

TESTATE ESTATE OF THE LATE BALDOMERO J. LESACA. CONSUELO F. LESACA AND JUANA F. LESACA, EXECUTRICES AND APPELLANTS, VS. JUANA FELIX VDA. DE LESACA, CLAIMANT AND APPELLEE.

G.R. No. L-3605. April 21, 1952

Ponente: REYES, J.

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REYES, J.:

There are three appeals registered in this case, all of which have been certified to this Court by the Court of Appeals for the reason that, in its opinion and as admitted by the parties, they involve only questions of law. Those questions are formulated in the certification of the Court of Appeals as follows:

"1. Whether money received after marriage, as purchase price of land sold a retrovendendo before such marriage to one of the consorts, constitutes conjugal property or not;

"2. Whether allowances for support granted by the court to the minor heirs should or should not be subject to collation and deducted from their respective hereditary portions; and

"3. Whether a standing crop of palay planted during coverture, and harvested after the death of one of the consorts, constitutes fruits and income within the purview of Article 1401 of the Civil Code, and one-half of such crop should be delivered to the surviving spouse."

Appeal No. 1

Baldomero J. Lesaca died in the City of Manila on November 8, 1946. He was survived by his second wife (Juana Felix), two minor children by the latter, two children by his first marriage, and three acknowledged natural children by a third woman. In his will he named Juana F. Lesaca and Consuelo F. Lesaca, his children by his first marriage, co-executrices.

Proceedings for the probate of the will and for the administration of the estate of the deceased having been instituted in the Court of First Instance of Manila, that court, at the instance of the widow but over the opposition of the co-executrices and the three acknowledged natural children, granted each of the two minor children a monthly allowance of P100 for living expenses, "plus an extra sum of P300 for their matriculation and uniforms," and later ordered the co-executrices to deposit in court all the allowances in arrears. The co-executrices refused to make the deposit, contending that if any amount were to be paid for the support and education of the minors the same should be charged against their share of the inheritance. But the court took a different view and issued an order, dated March 11, 1949, holding that the amounts it had authorized to be paid to the minors should be considered allowances for support, to be deducted from their hereditary portion only in so far as they exceed what they are entitled to as fruits or income, and requiring the co-executrices to deposit in court "all the amounts due the said minors, namely P2,955.83, if and when the financial condition of the estate under administration so warrants." This is the order involved in the first appeal, and the question presented is whether the allowances for support granted by the court to the legitimate minor children of the deceased pending liquidation of his estate are

subject to collation and deductible from their share of the inheritance.

Obviously, the answer should be in the affirmative in view of Article 1430 of the Civil Code of 1889 (re-enacted as Art. 188 of the new Civil Code) which provides that "the surviving spouse and his or her children shall be given an allowance for their support out of the general estate, pending the liquidation of the inventoried estate, and until their share has been delivered to them, but it shall be deducted from their portion in so far as it exceeds what they may have been entitled to as fruits or income."

Counsel for this appellant minors, however, contends that Art. 1430 should be harmonized with Art. 1041, which provides that "allowances for support, education, attendance in illness, even though unusually expensive, apprenticeship, ordinary equipment, or customary presents are not subject to collation," because the allowances mentioned in the latter article refer to no other than the allowances for support given to the children of a deceased person. This contention is without merit. Article 1041 is found under the section on "Collation," which refers only to property or rights received by donation or gratuitous title "during the lifetime of the decedent." (Civil Law by Padilla, Vol. I, p. 1125), and is based on the philosophy that such donations in no way impoverish the donor or enrich the donee since ordinarily they are not taken from the capital but rather from the fruits thereof which would anyway have been consumed or spent during the life of the donor and therefore would form no part of his inheritance. (7 Manresa, 5th ed., p. 625.) But allowances given to the heirs pending the liquidation of the estate of the decedent stand on a different footing.

As Manresa observes:

"Despues de la muerte del causante todo varia; los frutos del capital se agregarian a este, formando parte del mismo, y por esto se deben a la herencia, ya provengan de las cosas donadas sujetas a colacion, o de derechos de disfrute, ya constituyesen el objeto mismo de la liberalidad, como en caso de renta o pension, cesion de productos o frutos, perdon de intereses, etc." (7 Manresa, 5th ed. p. 576.)

Appeal No. 2

This appeal is taken by the co-executrices from another order of March 11, 1949, declaring that the sum of P2,500 received by them as repurchase price of land bought by the deceased before the marriage is conjugal property and directing that one-half of said sum be paid to the widow.

It appears that the deceased and his widow, Juana Felix, had lived together maritally since 1924 but were not married until December 18, 1945; that is, less than a year before his death; that in 1930 Ramon Garcia conveyed to the deceased three parcels of land for P2,500 under a pacto de retro sale; and that on September 25, 1947 the co-executrices, with the approval of the court, reconveyed the said parcels of land to Ramon Garcia for the same sum of P2,500. Claiming that this sum was conjugal property the widow petitioned the court to order the co-executrices to give her one-half thereof. The co-executrices opposed the petition, claiming that the money paid to Ramon Garcia for the land in question came from the products of the property left by their mother. But after hearing, the court granted the petition in an order dated March 11, 1949, holding that the sum in dispute was conjugal property, "considering that the reconveyance was effected after the marriage." This order is the subject of appeal No. 2, which presents the first of the three questions stated in the beginning, to wit:

"Whether money received after marriage, as purchase price of land sold a retrovendo before such marriage to one of the consorts, constitutes conjugal property or not."

In our opinion the question calls for a negative answer. According to the briefs Garcia sold the land for P2,500 to Lesaca before the latter's marriage to Juana Felix and repurchased it for that same amount after said marriage. If the money paid by Lesaca was his own exclusively, surely the mere fact that it was returned or repaid after the

marriage cannot convert it into conjugal property. It is true that under Art. 1401 of the Civil Code of 1889 property obtained by the industry, wages or work of the spouses or of either of them belongs to the conjugal partnership. But the article refers to property obtained during the marriage, and while counsel for the widow cites the case of *Marata vs. Dionio* (G. R. No. 24449, unreported) wherein this Court held that though there is no technical marital partnership between persons living maritally without being lawfully married, nevertheless there is between them an informal civil partnership which would entitle the parties to an equal interest in property acquired by their joint efforts, in the present case there is no showing that the sum paid to Garcia was earned by the joint efforts of the deceased and his widow. In the absence of such proof the sum must be deemed to have been the property of the deceased to whom the land for which it was given in payment was sold by Garcia. It follows that the order below adjudging one-half of the sum in question to the widow is erroneous.

But the claim that the sum in question belongs to the co-executrices as an inheritance from their deceased mother has not been upheld by the trial court, and as a question of fact cannot be urged in this appeal, which, with the conformity of the parties, has been submitted to this Court as involving questions purely of law. Moreover, as stated in the resolution of the Court of Appeals, dated October 28, 1949, the Clerk of the Court of First Instance certifies that no evidence has been submitted or taken in connection with the motions that gave rise to the present appeals.

Appeal No. 3

This is an appeal from the order of April 29, 1949, which declares that the 1,040 cavans of palay of the value of P20,800 received as rent on decedent's land for the agricultural year 1946-1947 should be considered conjugal property so that one-half thereof should go to the widow.

It is admitted that the deceased did not cultivate his land personally but had it cultivated by one who gave him a certain percentage of the crop every year by way of rent, and the lower court found that the 1,040 cavans of palay in dispute was the rent or the decedent's share of the harvest from palay planted in June or July, 1946—that is, after his marriage to Juana Felix—and which must have already matured or been near maturity at the time when the conjugal partnership was dissolved by the death of the deceased in November, 1946. Under Article 1380 of the old Civil Code "after the marriage has been dissolved, the uncollected fruits or rents shall be divided pro rata between the surviving spouse and the heirs of the deceased in accordance with the rules which govern in cases of termination of usufruct," the conjugal partnership being considered usufructuary of the private property of each spouse. As rents are civil fruits (Art. 355, old Civil Code) they must be deemed to accrue from day to day and belong to the usufructuary (in this case the conjugal partnership) in proportion to the time the usufruct may last. (Art. 474, old Civil Code.)

We gather from the findings of the trial court that the decedent's participation (as rent) in the palay planted by the lessee in June or July and which must have been harvested on the following November, if not before, accrued during coverture. Such being the case it should belong to the conjugal partnership. It is immaterial that the rent was actually received after the dissolution of the marriage through the death of one of the spouses. It is the date of accrual that is important. As Manresa says:

"Los frutos civiles se entienden devengados día por día; la regla en ellos no pueden ser mas sencilla. Importa poco la epoca en que se realice el pago. Si se percibieron adelantados, el conyuge propietario debe a la sociedad cuanto a esta corresponda, o sea, los devengados desde el día de la celebracion del matrimonio. Si las rentas, intereses, productos o utilidades se perciben o cobran despues, la sociedad debe al propietario la parte proporcional correspondiente hasta el día de la union." (9 Manresa, 5th ed., 508.)

"* * * En lo relativo al usufructo, esa regla se contiene en el art. 474: los frutos civiles se entienden percibidos

dia por dia y pertenecen al usufructuario en proporcion al tiempo que dure el usufructo." (4 Manresa, 5th ed., 346-347.)

To the same effect is the following comment on the corresponding provision of the French Civil Code:

"3. El modo de adquisicion de los frutos por la comunidad difiere segun se trate de frutos naturales o civiles; los primeros se adquieren por su percepcion, los segundos dia a dia. La distribucion de los frutos civiles por tanto debera hacerse sin tomar en consideracion el momento en que hayan sido efectivamente percibidos ni aun, si se trata de alquileres de fincas rusticas o urbanas el momento en que nan vencido: solo hay que atenerse a la epoca a que corresponde."

* * * * *

"Asi, frecuentemente ocurre que los alquileres solamente son pagaderos el año siguiente al de la cosecha y a veces en varios plazos. Es indudable que, si la comunidad queda disuelta antes del vencimiento, tendra derecho a la totalidad o a parte del alquiler de la finca, en proporcion al tiempo que aquella existio en el ano de la cosecha. Asimismo, si los alquileres han sido percibidos por anticipado, antes del matrimonio, la comunidad tiene derecho a una compensacion si esos alquileres son correspondientes a una epoca posterior al matrimonio: *infra*, titulo III, comunidad de gananciales). *Contra Req.*, mayo 27, 1879, D. I. 297, s. 80, 1, 393." (Planiol and Ripert, *Tratado Practico de Derecho Civil Frances*, vol. 8 p. 306 [Spanish translation by Diaz Cruz]).

It follows from the foregoing that the order appealed from is in accordance with law and should therefore be affirmed.

Wherefore, it is the decision of this Court that—

- (1) The order of March 11, 1949, declaring that the allowances granted the minors pending liquidation of the estate should be deducted from their hereditary shares in so far as they exceed what they may be entitled to as fruits or income, is affirmed;
- (2) The other order of March 11, 1949, declaring the sum of P2,500 received by the co-executrices from Ramon Garcia as repurchase price of the three parcels of land resold to the latter is conjugal property and that the widow is entitled to one-half thereof is reversed and the said sum is declared to be a part of the estate of the deceased;
- (3) The order of April 23, 1949, declaring that the decedent's share of a standing crop of palay planted during the coverture and harvested after the dissolution of the marriage are fruits and income within the purview of Article 1401 of the Civil Code and, therefore, should be considered conjugal property, of which one-half should be delivered to Juana F. Vda. de Lesaca, is affirmed.

Without pronouncement as to costs.

Paras, C. J., Feria, Bengzon, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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