palay, and the production of palay requires tilling, cultivation, seedlings, gathering, preservation and marketing. It was thru the labor and industry of Nicolas Delizo and Dorotea de Ocampo that the Caanawan property was able to produce fruits. Whatever it produced thru the labor and industry of the spouses belongs to their conjugal partnership. While it is true that to the owner of the land belongs the fruits, whether natural, industrial or civil (Art. 441, N.C.C. formerly Art. 354, Spanish Civil Code), this does not mean that all that is produced belongs to the owner of the land. The owner, according to Art. 443, N.C.C. (formerly Art. 356, Spanish Civil Code) who receives the fruits, has the obligation to pay the expenses made by a person in their production, gathering and preservation. When Dorotea Ocampo admitted that the Muñoz property was purchased partly with the fruits of the Caanawan property, she was referring to the gross production, not deducting therefrom what could have pertained to the person who produced the fruits. So it seems that if we

are to determine with mathematical certainty what portion of the Muñoz property and other properties acquired during the second marriage should pertain to the first marriage as corresponding to the value of its share in the fruits of the Caanawan property, and what should belong to the second marriage as corresponding to the value of the labor and industry of the spouses Delizo and Ocampo, we have to find how much was produced during the second marriage and determine what will be the share of the owner of the land that will correspond to the one who produced the fruits. The burden of proof lies upon the plaintiffs under the rules of evidence. But, of course, this is an impossibility. For no records have been kept and it is not in accordance with the Filipino customs for the surviving spouse — whether he remarries or not — to keep the record of the produce of the properties left by the deceased spouse. In addition thereto, according to Dorotea Ocampo, part of the price used in the purchase of Muñoz property was the proceeds of a loan which, together with the properties purchased with it, belongs to the conjugal partnership of Nicolas Delizo and Dorotea Ocampo. Under these circumstances, it would be impossible to determine with mathematical precision what portion of the properties acquired during the second marriage of Nicolas Delizo should belong to the second conjugal partnership and what portion should belong to the heirs of the first conjugal partnership, one half of which pertains to the husband. However, considering that —

"1. At the time of the dissolution of the first marriage or about five years after acquisition, according to plaintiffs' evidence, only about 20 hectares of the Caanawan property had been cultivated, the remaining 47 hectares were therefore cleared and improved during the second marriage thru the labor and industry of the spouses Nicolas Delizo and Dorotea Ocampo for 46 years (1911-1957). These improvements were made in good faith considering that Nicolas Delizo administered the properties of the first marriage. The second marriage is entitled to reimbursement for the increase in value of these 47 hectares (Art. 516, N.C.C.). Even the Muñoz property acquired during the second marriage had to be improved by the spouses Nicolas Delizo and Dorotea Ocampo.

"2. The one-half of the fruits of the Caanawan property which should pertain to the heirs of Rosa Villasfer refers only to one-half of the net after deducting the expenses of clearing the land, cultivating, gathering and preservation. Forty-seven hectares of the Caanawan property were cleared and cultivated only during the second marriage. Even under a liberal apportionment of the produce, the heirs of the second marriage could not be entitled to more than 30% of the gross produce.

"3. Part of the price used in the purchase of the properties acquired during the second marriage were the proceeds of a loan. This is conjugal property of the second marriage (*Palanca vs. Smith, Bell and Co.*, 9 Phil. 131, 133; *Castillo Jr. vs. Pasco*, 11 SCRA 102, 106-7).

"4. The improvements on 47 hectares of the Caanawan property and on the Muñoz property were made at the expense of the second conjugal partnership of Nicolas Delizo and Dorotea Ocampo, and thru their labor and industry which lasted for 46 years, whereas the first conjugal partnership had the Caanawan property for less than 6 years.

"Taking into account all the foregoing circumstances and equities of the case, an adjudication of 20% of all the properties acquired during the second marriage, including the Muñoz property, to the children of the first marriage, and 80% to the conjugal partnership of Nicolas Delizo and Dorotea Ocampo is fair and equitable. So the properties of the estate should be partitioned thus:

"One-half of the Caanawan property and the house and lot at 562 P. Campa street, Manila, covered by TCT No. 9616 as the share of Rosa Villasfer in the first conjugal partnership of Nicolas Delizo and Rosa Villasfer or 1/6 thereof for each child of the first marriage; and 20% of all the other properties or 1/15 thereof for each such child. To Nicolas Delizo should be adjudicated one-half of the Caanawan property and the house and lot on P. Campa, but in view of the death of Nicolas Delizo his share descends to all the children, both of the first and second marriages and the surviving spouse, Dorotea Ocampo, and should therefore be divided by the number of children

plus one or 1/26 thereof for each heir. Eighty per cent of all the properties acquired during the marriage of Nicolas Delizo and Dorotea Ocampo constitute the conjugal partnership of Nicolas Delizo and Dorotea Ocampo; one-half thereof is the share of Nicolas Delizo, to be divided among his heirs in accordance with the preceding statement, or 2/65 thereof for each heir; the other half constitutes the share of Dorotea Ocampo in the conjugal partnership, or 2/5 thereof.

"WHEREFORE, paragraph 1 of the judgment appealed from is hereby modified as follows:

"1. Declaring that (a) of the Caanawan property and the house and lot at 562 P. Campa street, Manila covered by TCT No. 9616 — 8/39 (1/6 + 1/26) thereof pro indiviso shall pertain to each of the children of Nicolas Delizo of the first marriage, namely: Urbana, Severino and the late Francisco Delizo (the last represented by his children Rancivillano, Soltrifilo, Josefina, Eufrocina, Aurea, Edit and Fe); and 1/26 thereof pro indiviso shall pertain to each of the children of the second marriage and their mother Dorotea Ocampo; (a) of all other properties acquired during the second marriage — 19/195 thereof pro indiviso shall pertain to each of the three children by the first marriage, 2/65 thereof pro indiviso shall pertain to each of the nine children of the second marriage, while 28/65 thereof pro indiviso shall pertain to the widow Dorotea Ocampo. The rest of the judgment particularly paragraphs 2 and 3 are affirmed; without pronouncement as to costs in both instances."

From this adverse judgment, petitioners-appellants interposed the present petition for review. The thrust of petitioners-appellants' petition is that the Appellate Court acted under a misapprehension of the facts or decided the legal issues in a way which is not in consonance with law and with the applicable decisions of this Court, (a) since the 67-hectare Caanawan properties could not have been properties of the first marriage because they were then public lands being homesteads, and while the first conjugal partnership may have had possessory rights over said properties, it was only during the second marriage that the requirements of the public land law were complied with, resulting in the confirmation, registration and issuance of the Torrens Title over said properties to Nicolas Delizo and his second wife, Dorotea de Ocampo; (b) apart from the fact that the legal presumption that all properties of the marriage belong to the conjugal partnership of Nicolas Delizo and Dorotea de Ocampo were not sufficiently rebutted, these properties were actually in the adverse possession under claim of title of petitioners-appellants continuously for a period of 47 years (1911 to 1957), and consequently, the claim of respondents-appellees for partition should have been considered barred by acquisitive and extinctive prescription, laches and estoppel; and (c) in any event, there being serious doubts as to whether said properties belong to the first marriage, it would have been more equitable if the said partnership properties were divided between the different partnerships in proportion to the duration of each and the capital of the spouses, pursuant to Article 189 of the Civil Code.

From the findings of the Appellate Court that sixty-six (66) hectares of the Caanawan properties were acquired by Nicolas Delizo as homesteads during the period of the first marriage, thus: sixteen (16) hectares as a homestead from the Government in 1905; and the 16-hectare homestead of Nicolas Dacquel, the 16-hectare homestead of Mariano Antolin, and the 16-hectare homestead of Francisco Pascua by purchase in 1906, 1907 and 1908, respectively, it does not necessarily follow that they should be considered as properties of the first marriage, considering that being homesteads they were part of the public domain, and it was not shown that all the requirements of the Homestead Law to warrant the grant of a patent to the homesteader have been complied with prior to the death in 1909 of Delizo's first wife, Rosa Villasfer.

Under Act 926,[1] which was then the applicable law, the right of the homesteader to the patent does not become absolute until after he has complied with all the requirements of the law. One of the most important requirements is that the "person filing the application shall prove by two credible witnesses that he has resided upon and cultivated the land for the term of five years immediately succeeding the time of filing the application aforesaid, and shall make affidavit that no part of said land has been alienated or encumbered ***" (Section 3 of Act 926,

italics supplied). Prior to the fulfillment of such requirement, the applicant has no complete equitable estate over the homestead which he can sell and convey, mortgage or lease.[2] Until a homestead right is established and registered under Section 3 of Act 926, there is only an inchoate right to the property and it has not ceased to be a part of the public domain and, therefore, not susceptible to alienation as such.[3] Conversely, when a "homesteader has complied with all the terms and conditions which entitled him to a patent for a particular tract of public land, he acquires a vested interest therein and has to be regarded an equitable owner thereof." [4] The decisive factor, therefore, in the determination of whether a parcel of land acquired by way of homestead is conjugal property of the first or the second marriage, is not necessarily the time of the issuance of the homestead patent but the time of the fulfillment of the requirements of the public land law for the acquisition of such right to the patent.[5]

As testified to by Lorenzo Delizo, his brother, Nicolas Delizo, and the latter's wife, Rosa Villasfer, arrived in Barrio Caanawan, San Jose, Nueva Ecija, from Barrio Ungag, Cuyapo, Nueva Ecija, during the year 1905. It was during that same year that Pedro Salvador and Mauricio Salvador, who were then the cabecillas, were distributing lands to homesteaders in Barrio Caanawan. Nicolas Dacquel, Mariano Antolin and Francisco Pascua must have received their respective homesteads from the same officers of the government that same year, considering that their respective homesteads are all adjacent to the homestead of Nicolas Delizo, and according to the evidence, this was the time when the homesteads in that barrio were parceled out to the new settlers. Indeed, the Homestead Act was then of recent vintage, having been enacted by the Philippine Commission by authority of the United States Government, only on October 7, 1903.

Considering that Nicolas Dacquel must have been in possession of his homestead for barely a year when he transferred his rights in 1906, Mariano Antolin for about two years with respect to his homestead in 1907, and Francisco Pascua for about three years in 1908 as regards to his homestead, at the time of their respective conveyances to Nicolas Delizo, it is, therefore, obvious that not one of them could have complied with the requirements of Act No. 926 to entitle any one of them to the issuance of a homestead patent before they sold or assigned their rights to Nicolas Delizo. The law was quite specific, that "No certificate shall be given or patent issued for the land applied for until the expiration of five years from the date of the filing of the application; and if, at the expiration of such time or at any time within three years thereafter, the person filing such application shall prove by two credible witnesses that he has resided upon and cultivated the land for the term of five years immediately succeeding the time of filing the application aforesaid, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has borne true allegiance to the Government of the United States and that of the Philippine Islands, then, upon payment of a fee of ten pesos, Philippine currency, to such officer as may be designated by law as local land officer, or in case there be no such officer then to the Chief of the Bureau of Lands, he shall be entitled to a patent." (Section 3, Act No. 926, italics supplied). Having neither legal nor equitable title thereon, what was transferred by them to Nicolas Delizo were, therefore, not rights of ownership, but inchoate rights as applicants for homesteads over portions of the public domain. Similarly, having received the homestead only in 1905, Nicolas Delizo could not have perfected his rights thereon by the completion of the five-year occupancy and cultivation requirement of the law, in 1909. Buttrressing the conclusion that Nicolas Delizo could not have perfected his rights to the four homesteads before 1909 is the specific limitation imposed by section 3 of Act No. 926 which provides that "No person who is the owner of more than sixteen hectares of land in said Islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter."

The foregoing sufficiently show that the Appellate Court erred in holding that the entire Caanawan properties belong to the conjugal partnership of Nicolas Delizo and Rosa Villasfer. Considering, however, that about twenty (20) hectares were cultivated and rendered productive during the period from 1905 to 1909, justice and equity

demand that the rights to said properties be apportioned to the parties in proportion to the extent to which the requirements of the public land laws had been complied with during the existence of each conjugal partnership.

II

In connection with the other properties, such as Lot No. 498 of the San Jose Cadastre, under Original Certificate of Title No. 5622; a parcel of land in San Jose, Nueva Ecija, under Transfer Certificate of Title No. 2985 (Exh. I or 13), and agricultural land of about 17.4753 hectares in Sitio Rangayan, Muñoz, Nueva Ecija, under Transfer Certificate of Title No. 5162 (Exh. J or 14); a parcel of land in Caanawan, San Jose, with an area of about 14.0354 hectares, under Transfer Certificate of Title No. 11910 (Exh. K or 10); a cornland in Barrio Rangayan, Muñoz, Nueva Ecija; of about 1,500 square meters under Tax Declaration No. 5476; a riceland in Rangayan, Muñoz, of about 17.4755 hectares, under Tax Declaration No. 812; a riceland, Lot No. 847, of about 13.0902 hectares covered by Transfer Certificate of Title No. 3585, issued on April 29, 1929 in the name of "Nicolas Delizo, married to Dorotea de Ocampo" (Exh. L or 15); a camarin of strong materials with galvanized iron roofing in San Jose, Nueva Ecija; a residential lot at Sanchez Street, San Jose, Nueva Ecija; Lot No. 1790 of the San Jose Cadastre, consisting of about 2,840 square meters, more or less, under Original Certificate of Title No. 8131 "in another name but claimed by the heirs under deed of sale, Exhibit N-1"; a sugar mill in San Jose, Nueva Ecija and several heads of carabaos (Exh. 0); Lots Nos. 495 and 496 of the San Jose Cadastre, possessed by defendants although adjudicated in the name of Marcelo Tomas and Guillermo Cabiso, respectively; and another lot, Lot No. 494-A of the San Jose Cadastre adjudicated in the name of Nicolas Delizo, married to Dorotea de Ocampo, the Appellate Court decision penned by Justice Arsenio Solidum held that "there is no controversy that these were all acquired during the existence of the second marriage of Nicolas Delizo".

The same opinion, however, held that since these properties were acquired from the produce of the Caanawan properties although such produce is the result of the labor and industry of the spouses Nicolas Delizo and Dorotea de Ocampo, only eighty per cent (80%) of said properties acquired during the second marriage should appertain to the second conjugal partnership, while twenty per cent (20%) thereof adjudicated to the children of the first marriage. The two concurring Appellate Justices, although of the view that the legal presumption that those properties acquired during the regime of the second conjugal partnership belong to said partnership has not been rebutted by respondents-appellees and, therefore, would hold that such after-acquired properties should belong to the second conjugal partnership, concurred nevertheless in the result aforesaid, in order to reach a judgment in the case. It would have been facile to hold that those after-acquired properties belong to the second conjugal partnership in view of the statutory presumption enunciated in Article 1407 of the old Civil Code (now Article 160, New Civil Code).[6] There are, however, important considerations which preclude Us from doing so. There is the established fact that the produce of the Caanawan lands contributed considerably to the acquisition of these properties, and We have held that the children of the first marriage, as a matter of equity, should share in the Caanawan properties. To deny the respondents-appellees a share in such properties would have exacerbated discord instead of enhancing family solidarity and understanding.

Considering these circumstances and since the capital of either marriage or the contribution of each spouse cannot be determined with mathematical precision, the total mass of these properties should be divided between the two conjugal partnerships in proportion to the duration of each partnership.[7] Under this criterion, the second conjugal partnership should be entitled to 46/64 or 23/32 of the total mass of properties, and the first conjugal partnership to 18/64 or 9/32 thereof pro indiviso. The share of the estate of Nicolas Delizo is one-half (1/2) pro indiviso of the net remainder[8] of the conjugal partnership of gains of the first and second marriages, which would amount to 32/64 or 1/2 of the whole estate. This should be distributed in equal shares to his children of both marriages,[9] with the widow having the same share as that of legitimate child.[10] The widow, Dorotea de

Ocampo, is entitled to one-half (1/2) of the net remainder of the second conjugal partnership and to her share as heir of her deceased husband which amounts to 23/64 of said properties, plus 1/13 of 32/64 pro indiviso. The share of the heirs of Rosa Villasfer would be 9/64 thereof.

The foregoing is recapitulated as follows:

Share of Rosa Villasfer, 1st wife 9/64 of whole estate to be divided among three (3) children

Share of Dorotea de Ocampo, 2nd wife 23/64 of whole estate plus her share in Nicolas Delizo's estate.

Share of Nicolas Delizo, husband 32/64 of whole estate to be divided into thirteen (13) equal parts.

Whole Estate 64/64

Computation of Sharing

$3/64 + 1/26 = 142/1664$] Share of each child of 1st marriage,

$3/64 + 1/26 = 142/1664$]

$3/64 + 1/26 = 142/1664$]

$1/26 = 64/1664$] Share of each child of 2nd marriage.

$1/26 = 64/1664$]

$1/26 = 64/1664$]

$1/26 = 64/1664$]

$1/26 = 64/1664$]

$1/26 = 64/1664$]

$1/26 = 64/1664$]

$1/26 = 64/1664$]

$1/26 = 64/1664$]

$23/64 + 1/26 = 662/1664$ Share of Dorotea Ocampo.

$32/64 + 13/26 = 1664/1664$ Whole Estate

In the partition of the properties, the probate court should take into account the fact that the respondents-appellees are in possession of the Muñoz lands, while the petitioners-appellants have been in possession of the Caanawan properties as well as the house and lot at 562 P. Campa Street, Sampaloc, Manila, as directed in the trial court's order of April 23, 1958 (Record on Appeal, pp. 76-77). Should it be convenient for the parties, their respective shares should be taken from the properties presently under their custody.

Having reached the foregoing conclusions, it is unnecessary to resolve the other legal questions raised in the appeal.

Wherefore, the appealed decision of the Court of Appeals is hereby modified as herein indicated. The records of these cases should be, as they are hereby, remanded to the trial court for further proceedings in accordance with this judgment. No costs.

Fernando, Barredo, and Concepcion Jr., JJ., concur.

Castro, C.J., concurs in the result.

Aquino, J., did not take part.

[1] The pertinent provisions of Act No. 926, provide, as follows:

"SECTION 1. Any citizen of the Philippine Islands * * * over the age of twenty-one years, or the head of a family, may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved, unappropriated agricultural public land in the Philippine Islands * * * but no person who is the owner of more than sixteen hectares of land in said Islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

"SEC. 2. Any person applying to enter land under the provisions of this chapter shall file with such officer as may be designated by law as local land officer, or in case there be no such officer then with the Chief of the Bureau of Public Lands, an application under oath showing that he has the qualifications required under section one of this chapter, and that he possesses none of the disqualifications there mentioned; that such application is made for his exclusive use and benefit; that the same is made for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person, persons, corporation, or association of persons; that the land applied for * * * is more valuable for agricultural than forestry purposes, and is not occupied by other person; and showing the location of the land by stating the province, municipality, and barrio in which the same is situated, and as accurate a description as may be given, showing the boundaries of the land, having reference to natural objects and permanent monuments, if any. Upon the filing of said application the Chief of the Bureau of Public Lands shall summarily determine, by inquiry of the Chief of the Bureau of Forestry and from the available land records, whether the land described is prima facie subject under the law to homestead settlement, and if he shall find nothing to the contrary, the applicant, upon the payment of ten pesos, Philippine currency, shall be permitted to enter the quantity of land specified.

"SEC. 3. No certificate shall be given or patent issued for until the expiration of five years from the date of the filing of the application; and if, at the expiration of such time or at any time within three years thereafter, the person filing such application shall prove by two credible witnesses that he has resided upon and cultivated the land for the term of five years immediately succeeding the time of filing the application aforesaid, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has borne true allegiance to the Government of the United States and that of the Philippine Islands, then, upon payment of a fee of ten pesos, Philippine Currency, to such officer as may be designated by law as local land officer, or in case there be no such officer then to the Chief of the Bureau of Public Lands, he shall be entitled to a patent: Provided, however, That in the event of the death of an applicant prior to the issuance of a patent, his widow shall be entitled to have a patent for the land applied for issue to her upon showing that she has consummated the requirements of law for homesteading the lands as above set out; and in case the applicant dies before the issuance of the patent and does not leave a widow, then the interest of the applicant in the land shall descend and patent shall issue to the persons who under the laws of the Philippine Islands would have taken had the

title been perfected by patent before the death of the applicant, upon proof by the persons thus entitled of compliance with said requirements and conditions.

"SEC. 4. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuance of a patent therefor.

"SEC. 5. If, at any time after the filing of the application as hereinabove provided and before the expiration of the period allowed by law for the making of final proof, it is proved to the satisfaction of the Chief of the Bureau of Public Lands, after due notice to the homesteader, that the land entered is not under the law subject to homestead entry, or that the homesteader has actually changed his residence, voluntarily abandoned the land for more than six months at any one time during the five years of residence herein required, or has otherwise failed to comply with the requirements of law, then in that event the Chief of the Bureau of Public Lands may cancel the entry, subject to appeal under proper regulations to the Secretary of the Interior, and the land thereupon shall become subject to disposition as other public lands of like character.

"SEC. 6. Not more than one homestead entry shall be allowed to any one person.

"SEC. 7. Before final proof shall be submitted to any person claiming to have complied with the provisions of this chapter, due notice, as prescribed by the Chief of the Bureau of Public Lands with the approval of the Secretary of Interior, shall be given to the public of his intention to make such proof, stating therein the time and place, and giving a description of the land and the names of the witnesses by whom it is expected that the necessary facts will be established.

* * * * *

"SEC. 9. No patent shall issue under the provisions of this chapter until the land has been surveyed under the direction of the Chief of the Bureau of Public Lands and an accurate plat made thereof, the cost of which survey shall be borne by the Insular Government." (*Italics supplied. This law was later amended by Acts Nos. 1573, 1699, 1864, 1908, 2051, 2222, 2325, and repealed by Act No. 2874. This law was replaced completely by Commonwealth Act No. 141 on November 7, 1936.*)

[2] *Juanico vs. American Land Commercial Company*, 97 Phil. 221, citing *Simmons vs. Wagner*, 10 U.S. 260, 68 C.J.S., 875.

[3] See *Uy Un vs. Perez and Villaplana*, 71 Phil. 508, where the principle was applied to occupants of public lands who have not perfected their rights under Section 45 of Act No. 2874.

[4] *Balboa vs. Farrales*, 51 Phil. 498.

[5] In *Fiel, et al. vs. Wages, et al.*, 48 O.G., 195 (January 9, 1950), Justice Concepcion, citing various authorities, reiterated the doctrine that the decisive factor in order to determine whether a land is conjugal property or belongs to one only of the spouses, is not the date of the issuance of the homestead patent but the time of fulfillment of the requirements of the public land law. Although this was a Court of Appeals decision, the same was sustained by the Supreme Court in its resolution of March 22, 1950.

[6] Article 1407. All the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife."

[7] Article 1431, now Article 189, Civil Code.

[8] Articles 1392 and 1426, now Articles 142 and 185, Civil Code.

[9] Article 932, now Article 980, Civil Code.

[10] Article 999, Civil Code.

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