

FABIAN PUGEDA, PLAINTIFF-APPELLEE, VS. RAFAEL TRIAS, MIGUEL TRIAS, SOLEDAD TRIAS, ASSISTED BY HER HUSBAND ANGEL SANCHES, CLARA TRIAS, ASSISTED BY HER HUSBAND VICTORIANO SALVANER...

G.R. No. L-16925. March 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

The subject of this action, which was appealed from the Court of First Instance of Cavite, is certain lands acquired from the Friar Lands Estate Administration known as lots Nos. 225, 226, 269, 311, 1803, 1814, 1816, 1832, 2264, 2265, 2266, 2282, 2284, 2378, 2412, 2682, 2683, 2685, 2686, 2688, 2722, 3177 and 3178 of the San Francisco de Malabon estate located in General Trias, Cavite, a house of strong materials, a barn (camarin) also of strong materials, and a store also of strong materials in General Trias, Cavite and sets of household furniture. The plaintiff claims participation in the said properties on the ground that the same were acquired by him and 'f the deceased Maria C. Ferrer, with whom plaintiff contracted marriage in January, 1916 and who died on February 11, 1934.

The defendants Rafael, Miguel, Soledad, Clara, Constancia and Gabriel, all surnamed Trias are the children of the deceased Maria C. Ferrer with her first husband Mariano Trias, while the defendants Teofilo Pugeda and Virginia Pugeda are children of the plaintiff with said deceased Maria C. Ferrer.

The plaintiff alleges that during the lifetime of the marriage between himself and the deceased Maria C. Ferrer, they acquired with conjugal partnership funds lots Nos. 273, 2650, 2680, 2718 and 2764 of the San Francisco de Malabon estate with the following interest therein: 71% in lot No. 273, 82% in lot No. 2650, 77% in lot No. 2652, 77% in lot No. 2080, 64% in lot No. 2718 and 76% in lot No. 2764; that plaintiff is the owner of one-half of the said interest in the lots above-mentioned; that upon the death of Maria C. Ferrer in 1934 plaintiff and defendants became co-owners of said properties and defendants managed the properties in trust as co-owners thereof. Plaintiff prays that the properties above described, acquired as conjugal properties by the plaintiff and deceased Maria C. Ferrer, be partitioned and one-half thereof be given as share therein of plaintiff.

The defendants surnamed Trias and Viniegra denied the claims of the plaintiff to the properties described in the complaint, or that said properties had been administered by the defendants in trust as co-owners with the plaintiff, and by way of special and affirmative defense they alleged that the properties subject of the complaint had been inherited by the defendants from their deceased father Mariano Trias and deceased mother Maria C. Ferrer and had been in possession and full enjoyment thereof for more than 10 years, peacefully, uninterruptedly, quietly and adversely under a claim of ownership to the exclusion of all others, and that plaintiff is estopped from claiming or asserting any rights or participation in the said properties. Defendants Trias also denied for lack of knowledge and belief the claim of plaintiff in his complaint that he was married to Maria C. Ferrer and that the marriage continued up to the death of the latter in 1934. They further presented a counterclaim against the plaintiff for the

sum of P40,000, this amount being what was contributed by them in support of the candidacies of plaintiff when running for the office of provincial governor of Cavite. They also filed a counterclaim for 30 pieces of Spanish gold coins and P5,000 in cash amounting in value to the total sum of P50,000 and a counterclaim for P100,000 which is the value of four big parcels of land belonging to the defendants which the plaintiff had appropriated for his own use.

The defendants Pugeda joined the plaintiff in the latter's claim that the properties mentioned in plaintiff's complaint were joint properties of the plaintiff and the defendants. They also allege that the properties had gone to the management and control of the defendants Trias who should be required to answer for the fruits and profits thereof during the administration by them of said properties. As crossclaim against their co-defendants, they allege that they are each entitled to one-eighth of the properties left by their mother as listed in the first ten paragraphs of the complaint, as well as a share of one-eighth each in lots Nos. 98, 2015 of the San Francisco de Malabon estate and in a parcel of land in Lingad, Litlit in Silang, Cavite and in 60 heads of cattle.

Plaintiff denied the counterclaim of the defendants Trias and the defendants Trias, answering the cross-claim of their co-defendants Pugeda, denied all the allegations contained in the answer of the defendants Pugeda, and further alleged that the cross-claim is improper as the same should be the subject of probate proceedings, and the defendants ii Pugeda are estopped and barred by prescription from claiming any further right to the properties left by their deceased mother.

There are two questions or issues raised in the present case. The first is the alleged existence of a marriage of Fabian Pugeda and Maria C. Ferrer. The second is the claim of the plaintiff to various lands acquired from the Friar Lands Estate under certificates of sale issued first in the name of Mariano Trias and later assigned to Maria C. Ferrer, but paid for in part during the marriage of plaintiff and Maria C. Ferrer, A third but minor issue is the claim for furniture alleged by plaintiff to have been bought by him and Maria C. Ferrer during the marriage, which plaintiff claims is in the possession of the defendants.

On the first issue, the existence of marriage, plaintiff and his witness Ricardo Ricafrente testified that in the afternoon of January 5, 1916, on the eve of Epiphany or Three Kings, plaintiff and the deceased Maria C. Ferrer went to the office of the Justice of the Peace, who was then witness Ricardo Ricafrente, to ask the latter to marry them; that accordingly Ricafrente celebrated the desired marriage in the presence of two witnesses one of whom was Santiago Salazar and another Amado Prudente, deceased; that after the usual ceremony Ricafrente asked the parties to sign two copies of a marriage contract, and after the witnesses had signed the same, he delivered one copy to the contracting parties and another to the President of the Sanitary Division, which officer was at that time the keeper of the records of the civil register. Plaintiff and his witnesses explained that no celebration of the marriage was held in spite of the prominence of the contracting parties because plaintiff was then busy campaigning for the office of Member of the Provincial Board and Maria C. Ferrer was already on the family way.

The defendants denied the existence of the marriage and introduced a photostatic copy of the record of marriages in the municipality of Rosario, Cavite, in the month of January 1916, which showed that no record of the alleged marriage existed therein; but this absence was explained by the Justice of the Peace that perhaps the person who kept the register forgot to make an entry of the marriage in the registry.

Other witnesses were introduced to the effect that after the marriage plaintiff lived in the house of Maria C. Ferrer, which was the house of spouses Mariano Trias and Maria C. Ferrer. Evidence was also submitted to the effect that the first issue was baptized on August 26, 1917 and the one who acted as sponsor was a sister-in-law of Maria C. Ferrer. The baptismal certificate submitted states that the baptized child was the issue of the spouses

Fabian Pugeda and Maria C. Ferrer. The registry of said birth was also submitted and it states that the father is Fabian Pugeda and the mother is Maria C. Ferrer.

It is also not denied that after the marriage, plaintiff cohabited with the deceased wife, as husband and wife, until the death of the latter, publicly and openly as husband and wife. Lastly, a document entitled "Project of Partition" (Exhibit 5-Trias) was signed by the parties defendants themselves. The document contains the following significant statement or admission.

"Whereas, the parties hereto are the only children and forced heirs of the said deceased: Rafael, Miguel, Soledad, Clara, Constancia, and Gahriel, all surnamed Trias y Ferrer, are the children of her first marriage with Mariano Trias, now deceased; and Teofilo and Virginia, both surnamed Pugeda y Ferrer, are the children of her second marriage with Fabian Pugeda.

"x x x That it is hereby agreed by and between the parties hereto that Lots Nos. 3177 and 3178 known as the Buenavista property will be administered by one of the parties to be agreed upon and for said purpose they appoint Miguel F. Trias, and all earnings, rentals and income or profits shall be expended for the Improvement and welfare of the said property and for the payment of all claims and accounts of our deceased mother Maria C. Ferrer, and for the maintenance and education of Teofilo and Virginia Pugeda y Ferrer."

The judge who heard the evidence, after a review of the , testimonial and documental evidence, arrived at the conclusion that plaintiff Fabian Pugeda was in fact married to Maria C. Ferrer on January 5, 1916, this conclusion being borne out not only by the chain of circumstances but also by the testimonies of the witnesses to the celebration of the marriage, who appeared to be truthful, as well as by the fact that plaintiff and deceased Maria C. Ferrer lived together as husband and wife for eighteen years (1916-1934) and there is a strong presumption that they were actually married.

On the competency of the evidence submitted by plaintiff to prove the marriage we cite the following authority:

"ART. 53. — As to marriages contracted subsequently, no proof other than a certificate of the record in the civil register shall be admitted, unless such books have never been kept, or have disappeared, or the question arises in litigation, in which cases the marriage may be proved by evidence of any kind." (p. 27, Civil Code)

"The mere fact that the parish priest who married the plaintiff's natural father and mother, while the latter was in articulo mortis, failed to send a copy of the marriage certificate to the municipal secretary, does not invalidate said marriage, since it does not appear that in the celebration thereof all requisites for its validity were not present, and the forwarding of a copy of the marriage certificate not being one of said requisites." (Madrirdejo vs. De Leon, 55 Phil., 1)

"Testimony by one of the parties to the marriage, or by one of the witnesses to the marriage, has been held to be admissible to prove the fact of marriage. The person who officiated at the solemnization is also competent to testify as an eyewitness to the fact of marriage." (55 C. J. S., p, 900).

In our judgment the evidence submitted shows conclusively that plaintiff Fabian Pugeda was in fact married to Maria C. Ferrer, said marriage subsisting from 1916 until 1934, upon the death of the latter, and we affirm the finding of the trial court to that effect.

On the second issue the evidence introduced at the trial shows that the lands subject of the action were formerly Friar Lands included in the San Francisco de Malabon Estate, province of Cavite, which were acquired under certificates of sale in the name of Mariano Trias in the year 1910 and later assigned to his widow Maria C. Ferrer in the year 1916. The different lots, the dates of their acquisition and assignment to said Maria C. Ferrer, widow, are set forth in a table appended to this decision as Annex "A".

On the basis of the facts about their acquisition and assignment Judge Lucero declared that the lots in question, were conjugal properties of Mariano Trias and Maria C. Ferrer, and consequently decreed that 1/2 thereof, should be adjudicated to Mariano Trias, as the latter's share in the conjugal properties, to be divided among his 6 children at the rate of 1/6 each, and the other half to Maria C. Ferrer, as her share in the conjugal properties, to be assigned to her children by both marriages at the rate of 1/9 each and the balance of 1/9 to widower Fabian Pugeda in usufruct. From this judgment the case was appealed to the Court of Appeals.

When the case was before the Court of Appeals, the attorneys for the defendants presented a motion for new trial on the ground that they discovered copies of four documents namely—Annexes "A", "B", "C", "D" and "E" Record on Appeal, pp. 108-117, (The last document is a copy of a court order issued by Judge Manuel V. Moran approving the project of partition in Case No. 860, Intestate of Mariano Trias) which if admitted might alter decision. The Court of Appeals granted the motion and remanded the case to the Court of First Instance of Cavite for the consideration of said evidence.

Upon the return of the case to the Court of First Instance, Judge Primitivo Gonzales who then presided the court, rendered a new decision. Judge Gonzales found that the total amount paid by Mariano Trias and Maria C. Ferrer on the lots in question amount to only P8,911.84, while the installments paid during the marriage of the spouses Fabian Pugeda and Maria C. Ferrer totaled P35,146.46. He also found that lots 3177 and 3178 were paid for during the marriage of Pugeda and Ferrer in the total sum of P16,557.32. Judge Gonzales therefore ruled that the two marriages should participate in the ownership of the lands, according to the actual contributions made by each marriage in the installments in payment of the lands. The dispositive part of the decision, now subject of the appeal is as follows:

"IN VIEW OF THE FOREGOING CONSIDERATION, the Court hereby renders judgment:

- That lots 2378, 225, 226, 269, 311, 1808, 1804, 1816, 1832, 2264,, 2265, 2282, 2284, 2412, 2682, 273, 2650, 2652, 2680, 2718, 2764, (21 lots) are conjugal assets of Pugeda and Maria C. Ferrer in the proportion of percentage and indicated in each individual lot;
- That lots 3177 and 3178, since all the installments for the same were fully paid during the marriage of Pugeda and Maria C. Ferrer are hereby declared conjugal of the couple Pugeda and Ferrer; and even some of the installments for these two lots were paid after death of Maria G. Ferrer, they do not lose the character of conjugal property for payments were :nade from the crops thereof;
- That since Mariano Trias during his marriage to Maria C. Ferrer contributed in the "payment for the installments of these 21 lots amounting to P8,911.84, half of which must be reimbursed in favor of the children or heirs of Mariano Trias to be paid from the mass of the hereditary estate of Maria C. Ferrer; the other half of P4,455.92 to be distributed among all the children of heirs of Maria C. Ferrer in her first and second marriage to be deducted from the mass of her estate;
- That lots 2266, 2683, 2685, 2686, 2688 and 2722 since all the installments for these six (6) lots were fully paid during marriage of Mariano Trias and Maria C. Ferrer, they are hereby declared to be conjugal between them—one half of which must go to the children or heirs of Mariano Trias, the other half must equally go to the children or heirs of Maria C. Ferrer in her first and second marriage;
- That Miguel Trias as administrator of all the properties which commenced after the death of his mother who died on February 11, 1934, must render an accounting of his administration within three (3) months time from the date this judgment has become final.
- That defendants Trias to pay the costs of this action." (Record on Appeal, pp. 154-156)

Against this ruling the appeal has come to this Court. Defendants-appellants claim that Judge Gonzales had no power or authority to change the decision of Judge Lucero, as it was not he but Judge Lucero himself, who had heard the evidence. They have also assigned before Us a set of errors which may be boiled down to the three main issues set forth above. As the issue of marriage has already been considered we will now pass to the second and more important question as to whether the lands subject of the action may be considered conjugal properties of the first marriage or of the second or of both.

A consideration of the legal nature and character of the acquisition of the various lots is necessary that the issues in the action may be justly determined.

A study of the provisions of the Friar Lands Act (Act No. 1120) discloses that the friar lands were purchased by the government for sale to actual occupants (actual settlers and occupants at the time said lands' are acquired by the Government). (Paragraph 3 of Declaration of Purposes, Act 1120). The said act expressly declares that the lands are not public lands in the sense in which this word is used in the Public Land Act, and their acquisition is not governed by the provisions of the Public Land Act (Par. IV, Declaration of Purposes, Id.)

The pertinent provisions of said Act No. 1120 are as follows:

"Sec. 12.—x x x. When the costs thereof shall have been thus ascertained, the Chief of the Bureau of Public Lands shall give the said settler, and occupant a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act at the office of the Chief of the Bureau of Public Lands, in gold coin of the United States or its equivalent in Philippine currency, and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act. x x x."

"Sec. 13.—The acceptance by the settler and occupant of such certificate shall be considered as an agreement by him to pay the purchase price so fixed and in the installments and at the interest specified in the certificate, and he shall by such acceptance become a debtor to the Government in that amount together with all accrued interest. x x x Provided, however, That every settler and occupant who desires to purchase his holding must enter into the agreement to purchase such holding by accepting the said certificate and executing the said receipt whenever called on so to do by the Chief of the Bureau of Public Lands, and a failure on the part of the settler and occupant to comply with this requirement shall be considered as a refusal to purchase, and he shall be ousted as above provided and thereafter his holding may be leased or sold as in case of unoccupied lands: x x x."

"Sec. 15.—The Government hereby reserves the title to each and every parcel of land sold under the provisions of this Act until the full payment of all installments of purchase money and interest by the purchaser has been made, and any sale or incumbrance made by him shall be invalid as against the Government of the Philippine Islands and shall be in all respects subordinate to its prior claim."

"Sec. 16.—In the event of the death of a holder of a certificate the issuance of which is provided for in section twelve hereof, prior to the execution of a deed by the Government to any purchaser, his widow shall be entitled to receive a deed of the land stated in the certificate upon showing that she has complied with the requirements of law for the purchase of the same. In case a holder of a certificate dies before the giving of the deed and does not leave a widow, then the interest of the holder of the certificate shall descend and deed shall issue to the persons who under the laws of the Philippine Islands would have taken had the title been perfected before the death of the holder of the certificate, upon proof of the holders thus entitled of compliance with all the requirements of the certificate. In case the holder of the certificate shall have sold his interest in the land before having complied with all the conditions thereof, the purchaser from the holder of the certificate shall be

entitled to all the rights of the holder of the certificate upon presenting his assignment to the Chief of the Bureau of Public Lands for registration." (Vol. III, Public Laws, pp. 315-316).

A study of the above quoted provisions clearly indicates that the conveyance executed in favor of a buyer or purchaser, or the so-called certificate of sale, is a conveyance of the ownership of the property, subject only to the resolutory condition that the sale may be canceled if the price agreed upon is not paid for in full. In the case at bar the sale certificates were made in favor of Mariano Trias, and upon his death they were assigned in accordance with Sec. 16, to his widow. But the law provides that when the buyer does not leave a widow, the rights and interests of the holder of the certificate of sale are left to the buyer's heirs in accordance with the laws of succession. In the case of the Director of Lands, et al., vs. Ricardo Rizal, et al., 87 Phil., 806, this court thru Mr. Justice Montemayor held:

"x x x All this clearly and inevitably leads to the conclusion that the purchaser, even before the payment of the full price and before the execution of the final deed of conveyance, is considered by the law as the actual owner of the lot purchased, under obligation to pay in full the purchase price, the role or position of the Government being that of a mere lien holder or mortgagee.

"x x x In conclusion, we find and hold that in the sale of a Friar Lands lot or parcel under Act 1120, pending payment in full of the purchase price, altho the Government reserves title thereto, merely for its protection, the beneficial and equitable title is in the purchaser, and that any accretion received by the lot even before payment of the last installment belongs to the purchaser thereof."

We also invite attention to the fact that a sale of friar lands is entirely different from a sale of public lands under the provisions of the Public Land Act. In the case of public lands, a person who desires to acquire must first apply for the parcel of land desired. Thereafter the land is opened for bidding. If the land is awarded to an applicant or to a qualified bidder the successful bidder is given a right of entry to occupy the land and cultivate and improve it, (Sees. 22-28, Commonwealth Act 141). It is only after satisfying the requirements of cultivation and improvement of 1/5 of the land that the applicant is given a sales patent. (Sec. 30)

In the case of friar lands the purchaser becomes the owner upon issuance of the certificate of sale in his favor, subject only to cancellation thereof in case the price agreed upon is not paid. In case of sale of public lands if the applicant dies and his widow remarries both she and the second husband are entitled to the land; the new husband has the same right as his wife. Such is not the case with friar lands. As indicated in Section 16 of Act 1120, if a holder of a certificate dies before the payment of the price in full, the sale certificate is assigned to the widow, but if the buyer does not leave a widow, the right to the friar land is transmitted to his heirs at law.

It is true that the evidence shows that of the various parcels of land now subject of the action none was paid for in full during the marriage of Mariano Trias and Maria C. Ferrer, and that payments in installments continued to be made even after the marriage of Pugeda and Maria C. Ferrer on January 5, 1916. But it is also true that even after said marriage the certificates of sale were assigned to Maria C. Ferrer and installments for the lots after said marriage continued in the name of Maria C. Ferrer; also all the amounts paid as installments for the lots were taken from the fruits of the properties themselves, according to the admission of plaintiff Fabian Pugeda himself, thus:

"Mr. Viniegra:

Q—

De los productos de esos terrenos, durante la administration por loa demandados, recibia Vd. su participacion?

A—

No, senor.

Q—

Nunca?

A—

Because I know there are obligations to be paid to the Bureau of Lands, and I have been informed that the obligations have been paid annually from the products of the land.

Q—

Therefore, from the products of these lands—the proceeds—the obligations to the Bureau of Lands are being discounted from the said proceeds and after the remainder, as in palay, are equally divided, is that what you mean to say?

A—

Perhaps they were following the practice that, from the products of the lands the obligations to the Bureau of Lands would be paid.

Court:

Q—

Pero Vd. no ha recibido ninguna cantidad, o sea les darian alguna participacion?

A—

No senor, porque estaba en Manila, but they informed me that the obligations to the Bureau of Lands were being paid from the products of the lands.

Mr. Viniegra:

Q—

You do not claim any participation in the remainder of the products after paying the Bureau of Lands?

A—

How would I ask for I knew they were still paying the obligations to the Bureau of Lands—that was until the Japanese time, and I knew some obligations were not paid, as a result of which the sales certificates of some big lots were cancelled.

Court:

Q—

Como se mantenía Vd?

A—

Mi Madre tenía la casa en Manila y ella recibía alguna renta. My mother helped me. (Session of November 20, 1951, before Judge A. G. Lucero, pp. 259-261, Matro.) (Brief for Defendants-Appellants, pp. 49-51).

There is another reason why the above conclusion must be upheld in the case at bar, and that is the fact that in the proceedings for the settlement of the estate of the deceased Mariano Trias, which was instituted in August 1915, the inventory of the estate left by said deceased included the lots purchased from the Friar Lands Estates (Exh. 2, Trias) and the project of partition in said especial proceedings submitted to the court as Exh. 3-Trias adjudicated 1/2 of said lands as the share of Mariano Trias in the conjugal properties, the other 1/2 being awarded to Maria C. Ferrer.

The above considerations, factual and legal, lead us to the inevitable conclusion that the friar lands purchased as above described and paid for, had the character of conjugal properties of the spouses Mariano Trias and Maria C. Ferrer. But another compelling legal reason for this conclusion as against plaintiff, is the judicial pronouncement : on said nature of the lands in question. In the year 1915, even before the marriage of plaintiff and Maria C. Ferrer took place, the latter was appointed administratrix of the estate of her deceased husband Mariano Trias in Civil Case No. 860 of the Court of First Instance of Cavite (Exh. "1" Trias). An inventory of the estate left by the deceased Mariano Trias, dated January 15, 1929, was submitted by her and on April 10, 1929, the project of partition of the properties was submitted. The project includes the friar lands subject of the action, and in accordance with it one-half of the properties listed in the inventory was adjudicated to the deceased Mariano Trias as his share and the other half adjudicated to Maria C. Ferrer also as her share. The share of Mariano Trias was decreed in favor of his children and heirs. This project of partition was approved by Judge Manuel V. Moran in an order dated February 11, 1929, submitted to the Court of Appeals as Annex "E", pp. 114-115 of the record on appeal.

The pendency of the above intestate proceedings for the settlement of the estate of Mariano Trias must have been known to plaintiff Fabian Pugeda, who is a lawyer. It does not appear, and neither does he claim or allege, that he ever appeared in said proceedings to claim participation in the properties subject of the proceedings. His failure to intervene in the proceedings to claim that the friar lands or some of them belonged to himself and his wife Maria C. Ferrer, shows a conviction on his part that the said friar lands actually belonged to the spouses Mariano Trias and Maria C. Ferrer, and that he had no interest therein. The project of partition was approved as late as 1929, by which time plaintiff and defendant had already been married for a period of 13 years. Plaintiff's failure to assert any claim to the properties in the said intestate proceedings during its pendency now bars him absolutely from asserting the claim that he now pretends to have to said properties.

We will now proceed to consider plaintiff's claim that the lands in question had, through the joint effort of himself and his wife, increased in productivity from 900 cavans to 2,400 cavans of rice because of the introduction therein of improvements such as a system of irrigation for the lands. If, as admitted by plaintiff himself, the installments remaining unpaid were taken from the produce or the yield of the said lands and if it be taken into account that one-half of said lands already belonged to the children of the first marriage, to whom the lands were adjudicated in the settlement of the estate of their father, the deceased Mariano C. Trias, the only portion of the products or produce of the lands in which plaintiff could claim any participation is the one-half share therein produced from the paraphernal properties of Maria C. Ferrer. How much of said produce belonging to Maria C. Ferrer was

actually used in the improvement of the lands is not shown, but the fact that plaintiff was engaged in continuous political campaigns, ever since his marriage in 1916 (he had devoted most of his time while married to Maria C. Ferrer to politics), portions of the products of the paraphernal properties of Maria C. Ferrer must have been used in these political campaigns as well as in meeting the expenses of the conjugal partnership. The value of the useful improvements introduced on the lands, joint properties of Maria C. Ferrer and her children, was not proved in court by plaintiff. Hence the provisions of Article 1404 of the old Civil Code, to the effect that useful expenditures for the benefit of the separate properties of one of the spouses are partnership properties, cannot be applied. But even if such useful improvements had been proved, the statute of limitations bars plaintiff's action to recover his share therein because Maria C. Ferrer died in 1934, whereas the present action was instituted by plaintiff only in the year 1948. After the death of Maria C. Ferrer, plaintiff came to Manila, took a second wife, and was not heard from for 14 years, that is, until he instituted this action in 1948. His claims for the improvements, if any, is therefore also barred.

The above ruling, that the action to demand his share in the value of the improvements in the paraphernal properties of Maria C. Ferrer is barred, is also applicable to the claim of the plaintiff herein for the construction alleged to have been made and the furniture supposedly bought by him and his spouse Maria C. Ferrer, and which had the character of conjugal partnership property of said spouses. In the year 1935, defendant herein presented a project of partition to plaintiff for his signature (the project of partition is dated March, 1935 and is marked Exhibit "5"-Trias). In this project of partition of the properties of the deceased Maria C. Ferrer, mention is made of the participation of the plaintiff's children with the deceased Maria C. Ferrer, but no mention is made therein of any participation that plaintiff had or could have as usufruct or otherwise, or in any building or improvement. This deed of partition was shown to plaintiff but the latter did not sign it.

The express omission of the name of plaintiff herein in the above deed of partition as one of the heirs of the deceased Maria C. Ferrer was enough notice to plaintiff that defendants had intended to deprive him of any share or participation in the properties left by the deceased Maria C. Ferrer, even of the usufruct that the law assigns to him. But in spite of his knowledge of this fact no action was taken by him until February, 1948 when plaintiff demanded his share in the properties and later brought this action.

The period of around 13 years therefore elapsed before plaintiff instituted this action. Consequently, whatever rights he may have had to any portion of the estate left by the deceased Maria C. Ferrer, as a usufructuary or otherwise, must be deemed to have prescribed. As a consequence, we find that the order of Judge Lucero granting to the plaintiff herein one-ninth share in the estate of the deceased Maria C. Ferrer in usufruct should be set aside and the objection to the grant of such share to plaintiff on the ground of prescription is sustained.

Having disposed of the claims of plaintiff Fabian Pugeda, we will now proceed to consider the cross-claim of his children, namely, Teofilo Pugeda and Virginia Pugeda. Judge Lucero decreed that the properties left by the deceased Maria C. Pugeda be divided among her children, including the two cross-claimants Teofilo Pugeda and Virginia Pugeda, and decreed one-ninth of the properties of the said deceased Maria C. Ferrer to each of these two children of hers with the plaintiff and assigning also to the plaintiff one-ninth share in the said estate left by her in usufruct.

In view of our finding that the claim of the plaintiff to any share in the estate of his wife Maria C. Ferrer is already barred by the statute of limitations, the decree entered by Judge Lucero declaring that heir properties be divided into nine parts, one part belonging to each heir and one to plaintiff in usufruct, is hereby modified, by eliminating the share in usufruct of the plaintiff therein and increasing the share of each of her heirs to one-eighth.

FOR ALL THE FOREGOING CONSIDERATIONS, the plaintiff's complaint is hereby dismissed, and the

judgment of the Court of First Instance of Cavite, Hon. Antonio G. Lucero, presiding, decreeing the division of the properties of the deceased Maria C. Ferrer among her eight children and plaintiff, is hereby modified in the sense that all of her properties be divided among her eight children at the rate of one-eighth per child. As thus modified, the judgment of Judge Lucero is hereby affirmed. Without costs.

Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.
Benzon, C.J., and Padilla, J., took no part.

A N N E X "A"

Lands included in action—Dates of acquisition and assignment.

Lot

Date of Sale

Date

Certificate

Number

to Mariano Trias

Assignment to

of Title

Maria C. Ferrer

225

April 30, 1960

May 17, 1915

—

226

April 5, 1910

May 17, 1915

—

269

April 5, 1910

May 17, 1915

—

311

April 13, 1910

May 17, 1915

—

1808 (3)

April 13, 1910

May 15, 1915

—

1814

Not known

May 17, 1915

—

1816

April 13, 1910

May 17, 1915

—

1832

April 13, 1910

May 17, 1915

—

2284

Nov. 1, 1910

Not known

July 11, 1924

2265

Nov. 1, 1910

July 11, 1924

—

2266

Nov. 1, 1910

Not known

July 11, 1924

2282

April 30, 1910

Not known

July 11, 1924

2284

Nov. 1, 1910

Not known

July 11, 1924

2378

April 30, 1910

May 17, 1915

—

2412

April 30, 1910

May 17, 1915

—

2682

Nov. 1, 1910

Not known

July 11, 1924

2683

Nov. 1, 1910

Not known

July 11, 1924

2685

Nov. 1, 1910

Not known

July 11, 1924

2686

Nov. 1, 1910

Not known

—

2688

Nov. 1, 1910

Not known

July 11, 1924

2722

Jan. 1, 1913

Not known

—

3177

Jan. 25, 1913

May 17, 1915

—

3178

Jan. 25, 1913

May 17, 1915

—

Other facts included in the complaint on which evidence was submitted are the following:

273

April 30, 1910

May 17, 1915

—

2650

April 27, 1910

April 17, 1915

—

2672

April 30, 1910

May 17, 1915

—

2718

April 30, 1910

May 17, 1915

—

2765

April 30, 1910

May 17, 1915

Two other additional lots are the following:

2225

July 1, 1909

May 17, 1915

—

2226

July 1, 1909

—

Sept. 20, 1924

Sold to Ignacio Ascano

later to M. Trias on

July 1, 1910

RESOLUTION

July, 24, 1962

Labrador, J.:

This resolution concerns a motion for the reconsideration of the decision rendered by this Court. The main argu-ment in support of the motion is that the lots not fully paid for at the time of the death of Miguel Trias,

which lots were, by provision of the Friar Lands Act (Act No. 1120), subsequently transferred to the widow's name and later paid for by her out of the proceeds of the fruits of the lands purchased, and for which titles were issued in the name of the widow, belong to the latter as her exclusive paraphernal properties, and are not conjugal properties of her deceased husband and herself. In our decision we laid down the rule that upon the issuance of a certificate of sale to the husband of a lot in a friar lands estate, purchased by the Government from the friars, the land becomes the property of the husband and the wife, and the fact that the certificate of sale is thereafter transferred to the wife does not change the status of the property so purchased as conjugal property of the deceased husband and wife. The reason for this ruling is the provision of the Civil Code to the effect that properties acquired by husband and wife are conjugal properties. (Art. 1401, Civil Code of Spain.) The provision of the Friar Lands Act to the effect that upon the death of the husband the certificate of sale is transferred to the name of the wife is merely an administrative device designed to facilitate the documentation of the transaction and the collection of installments; it does not produce the effect of destroying the character as conjugal property of the lands purchased. Hence the issuance of the title, after completion of the installments, in the name of the widow does not make the friar lands, purchased her own paraphernal property. The said lands, notwithstanding a certificate of sale, continue to be the conjugal property of her deceased husband and herself.

The case of *Arayata vs. Joya, et al.*, 51 Phil. 654, cited by the movants, is not applicable to the case at bar because it refers to the superior rights of the widow recognized in Section 16 of Act No. 1120 over transfers made by the husband which have not been approved by the Director of Lands. As a matter of fact the syllabus in said case is as follows:

"Widow's Rights.—The widow of a holder of a certificate of sale of friar lands acquired by the Government has an exclusive right to said lands and their fruits from her husband's death, provided that the deceased has not conveyed them to another during his lifetime and she fulfills the requirements prescribed by the law for the purchase of the same."

A minor ground for the reconsideration is that the decision of Judge Lucero, having been set aside by the Court of Appeals, could not be affirmed by Us. The setting aside of the said decision was due to the fact that newly discovered evidence was found regarding the partition of the estate of the deceased. The setting aside of the decision was not aimed or directed at the judge's ruling that the properties acquired by the husband during his lifetime from the friar lands estate were conjugal properties of the husband and the wife.

The third ground raised is that the lots were never partitioned as conjugal assets of Mariano Trias and Maria C. Ferrer. One of the arguments adduced in favor of the claim of the movants that the properties in question, which were acquired during the lifetime of Mariano Trias, were never partitioned is that, according to the records of the Register of Deeds and according to the friar lands agents, the alleged partition of the said properties as conjugal properties of the deceased Mariano Trias and Maria C. Ferrer had not been registered in said offices. The failure to make the registration is perhaps due to the neglect of the heirs. The fact, however, remains that the exhibits presented in Court, especially Exhibit "3-Trias" and Annex "E", which are the project of partition and the approval thereof, cannot be ignored by this Court. The neglect of the parties is not actually partitioning the properties does not argue in favor of the fact that partition was not actually decreed. Adjudications may be made pro indiviso without actual division or partition of the properties among the heirs.

Wherefore, the motion for reconsideration is hereby denied and the judgment rendered declared final. So ordered.

Bengzon, C. J., Padilla, Concepcion, Barrera, Paredes, and Dizon, JJ., concur

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