

LUISA CRUZ VDA. DE JOSE ET AL., PLAINTIFFS AND APPELLANTS, VS. EUGENIA DE LA PAZ, DEFENDANT AND APPELLEE.

G.R. No. L-2015. January 06, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

This litigation concerning a parcel of land in the municipality of Cainta was submitted to the court of first instance of Rizal upon a stipulation of facts. From a decision dismissing the case, the plaintiffs have appealed, and they claim that the court a quo erred in disregarding certain portions of the stipulation and consequently in absolving the defendant.

Vivencio Cruz married Magdalena Domingo in 1886. Magdalena died in 1897. In 1911 Vivencio Cruz married Fidela Lira. He died in 1940, leaving a testament, the fifth clause of which reads as follows:

"Quinto.—Lego a mi esposa Fidela Lira la parte de ganancias que me corresponde en los bienes que hemos adquirido entre de nuestro ma-trimonio; lego tambien a la misma el terreno pa-layero de cinco (5) balitas en el sitio de Tatlong Cauayan, dentro de la jurisdiction del raunicipio de Cainta, provincia de Rizal, segun el piano II-4653 con un area de 35,949 metros cuadrados, con la condicion de que haga renuncia de su derecho de usufructo que señala la ley sobre la porcion de los bienes que mis hijos me han de heredar, de lo contrario y si no se hace tal renuncia, este legado no tendra valor y efecto alguno."

The children mentioned in this paragraph are the plaintiffs in this case, being the offspring of Vivencio Cruz with his first wife Magdalena Domingo. (Fidela Lira bore him no children). The lot described therein is the land now in dispute, which the defendant possesses as successor in interest of Fidela Lira, who got the land pursuant to the testament of Vivencio Cruz above mentioned.

Plaintiffs contend (1) that the land should be declared as reservable property and (2) that they are entitled to the possession of the same upon the second marriage of Fidela Lira in 1941 to Angelo Javier or at least after her death in February, 1945.

Defendant replies that the plaintiffs are estopped to . claim such reservation, inasmuch as they agreed to the terms of the testament above recited, whereby the lot was bequeathed to Fidela Lira in exchange for her usufructuary rights. The plaintiffs counter with the assertion that the legacy was null and void, because the property belonged exclusively to their mother Magdalena, and that it passed to the possession of Vivencio Cruz merely as a trustee.

Magdalena's exclusive ownership is flatly denied by the defendant.

The stipulation of facts contains this statement about the realty in dispute:

"Que la parcela de terreno arriba descrito era parte de los bienes que Magdalena Domingo dejo a su fallecimiento sin liquidar, en poder de su esposo Vivencio Cruz, como conyuge supers-tite; y por tal motive este continuo en posesion de dichos bienes hasta su fallecimiento (de Vivencio Cruz), como asi se hizp constar en el parrafo tercero de su referido testamento."

It is not clear from the above that the property was private property of Magdalena. If it were paraphernal, the phrase "dejo a su fallecimiento sin liquidar" would be out of place, because usually no liquidation is made of paraphernal—but of conjugal property [1]. On the other hand, it is not inaccurate to refer to conjugal property as property which Magdalena "dejo a su fallecimiento" because in truth she has a half interest in such property. This doubt, however, is dispelled by the third paragraph in the testament of Vivencio Cruz which, denying that Magdalena had brought paraphernal property to the marriage, implies necessarily that this immovable property was conjugal. It says, "tanto mi primera como mi actual esposa (referring to Fidela Lira) no han aportado en nuestro matrimonio ninguna clase de bien inmueble." Note that the testament is made a part of the stipulation of facts.

Besides there is a prima facie presumption that the property in the hands of the spouses is conjugal [2]. Wherefore, all the arguments of the plaintiffs founded upon the alleged exclusive ownership of the property by their mother Magdalena Domingo have no persuasive force; and the trial judge did not err in refusing to hold that the lot was paraphernal property of Magdalena.

Plaintiffs might argue that, granting the lot was community property, still they are entitled to one-half thereof as heirs of their mother Magdalena. However, they are not in a position to repudiate the provisions of the testament of their father under which they enjoyed the benefits of the renunciation effected by Fidela Lira in exchange for the legacy of this lot. Anyway this was not their proposition in the lower court, wherein they asserted in the complaint that Vivencio Cruz was the owner of the property because he had inherited it from the relatives of his wife Magdalena Domingo.

Plaintiffs invoke article 968 of the Civil Code which provides that "the widower or widow who contracts a second marriage shall be obliged to reserve for the children and descendants of the first marriage the ownership of all the property acquired from the deceased spouse by will, by intestate succession, by donation, or by any other lucrative title; but not his or her half of the conjugal property." They maintain that according to this article Fidela was duty bound to reserve to them this particular lot which she had acquired from the deceased Vivencio Cruz. On this point we think the appellee is correct in pointing out that the article does not apply, because Fidela, who contracted a second marriage, did not have children in her first marriage with Vivencio Cruz.

"Persona obligada a reservar.—Se impone la obligación al conyuge sobreviviente que tenga hijos del matrimonio disuelto o descendientes de esos hijos, que posea bienes de los declarados reservables en los arts. 968 y 969, y que, o contraiga segundas nupcias, o tenga en estado de viudez un hijo natural reconocido." (Manresa, , Vol. VII, 6th Ed., p. 246).

Wherefore, finding no reason to reverse the appealed judgment, we hereby affirm it, with costs. So ordered.

Moran, C. J., Ozaeta, Paras, Pablo, Padilla, Tuason, Reyes, and Torres, JJ., concur.
Montemayor, J., no part.

[1] It is the duty of a husband, upon the death of his wife to liquidate the affairs of the conjugal partnership without delay. (Pamittan vs. Lasam, 60 Phil., 908.)

[2] Article 1407, Civil Code, Sison vs. Ambalada, 30 Phil., 118; Vilorio vs. Aquino, 28 Phil., 258.

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