

NATIVIDAD BATIQUIN ET AL., PLAINTIFFS AND APPELLANTS, VS. FILOMENA BATIQUIN ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-21164. March 18, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an action for the partition of seven parcels of land situated in the municipality of Danao, Province of Cebu.

The parcels were originally community property of the marriage of Braulio Gonzales and Dominga Batiquin. In August, 1896, the two spouses made their last wills and testaments, each of them making the other his or her universal heir. The wills bore the same date but appeared in separate instruments and were executed in conformity with the laws at that time in force.

Dominga Batiquin died in May, 1898, and her husband in September, 1901, neither of them leaving heirs by force of law. The plaintiffs are the potential collateral heirs of Dominga Batiquin and the defendants are the collateral heirs of Braulio Gonzales.

After the death of his wife, Gonzales remained in possession of the lands in question until the year 1900, when he appears to have surrendered it to the defendants, who have continued in such possession ever since.

It further appears that the plaintiffs have, from time to time, made demands upon the defendants for a share in the property, such demands culminating in the present action. The trial court held that the defendants are the owners of the lands in question and absolved them from the complaint. From this judgment the plaintiffs appeal.

In our opinion the case presents no serious difficulty. As stated above, the will of Dominga Batiquin was executed in accordance with the law in force at the time of its execution. Counsel for the plaintiffs suggests that the notary public before whom the will was executed did not certify that he knew the testatrix as required by article 699 of the Civil Code and that the will therefore is void. In this counsel is mistaken. The last sentence of the attestation clause of the will reads:

"De todo lo cual del conocimiento de la testadora y de haberse cumplido con todas las formalidades que expresa el Capitulo 1.º, Titulo 3.º, Libro 3.º, delCodigo Civil, doy fe."

This constitutes a sufficient compliance with the law. Counsel's argument that the will is of no value as evidence because it has not been submitted for probate is equally unsound. The present system of giving effect to wills by probate proceedings was unknown to the Spanish law and was introduced in this country by the Code of Civil Procedure of 1901. The testatrix in this case died long before the enactment of that Code and under the law in force at the time of her death, the title to the property left by her immediately vested in the surviving husband, her testamentary universal heir. (Civil Code, arts. 657 and 661.) The property rights so vested were not in any manner affected by the enactment of the Code of Civil Procedure. (Subs. 6, sec. 795, Code of Civil Procedure.)

The appellants' brief is principally devoted to a discussion of alleged recognitions by the defendants of plaintiffs'

right to a share of the property in question. We agree with the court below that such concessions as the defendants are alleged to have offered were, at best, offers of compromise and that evidence thereof was inadmissible. It is not disputed that the defendants are the heirs of Braulio Gonzales and have been in actual possession of the lands since his death and there is nothing to show that they have been divested, neither in whole nor in part, of the title acquired by them from him.

The judgment appealed from is therefore affirmed, with the costs against the appellants. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avancena, Johns, and Romualdez, JJ., concur.

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