

BEATRIZ L. GONZALEZ, PETITIONER, VS. COURT OF FIRST INSTANCE OF MANILA (BRANCH V), BENITO F. LEGARDA, ROSARIO L. VAL-DES, ALEJANDRO LEGARDA, TERESA LEGARDA, JOSE LE-GARDA, BENIT...

G.R. No. L-34395. May 19, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Beatriz Legarda Gonzalez appealed from the decision of the Court of First Instance of Manila, dismissing her complaint for partition, accounting, reconveyance and damages and holding, as not subject to reserva troncal, the properties which her mother Filomena Roces inherited in 1943 from Filomena Legarda (Civil Case No. 73335). The facts are as follows:

Benito Legarda y De la Paz, the son of Benito Legarda y Tuason, died in Manila on June 17, 1933. He was survived by his widow, Filomena Roces, and their seven children: four daughters named Beatriz, Rosario, Teresa and Filomena and three sons named Benito, Alejandro and Jose.

On July 12, 1939, the real properties left by Benito Legarda y Tuason were partitioned in three equal portions by his daughters, Consuelo and Rita, and the heirs of his deceased son Benito Legarda y De la Paz who were represented by Benito F. Legarda.

Filomena Legarda y Roces died intestate and without issue on March 19, 1943. Her sole heiress was her mother, Filomena Roces Vda. De Legarda.

Mrs. Legarda executed on May 12, 1947 an affidavit adjudicating extrajudicially to herself the properties which she inherited from her deceased daughter, Filomena Legarda. The said properties consist of the following:

- (a) Savings deposit in the National City Bank of New York with a credit balance of P3,699.63.
 - (b) 1,429 shares of the Benguet Consolidated Mining Company and a 1/7 interest in certain shares of the San Miguel Brewery, Tuason & Legarda, Ltd., Philippine Guaranty Company, Insular Life Assurance Company and the Manila Times.
 - (c) 1/7 of the properties described in TCT Nos. 80226, 80237 to 80243 (7 titles), 80260, 80261 and 57512 of the Manila registry of deeds.
- 1/21st of the properties covered by TCT Nos. 48164, 84714, 48201, 48202, 48205, 48203, 48206, 48160 and 48192 of the Manila registry of deeds;
- 1/21st of the property described in TCT No. 4475 of the registry of deeds of Rizal, now Quezon City; 1/14th of the property described in TCT No. 966 of the registry of deeds of Baguio;
- 1/7th of the lot and improvements at 127 Aviles described in TCT No. 41862 of the Manila registry of deeds;

1/7th of the lots and improvements at 181 San Rafael described in TCT Nos. 50495 and 48161 of the Manila registry of deeds;

1/7th of the property described in TCT No. 48163 of the Manila registry of deeds (Streets);

1/21st of the properties described in TCT Nos. 48199 and 57551 of the Manila registry of deeds (Streets and Estero);

2/21st of the property described in TCT No. 13458 of the registry of deeds of Tayabas.

These are the properties in litigation in this case. As a result of the affidavit of adjudication, Filomena Roces succeeded her deceased daughter Filomena Legarda as co-owner of the properties held proindiviso by her other six children.

Mrs. Legarda on March 6, 1953 executed two hand-written identical documents wherein she disposed of the properties, which she inherited from her daughter, in favor of the children of her sons, Benito, Alejandro and Jose (sixteen grandchildren in all). The document reads:

"A mis hijos:

"Dispongo que se reparta a todos mis nietos, hijos de Ben, Mandu y Pepito, los bienes que he heredado de mi difunta hija Filomena y tambien los acciones de la Destileria 'La Rosario' recientemente comprada a los hermanos Valdes Legarda.

"De los bienes de mi hija Filomena se deducira un lote de terreno que yo he donada a las Hijas de Jesus, en Guipit.

"La casa No. 181 San Rafael, la cedo a mi hijo Mandu, solo la casa; porque ella esta construida sobre terreno de los hermanos Legarda Roces.

"(Sgd.) Filomena Roces Legarda

"6 Marzo 1953"

During the period from July, 1958 to February, 1959 Mrs. Legarda and her six surviving children partitioned the properties consisting of the one-third share in the estate of Benito Legarda y Tuason which the children inherited in representation of their father, Benito Legarda y De la Paz.

Mrs. Legarda died on September 22, 1967. Her will was admitted to probate as a holographic will in the order dated July 16, 1968 of the Court of First Instance of Manila in Special Proceeding No. 70878, Testate Estate of Filomena Roces Vda. de Legarda. The decree of probate was affirmed by the Court of Appeals in Legarda vs. Gonzalez, CA-G.R. No. 43480-R, July 30, 1976.

In the testate proceeding, Beatriz Legarda Gonzalez, a daughter of the testatrix, filed on May 20, 1968 a motion to exclude from the inventory of her mother's estate the properties which she inherited from her deceased daughter, Filomena, on the ground that said properties are reservable properties which should be inherited by Filomena Legarda's three sisters and three brothers and not by the children of Benito, Alejandro and Jose, all surnamed Legarda. That motion was opposed by the administrator, Benito F. Legarda.

Without awaiting the resolution on that motion, Mrs. Gonzalez filed on June 20, 1968 an ordinary civil action against her brothers, sisters, nephews and nieces and her mother's estate for the purpose of securing a declaration that the said properties are reservable properties which Mrs. Legarda could not bequeath in her holographic will to her grandchildren to the exclusion of her three daughters and her three sons (See Paz vs. Madrigal, 100 Phil. 1085).

As already stated, the lower court dismissed the action of Mrs. Gonzalez. In this appeal under Republic Act No. 5440 she contends in her six assignments of error that the lower court erred in not regarding the properties in question as reservable properties under article 891 of the Civil Code.

On the other hand, defendants-appellees in their six counter-assignments of error contend that the lower court erred in not holding that Mrs. Legarda acquired the estate of her daughter Filomena Legarda in exchange for her con-jugal and hereditary shares in the estate of her husband Benito Legarda y De la Paz and in not holding that Mrs. Gonzalez waived her right to the reservable properties and that her claim is barred by estoppel, laches and prescription.

The preliminary issue raised by the private respondents as to the timeliness of Mrs. Gonzalez' petition for review is a closed matter. This Court in its resolution of December 16, 1971 denied respondents' motion to dismiss and gave due course to the petition for review.

In an appeal under Republic Act No. 5440 only legal issues can be raised under undisputed facts. Since on the basis of the stipulated facts the lower court resolved only the issue of whether the properties in question are subject to reserva troncal, that is the only legal issue to be resolved in this appeal.

The other issues raised by the defendants-appellees, particularly those involving factual matters, cannot be re-solved in this appeal. As the trial court did not pass upon those issues, there is no ruling which can be reviewed by this Court.

The question is whether the disputed properties are reservable properties under article 891 of the Civil Code, formerly article 811, and whether Filomena Rocas Vda. de Legarda could dispose of them in her will in favor of her grandchildren to the exclusion of her six children.

Did Mrs. Legarda have the right to convey mortis causa what she inherited from her daughter Filomena to the reservees within the third degree and to bypass the reservees in the second degree or should that inheritance automatically go to the reservees in the second degree, the six children of Mrs. Legarda?

As will hereinafter be shown that is not a novel issue or a question of first impression. It was resolved in *Florentino vs. Florentino*, 40 Phil. 480. Before discussing the applicability to this case of the doctrine in the *Florentino* case and other pertinent rulings, it may be useful to make a brief discourse on the nature of reserva troncal, also called lineal, familiar, extraordinaria o semi-troncal.

Much time, effort and energy were spent by the parties in their five briefs in descanting on the nature of reserva troncal, which together with the reserva viudal and reversion legal, was abolished by the Code Commission to prevent the decedent's estate from being entailed, to eliminate the uncertainty in ownership caused by the reservation (which uncertainty impedes the improvement of the reservable property) and to discourage the confinement of property within a certain family for generations which situation allegedly leads to economic oligarchy and is incompatible with the socialization of ownership.

The Code Commission regarded the reservas as remnants of feudalism which fomented agrarian unrest. More-over, the reservas, insofar as they penalize legitimate relationship, is considered unjust and inequitable.

However, the lawmaking body, not agreeing entirely with the Code Commission, restored the reserva troncal, a legal institution which, according to Manresa and Castan Tobeñas, has provoked questions and doubts that are difficult to resolve.

Reserva troncal is provided for in article 811 of the Spanish Civil Code, now article 891, which reads:

"ART. 811. El ascendiente que heredare de su descendiente bienes que este hubiese adquirido por titulo

lucrativo de otro ascendiente, o de un hermano, se halla obligado a re-servar los que hubiere adquirido por ministerio de la ley en favor de los parientes que esten dentro del tercer grado y pertenezcan a la linea de donde los bienes proceden."

"ART. 891. 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."

In reserva troncal, (1) a descendant inherited or acquired by gratuitous title property from an ascendant or from a brother or sister; (2) the same property is inherited by another ascendant or is acquired by him by operation of law from the said descendant, and (3) the said ascendant should reserve the said property for the benefit of relatives who are within the third degree from the deceased descendant (prepositus) and who belong to the line from which the said property came.

So, three transmissions are involved: (1) a first transmission by lucrative title (inheritance or donation) from an ascendant or brother or sister to the deceased descendant; (2) a posterior transmission, by operation of law (intestate succession or legitime) from the deceased descendant (causante de la reserva) in favor of another ascendant, the reserver or reservista, which two transmissions precede the reservation, and (3) a third transmission of the same property (in consequence of the reservation) from the reserver to the reservees (reservatarios) or the relatives within the third degree from the deceased descendant belonging to the line of the first ascendant, brother or sister of the deceased descendant (6 Castan Tobeñas, Derecho Civil, Part I, 1960, 6th Ed., pp. 198-9).

If there are only two transmissions there is no reserva. Thus, where one Bonifacia Lacerna died and her properties were inherited by her son, Juan Marbebe, upon the death of Juan, those lands should be inherited by his half-sister, to the exclusion of his maternal first cousins. The said lands are not reservable property within the meaning of article 811 (Lacerna vs. Vda. de Corcino, 111 Phil. 872).

The persons involved in reserva troncal are (1) the ascendant or brother or sister from whom the property was received by the descendant by lucrative or gratuitous title, (2) the descendant or prepositus (propositus) who received the property, (3) the reserver (reservista), the other ascendant who obtained the property from the prepositus by operation of law and (4) the reservee (reservatario) who is within the third degree from the prepositus and who belongs to the line (linea o tronco) from which the property came and for whom the property should be reserved by the reserver.

The reservees may be half-brothers and sisters (Rodriguez vs. Rodriguez, 101 Phil. 1098; Chua vs. Court of First Instance of Negros Occidental, L-29901, August 31, 1977, 78 SCRA 412). Fourth degree relatives are not included (Jardin vs. Villamayor, 72 Phil. 392).

The rationale of reserva troncal is to avoid "el peligro de que bienes poseidos secularmente por una familia pasen bruscamente a titulo gratuito a manos extrañas por el azar de los enlaces y muertes prematuras", or "impedir que, por un azar de la vida, personas extrañas a una familia puedan adquirir bienes que sin aquel hubieran quedado en ella" (6 Castan Tobeñas, Derecho Civil, Part 1, 6th Ed., 1960, p. 203; Padura vs. Baldovino, 104 Phil. 1065).

An illustration of reserva troncal is found in Edroso vs. Sablan, 25 Phil. 295. In that case, Pedro Sablan inherited two parcels of land from his father Victoriano. Pedro died in 1902, single and without issue. His mother, Marcelina Edroso, inherited from him the two parcels of land.

It was held that the land was reservable property in the hands of Marcelina. The reservees were Pablo Sablan and Basilio Sablan, the paternal uncles of Pedro Sablan, the prepositus. Marcelina could register the land under the

Torrens system in her name but the fact that the land was reservable property in favor of her two brothers-in-law, should they survive her, should be noted in the title.

In another case, it appears that Maria Aglibot died intestate in 1906. Her one-half share of a parcel of conjugal land was inherited by her daughter, Juliana Mañalac. When Juliana died intestate in 1920, said one-half share was inherited by her father, Anacleto Mañalac who owned the other one-half portion.

Anacleto died intestate in 1942, survived by his second wife and their six children. It was held that the said one-half portion was reservable property in the hands of Anacleto Mañalac and, upon his death, should be inherited by Leona Aglibot and Evarista Aglibot, sisters of Maria and maternal aunts of Juliana Mañalac, who belonged to the line from which said one-half portion came (*Aglibot vs. Mañalac*, 114 Phil. 964).

Other illustrations of reserva troncal are found in *Florentino vs. Florentino*, 40 Phil. 480; *Nieva and Alcala vs. Alcala and Deocampo*, 41 Phil. 915; *Maghirang and Gu-tierrez vs. Balcita*, 46 Phil. 551; *Lunsod vs. Ortega*, 46 Phil. 664; *Dizon vs. Galang*, 48 Phil. 601; *Riosa vs. Rocha*, 48 Phil. 737; *Centeno vs. Centeno*, 52 Phil. 322; *Velayo Ber-nardo vs. Siojo*, 58 Phil. 89; *Director of Lands vs. Aguas*, 63 Phil. 279; *Fallorfina vs. Abille*, CA 39 O.G. 1784.

The person from whom the degree should be reckoned is the descendant, or the one at the end of the line from which the property came and upon whom the property last revolved by descent. He is called the prepositus (*Cabardo vs. Villa-nueva*, 44 Phil. 186, 190).

In the *Cabardo* case, one Cornelia Abordo inherited property from her mother, Basilia Cabardo. When Cornelia died, her estate passed to her father, Lorenzo Abordo. In his hands, the property was reservable property. Upon the death of Lorenzo, the person entitled to the property was Rosa Cabardo, a maternal aunt of Cornelia, who was her nearest relative within the third degree.

First cousins of the prepositus are in the fourth degree and are not reservees. They cannot even represent their parents because representation is confined to relatives within the third degree (*Florentino vs. Florentino*, 40 Phil. 480).

Within the third degree, the nearest relatives exclude the more remote subject to the rule of representation. But the representative should be within the third degree from the prepositus (*Padura vs. Baldovino*, 104 Phil. 1065).

Reserva troncal contemplates legitimate relationship. Illegitimate relationship and relationship by affinity are excluded.

Gratuitous title or titulo lucrativo refers to a transmission wherein the recipient gives nothing in return such as donation and succession (*Cabardo vs. Villanueva*, 44 Phil. 186, 189-190, citing 6 Manresa, *Codigo Civil*, 7th Ed., 1951, p. 360).

The reserva creates two resolutive conditions, namely, (1) the death of the ascendant obliged to reserve and (2) the survival, at the time of his death, of relatives within the third degree belonging to the line from which the property came (*Sienes vs. Esparcia*, 111 Phil. 349, 353).

The reservor has the legal title and dominion to the reservable property but subject to the resolutive condition that such title is extinguished if the reservor predeceased the reservee. The reservor is a usufructuary of the reservable property. He may alienate it subject to the reservation. The transferee gets the revocable and conditional ownership of the reservor. The transferee's rights are revoked upon the survival of the reservees at the time of the death of the reservor but become indefeasible when the reservees predecease the reservor. (*Sienes vs. Esparcia*, 111 Phil. 349, 353; *Edroso vs. Sablan*, 25 Phil. 295; *Lunsod vs. Ortega*, 46 Phil. 664; *Florentino vs.*

Florentino, 40 Phil. 480; Director of Lands vs. Aguas, 63 Phil. 279.)

The reservor's title has been compared with that of the vendee a retro in a pacto de retro sale or to a fideicomiso condicional.

The reservor's alienation of the reservable property is subject to a resolutory condition, meaning that if at the time of the reservor's death, there are reservees, the transferee of the property should deliver it to the reservees. If there are no reservees at the time of the reservor's death, the transferee's title would become absolute. (Lunsod vs. Ortega, 46 Phil. 664; Gueco vs. Lacson, 118 Phil. 944; Nono vs. Nequia, 93 Phil. 120).

On the other hand, the reservee has only an inchoate, expectant or contingent right. His expectant right would disappear if he predeceased the reservor. It would become absolute should the reservor predecease the reservee.

The reservee cannot impugn any conveyance made by the reservor but he can require that the reservable character of the property be recognized by the purchaser (Riosa vs. Rocha, 48 Phil. 737; Edroso vs. Sablan, 25 Phil. 295, 312-3; Gueco vs. Lacson, 118 Phil. 944).

There is a holding that the renunciation of the reservee's right to the reservable property is illegal for being a contract regarding future inheritance (Velayo Bernardo vs. Siojo, 58 Phil. 89, 96).

And there is a dictum that the reservee's right is a real right which he may alienate and dispose of conditionally. The condition is that the alienation shall transfer ownership to the vendee only if and when the reservee survives the reservor (Sienes vs. Esparcia, 111 Phil. 349, 353).

"The reservatario receives the property as a conditional heir of the descendant (prepositus), said property merely reverting to the line of origin from which it had temporarily and accidentally strayed during the reservista's lifetime. The authorities are all agreed that there being reservatarios that survive the reservista, the latter must be deemed to have enjoyed no more than a life interest in the reservable property." (J. J.B.L. Reyes in Cano vs. Director of Lands, 105 Phil. 1, 5.)

"Even during the reservista's lifetime, the reservatarios, who are the ultimate acquirers of the property, can already assert the right to prevent the reservista from doing anything that might frustrate their reversionary right, and, for this purpose, they can compel the annotation of their right in the registry of property even while the reservista is alive (Ley Hipotecaria de Ultramar, Arts. 168, 199; Edroso vs. Sablan, 25 Phil. 295).

"This right is incompatible with the mere expectancy that corresponds to the natural heirs of the reservista. It is likewise clear that the reservable property is no part of the estate of the reservista who may not dispose of them (it) by will, so long as there are reservatarios existing (Arroyo vs. Gerona, 58 Phil. 226, 237).

"The latter, therefore, do not inherit from the reservista but from the descendant prepositus, of whom the reservatarios are the heirs mortis causa, subject to the condition that they must survive the reservista." (Sanchez Roman, Vol. VI, Tomo 2, p. 286; Manresa, Commentaries, Vol. 6, 6th Ed., pp. 274, 310, cited by J. J.B.L. Reyes in Padura vs. Baldovino, L-11960, December 27, 1958, 104 Phil. 1065).

Hence, upon the reservista's death, the reservatario nearest to the prepositus becomes, "automatically and by operation of law, the owner of the reservable property." (Cano vs. Director of Lands, 105 Phil. 1, 5.)

In the instant case, the properties in question were indubitably reservable properties in the hands of Mrs. Legarda. Undoubtedly, she was a reservor. The reservation became a certainty when at the time of her death the reservees or relatives within the third degree of the prepositus Filomena Legarda were living or they survived Mrs. Legarda.

So, the ultimate issue in this case is whether Mrs. Legarda, as reservor, could convey the reservable properties by will or mortis causa to the reservees within the third degree (her sixteen grandchildren) to the exclusion of the reservees in the second degree, her three daughters and three sons.

As indicated at the outset, that issue is already *res judicata* or *cosa juzgada*.

We hold that Mrs. Legarda could not convey in her holographic will to her sixteen grandchildren the reservable properties which she had inherited from her daughter Filomena because the reservable properties did not form part of her estate (*Cabardo vs. Villanueva*, 44 Phil. 186, 191). The reservor can-not make a disposition mortis causa of the reservable properties as long as the reservees survived the reservor.

As repeatedly held in the *Cano* and *Padura* cases, the reservees inherit the reservable properties from the prepositus, not from the reservor.

Article 891 clearly indicates that the reservable properties should be inherited by all the nearest relatives within the third degree from the prepositus who in this case are the six children of Mrs. Legarda. She could not select the reservees to whom the reservable property should be given and deprive the other reservees of their share therein.

To allow the reservor in this case to make a testamentary disposition of the reservable properties in favor of the reservees in the third degree and, consequently, to ignore the reservees in the second degree would be a glaring violation of article 891. That testamentary disposition cannot be allowed.

We have stated earlier that this case is governed by the doctrine of *Florentino vs. Florentino*, 40 Phil. 480, a similar case, where it was ruled:

"Reservable property left, through a will or otherwise, by the death of ascendant (*reservista*) together with his own property in favor of another of his descendants as forced heir, forms no part of the latter's lawful inheritance nor of the *legi-time*, for the reason that, as said property continued to be reservable, the heir receiving the same as an inheritance from his ascendant has the strict obligation of its delivery to the relatives, within the third degree, of the predecessor in interest (*prepositus*), without prejudicing the right of the heir to an aliquot part of the property, if he has at the same time the right of a *reservatario*" (reservee).

In the *Florentino* case, it appears that Apolonio Florentino II and his second wife Severina Faz de Leon begot two children, Mercedes and Apolonio III. These two inherited properties from their father. Upon Apolonio III's death in 1891, his properties were inherited by his mother, Severina, who died in 1908. In her will, she instituted her daughter Mercedes as heiress to all her properties, including those coming from her deceased husband through their son, Apolonio III.

The surviving children, begotten by Apolonio II with his first wife Antonia Faz de Leon and the descendants of the deceased children of his first marriage, sued Mercedes Florentino for the recovery of their share in the reservable properties, which Severina de Leon had inherited from Apolonio III, which the latter had inherited from his father Apolonio II and which Severina willed to her daughter Mercedes.

Plaintiff's theory was that the said properties, as reservable properties, could not be disposed of in Severina's will in favor of Mercedes only. That theory was sustained by this Court.

It was held that the said properties, being reservable properties, did not form part of Severina's estate and could not be inherited from her by her daughter Mercedes alone.

As there were seven reservees, Mercedes was entitled, as a reservee, to one-seventh of the properties. The other six-sevenths portions were adjudicated to the other six reservees.

Under the rule of *stare decisis et non quieta movere*, we are bound to follow in this case the doctrine of the

Florentino case. That doctrine means that as long as during the reservor's lifetime and upon his death there are relatives within the third degree of the prepositus, regardless of whether those reservees are common descendants of the reservor and the ascendant from whom the property came, the property retains its reservable character. The property should go to the nearest reservees. The reservor cannot, by means of his will, choose the reservee to whom the reservable property should be awarded.

The alleged opinion of Sanchez Roman that there is no reserva troncal when the only relatives within the third degree are the common descendants of the predeceased ascendant and the ascendant who would be obliged to reserve is irrelevant and sans binding force in the light of the ruling in the Florentino case.

It is contended by the appellees herein that the properties in question are not reservable properties because only relatives within the third degree from the paternal line have survived and that when Mrs. Legarda willed the said properties to her sixteen grandchildren, who are third-degree relatives of Filomena Legarda and who belong to the paternal line, the reason for the reserva troncal has been satisfied: "to prevent persons outside a family from securing, by some special accident of life, property that would otherwise have remained therein".

That same contention was advanced in the Florentino case where the reservor willed the reservable properties to her daughter, a full-blood sister of the prepositus and ignored the other six reservors, the relatives of the half-blood of the prepositus.

In rejecting that contention, this Court held that the reservable property bequeathed by the reservor to her daughter does not form part of the reservor's estate nor of the daughter's estate but should be given to all the seven reservees or nearest relatives of the prepositus within the third degree.

This Court noted that, while it is true that by giving the reservable property to only one reservee it did not pass into the hands of strangers, nevertheless, it is likewise true that the heiress of the reservor was only one of the reservees and there is no reason founded upon law and justice why the other reservees should be deprived of their shares in the re-servable property (pp. 894-5).

Applying that doctrine to this case, it results that Mrs. Legarda could not dispose of in her will the properties in question even if the disposition is in favor of the relatives within the third degree from Filomena Legarda. The said properties, by operation of article 891, should go to Mrs. Legarda's six children as reservees within the second degree from Filomena Legarda.

It should be repeated that the reservees do not inherit from the reservor but from the prepositus, of whom the re-servable property is the heirs mortis causa subject to the condition that they must survive the reservor (*Padura vs. Baldovino*, L-11960, December 27, 1958, 104 Phil. 1065).

The trial court said that the disputed properties lost their reservable character due to the non-existence of third-degree relatives of Filomena Legarda at the time of the death of the reservor, Mrs. Legarda, belonging to the Legarda family, "except third-degree relatives who pertain to both" the Legarda and Roces lines.

That holding is erroneous. The reservation could have been extinguished only by the absence of reservees at the time of Mrs. Legarda's death. Since at the time of her death, there were (and still are) reservees belonging to the second and third degrees, the disputed properties did not lose their reservable character. The disposition of the said properties should be made in accordance with article 891 or the rule on reserva troncal and not in accordance with the reservor's holographic will. The said properties did not form part of Mrs. Legarda's estate (*Cano vs. Director of Lands*, 105 Phil. 1, 4).

WHEREFORE, the lower court's decision is reversed and set aside. It is hereby adjudged that the properties

inheri-ted by Filomena Roces Vda. de Legarda from her daughter Filomena Legarda, with all the fruits and accessions thereof, are reservable properties which belong to Beatriz, Rosario, Teresa, Benito, Alejandro and Jose, all surnamed Legarda y Roces, as reservees. The shares of Rosario L. Valdes and Benito F. Legarda, who died in 1969 and 1973, respectively, should pertain to their respective heirs. Costs against the private respondents.

SO ORDERED.

Barredo, (Chairman), Guerrero*, Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., on leave.

* Justice Guerrero was designated to sit in the Second Division.

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