

MARIA USON, PLAINTIFF AND APPELLEE, VS. MARIA DEL ROSARIO, CONCEPCION NEBRED, CONRADO NEBRED, DOMINADOR NEBRED, AND FAUSTINO NEBRED, JR., DEFENDANTS AND APPELLANTS.

G.R. No. L-4963. January 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action for the recovery of the ownership and possession of five (5) parcels of land situated in the municipality of Labrador, Province of Pangasinan, filed by Maria Uson against Maria del Rosario and her four children named Concepcion, Conrado, Dominador and Faustino, surnamed Nebreda, who are all of minor age, before the Court of First Instance of Pangasinan.

Maria Uson was the lawful wife of Faustino Nebreda who upon his death in 1945 left the lands involved in this litigation. Faustino Nebreda left no other heir except his widow Maria Uson. However, plaintiff claims that when Faustino Nebreda died in 1945, his common-law wife Maria del Rosario took possession illegally of said lands thus depriving her of their possession and enjoyment.

Defendants in their answer set up as special defense that on February 21, 1931, Maria Uson and her husband, the late Faustino Nebreda, executed a public document whereby they agreed to separate as husband and wife and, in consideration of their separation, Maria Uson was given a parcel of land by way of alimony and in return she renounced her right to inherit any other property that may be left by her husband upon his death (Exhibit 1).

After trial, at which both parties presented their respective evidence, the court rendered decision ordering the defendants to restore to the plaintiff the ownership and possession of the lands in dispute without special pronouncement as to costs. Defendants interposed the present appeal.

There is no dispute that Maria Uson, plaintiff-appellee, is the lawful wife of Faustino Nebreda, former owner of the five parcels of lands litigated in the present case. There is likewise no dispute that Maria del Rosario, one of the defendants-appellants, was merely a common-law wife of the late Faustino Nebreda with whom she had four illegitimate children, her now co-defendants. It likewise appears that Faustino Nebreda died in 1945 much prior to the effectivity of the new Civil Code. With this background, it is evident that when Faustino Nebreda died in 1945 the five parcels of land he was seized of at the time passed from the moment of his death to his only heir, his widow Maria Uson (Article 657, old Civil Code). As this Court aptly said, "The property belongs to the heirs at the moment of the death of the ancestor as completely as if the ancestor had executed and delivered to them a deed for the same before his death" (*Ilustre vs. Alaras Frondosa*, 17 Phil., 321). From that moment, therefore, the rights of inheritance of Maria Uson over the lands in question became vested.

The claim of the defendants that Maria Uson had relinquished her right over the lands in question because she expressly renounced to inherit any future property that her husband may acquire and leave upon his death in the

deed of separation they had entered into on February 21, 1931, cannot be entertained for the simple reason that future inheritance cannot be the subject of a contract nor can it be renounced (1 Manresa, 123, sixth edition; Tolentino on Civil Code, p. 12; Osorio vs. Osorio and Ynchausti Steamship Co., 41 Phil., 531).

But defendants contend that, while it is true that the four minor defendants are illegitimate children of the late Faustino Nebreda and under the old Civil Code are not entitled to any successional rights, however, under the new Civil Code which became in force in June, 1950, they are given the status and rights of natural children and are entitled to the successional rights which the law accords to the latter (Article 2264 and article 287, new Civil Code), and because these successional rights were declared for the first time in the new code, they shall be given retroactive effect even though the event which gave rise to them may have occurred under the prior legislation (Article 2253, new Civil Code).

There is no merit in this claim. Article 2253 above referred to provides indeed that rights which are declared for the first time shall have retroactive effect even though the event which gave rise to them may have occurred under the former legislation, but this is so only when the new rights do not prejudice any vested or acquired right of the same origin. Thus, said article provides that "if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin." As already stated in the early part of this decision, the right of ownership of Maria Uson over the lands in question became vested in 1945 upon the death of her late husband and this is so because of the imperative provision of the law which commands that the rights to succession are transmitted from the moment of death (Article 657, old Civil Code). The new right recognized by the new Civil Code in favor of the illegitimate children of the deceased cannot, therefore, be asserted to the, impairment of the vested right of Maria Uson over the lands in dispute.

As regards the claim that Maria Uson, while her deceased husband was lying in state, in a gesture of pity or compassion, agreed to assign the lands in question to the minor children for the reason that they were acquired while the deceased was living with their mother and Maria Uson wanted to assuage somewhat the wrong she has done to them, this much can be said; apart from the fact that this claim is disputed, we are of the opinion that said assignment, if any, partakes of the nature of a donation of real property, inasmuch as it involves no material consideration, and in order that it may be valid it shall be made in a public document and must be accepted either in the same document or in a separate one (Article 633, old Civil Code). Inasmuch as this essential formality has not been followed, it results that the alleged assignment or donation has no valid effect.

Wherefore, the decision appealed from is affirmed, without costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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