

## CONSOLACION FLORENTINO DE CRISOLOGO, ET AL., PLAINTIFFS AND APPELLEES, VS. DR. MANUEL SINGSON, DEFENDANT AND APPELLANT.

*G. R. No. 13876. February 28, 1962*

Ponente: DIZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13876/>

---

### DIZON, J.:

Action for partition commenced by the spouses Consolacion Florentino and Francisco Crisologo against Manuel Singson in connection with a residential lot located at Plaridel St., Vigan, Ilocos Sur, with an area of approximately 193 square meters, and the improvements existing thereon, covered by Tax No. 10765-C. Their complaint alleged that Singson owned one half proindiviso of said property and that Consolacion Florentino owned the other half by virtue of the provisions of the duly probated last will of Dona Leona Singson, the original owner, and the project of partition submitted to, and approved by the Court of First Instance of Ilocos Sur in Special Proceeding No. 453; that plaintiffs had made demands for the partition of said property, but defendant refused to accede thereto, thus compelling them to bring action.

Defendant's defense was that Consolacion Florentino was a mere usufructuary of, and not owner of one half proindiviso of the property in question, and that, therefore, she was not entitled to demand partition thereof.

After trial upon the issue thus posed, the lower court rendered judgment as follows:

- "1. Declaring that the plaintiff is a co-owner pro-indiviso with the defendant of the house and lot described in the complaint to the extent each of an undivided 1/2 portion thereof;
- "2. Ordering the aforesaid co-owners to execute an agreement of partition of the said property within 30 days from receipt of this judgment unless it be shown that the division thereof may render it unserviceable, in which case the provisions of Art. 498 of the New Civil Code may be applied;
- "3. That in the event the said parties shall fail to do so, this Court will appoint the corresponding commissioners to make the partition in accordance with law; and
- "4. Without special pronouncement as to costs."

From the above judgment, defendant Singson appealed.

It is admitted that Doña Leona Singson, who died single on January 13, 1948, was the owner of the property in question at the time of her death. On July 31, 1951 she executed her last will which was admitted to probate in Special Proceeding No. 453 of the lower court whose decision was affirmed by the Court of Appeals in G. R. No. 3605-R. At the time of the execution of the will her nearest living relatives were her brothers Evaristo, Manuel and Dionisio Singson, and her nieces Rosario, Emilia and Trinidad, and her grandniece Consolacion, all surnamed Florentino.

Clause IX of her last will reads as follows:

"NOVENO.—Ordeno que se de a mi nieta por parte de mi hermana mia y que al mismo tiempo vive en mi casa, y, por tanto, bajo mi proteccion, y es la CONSOLACION FLORENTINO:—

"(A). La mitad de mi casa de materiales fuertes con techo de hierro galvanizado, incluyendo la mitad de su solar, ubicado en la Poblacion de Vigan, Ilocos Sur, Calle Plaridel, actualmente arrendada por los hermanos Fortunato, Teofilo y Pedro del apellido Kairuz. Pero si falleciere antes o despues que yo mi citada nieta, esta propiedad se dara por partes iguales entre mis tres hermanos Evaristo, Manuel y Dionisio, o a sus herederos forzosos en el caso de que alguno de ellos muriere antes. \* \* \*. (Exhibit F)."

The issue to be decided is whether the testamentary disposition above-quoted provided for what is called sustitucion vulgar or for a sustitucion fideicomisaria. This issue is, we believe, controlled by the pertinent provisions of the Civil Code in force in the Philippines prior to the effectivity of the New Civil Code, in view of the fact that the testatrix died on January 13, 1948. They are the following:

"ART. 774. The testator may designate one or more persons to substitute the heir or heirs instituted in case such heir or heirs should die before him, or should not wish or should be unable to accept the inheritance.

"A simple substitution, without a statement of the cases to which it is to apply, shall include the three mentioned in the next preceding paragraph, unless the testator has otherwise provided."

"ART. 781. Fidei-comissary substitutions by virtue of which the heir is charged to preserve and transmit to a third person the whole or part of the inheritance shall be valid and effective, provided they do not go beyond the second degree, or that they are made in favor of persons living at the time of the death of the testator."

"ART. 785. The following shall be inoperative:

1. Fiduciary substitutions not made expressly, either by giving them this name or by imposing upon the fiduciary the absolute obligation of delivering the property to a second heir." \* \* \*.

In accordance with the first legal provision quoted above, the testator may not only designate the heirs who will succeed him upon his death, but also provide for substitutes in the event that said heirs do not accept or are in no position to accept the inheritance or legacies, or die ahead of him.

The testator may also bequeath his properties to a particular person with the obligation, on the part of the latter, to deliver the same to another person, totally or partially, upon the occurrence of a particular event (6 Manresa, p. 1112).

It is clear that the particular testamentary clause under consideration provides for a substitution of the heir named therein in this manner: that upon the death of Consolacion Florentino—whether this occurs before or after that of the testatrix—the property bequeathed to her shall be delivered ("se dara") or shall belong in equal parts to the testatrix's three brothers, Evaristo, Manuel and Dionisio, or their forced heirs, should anyone of them die ahead of Consolacion Florentino. If this clause created what is known as sustitucion vulgar, the necessary result would be that Consolacion Florentino, upon the death of the testatrix, became the owner of one undivided half of the property, but if it provided for a sustitucion fideicomisaria, she would have acquired nothing more than usufructuary rights over the same half. In the former case, she would undoubtedly be entitled to partition, but not in the latter. As Manresa says, if the fiduciary did not acquire full ownership of the property bequeathed by will, but mere usufructuary rights thereon until the time came for him to deliver said property to the fideicomisario, it is obvious that the nude ownership over the property, upon the death of the testatrix, passed to and was acquired by another person, and that person cannot be other than the fideicomisario. (6 Manresa, p. 145)

It seems to be of the essence of a fideicommissary substitution that an obligation be clearly imposed upon the first heir to preserve and transmit to another the whole or part of the estate bequeathed to him, upon his death or upon

the happening of a particular event. For this reason Art. 785 of the old Civil Code provides that a fideicommissary substitution shall have no effect unless it is made expressly ("de una manera expresa") either by giving it such name, or by imposing upon the first heir the absolute obligation ("obligacion terminante") to deliver the inheritance to a substitute or second heir. In this connection Manresa says:

"Para que la sustitueion sea fideicomisaria, es preciso segun el art. 781, que se ordene o encargue al primer heredero, cuando sea tal, que conserve y transmita a una tercera persona o entidad el todo o parte de la herencia. O lo que es lo mismo, la sustitueion fideicomisaria, como declaran las resoluciones de 25 de Junio de 1895, 10 de Febrero de 1899 y 19 de Julio de 1909, exige tres requisitos:

"1.o Un primer heredero llamado al goce de los bienes prefereritamente.

"2.o Obligacion claramente impuesta al mismo de conservar y transmitir a un tercero el todo o parte del caudal.

"3.o Un segundo heredero.

"A estos requisitos anade la sentencia de 18 de Noviembre de 1918, otro mas, el del que el fideicomisario tenga derecho a los bienes de la herencia desde el momento de la muerte del testador, puesto que ha de suceder a este y no al fiduciario.

"Por tanto, cuando el causante se limita a instituir dos herederos, y por fallecimiento de ambos o de cualquiera de ellos, asigna la parte del fallecido o fallecidos, a los herederos legitimos o a otras personas, solo existe una sustitucion vulgar, porque falta el requisito de haberse impuesto a los primeros herederos la obligacion de conservar y transmitir los bienes, y el articulo 789, en su parrafo primero, exige que la sustitucion sea expresa, ya dandole el testador el nombre de sustitucion fideicomisaria, ya imponiendo al sustituido la obligacion terminante de conservar y transmitir los bienes a un segundo heredero."

A careful perusal of the testamentary clause under consideration shows that the substitution of heirs provided for therein is not expressly made of the fideicommissary kind, nor does it contain a clear statement to the effect that appellee, during her lifetime, shall only enjoy usufructuary rights over the property bequeathed to her, naked ownership thereof being vested in the brothers of the testatrix. As already stated, it merely provides that upon appellee's death—whether this happens before or after that of the testatrix—her share shall belong to the brothers of the testatrix.

In the light of the foregoing, we believe, and so hold, that the last will of the deceased Dña. Leon a Singson established a mere substitution vulgar, the substitution of Consolacion Florentino by the brothers of the testatrix to be effective or to take place upon the death of the former, whether it happens before or after that of the testatrix.

In view of the foregoing, the appealed judgment is affirmed, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.