

**TESTATE ESTATE OF JOSEFA TANGCO, JOSE DE BORJA,
ADMINISTRATOR AND APPELLEE, JOSE DE BORJA, AS
ADMINISTRATOR, CAYETANO DE BORJA, MATILDE DE BORJA AND
CRISANTO DE BORJA (DECEASED)...**

G.R. No. L-28040. August 18, 1972

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Of these cases, the first, numbered L-28040 is an appeal by Tasiana Ongsingco Vda. de de Borja, special administratrix of the testate estate of Francisco de Borja[1], from the approval of a compromise agreement by the Court of First Instance of Rizal, Branch I, in its Special Proceeding No. R-7866, entitled, "Testate Estate of Josefa Tangco, Jose de Borja, Administrator".

Case No. L-28568 is an appeal by administrator Jose de Borja from the disapproval of the same compromise agreement by the Court of First Instance of Nueva Ecija, Branch II, in its Special Proceeding No. 832, entitled, "Testate Estate of Francisco de Borja, Tasiana O. Vda. de de Borja, Special Administratrix".

And Case No. L-28611 is an appeal by administrator Jose de Borja from the decision of the Court of First Instance of Rizal, Branch X, in its Civil Case No. 7452, declaring the Hacienda Jalajala Poblacion, which is the main object of the aforesaid compromise agreement, as the separate and exclusive property of the late Francisco de Borja and not a conjugal asset of the community with his first wife, Josefa Tangco, and that said hacienda pertains exclusively to his testate estate, which is under administration in Special Proceeding No. 832 of the Court of First Instance of Nueva Ecija, Branch II.

It is uncontested that Francisco de Borja, upon the death of his wife Josefa Tangco, on 6 October 1940, filed a petition for the probate of her will which was docketed as Special Proceeding No. R-7866 of the Court of First Instance of Rizal, Branch I. The will was probated on 2 April 1941. In 1946, Francisco de Borja was appointed executor and administrator; in 1952, their son, Jose de Borja, was appointed co-administrator. When Francisco died, on 14 April 1954, Jose became the sole administrator of the testate estate of his mother, Josefa Tangco. While a widower Francisco de Borja allegedly took unto himself a second wife, Tasiana Ongsingco. Upon Francisco's death, Tasiana instituted testate proceedings in the Court of First Instance of Nueva Ecija, where, in 1955, she was appointed special administratrix. The validity of Tasiana's marriage to Francisco was questioned in said proceeding.

The relationship between the children of the first marriage and Tasiana Ongsingco has been plagued with several court suits and counter-suits; including the three cases at bar, some eighteen (18) cases remain pending determination in the courts. The testate estate of Josefa Tangco alone has been unsettled for more than a quarter of a century. In order to put an end to all these litigations, a compromise agreement was entered into on 12 October 1963[2], by and between "[T]he heir and son of Francisco de Borja by his first marriage, namely, Jose de Borja personally and as administrator of the Testate Estate of Josefa Tangco," and "[T]he heir and surviving spouse of

Francisco de Borja by his second marriage, Tasiana Ongsingco Vda. de Borja, assisted by her lawyer, Atty. Luis Panaguiton, Jr." The terms and conditions of the compromise agreement are as follows:

"AGREEMENT

THIS AGREEMENT made and entered into by and between

The heir and son of Francisco de Borja by his first marriage, namely, Jose de Borja personally and as administrator of the Testate Estate of Josefa Tangco,

AND

The heir and surviving spouse of Francisco de Borja by his second marriage, Tasiana Ongsingco Vda. de de Borja, assisted by her lawyer, Atty. Luis Panaguiton, Jr.

WITNESSETH

THAT it is the mutual desire of all the parties herein to terminate and settle, with finality, the various court litigations, controversies, claims, counterclaims, etc., between them in connection with the administration, settlement, partition, adjudication and distribution of the assets as well as liabilities of the estates of Francisco de Borja and Josefa Tangco, first spouse of Francisco de Borja.

THAT with this end in view, the parties herein have agreed voluntarily and without any reservations to enter into and execute this agreement under the following terms and conditions:

1. That the parties agree to sell the Poblacion portion of the Jalajala properties situated in Jalajala, Rizal, presently under administration in the Testate Estate of Josefa Tangco (Sp. Proc. No. 7866, Rizal), more specifically described as follows:

'Linda al Norte con el Rio Puwang que la separa de la jurisdiccion del Municipio de Pililla de la Provincia de Rizal, y con el pico del Monte Zambrano; al Oeste con la Laguna de Bay; por el Sur con los herederos de Marcelo de Borja; y por el Este con los terrenos de la Familia Maronilla'

with a segregated area of approximately 1,313 hectares at the amount of P0.30 per square meter.

2. That Jose de Borja agrees and obligates himself to pay Tasiana Ongsingco Vda. de de Borja the total amount of Eight Hundred Thousand Pesos (P800,000) Philippine Currency, in cash, which represents P200,000 as his share in the payment and P600,000 as pro-rata shares of the heirs Crisanto, Cayetano, and Matilde, all surnamed de Borja and this shall be considered as full and complete payment and settlement of her hereditary share in the estate of the late Francisco de Borja as well as the estate of Josefa Tangco, Sp. Proc. No. 832 - Nueva Ecija and Sp. Proc. No. 7866 - Rizal, respectively, and to any properties bequeathed or devised in her favor by the late Francisco de Borja by Last Will and Testament or by Donation Inter Vivos or Mortis Causa or purportedly conveyed to her for consideration or otherwise. The funds for this payment shall be taken from and shall depend upon the receipt of full payment of the proceeds of the sale of Jalajala, Poblacion.'

3. That Tasiana Ongsingco Vda. de de Borja hereby assumes payment of that particular obligation incurred by the late Francisco de Borja in favor of the Rehabilitation Finance Corporation, now Development Bank of the Philippines, amounting to approximately P30,000.00 and also assumes payment of her 1/5 share of the Estate and Inheritance taxes on the Estate of the late Francisco de Borja or the sum of P3,500.00, more or less, which shall be deducted by the buyer of Jalajala 'Poblacion' from the payment to be made to Tasiana Ongsingco Vda. de de Borja under paragraph 2 of this Agreement and paid directly to the Development Bank of the Philippines and the heirs-children of Francisco de Borja.

4. Thereafter, the buyer of Jalajala 'Poblacion' is hereby authorized to pay directly Tasiana Ongsingco Vda. de de

Borja the balance of the payment due her under paragraph 2 of this Agreement (approximately P766,500.00) and issue in the name of Tasiana Ongsingco Vda. de de Borja, corresponding certified checks/treasury warrants, who, in turn, will issue the corresponding receipt to Jose de Borja.

5. In consideration of above payment to Tasiana Ongsingco Vda. de de Borja, Jose de Borja personally and as administrator of the Testate Estate of Josefa Tangco, and Tasiana Ongsingco Vda. de de Borja, for themselves and for their heirs, successors, executors, administrators, and assigns, hereby forever mutually renounce, withdraw, waive, remise, release and discharge any and all manner of action or actions, cause or causes of action, suits, debts, sum or sums of money, accounts, damages, claims and demands whatsoever, in law or in equity, which they ever had, or now have or may have against each other, more specifically Sp. Proceedings Nos. 7866 and 1955, CFI-Rizal, and Sp. Proc. No. 832 - Nueva Ecija, Civil Case No. 3033, CFI-Nueva Ecija and Civil Case No. 7452-CFI, Rizal, as well as the case filed against Manuel Quijal for perjury with the Provincial Fiscal of Rizal, the intention being to completely, absolutely and finally release each other, their heirs, successors, and assigns, from any and all liability, arising wholly or partially, directly or indirectly, from the administration, settlement, and distribution of the assets as well as liabilities of the estates of Francisco de Borja and Josefa Tangco, first spouse of Francisco de Borja, and lastly, Tasiana Ongsingco Vda. de de Borja expressly and specifically renounce absolutely her rights as heir over any hereditary share in the estate of Francisco de Borja.

6. That Tasiana Ongsingco Vda. de de Borja, upon receipt of the payment under paragraph 4 hereof, shall deliver to the heir Jose de Borja all the papers, titles and documents belonging to Francisco de Borja which are in her possession and said heir Jose de Borja shall issue in turn the corresponding receipt thereof.

7. That this agreement shall take effect only upon the fulfillment of the sale of the properties mentioned under paragraph 1 of this agreement and upon receipt of the total and full payment of the proceeds of the sale of the Jalajala property 'Poblacion', otherwise, the non-fulfillment of the said sale will render this instrument NULL AND VOID AND WITHOUT EFFECT THEREAFTER.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands in the City of Manila, Philippines, this 12th day of October, 1963."

On 16 May 1966, Jose de Borja submitted for Court approval the agreement of 12 October 1963 to the Court of First Instance of Rizal, in Special Proceeding No. R-7866; and again, on 8 August 1966, to the Court of First Instance of Nueva Ecija, in Special Proceeding No. 832. Tasiana Ongsingco Vda. de de Borja opposed in both instances. The Rizal court approved the compromise agreement, but the Nueva Ecija court declared it void and unenforceable. Special administratrix Tasiana Ongsingco Vda. de de Borja appealed the Rizal Court's order of approval (now Supreme Court G. R. case No. L-28040), while administrator Jose de Borja appealed the order of disapproval (G. R. case No. L-28568) by the Court of First Instance of Nueva Ecija.

The genuineness and due execution of the compromise agreement of 12 October 1963 is not disputed, but its validity is, nevertheless, attacked by Tasiana Ongsingco on the ground that: (1) the heirs cannot enter into such kind of agreement without first probating the will of Francisco de Borja; (2) that the same involves a compromise on the validity of the marriage between Francisco de Borja and Tasiana Ongsingco; and (3) that even if it were valid, it has ceased to have force and effect.

In assailing the validity of the agreement of 12 October 1963, Tasiana Ongsingco and the Probate Court of Nueva Ecija rely on this Court's decision in *Guevara vs. Guevara*, 74 Phil. 479, wherein the Court's majority held the view that the presentation of a will for probate is mandatory and that the settlement and distribution of an estate on the basis of intestacy when the decedent left a will, is against the law and public policy. It is likewise pointed out by appellant Tasiana Ongsingco that Section 1 of Rule 74 of the Revised Rules explicitly conditions the

validity of an extrajudicial settlement of a decedent's estate by agreement between heirs, upon the facts that "(if) the decedent left no will and no debts, and the heirs are all of age, or the minors are represented by their judicial and legal representatives * * *." The will of Francisco de Borja having been submitted to the Nueva Ecija Court and still pending probate when the 1963 agreement was made, those circumstances, it is argued, bar the validity of the agreement.

Upon the other hand, in claiming the validity of the compromise agreement, Jose de Borja stresses that at the time it was entered into, on 12 October 1963, the governing provision was Section 1, Rule 74 of the original Rules of Court of 1940, which allowed the extrajudicial settlement of the estate of a deceased person regardless of whether he left a will or not. He also relies on the dissenting opinion of Justice Moran, in *Guevarra vs. Guevarra*, 74 Phil. 479, wherein was expressed the view that if the parties have already divided the estate in accordance with a decedent's will, the probate of the will is a useless ceremony; and if they have divided the estate in a different manner, the probate of the will is worse than useless.

The doctrine of *Guevara vs. Guevara*, ante, is not applicable to the case at bar. This is apparent from an examination of the terms of the agreement between Jose de Borja and Tasiana Ongsingco. Paragraph 2 of said agreement specifically stipulates that the sum of P800,000 payable to Tasiana Ongsingco -

"shall be considered as full - complete payment - settlement of her hereditary share in the estate of the late Francisco de Borja as well as the estate of Josefa Tangco, * * * and to any properties bequeathed or devised in her favor by the late Francisco de Borja by Last Will and Testament or by Donation Inter Vivos or Mortis Causa or purportedly conveyed to her for consideration or otherwise."

This provision evidences beyond doubt that the ruling in the *Guevara* case is not applicable to the cases at bar. There was here no attempt to settle or distribute the estate of Francisco de Borja among the heirs thereto before the probate of his will. The clear object of the contract was merely the conveyance by Tasiana Ongsingco of any and all her individual share and interest, actual or eventual, in the estates of Francisco de Borja and Josefa Tangco. There is no stipulation as to any other claimant, creditor or legatee. And as a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such causante or predecessor in interest (Civil Code of the Philippines, Art. 777)[3] there is no legal bar to a successor (with requisite contracting capacity) disposing of her or his hereditary share immediately after such death, even if the actual extent of such share is not determined until the subsequent liquidation of the estate[4]. Of course, the effect of such alienation is to be deemed limited to what is ultimately adjudicated to the vendor heir. However, the aleatory character of the contract does not affect the validity of the transaction; neither does the coetaneous agreement that the numerous litigations between the parties (the approving order of the Rizal Court enumerates fourteen of them, Rec. App. pp. 79-82) are to be considered settled and should be dismissed, although such stipulation, as noted by the Rizal Court, gives the contract the character of a compromise that the law favors, for obvious reasons, if only because it serves to avoid a multiplicity of suits.

It is likewise worthy of note in this connection that as the surviving spouse of Francisco de Borja, Tasiana Ongsingco was his compulsory heir under articles 995 et seq. of the present Civil Code. Wherefore, barring unworthiness or valid disinheritance, her successional interest existed independent of Francisco de Borja's last will and testament, and would exist even if such will were not probated at all. Thus, the prerequisite of a previous probate of the will, as established in the *Guevara* and analogous cases, can not apply to the case of Tasiana Ongsingco Vda. de de Borja.

Since the compromise contract Annex A was entered into by and between "Jose de Borja personally and as administrator of the Testate Estate of Josefa Tangco" on the one hand, and on the other, "the heir and surviving spouse of Francisco de Borja by his second marriage, Tasiana Ongsingco Vda. de de Borja", it is clear that the

transaction was binding on both in their individual capacities, upon the perfection of the contract, even without previous authority of the Court to enter into the same. The only difference between an extrajudicial compromise and one that is submitted and approved by the Court, is that the latter can be enforced by execution proceedings. Art. 2037 of the Civil Code is explicit on the point:

Art. 2037. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

It is argued by Tasiana Ongsingco that while the agreement Annex A expressed no definite period for its performance, the same was intended to have a resolutive period of 60 days for its effectiveness. In support of such contention, it is averred that such a limit was expressly stipulated in an agreement in similar terms entered into by said Ongsingco with the brothers and sister of Jose de Borja, to wit, Crisanto, Matilde and Cayetano, all surnamed de Borja, except that the considerations was fixed at P600,000 (Opposition, Annex 1 Rec. of Appeal, L-28040, pp. 39-46) and which contained the following clause:

"III. That this agreement shall take effect only upon the consummation of the sale of the property mentioned herein and upon receipt of the total and full payment of the proceeds of the sale by the herein owner heirs-children of Francisco de Borja, namely, Crisanto, Cayetano and Matilde, all surnamed de Borja; Provided that if no sale of the said property mentioned herein is consummated, or the non-receipt of the purchase price thereof by the said owners within the period of sixty (60) days from the date hereof, this agreement will become null and void and of no further effect."

Ongsingco's argument loses validity when it is considered that Jose de Borja was not a party to this particular contract (Annex 1), and that the same appears not to have been finalized, since it bears no date, the day being left blank "this - day of October 1963"; and while signed by the parties, it was not notarized, although plainly intended to be so done, since it carries a proposed notarial ratification clause. Furthermore, the compromise contract with Jose de Borja (Annex A), provides in its par. 2 heretofore transcribed that of the total consideration of P800,000 to be paid to Ongsingco, P600,000 represent the "pro rata share of the heirs Crisanto, Cayetano and Matilde, all surnamed de Borja" which corresponds to the consideration of P600,000 recited in Annex 1, and that circumstance is proof that the duly notarized contract entered into with Jose de Borja under date 12 October 1963 (Annex A), was designed to absorb and supersede the separate unformalized agreement with the other three Borja heirs. Hence, the 60 days resolutive term in the contract with the latter (Annex 1) not being repeated in Annex A, can not apply to the formal compromise with Jose de Borja. It is moreover manifest that the stipulation that the sale of the Hacienda de Jalajala was to be made within sixty days from the date of the agreement with Jose de Borja's co-heirs (Annex 1) was plainly omitted in Annex A as improper and ineffective since the Hacienda de Jalajala (Poblacion) that was to be sold to raise the P800,000 to be paid to Ongsingco for her share formed part of the estate of Francisco de Borja and could not be sold until authorized by the Probate Court. The Court of First Instance of Rizal so understood it, and in approving the compromise it fixed a term of 120 days counted from the finality of the order now under appeal, for the carrying out by the parties of the terms of the contract.

This brings us to the plea that the Court of First Instance of Rizal had no jurisdiction to approve the compromise with Jose de Borja (Annex A) because Tasiana Ongsingco was not an heir in the estate of Josefa Tangco pending settlement in the Rizal Court, but she was an heir of Francisco de Borja, whose estate was the object of Special Proceeding No. 832 of the Court of First Instance of Nueva Ecija. This circumstance is irrelevant, since what was sold by Tasiana Ongsingco was only her eventual share in the estate of her late husband, not the estate itself; and as already shown, that eventual share she owned from the time of Francisco's death and the Court of Nueva Ecija could not bar her selling it. As owner of her undivided hereditary share, Tasiana could dispose of it in favor of whomsoever she chose. Such alienation is expressly recognized and provided for by article 1088 of the present

Civil Code:

"Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor."

If a sale of a hereditary right can be made to a stranger, then a fortiori sale thereof to a coheir could not be forbidden.

Tasiana Ongsingco further argues that her contract with Jose de Borja (Annex "A") is void because it amounts to a compromise as to her status and marriage with the late Francisco de Borja. The point is without merit, for the very opening paragraph of the agreement with Jose de Borja (Annex "A") describes her as "the heir and surviving spouse of Francisco de Borja by his second marriage, Tasiana Ongsingco Vda. de de Borja", which is in itself definite admission of her civil status. There is nothing in the text of the agreement that would show that this recognition of Ongsingco's status as the surviving spouse of Francisco de Borja was only made in consideration of the cession of her hereditary rights.

It is finally charged by appellant Ongsingco, as well as by the Court of First Instance of Nueva Ecija in its order of 21 September 1964, in Special Proceedings No. 832 (Amended Record on Appeal in L-28568, page 157), that the compromise agreement of 13 October 1963 (Annex "A") had been abandoned, as shown by the fact that, after its execution, the Court of First Instance of Nueva Ecija, in its order of 21 September 1964, had declared that "no amicable settlement had been arrived at by the parties", and that Jose de Borja himself, in a motion of 17 June 1964, had stated that the proposed amicable settlement "had failed to materialize".

It is difficult to believe, however, that the amicable settlement referred to in the order and motion above-mentioned was the compromise agreement of 13 October 1963, which already had been formally signed and executed by the parties and duly notarized. What the record discloses is that some time after its formalization, Ongsingco had unilaterally attempted to back out from the compromise agreement, pleading various reasons restated in the opposition to the Court's approval of Annex "A" (Record on Appeal, L-20840, page 23): that the same was invalid because of the lapse of the allegedly intended resolutive period of 60 days and because the contract was not preceded by the probate of Francisco de Borja's will, as required by this Court's *Guevara vs. Guevara* ruling; that Annex "A" involved a compromise affecting Ongsingco's status as wife and widow of Francisco de Borja, etc., all of which objections have been already discussed. It was natural that in view of the widow's attitude, Jose de Borja should attempt to reach a new settlement or novatory agreement before seeking judicial sanction and enforcement of Annex "A", since the latter step might ultimately entail a longer delay in attaining final remedy. That the attempt to reach another settlement failed is apparent from the letter of Ongsingco's counsel to Jose de Borja quoted in pages 35-36 of the brief for appellant Ongsingco in G. R. No. L-28040; and it is more than probable that the order of 21 September 1964 and the motion of 17 June 1964 referred to the failure of the parties' quest for a more satisfactory compromise. But the inability to reach a novatory accord can not invalidate the original compromise (Annex "A") and justifies the act of Jose de Borja in finally seeking a court order for its approval and enforcement from the Court of First Instance of Rizal, which, as heretofore described, decreed that the agreement be ultimately performed within 120 days from the finality of the order, now under appeal.

We conclude that in so doing, the Rizal court acted in accordance with law, and, therefore, its order should be upheld, while the contrary resolution of the Court of First Instance of Nueva Ecija should be, and is, reversed.

In her brief, Tasiana Ongsingco also pleads that the time elapsed in the appeal has affected her unfavorably, in

that while the purchasing power of the agreed price of P800,000 has diminished, the value of the Jalajala property has increased. But the fact is that her delay in receiving the payment of the agreed price for her hereditary interest was primarily due to her attempts to nullify the agreement (Annex "A") she had formally entered into with the advice of her counsel, Attorney Panaguiton. And as to the devaluation de facto of our currency, what We said in *Dizon Rivera vs. Dizon*, L-24561, 30 June 1970, 33 SCRA, 554, that "estates would never be settled if there were to be a revaluation with every subsequent fluctuation in the values of currency and properties of the estate", is particularly apposite in the present case.

Coming now to Case G. R. No. L-28611, the issue is whether the Hacienda de Jalajala (Poblacion), concededly acquired by Francisco de Borja during his marriage to his first wife, Josefa Tangco, is the husband's private property (as contended by his second spouse, Tasiana Ongsingco), or whether it forms part of the conjugal (ganancial) partnership with Josefa Tangco. The Court of First Instance of Rizal (Judge Herminio Mariano, presiding) declared that there was adequate evidence to overcome the presumption in favor of its conjugal character established by Article 160 of the Civil Code.

We are of the opinion that this question as between Tasiana Ongsingco and Jose de Borja has become moot and academic, in view of the conclusion reached by this Court in the two preceding cases (G. R. No. L-28568), upholding as valid the cession of Tasiana Ongsinco's eventual share in the estate of her late husband, Francisco de Borja, for the sum of P800,000 with the accompanying reciprocal quitclaims between the parties. But as the question may affect the rights of possible creditors and legatees, its resolution is still imperative.

It is undisputed that the Hacienda Jalajala, of around 4,363 hectares, had been originally acquired jointly by Francisco de Borja, Bernardo de Borja and Marcelo de Borja, and their title thereto was duly registered in their names as co-owners in Land Registration Case No. 528 of the province of Rizal, G.L.R.O. Rec. No. 26403 (*De Borja vs. Jugo*, 54 Phil. 465). Subsequently, in 1931, the Hacienda was partitioned among the co-owners: the Punta section went to Marcelo de Borja; the Bagombong section to Bernardo de Borja, and the part in Jalajala proper (Poblacion) corresponded to Francisco de Borja (*V. De Borja vs. De Borja*, 101 Phil. 911, 932).

The lot allotted to Francisco was described as -

"Una Parcela de terreno situada en Poblacion, Jalajala: N. Puang River; E. Hermogena Romero; S. Heirs of Marcelo de Borja, O. Laguna de Bay; containing an area of 13,488,870 sq. m. more or less, assessed at P297,410." (Record on Appeal, pages 7 and 105)

On 20 November 1962, Tasiana O. Vda. de Borja, as Administratrix of the Testate Estate of Francisco de Borja, instituted a complaint in the Court of First Instance of Rizal (Civil Case No. 7452) against Jose de Borja, in his capacity as Administrator of Josefa Tangco (Francisco de Borja's first wife), seeking to have the Hacienda above described declared exclusive private property of Francisco, while in his answer defendant (now appellant) Jose de Borja claimed that it was conjugal property of his parents (Francisco de Borja and Josefa Tangco), conformably to the presumption established by Article 160 of the Philippine Civil Code (reproducing Article 1407 of the Civil Code of 1889), to the effect that:

"Art. 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."

Defendant Jose de Borja further counterclaimed for damages, compensatory, moral and exemplary, as well as for attorney's fees.

After trial, the Court of First Instance of Rizal, per Judge Herminio Mariano, held that the plaintiff had adduced sufficient evidence to rebut the presumption, and declared the Hacienda de Jalajala (Poblacion) to be the exclusive

private property of the late Francisco de Borja, and his Administratrix, Tasiana Ongsingco Vda. de Borja, to be entitled to its possession. Defendant Jose de Borja then appealed to this Court.

The evidence reveals, and the appealed order admits, that the character of the Hacienda in question as owned by the conjugal partnership de Borja-Tangco was solemnly admitted by the late Francisco de Borja no less than two times: first, in the Reamended Inventory that, as executor of the estate of his deceased wife Josefa Tangco, he filed in the Special Proceedings No. 7866 of the Court of First Instance of Rizal on 23 July 1953 (Exhibit "2"); and again, in the Reamended Accounting of the same date, also filed in the proceedings aforesaid (Exhibit "7"). Similarly, the plaintiff Tasiana O. Vda. de Borja, herself, as oppositor in the Estate of Josefa Tangco, submitted therein an inventory dated 7 September 1954 (Exhibit "3") listing the Jalajala property among the "Conjugal Properties of the Spouses Francisco de Borja and Josefa Tangco". And once more, Tasiana Ongsingco, as administratrix of the Estate of Francisco de Borja, in Special Proceedings No. 832 of the Court of First Instance of Nueva Ecija, submitted therein in December, 1955 an inventory wherein she listed the Jalajala Hacienda under the heading "Conjugal Property of the Deceased Spouses Francisco de Borja and Josefa Tangco, which are in the possession of the Administrator of the Testate Estate of the Deceased Josefa Tangco in Special Proceedings No. 7866 of the Court of First Instance of Rizal" (Exhibit "4").

Notwithstanding the four statements aforesaid, and the fact that they are plain admissions against interest made by both Francisco de Borja and the Administratrix of his estate, in the course of judicial proceedings in the Rizal and Nueva Ecija Courts, supporting the legal presumption in favor of the conjugal community, the Court below declared that the Hacienda de Jalajala (Poblacion) was not conjugal property, but the private exclusive property of the late Francisco de Borja. It did so on the strength of the following evidences: (a) the sworn statement by Francisco de Borja on 6 August 1951 (Exhibit "F") that -

"He tomado posesion del pedazo de terreno ya delimitado (equivalente a 1/4 parte, 337 hectareas) adjunto a mi terreno personal y exclusivo (Poblacion de Jalajala, Rizal)."

and (b) the testimony of Gregorio de Borja, son of Bernardo de Borja, that the entire Hacienda had been bought at a foreclosure sale for P40,100.00, of which amount P25,100 was contributed by Bernardo de Borja and P15,000.00 by Marcelo de Borja; that upon receipt of a subsequent demand from the provincial treasurer for realty taxes in the sum of P17,000, Marcelo told his brother Bernardo that Francisco (son of Marcelo) wanted also to be a co-owner, and upon Bernardo's assent to the proposal, Marcelo issued a check for P17,000.00 to pay the back taxes and said that the amount would represent Francisco's contribution in the purchase of the Hacienda. The witness further testified that -

"Marcelo de Borja said that that money was entrusted to him by Francisco de Borja when he was still a bachelor and which he derived from his business transactions." (Hearing, 2 February 1965, t.s.n., pages 13-15) (Italics supplied)

The Court below, reasoning that not only Francisco's sworn statement overweighed the admissions in the inventories relied upon by defendant-appellant Jose de Borja, since probate courts can not finally determine questions of ownership of inventoried property, but that the testimony of Gregorio de Borja showed that Francisco de Borja acquired his share of the original Hacienda with his own private funds, for which reason that share can not be regarded as conjugal partnership property, but as exclusive property of the buyer, pursuant to Article 1396(4) of the Civil Code of 1889 and Article 148(4) of the Civil Code of the Philippines.

The following shall be the exclusive property of each spouse:

* * * * *

"(4) That which is purchased with exclusive money of the wife or of the husband."

We find the conclusions of the lower court to be untenable. In the first place, witness Gregorio de Borja's testimony as to the source of the money paid by Francisco for his share was plain hearsay, hence inadmissible and of no probative value, since he was merely repeating what Marcelo de Borja had told him (Gregorio). There is no way of ascertaining the truth of the statement, since both Marcelo and Francisco de Borja were already dead when Gregorio testified. In addition, the statement itself is improbable, since there was no need or occasion for Marcelo de Borja to explain to Gregorio how and when Francisco de Borja had earned the P17,000.00 entrusted to Marcelo. A ring of artificiality is clearly discernible in this portion of Gregorio's testimony.

As to Francisco de Borja's affidavit, Exhibit "F", the quoted portion thereof (ante, page 373) does not clearly demonstrate that the "mi terreno personal y exclusivo (Poblacion de Jalajala, Rizal)" refers precisely to the Hacienda in question. The inventories (Exhibits 3 and 4) disclose that there were two real properties in Jalajala owned by Francisco de Borja, one of 72.038 sq. m., assessed at P44,600, and a much bigger one of 1,357,260.70 sq. m., which is evidently the Hacienda de Jalajala (Poblacion). To which of these lands did the affidavit of Francisco de Borja (Exhibit "F") refer to? In addition, Francisco's characterization of the land as "mi terreno personal y exclusivo" is plainly self-serving, and not admissible in the absence of cross examination.

It may be true that the inventories relied upon by defendant-appellant (Exhibits "2", "3", "4" and "7") are not conclusive on the conjugal character of the property in question; but as already noted, they are clear admissions against the pecuniary interest of the declarants, Francisco de Borja and his executor-widow, Tasiana Ongsingco, and as such of much greater probative weight than the self-serving statement of Francisco (Exhibit "F"). Plainly, the legal presumption in favor of the conjugal character of the Hacienda de Jalajala (Poblacion) now in dispute has not been rebutted - but actually confirmed by proof. Hence, the appealed order should be reversed and the Hacienda de Jalajala (Poblacion) declared property of the conjugal partnership of Francisco de Borja and Josefa Tangco.

No error having been assigned against the ruling of the lower court that claims for damages should be ventilated in the corresponding special proceedings for the settlement of the estates of the deceased, the same requires no pronouncement from this Court.

IN VIEW OF THE FOREGOING , the appealed order of the Court of First Instance of Rizal in Case No. L-28040 is hereby affirmed; while those involved in Cases Nos. L-28568 and L-28611 are reversed and set aside. Costs against the appellant Tasiana Ongsingco Vda. de Borja in all three (3) cases.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Fernando, J., did not take part.

[1] She died during the pendency of these appeals, being substituted by Atty. Luis Panaguiton, Jr., administrator of her estate (S. C. Resolution, 27 February 1970).

[2] Annex A, Record of Appeal, G. R. No. L-28040, pp. 16-21.

[3] Also; Osorio vs. Osorio Steamship Co. 41 Phil. 531; Baun vs. Heirs of Baun 53 Phil. 654; Barretto vs. Tuason, 59 Phil. 845; Cuevas vs. Abesamis, 71 Phil. 147; Jayme vs. Gamboa, 75 Phil. 479; Iballe vs. Po 49 O.G. 956.

[4] Garcia vs. David, 67 Phil. 279; Jakosalem vs. Rafols, 73 Phil. 628.

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