

TESTATE ESTATE OF NARCISO A. PADILLA, DECEASED. ISABEL B. VDA. DE PADILLA, EXECUTRIX AND APPELLANT, VS. CONCEPCION PATERNO, ADMINISTRATIX AND APPELLEE.

G.R. No. L-8748. December 26, 1961

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

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

This appeal from an order of the probate court in the special proceeding for the settlement of the testate estate of the deceased Narciso A. Padilla involves the same properties that had already been the subject-matter of two earlier appeals also brought to this Court by the executrix-appellant Isabel B. Vda. de Padilla, G.R. No. 48137[1] decided October 4, 1943, during the war, and G. R. No. L-4130,[2] decided September 30, 1953, after the war.

The facts of the case, up to the time the second appeal (G.R. No, L-4130) was taken by the executrix to this Court, were summed up in our 1953 decision as follows:

"Narciso A. Padilla died February 12, 1934, leaving a childless widow, Concepcion Paterno, Whom he had married in 1912. His last will, which was probated in due course, instituted his mother, Ysabel Bibby Vda. de Padilla, as universal heiress.

In the proceedings for the settlement of his estate in Manila (Civil Cases 46058-63), his widow moved for delivery of her paraphernal property together with some reimbursements and indemnities, and for one-half of the conjugal partnership property. She also asked that her usufructuary right as surviving spouse be imposed on the corresponding portion of her husband's assets. The heiress, who was executrix, opposed several such claims.

After hearing evidence on both sides, the Court rendered on January 15, 1940, a decision which, as amended by its resolution of April 24, 1940, declared as paraphernal certain personal and real properties, Other realties, although originally paraphernal, were considered part of the conjugal assets because of buildings erected thereon during coverture, but reimbursement of their value was directed. The main bulk was adjudged conjugal property. The Court ordered the appointment of commissioners to estimate the amounts to be reimbursed, to divide the matrimonial assets into two equal parts for the spouses, and to determine the specific portion of the deceased's estate to be encumbered with the widow's usufruct (1/3). Other minor directives are omitted for the sake of brevity.

The executrix appealed to this Supreme Court, wherein, dated October 4, 1943, a decision was promulgated upholding the judgment of the Manila court with a slight modification as to payment of interest.

(That year Concepcion Paterno died. She is now represented by her testate heirs and legatees.)

For compliance with the decision, the records went back to the Manila court. Therein three commissioners were duly appointed: Vicente A. Rufino, chosen by the widow's side, Augusto J.D. Cortes by the heiress-executrix, and V.R. Endaya by the Court.

After hearing held before the said committee (May-November, 1947), Vicente A. Rufino submitted his report

dated July 9, 1948 which was concurred in toto by V. R. Endaya. A few days later Augusto J. D. Cortes filed his own report, wholly at variance with his colleague's recommendations on many important particulars.

In December, 1948, counsel for the executrix interposed legal and factual objections to the Rufino report. In May, 1949, Atty. Claro M. Recto, for the Paterno relatives, replied to said objections, and prayed that they be overruled with the approval of the aforesaid report.

On July 3, 1950, Judge Rafael Amparo of the Manila Court approved the majority report except that he declared: (1) lot No. 50 on Juan Luna Street was conjugal, and (2) the usufruct of the widow shall be constituted on the one-third estate." (Report on Appeal, pp. 149-151)

After the return of the records to the probate court for partition in accordance with our decision in G. R. No. L-4130, which affirmed the decision appealed from with the exception of the modification that one piece of property (the R. Hidalgo property) adjudicated to the widow was assigned instead to the estate of the deceased, in exchange for another property (in Azcarraga-Reina Regente) given to the widow, and after delivery by the executrix on December 7, 1953 of the properties constituting the widow's share in the partition of the conjugal estate, the executrix, on March 3, 1954, filed a petition for the final closure of the testate proceedings. A day before the filing of this petition, however, the trial court had issued an order, upon motion of the administratrix of the estate of the widow Concepcion Paterno, for a final accounting of the 1951, 1952, and 1953 credit balances of the estate, and to determine the rentals or income of those properties found to be paraphernal assets of the widow, so that the undelivered portions of said rentals could be turned over to the widow's estate. Accordingly, the estate of the widow opposed the petition for closure pending the final accounting required of the executrix in the court's order of March 2, 1954; and also pending determination of the share of the widow in the additional value of the R. Hidalgo property, due to the construction of the Illusion Theater, that in 1952 would become property of the owners of the land. The administratrix of the widow's estate likewise sought an amendment of the court's order of March 2, 1954, so as to require the executrix to account for the undelivered rentals or fruits of the widow's paraphernal properties from October 5, 1938, when the executrix started her administration, until December 7, 1953, when they were finally turned over to the widow's estate.

On March 15, 1954, the executrix submitted an accounting of the credit balances of the estate for the years 1951, 1952, and 1953, but in subsequent pleadings objected to the accounting of the fruits of the properties declared to be paraphernal on the theory that (1) said properties were actually held conjugal subject only to paraphernal claims; and that (2) consequently, their income belonged to the conjugal estate and had been periodically divided equally between the executrix as the universal heir of the deceased and the widow's estate. As for the R. Hidalgo property, the executrix also objected to any further determination of an additional share of the widow on the improvements thereon, claiming that the widow's estate was bound by the value of P189,240 given to this property by the Rufino report from which the administratrix of the Widow's estate did not appeal.

Reply and counter-reply having been filed by the parties on the above issues, the probate court finally resolved the same in its order of July 31, 1954, the pertinent portions of which are as follows:

"The questions that should be passed upon by this Court are those raised by the administratrix of the estate of Concepcion Paterno in her motion for reconsideration, to wit: (1) Should the herein executrix be made to account for the income of the paraphernal properties belonging to Concepcion Paterno as prayed for by said administratrix? (2) Is it necessary to determine the additional value of the R. Hidalgo property as sought by said administratrix?

The answer to the first question is in the affirmative. The Civil Code of 1889 provided that upon dissolution of marriage the husband or his heirs may be compelled to make immediate restitution of the paraphernal property which has been turned over to the husband for administration (Art. 1391 in connection with Art. 1369). The

Code of Civil Procedure provided in its Section 726 that where a deceased person in his lifetime held lands in trust for another person, the court may, after notice given as required in the preceding section, grant license to the executor or administrator, and the person, his executor, or administrator, for whose use and benefit they are holden; and the court may decree the execution of such trust, whether created by deed or by law.' Upon the death of Narciso Padilla his marriage with Concepcion Paterno was dissolved. From the moment of his death, his heir was bound to return the paraphernal properties of Concepcion Paterno, and from said moment any income or fruit derived from said paraphernal properties belonged to the owner thereof.

It is contended by the executrix herein that the properties under administration in this proceeding are conjugal subject to the paraphernal claims of the widow, Concepcion Paterno and that the rentals from one or the other property cannot be excluded 'for such exclusions cannot be justified, as the definite character of the properties as adjudicated in favour of the wife or of the husband became absolute and definite only after the decision of the Hon. Supreme Court late in 1953.' This contention is not well taken, because the determination made by the Supreme Court of the character of the properties in question retroacts to the date Narciso Padilla died.

It appears that Ysabel Bibby was appointed special administratrix in this proceeding on August 29, 1938.

The other question refers to the R. Hidalgo property. With respect to this property, the Supreme Court in its decision in G.R. No. L-4130 said—

'This Illusion Theatre was not reckoned with in the Rufino report Apparently it would pass to the estate in 1952 upon the occurrence of specified contingencies. If it has passed the matter could undoubtedly be the subject of further deliberation upon appropriate motions. It would only be a question of determining the additional value of the R. Hidalgo property and of requiring the herein appellant to pay the Paterno estate its corresponding share.'

The above quoted portion of the decision is clear and needs no further elucidation.

Wherefore, the executrix herein is directed to submit within ten (10) days from receipt of this order an accounting of the income of the paraphernal properties in question covering the period from August 29, 1938 to December 7, 1953.

Regarding the R. Hidalgo property, this proceeding is hereby set for hearing on August 1954, 8:30 a.m. for the purpose of determining the additional value of said property in consonance with the above indicated decision of the Supreme Court.

The executrix herein is hereby authorized and directed to deliver immediately to the estate of Concepcion Paterno the one-half portion of the credit balance on the 1953 annual accounting.

The consideration of the prayer to close this proceedings is hereby deferred until the accounting herein above called for shall have been submitted and passed upon and the additional value of the R. Hidalgo property shall have been determined.

Let the correction indicated by the administratrix of the estate of Concepcion Paterno be made. It is so ordered." (Record on Appeal, pp. 60-62)

The executrix sought but failed to have the above order reconsidered; whereupon, she filed this her third appeal before this Court.[1]

The executrix-appellant assigns six errors, which may be reduced to the following propositions:

(1) That the lower court erred in holding that some of the properties included in the estate are paraphernal in character and that all their income belonged to the widow Concepcion Paterno;

(2) That the widow having already raised the question of her right to all the fruits of her alleged paraphernal properties in a petition for the liquidation of their fruits filed before the probate court even before the war, and no fruits having been awarded to her by the probate court in its decision of January 15, 1940, as amended by its resolution of April 24, 1940, or by this Court in its 1943 decision in G.R. No. 48137 or in its 1953 decision in G.R. No. L-4130, (93 Phil., 884) the widow or her estate is now barred from raising again the question of her exclusive right to such fruits either by the principles of res judica or that of conclusiveness of judgment;

(3) As to the R. Hidalgo property of the estate, the lower court erred in sustaining the additional claim of the widow's estate over the improvements thereon.

In support of her first proposition, that the lower court erred in holding that some of the properties in the estate are paraphernal and that all their income belonged to the widow Concepcion Paterno, the executrix-appellant claims "that our decision in G.R. No. L-4130 did not declare any properties in the estate of the deceased Narciso A. Padilla paraphernal, but that certain properties therein were declared "conjugal assets, subject to paraphernal claims", and that this decision is the "law of the case" in this incident and appeal.

The above argument appears to be a mere reiteration of the claims already urged by this same appellant in G.R. No. L-4130, wherein she similarly argued that the probate court, and this Court in G. R. No. 48137, did not hold any properties in the estate paraphernals but that certain properties therein were declared conjugal partnership properties, with the widow being entitled to reimbursement for the value of her paraphernal claims (see Appellant's Brief in G.R. No. L-4130, pp. 70-71, 103, 106). Rejecting this argument in our decision in G.R. No. L-4130, we said:

"The Rufino report which is printed in full on pages I69-I92 of the Record on Appeal, states that the buildings constructed by the partnership on the two lots were destroyed by fire during the battle of liberation of Manila in 1945. Then it goes on to adjudicate:

'As already stated, the conjugal improvements on the lots on Arquiza and Juan Luna have been destroyed by fire, and the Supreme Court having held that the lands on which said improvements were erected remained paraphernal until the value of said lands were paid to the widow Concepcion Paterno Vda. de Padilla, said lands must be returned to the Testate Estate of Concepcion Paterno Vda. de Padilla.

However, any amount due or that may be received from the War Damage Commission for the improvements that Were destroyed on those two pieces of property shall be divided share and share alike between the estate of Ysabel Bibby Vda. de Padilla and the estate of Concepcion Paterno Vda. de Padilla.' (Record on Appeal, p. 177).

The executrix earnestly challenges the first paragraph contending that the lots became conjugal properties from the time the buildings were erected thereon, and the subsequent destruction of such buildings did not make them paraphernal. She also argues that the indemnity to the widow for said lots should be their value at the time of construction of the buildingd, or at most, at the time of dissolution of the partnership in 1934.

These contentions may not be upheld in view of the decision of the Manila Court and the confirmatory decision of this Tribunal in 1943, There are, to be sure some propositions in said decision which we may now hesitate to ratify, especially the pronouncement that the lot continued to be paraphernal until its value had been actually paid. But that judgment is now the law of the case." (Record on Appeal, pp. 151-152)

In other words, we maintained in G. R. No. L-4130, as the law of the case, our previous decision in G. R. No. 48137 that—

"The ownership of the land is retained by the wife until she is paid the value of the lot, as a result of the

liquidation of the conjugal partnership. The mere construction of a building from common funds does not automatically convey the ownership of the wife's land to the conjugal partnership," (Record on Appeal, p. 138)

Considering that our decision in G. R. No. L-4130 is, in executrix-appellant's own words, "the last and final decision of this Honorable Court intended to definitely settle and close this estate" (Appellant's Brief, p. 49), and that the "law of the case" in this appeal are all the previous decisions herein, "including the 1953 decision in G. R. No. L-4130" (idem, p. 17), the dispositions made in our decision in G. R. No. L-4130 should be considered as final and conclusive on the parties in this case and its incidents.

But to what extent does the "law of the case", as expressed in the above decisions, bear on the more important question in this appeal—namely, the alleged exclusive right of the widow Concepcion Paterno to all the fruits of the properties of the estate declared paraphernal from the time conjugal partnership was terminated by the death of the husband Narciso A. Padilla up to their final delivery to the estate of the widow Concepcion Paterno on December 7, 1953?

On this matter, we must perforce distinguish those paraphernal properties that did not cease to be such all throughout and were, accordingly, turned over to the widow's estate on December 7, 1953, from those that, having been paid or indemnified in full to the widow upon the final partition and division of the conjugal estate, had finally been converted into conjugal assets. To determine the properties that belong to either class, we must go back to the records of these settlement proceedings before this appeal and the proceedings taken in the court below in the course of the execution of our final judgment in G. R. No. L-4130.

Let us recall that in its original resolution of January 15, 1940, the probate court found the following properties to be paraphernal:

- (1) the lot at 305 Arquiza Street and the demolished improvements therein;
- (2) the lot at 1393-1409 Juan Luna Street and the improvements therein that had been torn down;
- (3) the lot and improvements (except the building constructed during the marriage) at 401-407 Camba Street;
- (4) the lot at 613-631 and 634-636 Martin Ocampo Street, with the original "accesorias" and a camarin which was destroyed in order that new "accesorias" might be constructed, these new "accesorias" being conjugal property;
- (5) the property at 620-H, Callejon De la Fe;
- (6) one-half of the property at 631 Regidor Street; and
- (7) 9/29 of the property at 302-306 R. Hidalgo Street. (Record on Appeal, pp. 133-134).

The findings of the probate court as to the nature of the above properties were affirmed in toto by this Court in our decision in G.R. No. 48137 dated October 4, 1943.

After the above-mentioned decision was returned to the lower court for execution, the battle for the liberation of Manila supervened and as a result of the general conflagration in the city sometime in February, 1945, the conjugal buildings on the Arquiza and Juan Luna properties were completely destroyed. As for the property at 631 Regidor Street, the same was later expropriated by the government.

When the commissioners appointed to execute the judgment submitted their report, therefore, the majority of these commissioners (whose report, otherwise known as the "Rufino Report" the lower court approved) made the following recommendations:

- (1) As to the Arquiza and Juan Luna properties, the improvements of which were destroyed during the battle

for the liberation of Manila:

"As already stated, the conjugal improvements on the lots on Arquiza and Juan Luna have been destroyed by fire, and the Supreme Court having held that the lands in which said improvements were erected remained paraphernal until the value of said lands were paid to the widow Concepcion Paterno Vda. de Padilla, said lands must be returned to the Testate Estate of Concepcion Paterno Vda. de Padilla." (Record on Appeal in G. R. L-4130, p. 177)

(2) As to the Camba property:

"According to the evidence presented, the portion of this lot located right at the corner of San Nicolas and Camba Streets, otherwise known as Lot No. 6-A, and the building existing thereon, are both paraphernal properties. They should, therefore, be delivered to the Testate Estate of Concepcion Paterno Vda. de Padilla.

The portion of said lot which is otherwise known as Lot No. 6-B likewise, originally paraphernal, but a building was erected thereon by the conjugal partnership, so that it would become conjugal partnership property upon the reimbursement to the wife of its present value. According to the evidence, Lot-No.6-B has an area of 83.422 sq. ms., and the present value thereof per square meter is P30.00. This Testate Estate, therefore, should reimburse the Testate Estate of Concepcion Paterno Vda. de Padilla in the sum of P2,502.66. After said reimbursement, Lot No, 6-B and the existing improvement thereon shall become conjugal partnership property and should be divided accordingly for purposes of distribution.¹¹ (Record on Appeal in L-4130, pp. 179-80).

(3) As to the Martin Ocampo property;

"According to the evidence the portion of the lot occupied by paraphernal building or the accesorias otherwise known as Nos. 612, 614, 616, 620, 624, 626, 628 Quezon Boulevard, has a total area of 360.5 sq. m.; while the interior portion of said lot actually occupied by the accesorias constructed during the marriage of the spouses contained an area of 528.1 sq. ms. This interior portion is the one which must be appraised by the Commissioners, and its value reimbursed to the Estate of Concepcion Paterno Vda. de Padilla, in view of the ruling of the Court that 'el valor actual del suelo ocupado por dicha accesorias construida durante el matrimonio se determinara por los Comisionados y se adjudicara a la Viuda en concepto de indemnizacion.' The outer portion of 360.5 sq. ms. having been declared paraphernal property, should be delivered to the Estate of Concepcion Paterno Vda. de Padilla.

The evidence further shows that the reasonable value of said interior portion is P125 sq. m., so that the total amount to be reimbursed is P66,012.50. As soon as said reimbursement is made, said portion of the lot and the buildings existing thereon as conjugal property should be divided accordingly for purposes of distribution." (Record on Appeal, *ibid*, p. 181)

(4) As to the Callejon De la Fe property:

"In view of the fact that finding of the Supreme Court was that this property and the improvement which used to exist thereon were both paraphernal, the lot should be delivered to the Testate Estate of Concepcion Paterno Vda. de Padilla and whatever amount is paid by the War Damage Commission as compensation for the destruction of said building should also be totally paid to it." (Record on Appeal, *ibid*, p. 182)

(5) As to the Regidor property, which was expropriated by the government:

"The compensation received for the expropriation of the Regidor property, should be divided between the spouses in accordance with the finding of the decision of the Supreme Court as to the character of said property." (*Ibid*, p. 192)

(6) And as to the R. Hidalgo property:

"The R. Hidalgo property is partly conjugal and partly paraphernal. Nine-twenty-ninths thereof belongs to the Testate Estate of Concepcion Paterno Vda. de Padilla as paraphernal property, ten-twenty-ninths thereof belongs to it as share in the conjugal partnership, while the remaining ten-twenty-ninths should belong to Doña. Isabel B. Vda. de Padilla as her inheritance from the decedent herein. It has a total area of 946.2 square meters. At the rate of P200 per square meter, it has a total value of P189,240.00. The lot shall become conjugal property and divided accordingly after the Testate Estate of Concepcion Paterno Vda. de Padilla shall have been reimbursed in the sum of P58,729.67.

Any payment made by the War Damage Commission shall be divided in the same proportion, to wit: nineteen-twenty-ninths shall belong to the Testate Estate of Concepcion Paterno Vda. de Padilla, and the remaining ten-twenty-ninths shall belong to Doña. Isabel B. Viuda de Padilla." (Idem., pp. 182-183)

All the above recommendations were approved by the trial court, and in her appeal from the order of approval which is G. R. No. L-4130), wherein the executrix-appellant specially protested against the declaration that upon the destruction of the improvements on the Arquiza and Juan Luna properties, they remained paraphernal and must be returned to the estate of the widow, as well as the recommendation to subdivide the Camba and Martin Ocampo properties, declaring those portions thereof occupied by paraphernal buildings as paraphernal and should be returned to the widow's estate, the same recommendations were affirmed by this Court.

Considering, then, the "law of the case" in this appeal as expressed in the Rufino report and approved by both the probate court and this Court in G. R. No-L-4130, we find no error[in the lower court's pronouncement that as sole owner of those properties that never became conjugal because the conjugal improvements thereon were destroyed before they could be paid for to the widow (i.e., the Arquiza and Juan Luna properties), as well as Lot No. 6-B on Camba Street, the outer portion of the Martin Ocampo lot, and the Callejon de la Fe property, that never 'ceased to be paraphernal because there were paraphernal buildings thereon at the time of the termination of the conjugal partnership, the widow Concepcion Paterno is also the sole owner of all their income that accrued during their administration by the executrix-appellant until they were finally delivered to the estate of the deceased Concepcion Paterno on December 7, 1953, minus, of course, the administration expenses incurred by said executrix-appellant with respect to these, paraphernal properties. This is also in accordance with that portion of the Rufino report making the following recommendation as to the rentals of said properties during the period of settlement:

E. RENTALS AND OTHER INCOME DURING SETTLEMENT.

For a complete liquidation of the estate under administration, the rentals from real properties, and other income, such as proceeds from expropriation, etc, should be disposed in the following manner:

The rentals of property declared paraphernal, after deducting administration expenses, must be delivered to the estate of Concepcion Paterno; while the rentals from conjugal property, after deducting administration expenses, should be divided equally between the heir of the husband and those of the wife. * * * " (Record on Appeal in L-4130, p. 192)

Appellant claims that the above recommendation is void because the commissioners appointed to execute our 1943 decision in G. R. No. 48137 were vested only with the limited authority of putting said decision into effect, and said decision made no disposition as to rentals or fruits of the paraphernal properties. This contention is unmeritorious because the above recommendation was approved by the trial court in its order of July 3, 1950, and by this Court in the 1953 decision in G. R. No. L-4130, and has become part of the "law of the case"; as such it is now binding, conclusive, and irrevocable in this appeal. Indeed, it nowhere appears in the brief submitted by the executrix-appellant in G.R. No. L-4130 that she then questioned the disposition, made by the Rufino report and by the lower court, as to the rentals of the properties declared paraphernal during the period of her administration,

and it is now too late for her to raise this objection many years after our decision in L-4130 had become final and executory. With this result, it becomes unnecessary for us to discuss the executrix-appellant's proposition that the lower court's order of January 15, 1940, as amended by its resolution of April 24, 1940, and this Court's decision in G. R. No. 48137, both of which came ahead of our decision in G. R. No. L-4130, are *res judicata* by passing *sub silentio* this issue of the exclusive right of the widow to the fruits of her paraphernal properties.

The above discussion does not, however, imply that the estate of the widow Concepcion Paterno has also the exclusive right to the fruits of those properties which, although originally paraphernal, had finally become converted to conjugal assets after their values were reimbursed or paid to the estate of the widow Concepcion Paterno in the final partition and division of the estate left by the deceased Narciso A. Padilla. These properties are the following:

- (1) Lot No. 6-B of the Camba property;
- (2) The interior portion of the Martin Ocampo property; and
- (3) the 9/29 share of the widow in the R. Hidalgo property.

As to the above properties, their conversion from paraphernal to conjugal assets should be deemed to retroact to the time the conjugal buildings were first constructed thereon or, at the very latest, to the time immediately before the death of Narciso A. Padilla that ended the conjugal partnership. They can not be considered to have become conjugal property only as of the time their values were paid to the estate of the widow Concepcion Paterno because by that time the conjugal partnership no longer existed and it could not acquire the ownership of said properties. The acquisition by the partnership of these properties was, under the 1943 decision, subject to the suspensive condition that their values would be reimbursed to the widow at the liquidation of the conjugal partnership; once paid, the effects of the fulfillment of the condition should be deemed to retroact to the date the obligation was constituted (Art. 1187, New Civil Code). As a consequence, all the fruits of these properties, after the dissolution of the partnership by the death of the husband, until final partition, logically belonged to the universal heir of said husband (his mother Isabel Bibby) and to the surviving widow in co-ownership, share and share alike. As there has been periodical equal distribution between these two parties of the current income of the estate, there is no need for the executrix-appellant to make any new accounting for the fruits of these properties.

Coming now to the third issue in this appeal, namely, the right of the widow to an additional share in the improvements on the R. Hidalgo property that was adjudicated to the estate of the husband Narciso A. Padilla in the 1953 decision, G. R. No. L-4130, we find no merit to the claim of appellant that—

"When the R. Hidalgo property was appraised by the Rufino Report on July 9, 1948, at P189,240.00 and under such appraisal awarded to the estate of the widow, we respectfully submit that the value as appraised included not only the land but also the improvement which was then already existing, the same having been built in 1947."

because the Rufino report states in clear and unmistakable terms that only the land was appraised in the report and only its value included in the project of partition:

"The R. Hidalgo property is partly conjugal and partly paraphernal. Nine-twenty-ninths thereof belongs to the Testate Estate of Concepcion Paterno Vda. de Padilla as paraphernal property, ten-twenty-ninths thereof belongs to it as share in the conjugal partnership, while the remaining ten-twenty-ninths should belong to Doña Isabel B. Vda. de Padilla as her inheritance from the decedent herein. It has a total area of 946.2 square meters. At the rate of P200 per square meter, it has a total value of P189,240.00. The lot shall become conjugal property and divided accordingly after the Testate Estate of Concepcion Paterno Vda. de Padilla shall have been reimbursed in the sum of P58,729.67." (Record on Appeal in L-4130, pp. 182-183)

Indeed, the Rufino report could not have included the value of the improvements at the time the commissioners appraised this property for purposes of partition between the parties, because the old improvements thereon were destroyed during the war and whatever improvements were found therein by the commissioners in 1948 still belonged to the lessee of said property. This was admitted in the executrix-appellant's own brief in G.R. No. L-4130 (pp. 119-120), to wit:

"The increase in the valuation of the share of the widow in the R. Hidalgo property from P45,608.26 to P58,729.59 is certainly unjustified, considering, as above stated, that the permanent improvements on the R. Hidalgo property were totally destroyed by fire during liberation. Besides, if the property at present has increased in value, it is due to the executrix-appellant who, after liberation, entered into a contract of lease with Cinema Operators, Inc., which built the Illusion Theatre and the commercial establishments nearby. The improvements built by the lessee will become the property of the estate of Narciso A. Padilla after the expiration of said contract of lease."

Hence, the footnote in our decision in L-4130 to the following effect:

"This Illusion Theater was not reckoned with in the Rufino report. Apparently it would pass to the estate in 1952 upon the occurrence of certain specified contingencies. If it has passed the matter could undoubtedly be the subject of further deliberation upon appropriate motions. It Would only be a question of determining the additional value of the R. Hidalgo property and of requiring the herein appellant to pay the Paterno estate its corresponding share." (Record on Appeal, p.157)

As correctly observed by the lower court in the order now appealed from, "the above-quoted portion of the decision is clear and needs no further elucidation" (Record on Appeal, p. 62).

Considering that the improvements on the R. Hidalgo property accrued to the owner of the land only after the, expiration of the seven-year lease entered into by the executrix-appellant with the tenant on February 2, 1946, the lower court did not err in ordering the appraisal of said improvement with the view of determining the additional share therein of the widow Concepcion Paterno.

Wherefore, with the clarification that the accounting of the income of the paraphernal properties to be made by the executrix-appellant should refer only to the Arquiza, Juan Luna, and Callejon de la Fe properties, to Lot No. 6-A of the Camba property, and to the outer portion of the Martin Ocampo property, the order appealed from is affirmed. Without special pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Labrador, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] 74 Phil., 377.

[2] 93 Phil., 884

[1] Appellant Isabel Bibby Vda. de Padilla died during the pendency of this appeal. For convenience of reference herein, however, she is still referred to in this decision as the executrix-appellant.

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