

ROMAN F. DIONISIO, PETITIONER, VS. SOCORRO FRANCISCO VDA. DE DIONISIO, RESPONDENT.

G.R. No. L-18786. August 31, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

A parcel of rice land, 18,400 square meters, more or less, in barrio San Pedro, Morong, Rizal was formerly owned by Simplicio F. Dionisio. During his lifetime he sold an undivided two-fifth (2/5) of it to his brother Roman F. Dionisio. Simplicio died without testament in 1944.

Surviving as heirs of Simplicio F. Dionisio were his spouse Socorro Francisco Vda. de Dionisio, his brothers, nephews and nieces, because he died without ascendants or descendants.

Pursuant to the old Civil Code, the brothers, nephews and nieces of Simplicio F. Dionisio succeeded him to the ownership of his remaining three-fifth (3/5) of the parcel of land aforementioned.[1] Socorro Francisco Vda. de Dionisio also succeeded to one-half of the estate in usufruct.[2]

Subsequently, on July 17, 1947, the brothers, nephews and nieces of the late Simplicio F. Dionisio sold their three-fifth (3/5) portion of the land to Roman F. Dionisio, who thereby became the sole owner of the entire parcel of land, subject to Socorro's right of usufruct.

Socorro filed suit on June 23, 1953 in the Court of First Instance of Rizal against Roman F. Dionisio for partition of the land and damages. On July 13, 1953 Roman filed his answer praying for dismissal of the complaint and setting up a counterclaim for expenses on the land. Answer to the counterclaim was filed on July 14, 1953.

On July 12, 1958 the trial court rendered decision stating that Socorro has usufruct over one-half (1/2) of three-fifth (3/5) of the land; ordering partition of 5,544 square meters to be given to her in usufruct and payment to her of damages representing her share of the products, namely, P270.00 a year from 1947—the year defendant purchased the three-fifth (3/5) portion subject to the usufruct—up to the delivery of the partitioned area; and dismissing the counterclaim.

Defendant appealed to the Court of Appeals. Said appellate court rendered on May 19, 1961 a decision finding that the trial court erred in ordering partition, since as majority co-owner defendant has the choice of giving or not giving a determinate area to usufructuary. Nonetheless, it concluded that the trial court's order of partition cannot be reversed because defendant had not questioned plaintiff's right to demand partition.

Accordingly, defendant appealed to this Court. Appellant contends that plaintiff has no right to demand partition; that defendant had questioned plaintiff's right to demand partition; and that on his counterclaim, defendant is entitled to reimbursement for expenses on the land.

Article 838 of the Old Civil Code provides three alternative ways of satisfying the right of usufruct of the surviving spouse:

"ART. 838. The usufructory rights of the surviving spouse may be satisfied by the settlement upon him or her by the heirs of a life annuity or the income from some specific property, or by the payment of money, as may be determined by agreement between the parties, or, in default of such agreement, by judicial decision."

According to Sanchez Roman, the law hereby establishes three forms which, while not strictly conforming to the juridical concept of usufruct, are deemed equivalent thereto so that by substitution of any of said forms, the right of usufruct belonging to the surviving spouse is fully complied with:

"... el art. 838, en su primer parrafo, establece otras tres formas de excepcion en sustitucion de aquella, consistentes: 1.o, en la asignacion de una renta vitalicia; 2.o, en la de los productos de determinados bienes; 3.o, o en la de un capital en efectivo. Ninguna de estas tres son iguales, en el concepto juridico, al usufructo, forma que llamamos normal; pero cualquiera de ellas tiene el caracter legal de equivalente, como supletorias, o in subsidium, de aquella, si bien desde que la legitima vidual se entiende cumplida por la sustitucion de cualquiera de ellas a la ordinaria..." (Sanchez Roman, Derecho Civil, Tomo VI, p. 1068)

Similarly, Manresa states that the provision aforequoted gives the heirs the choice of paying the surviving spouse in any of the manner therein specified:

"La ley estima que con estos medios no puede perjudicarse al conyuge, el cual ha de disfrutar con mas tranquilidad, y sin graves obligaciones, ni responsabilidad, ni gastos, su cuota. Por esto, para evitar los inconvenientes del usufructo por tener el caracter de deudores los herederos, el art. 838 concede a estos exclusivamente el derecho de pagar en la forma que quieran, sin que el conyuge pueda oponerse en principio a esa determinacion.

"En la palabra herederos debemos ver todo interesado, los herederos voluntarios o forzosos y aun los legatarios, los obligados a pagar al conyuge su cuota. Si siendo mas de uno no puedan llegar a un acuerdo, resolvera la autoridad judicial. Y debe entenderse que hay acuerdo cuando lo resuelva la mayoría de los interesados y no pueda resultarles grave perjuicio, aplicandose las reglas establecidas en el art. 398.

"El testador puede tambien disponer el pago del usufructo en una de las formas expresadas.

"Dispuesto asi por el testador o por los herederos, hay que realizar o ejecutar lo dispuesto, y ya para esto es indispensable que dickef hezedesos y el conyuge procedan de mutuo acuerdo, porque ni la fijacion del capital en efectivo, ni la determinacion de la renta o de los productos, pueden quedar al arbitrio de los deudores. Pagnese en una forma o en otra, el conyuge tiene siempre derecho a la cuota que le asigna la ley, y esa cuota no puede aer mermada contra su voluntad. De aqui que deban calcularse las utilidades que, en relacion con las de la totalidad, de los bienes hereditarioe, le corresponda disfrutar, y con arreglo a ellas fijar la renta, o escoger los bienes o el capital que deben producirlo.

"Si no existe mutuo acuerdo, ha de resolver la autoridad judicial. * * *" (Manresa, Comentarios AlCodigo Espanol, Tomo VI, pp. 506-507.)

As to which of the three forms is to be applied, the same is left to the agreement of the parties and, in default thereof, as in this case, to judicial decision (Art. 888, Old Civil Code).

It follows, therefore, that payment to plaintiff of her share in the income from the property in question—which amounts to P270.00 a year as found by the trial court, and duly affirmed by the Court of Appeals—suffices to satisfy her right of usufruct.

Appellant clearly questioned plaintiff's right to demand partition, since in his answer in the Court of First Instance, he asked that plaintiff's complaint (seeking partition) be dismissed. Furthermore, he assailed in his brief in the Court of Appeals the partition decreed by the order of the Court of First Instance.

Regarding the expenses subject of the counterclaim, the finding of fact by the Court of First Instance, unreversed

by the Court of Appeals, is that no evidence supports the incurrance of said expenses (Record on Appeal, pp. 70-72). Consequently, the counterclaim fails even on this ground alone.

Wherefore, the judgment appealed from is modified, so as to deny respondent Socorro Francisco Vda. de Dionisio's demand for partition, and to order petitioner Roman F. Dionisio to pay respondent Socorro Francisco Vda. de Dionisio P270.00 yearly beginning 1947 in satisfaction of her right of usufruct. Judgment affirmed in all other respects, without costs in this instance. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

[1] Articles 946, 948, Old Civil Code.

[2] Articles 837, 953, Old Civil Code.

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