

**RICARDO LACERNA, ET AL., PLAINTIFFS AND APPELLANTS, VS.
AGATONA PAURILLO VDA. DE CORCINO, DEFENDANT AND
APPELLEE. JACOB MARBEBE, INTERVENOR AND APPELLEE.**

G.R. No. L-14603. April 29, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Hoilo declaring that the parcels of land in litigation are property of intervenor Jacoba Marbebe.

This action was instituted by Ricardo, Patrocinia, Patria, Faustino, Leonor, Eamona, Asuncion, Emiliana, Arsenio and Felipe, all surnamed Lacerna, for the recovery of three parcels of unregistered lands, situated in the municipality of Maasin, Iloilo, and more specifically described in the complaint, upon the ground that said lands belonged to the deceased Juan Marbebe, and that his cousins, plaintiffs herein, are his sole heirs.

In her answer, defendant Agatona Vda. de Corcino alleged, inter alia, that Juan Marbebe might still be alive.; that she held the disputed lands, under a power of attorney executed by Juan Marbebe; and that, if he has died, she is entitled to succeed him in the same manner as plaintiffs herein, she being related to him in the same manner as plaintiffs are.

With the court's permission, Jacoba Marbebe filed an answer in intervention alleging that she is a half sister of Juan Marbebe who died intestate, leaving neither ascendants nor descendants, and that, as his half sister, she is entitled, by succession, to the properties in dispute.

After due trial, the court rendered judgment for the intervenor. Hence, this appeal by the plaintiffs.

The lower court found, and appellants do not question, that the lands described in the complaint belonged originally to Bonifacia Lacerna. Upon her death in 1932, they passed, by succession, to her only son, Juan Marbebe who was, subsequently, taken to Culion, where he died intestate, single and without issue, on February 21, 1943. The question for determination is: Who shall succeed him?

It appears that his mother, Bonifacia Lacerna, had two (2) brothers, Catalino Lacerna and Marcelo Lacerna, and a sister, Agatona Paurillo Vda. de Corcino, the defendant herein; that Catalino Lacerna died in 1950 and was survived by his children, plaintiffs Ricardo, Patrocinia and Patria, all surnamed Lacerna; and that Marcelo Lacerna, who died in 1953, was survived by his children, the other plaintiffs herein, namely, Ramona, Faustino, Leonor, Asuncion, Emiliana, Arsenio and Felipe, all surnamed Lacerna. Upon the other hand, intervenor Jacoba Marbebe is a daughter, by first marriage, of Valentin Marbebe, husband of Bonifacia Lacerna and father of Juan Marbebe, who, accordingly, is a half brother of said intervenor.

With this factual background, the issue is narrowed down to whether Jacobo Marbebe, as half sister of Juan Marbebe, on his father's side, is his sole heir, as held by his Honor, the Trial Judge, or whether plaintiffs herein, as first cousins of Juan Marbebe, on his mother side, have a better right to succeed him, to the exclusion of Jacoba

Marbebe, as plaintiffs-appellants maintain.

The latter's pretense is based upon the theory that, pursuant to Article 891 of the Civil Code of the Philippines, establishing what is known as "reserva troncal", the properties in dispute should pass to the heirs of the deceased within the third degree, who belong to the line from which said properties came, and that since the same were inherited by Juan Marbebe from his mother, they should go to his nearest relative' within the third degree on the maternal line, to which plaintiffs belong, not to intervenor, Jacoba Marbebe, despite the greater proximity of her relationship to the deceased, for she belongs to the paternal line.

Jacoba Marbebe contends, however, and the lower court held, that brothers and sisters exclude all other collateral relatives in the order of intestate succession, and that, as Juan Marbebe's half-sister, she has, accordingly, a better right than plaintiffs herein to inherit his properties.

The main flaw in appellants' theory is that it assumes that said properties are subject to the "reserva troncal", which is not a fact, for Article 891 of the Civil Code of the Philippines, provides:

"The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came. " (Italics supplied.)

This article applies only to properties inherited, under the conditions therein set forth, by an ascendant from a descendant, and this is not the case before us, for the lands in dispute were inherited by a descendant, Juan Marbebe, from an ascendant, his mother, Bonifacia Lacerna. Said legal provision is, therefore, not in point, and the transmission of the aforementioned lands, by inheritance, was properly determined by his Honor, the Trial Judge, in accordance with the order prescribed for intestate succession, particularly Article 1003 to 1009 of the Civil Code of the Philippines, pursuant to which a sister, even if only a half-sister, in the absence of other sisters or brothers, or of children of brothers or sisters, excludes all other collateral relatives, regardless of whether or not the latter belong to the line from which the property of the deceased came.

Wherefore, the decision appealed from is hereby affirmed, with costs against plaintiffs-appellants. It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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