

**FRANCISCO DEL VAL ET AL., PLAINTIFFS AND APPELLANTS, VS.
ANDRES DEL VAL, DEFENDANT AND APPELLEE.**

G.R. No. L-9374. February 16, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila dismissing the complaint with costs.

The pleadings set forth that the plaintiffs and defendant are brothers and sisters; that they are the only heirs at law and next of kin of Gregorio Nacianceno del Val, who died in Manila on August 4, 1910, intestate; that an administrator was appointed for the estate of the deceased, and, after a partial administration, it was closed and the administrator discharged by order of the Court of First Instance dated December 9, 1911; that during the lifetime of the deceased he took out insurance on his life for the sum of P40,000 and made it payable to the defendant as sole beneficiary; that after his death the defendant collected the face of the policy; that of said policy he paid the sum of P18,365.20 to redeem certain real estate which the decedent had sold to third persons with a right to repurchase; that the redemption of said premises was made by the attorney of the defendant in the name of the plaintiffs and the defendant as heirs of the deceased vendor; that the redemption in the name of the plaintiffs was, so defendant declares, without his knowledge or consent; that since the redemption of said "premises they have been in the possession of the plaintiffs, who have had the use and benefit thereof; that during that time the plaintiffs paid no taxes and made no repairs.

It further appears from the pleadings that the defendant, on the death of the deceased, took possession of most of his personal property, which he still has in his possession, and that he has also the balance on said insurance policy amounting to P21,634.80.

Plaintiffs contend that the amount of the insurance policy belonged to the estate of the deceased and not to the defendant personally; that, therefore, they are entitled to a partition not only of the real and personal property, but also of the P40,000 life insurance. The complaint prays a partition of all the property, both real and personal, left by the deceased; that the defendant account for P21,634.80, and that that sum be divided equally among the plaintiffs and defendant along with the other property of deceased.

The defendant denies the material allegations of the complaint and sets up as special defense and counterclaim that the redemption of the real estate sold by his father was made in the name of the plaintiffs and himself instead of in his name alone without his knowledge or consent; and that it was not his intention to use the proceeds of the insurance policy for the benefit of any person but himself, he alleging that he was and is the sole owner thereof and that it is his individual property. He, therefore, asks that he be declared the owner of the real estate redeemed by the payment of the P18,365.20, the owner of the remaining P21,634.80, the balance of the insurance policy, and that the plaintiffs account for the use and occupation of the premises so redeemed since the date of the redemption.

The learned trial court refused to give relief to either party and dismissed the action.

It says in its opinion: "This purports to be an action for partition, brought against an heir by his coheirs. The complaint, however, fails to comply with Code Civ. Pro. sec. 183, in that it does not 'contain an adequate description of the real property of which partition is demanded.' Because of this defect (which has not been called to our attention and was discovered only after the cause was submitted) it is more than doubtful whether any relief can be awarded under the complaint, except by agreement of all the parties."

This alleged defect of the complaint was made one of the two bases for the dismissal of the action.

We do not regard this as sufficient reason for dismissing the action. It is the doctrine of this court, set down in several decisions, *Lizarraga Hermanos vs. Yap Tico*, 24 Phil. Rep., 504, that, even though the complaint is defective to the extent of failing in allegations necessary to constitute a cause of action, if, on the trial of the cause, evidence is offered which establishes the cause of action which the complaint intended to allege, and such evidence is received without objection, the defect is thereby cured and cannot be made the ground of a subsequent objection. If, therefore, evidence was introduced on the trial in this case definitely and clearly describing the real estate sought to be partitioned, the defect in the complaint was cured in that regard and should not have been used to dismiss the action. We do not stop to inquire whether such evidence was or was not introduced on the trial, inasmuch as this case must be returned for a new trial with opportunity to both parties to present such evidence as is necessary to establish their respective claims.

The court in its decision further says: "It will be noticed that the provision above quoted refers exclusively to real estate. * * * It is, in other words, an exclusive real 'property action, and the institution thereof gives the court no jurisdiction over chattels. * * * But no relief could possibly be granted in this action as to any property except the last (real estate), for the law contemplated that all the personal property of an estate be distributed before the administration is closed. Indeed, it is only in exceptional cases that the partition of the real estate is provided for, and this too is evidently intended to be effected as a part of the administration, but here the complaint alleges that the estate was finally closed on December 9, 1911, and we find upon referring to the record in that case that subsequent motions to reopen the same were denied; so that the matter of the distribution of the personal property at least must be considered *res judicata* (for the final judgment in the administration proceedings must be treated as concluding not merely what was adjudicated, but what might have been). So far, therefore, as the personal property at least is concerned, plaintiffs' only remedy was an appeal from said order."

We do not believe that the law is correctly laid down in this quotation. The courts of the Islands have jurisdiction to divide personal property between the common owners thereof and that power is as full and complete as is the power to partition real property. If an actual partition of personal property cannot be made it will be sold under the direction of the court and the proceeds divided among the owners after the necessary expenses have been deducted.

The administration of the estate of the decedent consisted simply, so far as the record shows, in the payment of the debts. No division of the property, either real or personal, seems to have been made. On the contrary, the property appears, from the record, to have been turned over to the heirs in bulk. The failure to partition the real property may have been due either to the lack of request to the court by one or more of the heirs to do so, as the court has no authority to make a partition of the real estate without such request; or it may have been due to the fact that all the real property of decedent had been sold under *pacto de retro* and that, therefore, he was not the owner of any real state at the time of his death. As to the personal property, it does not appear that it was disposed of in the manner provided by law. (Sec. 753, Code of Civil Procedure.) So far as this action is concerned, however, it is sufficient for us to know that none of the property was actually divided among the heirs in the administration

proceedings and that they remain coowners and tenants-in-common thereof at the present time. To maintain an action to partition real or personal property it is necessary to show only that it is owned in common.

The order finally closing the administration and discharging the administrator, referred to in the opinion of the trial court, has nothing to do with the division of either the real or the personal property. The heirs have the right to ask the probate court to turn over to them both the real and personal property without division; and where that request is unanimous it is the duty of the court to comply with it, and there is nothing in section 753 of the Code of Civil Procedure which prohibits it. In such case an order finally settling the estate and discharging the administrator would not bar a subsequent action to require a division of either the real or personal property. If, on the other hand, an order had been made in the administration proceedings dividing the personal or the real property, or both, among the heirs, then it is quite possible that, to a subsequent action brought by one of the heirs for a partition of the real or personal property, or both, there could have been interposed a plea of *res judicata* based on such order. As the matter now stands, however, there is no ground on which to base such a plea. Moreover, no such plea has been made and no evidence offered to support it.

With the finding of the trial court that the proceeds of the life-insurance policy belong exclusively to the defendant as his individual and separate property, we agree. That the proceeds of an insurance policy belong exclusively to the beneficiary and not to the estate of the person whose life was insured, and that such proceeds are the separate and individual property of the beneficiary, and not of the heirs of the person whose life was insured, is the doctrine in America. We believe that the same doctrine obtains in these Islands by virtue of section 428 of the Code of Commerce, which reads:

"The amounts which the underwriter must deliver to the person insured, in fulfillment of the contract, shall be the property of the latter, even against the claims of the legitimate heirs or creditors of any kind whatsoever of the person who effected the insurance in favor of the former."

It is claimed by the attorney for the plaintiffs that the section just quoted is subordinated to the provisions of the Civil Code as found in article 1035. This article reads:

"An heir by force of law surviving with others of the same character to a succession must bring into the hereditary estate the property or securities he may have received from the deceased during the life of the same, by way of dowry, gift, or for any good consideration, in order to compute it in fixing the legal portions and in the account of the division."

Counsel also claims that the proceeds of the insurance policy were a donation or gift made by the father during his lifetime to the defendant and that, as such, its ultimate destination is determined by those provisions of the Civil Code which relate to donations, especially article 819. This article provides that "gifts made to children which are not betterments shall be considered as part of their legal portion."

We cannot agree with these contentions. The contract of life insurance is a special contract and the destination of the proceeds thereof is determined by special laws which deal exclusively with that subject. The Civil Code has no provisions which relate directly and specifically to life-insurance contracts or to the destination of life insurance proceeds. That subject is regulated exclusively by the Code of Commerce which provides for the terms of the contract, the relations of the parties and the destination of the proceeds of the policy.

The proceeds of the life-insurance policy being the exclusive property of the defendant and he having used a portion thereof in the repurchase of the real estate sold by the decedent prior to his death with right to repurchase, and such repurchase having been made and the conveyance taken in the names of all of the heirs instead of the defendant alone, plaintiffs claim that the property belongs to the heirs in common and not to the defendant alone.

We are not inclined to agree with this contention unless the fact appear or be shown that the defendant acted as he

did with the intention that the other heirs should enjoy with him the ownership of the estate—in other words, that he proposed, in effect, to make a gift of the real estate to the other heirs. If it is established by the evidence that that was his intention and that the real estate was delivered to the plaintiffs with that understanding, then it is probable that their contention is correct and that they are entitled to share equally with the defendant therein. If, however, it appears from the evidence in the case that the conveyances were taken in the name of the plaintiffs without his knowledge or consent, on that it was not his intention to make a gift to them of the real estate, then it belongs to him. If the facts are as stated, he has two remedies. The one is to compel the plaintiffs to reconvey to him and the other is to let the title, stand with them and to recover from them the sum he paid on their behalf.

For the complete and proper determination of the questions at issue in this case, we are of the opinion that the cause should be returned to the trial court with instructions to permit the parties to frame such issues as will permit the settlement of all the questions involved and to introduce such evidence as may be necessary for the full determination of the issues framed. Upon such issues and evidence taken thereunder the court will decide the questions involved according to the evidence, subordinating his conclusions of law to the rules laid down in this opinion.

We do not wish to be understood as having decided in this opinion any question of fact which will arise on the trial and be there in controversy. The trial court is left free to find the facts as the evidence requires. To the facts as so found he will apply the law as herein laid down.

The judgment appealed from is set aside and the cause returned to the Court of First Instance whence it came for the purposes hereinabove stated. So ordered.

Arellano, C. J., and Carson, J., concur.

Torres, J., concurs in the result.

Araullo, J., concurs. (See page 624, post.)

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