

**CONSOLACION ZAIDE, RAMON ZAIDE AND TRINIDAD ZAIDE,
PLAINTIFFS, VS. PEDRO CONCEPCION, JUDGE OF THE COURT OF
FIRST INSTANCE OF LAGUNA, AND EUSEBIO QUINTANA,
ADMINISTRATOR OF THE E...**

G.R. No. 10860, December 03, 1915

Ponente: TORRES, J.

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TORRES, J.:

This case, G. R. No. 10860 of this court, was instituted by counsel for Consplacion, Ramon, and Trinidad, all sumamed Zaide, against Pedro Concepcion, the honorable judge of the Court of First Instance of Laguna, and Eusebio Quintana, judicial administrator of the estate of the deceased Brigida Ordovesa. After a hearing in this court and after an examination of the record of the probate proceedings still pending in the said lower court and brought up before us, it appears:

That, on May 27, 1915, counsel for plaintiffs prayed that a writ of mandamus issue to the said judge to compel him to permit plaintiffs to appear and intervene in the said probate proceedings, as parties interested in the undivided estate of the deceased husband and wife Salvador Zaide and Brigida Ordovesa; that Brigida Ordovesa was the second wife of plaintiffs' father, Zaide; that at the time of their marriage, both the said Ordovesa and Zaide, each brought to the conjugal partnership, property not exceeding 710,000 in value; that during their marriage they acquired real and personal property situated in the Province of Laguna, all valued at about 7260,000; that this real and personal property was and is community property; that the husband, Zaide, died intestate in April, 1905, leaving as his sole heirs the plaintiffs and his widow, Brigida Ordovesa; that no inventory was made of the conjugal partnership property; that no judicial proceedings were instituted for the settlement and division of this property; that this property remained in the possession of and was administered by the widow Ordovesa until the date of her death, July 12, 1912; that she left a will executed on April 18 of the same year; that, after probate of the will of the widow Ordovesa, all the property left by her was taken in charge by one Eusebio Quintana, who had been appointed judicial administrator thereof; that, during the pendency of the said proceedings for the approval of the proposed partition of the property of the estate, counsel for plaintiffs, the children of Salvador Zaide by his first wife and his heirs by force of law, appeared in the said probate proceedings of the will of the widow Ordovesa and therein prayed that plaintiffs be admitted as parties thereto and be held to be entitled to the property that had belonged to their father; that the Court of First Instance, by an order of March 13, 1915, disallowed this petition of plaintiffs' counsel; that by another order of the 24th of the same month, the petition made for the reinstatement of the previous order was also disallowed, thus denying plaintiffs the right to establish and prove their capacity of heirs and as such to be entitled to one-half of the community property which belonged to their deceased father; and that, were the proposed partition approved and the property of the estate distributed, irreparable losses and damages would be caused to plaintiffs.

A demurrer filed to the foregoing complaint being overruled, the judge in his answer denied all the allegations therein contained, except those not contrary to his own. He set forth that the order of May 17 aforementioned was

issued in the exercise of sound judicial discretion, because it was not the ministerial duty of the court to allow without argument the intervention solicited by plaintiffs in the probate proceedings relative to the will of the deceased Ordovesa; that he did not deny them their right to the property they claimed; that he did not even question whether they had or had not such a right; that in the order of May 17, he gave them to understand that they should bring a separate action for the reasons specified in that order, and that if there was error, it would be corrected by an appeal, but in no wise by writ of mandamus.

The defendant administrator, after a general and specific denial of all the allegations of the written complaint, except the paragraphs and points thereof admitted by him, alleged: That the conjugal partnership formed by the marriage between Zaide and Ordovesa was constituted on the basis or agreement of an absolute separation of property between the spouses; that this separation was recorded in a public instrument, and in fact was so effected at the beginning of the marriage; that plaintiffs, expressly recognizing such agreement of separation of property, could not help but explicitly waive in the proper instrument, upon their father's death, all their rights to any property which might belong to the latter as community property; that, for this reason, although the proceedings were commenced in July, 1912, they had made no claim until 1915 and only did so then because they learned that the most important and valuable part of the property inventoried had been registered under the torrens system in the name solely of the testatrix Ordovesa and in those of her lawful and forced heirs; that plaintiffs had no right whatever to intervene in the probate proceedings; and that in any event they had the remedy of appeal from the decision of the court, or that of making the proper claim against the estate in a separate action, inasmuch as the allegations set forth in the complaint did not constitute a right of action for mandamus. In conclusion defendant prayed that he be absolved from the complaint or that it be finally dismissed, with the costs against plaintiffs.

By agreement between the parties at the hearing of the demurrer the record in the proceedings for the probate of the will of the late Brigida Ordovesa in the Court of First Instance of Laguna was presented at the hearing in this court.

The questions submitted to us for final decision in the matter of the special remedy of mandamus sought by counsel for plaintiffs consist of whether the latter, as the legitimate children and heirs of Salvador Zaide, have or have not the right to intervene and be heard in the settlement of the community property, which was to be made in the probate proceedings relative to the estate of the deceased Brigida Ordovesa, a wife of plaintiffs' father, Salvador Zaide, by his second marriage; and whether this settlement must necessarily be made in the aforesaid probate proceedings.

In deciding these questions it must be kept in mind that Zaide left no will at his death, that no proceedings were had relative to his intestate estate, and that no inventory was made of the property he left when he died.

It is not necessary in this decision to discuss the question of whether, by reason of the marriage of the said spouses, the conjugal partnership which they formed was constituted on the basis of community property or on that of an absolute separation of property, since, for the determination of the controversy either way the representation of the three plaintiffs, children of one of the members of the partnership dissolved by his death, is essential.

Having regard to the law, it is impossible to approve the inventory and partition of the estate of the testatrix Brigida Ordovesa until it first shall have been determined, by final judgment, whether there is or is not included in that estate, confused and mixed therewith, property which belonged exclusively to her husband, Salvador Zaide, or which was community property belonging, one-half of it, to him.

So long as no final judgment shall have been decreed holding that the partnership formed at the marriage of the said spouses was constituted on the basis or agreement of separation of property, the husband's heirs are

unquestionably entitled to intervene in the settlement of the affairs of the estate of the deceased Zaide's widow, since, upon her husband's death and the dissolution of the conjugal partnership, his surviving wife assumed charge of all the property of the dissolved partnership, without any settlement of its affairs having been made and without prior determination as to what was the community property, one-half of which now belongs to the heirs of said husband, who died before his wife, unless it be proved that the conjugal partnership was constituted on the basis of absolute separation of property. (Civil Code, arts. 1315, 1316, 1319, 1321, 1392, 1393 and 1407.)

Meanwhile, and in view of the present status of the proceedings for the probate of the will of the deceased Brigida Ordovesa, since, as aforesaid, proceedings for the settlement of the intestate estate of her husband, Salvador Zaide, had not been commenced, if it is found that a liquidation should be made of the community property obtained by both spouses up to the moment of the dissolution of the conjugal partnership caused by the death of the husband, such liquidation must necessarily be made by the executor or administrator of the estate of the wife, who survived her husband and who took charge of the partnership property and was the last one to die. It cannot be maintained lawfully that said settlement should not be made in the proceedings, for the probate of the will of the wife, but in those for the settlement of the husband's intestate estate, since this latter was never settled nor were such proceedings ever had in connection therewith. Moreover, it is to be noted that if, at the time of his death, the said Zaide left any property of his own and any other property of the nature of community property, on the supposition that the conjugal partnership which he formed on his marriage with Ordovesa was not governed by the agreement of complete separation of property, the record does not show that his share of the community property was in the hands of any third person; and, unless there is proof to the contrary, it is to be presumed that it was in the possession of his widow, Brigida Ordovesa. Therefore, if there is any community property which should now belong to the heirs of the deceased husband, Salvador Zaide, it is to be looked for in the estate of his deceased wife, Brigida Ordovesa, unless it shall have been held by final judgment that the conjugal partnership was formed on the basis of separation of property.

In the decision of the case of *Tabotabo vs. Molero* (22 Phil. Rep., 418) the following principle was laid down: "The exact determination of what constitutes the conjugal property and the proportionate participation of the parties therein, can only be effected in special proceedings for the liquidation of the conjugal partnership, in accordance with articles 1418 to 1431 of the Civil Code."

So, in the special proceedings instituted by reason of the death of one of the spouses, a settlement of the property affairs of the dissolved conjugal partnership must be effected in order exactly to determine what constitutes such property. If, on Salvador Zaide's death, the proper proceedings had been had for the settlement of his intestate estate, it would have been disclosed whether the conjugal partnership formed between him and Brigida Ordovesa had or had not been constituted on the basis of absolute separation of property. Nothing was done then and, as there is no proof to the contrary, it appears that the property of that dissolved marriage continued in the possession of his widow, Ordovesa, and that only subsequent to her death were proceedings instituted for the probate of her will, in which proceedings an inventory was made of her property and a proposed partition thereof was presented. Therefore, if the settlement of the community property affairs of that dissolved marriage be proper, this operation must necessarily be effected in the proceedings for the probate of the widow's will, not in another separate action, and there is no explicit legal provision nor any well-founded reason why the heirs of the deceased husband, Salvador Zaide, should not be parties to and intervene in the settlement of the community property affairs of the said marriage, inasmuch as they are unquestionably entitled to the one-half of the community property which belonged to their deceased father.

In the case of *Alfonso vs. Natividad* (6 Phil. Rep., 240) the principle was laid down that "when a conjugal partnership is dissolved by the death of the husband it must be liquidated in the proceedings for the settlement of

the estate of the husband"

It is true that, in the case at bar, the husband died first and the conjugal partnership was dissolved by his death, without any settlement having been made of the partnership-property affairs, and also that, some years afterwards the wife died testate; but then proceedings were instituted for the probate of her will, in which proceedings her testamentary executor or administrator objects to her deceased husband's heirs being made parties to and intervening in the settlement of the community-property, affairs of the deceased spouses, on the ground that the conjugal partnership was constituted on the basis and agreement of separation of property. This allegation is impugned by the husband's children of his first marriage.

In this state of the case and in view of the conflicting rights of both parties, either the course of the probate proceedings should be suspended until it be determined, by final judgment, whether the conjugal partnership between Zaide and Ordovesa was, in fact, constituted on the basis and agreement of separation of property, in which event there would be no community property to liquidate; or, if the probate proceedings are continued, it is necessary and indispensable that the three plaintiffs, the deceased Zaide's children, be recognized as entitled to intervene and be parties to the settlement of the affairs pertaining to the community property of the dissolved marriage between Zaide and Ordovesa, inasmuch as disregarding the exception made by the representative of the estate and which, after argument, should be judicially determined by a final order, the presumption is that the said marriage was constituted on the basis of a partnership of community property.

In the case of Enrique vs. Victoria (10 Phil. Rep., 10), in citing a part of the decision in the case of Alfonso vs. Natividad, it is said: " 'The question whether or not this rule for the settlement of the affairs of the conjugal partnership when it is dissolved by the death of the husband is equally applicable when the partnership is dissolved by the death of the wife, we do not consider.'

"It is necessary now, however, to resolve that question.

"The husband is by law the manager of the conjugal partnership. (Art. 1412, Civil Code.) His debts contracted during marriage, are its debts. (Art. 1408.) Upon the death of the wife he becomes the surviving partner, and we do not doubt that he is the person called upon to settle the affairs of the partnership. It could not have been intended that upon the death of the wife, leaving the husband surviving, the property which the husband had administered and in which he was directly interested, should be taken-out of his hands and delivered over to an administrator appointed in proceedings for the settlement of his wife's estate, and we hold that, where a conjugal partnership is dissolved by the death of the wife, the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated.

"It follows from this holding, and from the holding already made in the case of Alfonso vs. Natividad, that when the husband who is the administrator of the affairs of the conjugal partnership, the wife having died, himself dies, his executor or administrator becomes not only the executor or administrator of the property of the husband but also the administrator of the affairs of the conjugal partnership and that he is the legal representative of that conjugal partnership."

So; on the supposition that the community property of the dissolved marriage between Zaide and Ordovesa is included pro indiviso in the estate left by the wife, who died after her husband, the administrator of her estate should be considered as being also the administrator of the said community property of the dissolved partnership, and it devolves upon him, by law, duly to settle the affairs thereof, unless it shall have been held by final judicial declaration that that dissolved conjugal partnership had no community property by reason of its having been formed on an agreement of complete separation of property.

If on the contrary, the conjugal partnership between Zaide and Ordovesa was constituted on the ordinary basis of

community property, the husband's children by his first marriage are unquestionably entitled to the one-half of such property which belonged to their father, and they also have a right to be parties to and intervene in the settlement of the affairs pertaining thereto.

For the foregoing reasons it is held that the special remedy prayed for is proper, and the Court of First Instance of Laguna, which shall be furnished with a certified copy of this decision, and to whom shall be returned the record of the proceedings in case No. 1287, shall grant permission to plaintiffs to be parties to and intervene in the said probate proceedings, now pending in his court, in order that they may prove their rights and take proper steps in consequence thereof in the settlement of the community-property affairs of the conjugal partnership between Zaide and his wife Ordovesa. The costs shall be against the administrator of the said estate. So ordered.

Carson, Trent, and Araullo, JJ., concur.

Writ granted.

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