

DOROTEO ROMERO, PETITIONER AND APPELLEE, VS. PEDRO VILLAMOR, ET AL., OPPOSITORS AND APPELLANTS.*G. R. No. L-10850. December 20, 1957*

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

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Mariano Villamor and Eustaquia Leopoldo were husband and wife. Both died intestate, the former on October 20, 1952, and the latter in December, 1941, in the municipality of Oroquieta, Misamis Occidental, Philippines, which was their last known residence at the time of their demise. Upon their death, they left conjugal properties, real and personal, said to be worth 15,000.

These spouses had five children, to wit: Calixta Villamor (now deceased and mother of Doroteo, Matias, Victor and Wilijado, surnamed Romero); and Pedro, Hilaria, Aniceta and Eusebia, also surnamed Villamor. It appears from the record that on January 23, 1949, the estate of said couple was partitioned extra judicially inter vivos by the widower Mariano Villamor among the four surviving children of said spouses and their grandchildren, issue of the predeceased daughter Calixta, who were represented by their father Luciano Romero, as their natural guardian; but apparently, the children of Luciano Romero and Calixta Villamor were not agreeable to said partition, and questioning the validity of the partition as well as the authority of their father to represent them because he had not been judicially appointed as their administrator, they asked their uncle and aunts to cause the institution of an intestate proceeding for the adjudication of the properties left by their parents or grandparents. As his uncle and aunts refused to do so, Doroteo Romero instituted special proceedings No. 225 on March 23, 1953, in the Court of First Instance of Misamis Occidental, praying in the petition that letters of administration of the estate of the deceased couple Mariano Villamor and Eustaquia Leopoldo be issued to him, and that in the meantime, pending hearing of the petition and for the protection, of the interests of the surviving heirs in the estate left by said deceased spouses, the petitioner or any other person that the Honorable Court may deem capable, be appointed as special administrator upon filing a bond with sufficient solvent sureties in the amount to be fixed by the Court. The petition for the opening of these intestate proceedings was objected to by Pedro, Aniceta and Eusebia Villamor, who moved for the dismissal of the petition, on the ground that the properties had been already partitioned since 1949; notwithstanding which and after the usual procedure. For such cases provided, the Court, by order of August 15, 1958, delegated the Clerk of Court to receive the evidence as to the propriety of the appointment of an administrator in this case, and by order of October 3, 1953, designated Doroteo Romero to check, without compensation, on all the produce of the property listed or mentioned in the so-called extrajudicial partition dated January 23, 1949 (Exhibit 1).

On October 12, 1953, the oppositors above named filed a motion for reconsideration of the orders of August 15 and October 3, 1953, and after considering the arguments adduced by both parties, the Court, by order of March 5, 1954, denied the motion for reconsideration of the orders of the Court of August 15 and October 3, 1953, as without merit. In view of this outcome, the oppositors filed on March 17, 1954, their notice of appeal to the Supreme Court from the orders of the court dated August 15 and October 3, 1953, and March 5, 1954, on the

ground that they were contrary to law; but when the record on appeal was approved, the trial judge erroneously directed the clerk of his court to forward the records of this case to the Court of Appeals, which certified the case to this Court. It is immediately apparent that the widower Mariano Villamor had no legal authority to liquidate and distribute the estate of his predeceased wife. The power of the widower under the Civil Code of 1889, to liquidate the conjugal partnership upon his wife's demise had disappeared as of 24 November 1924 with the passage of Act 3176 of the Philippine Legislature (*Calma vs. Tafiedo*, 66 Phil. 594), now embodied in Rule 75, section 2 of the Rules of Court. Clearly, therefore, the respondents had the right to commence intestate proceedings for the distribution of their grandmother's estate, since the latter was not validly partitioned.

With regard to the estate of Mariano Villamor himself the (basic issue and the one of which all the others are subordinate, is the validity of the extrajudicial partition inter vivos made on January 23, 1949, with the intervention of Mariano Villamor and his children, as well as the father of the respondents, who were minors at the time. It is upon this partition that appellants predicate their opposition to the judicial estate proceedings. While Article 1056 of the Civil Code of 1889, which was the government law in 1949, authorizes a testator to make a partition of his estate by act inter vivos, this Court has ruled that the validity of any such distribution rests upon the prior making of a valid testament, with all the formalities prescribed by law, the partition inter vivos being but the execution thereof (*Legasto vs. Verzosa*, 54 Phil. 766; *Fajardo vs. Fajardo*, 54 Phil. 842). Since Mariano Villamor died intestate, on 20 October 1952, and this fact is not controverted, it is the inescapable conclusion that the partition inter vivos of his estate is void and of no effect. In *Legasto vs. Verzosa*, supra, this Court

"It is thus seen that both the Spanish Supreme Court and the learned and authoritative commentator, Manresa, affe of the opinion that a testator may, by an act inter vivos, partition his property, but he must first make a "will with all the formalities provided for by law. And it could not be otherwise, for without a will there can be no testator; when the law, therefore, speaks of the partition inter vivos made by a testator of his property, it necessarily refers to that property which he has devised to his heirs. A person who dispose of his property gratis inter vivos is not called a testator, but a donor. In employing' the word "testator", the law evidently desired to distinguished between one who freely donates his property in life and one who disposes of it by will to take effect after death." (Rec. App., pp. 25-26.)

It is true that when Mariano Villamor died, the new Civil Code was already in effect, and that its Article 1080 now permits any person (not a testator, as under the old law) to partition his estate by act inter vivos; but the validity of any such partition must be determined as of the date it was executed or accomplished, not the date when the author dies. The new Civil Code so provides in its Article 2256:

"Art. 2256. Acts and contracts under the regime of the old laws, if they are valid in accordance therewith, shall continue to be fully operative as provided in the same, with the limitations established in these rules. But the revocation or modification of these acts and contracts after the beginning of the effectivity of this Code, shall be subject to the provisions of this new body of laws."

There is no rule in the new Civil Code giving its Article 1080 retroactive effect; on the other hand, Art. 4 expressly provides that "laws shall have no retroactive effect unless the contrary is provided." The law in force at the demise of the decedent simply determines the legal shares of the heirs, but respects the validity of his prior dispositions in so far as compatible with the new law. Article 2263 provides:

"Art. 2263. Rights to the inheritance of a person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court. The inheritance of those who, with or without" a will, die after the beginning of the effectivity of this Code, shall be adjudicated and distributed in accordance with this new body of laws and by the Rules of Court; but the testamentary provisions shall be carried out insofar as they may be permitted by the Code. Therefore, legitimes,

betterments, legacies and bequests shall be respected; however, their amount shall be reduced if in no other manner can every compulsory heir be given his full share according to this Code,"

The proposed partition inter vivos of the estate of Mariano Viliamor not being valid or effective, it is unnecessary to inquire whether or not the father of the appellees had authority to represent them therein.

Premises considered, the orders appealed from are affirmed. Coats against appellants. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia and Felix, JJ., concur.

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