

**MARIA GERVACIO BLAS, ETC., ET AL., PLAINTIFFS AND
APPELLANTS, VS. ROSALINA SANTOS, IN HER CAPACITY AS SPECIAL
ADMINISTRATRIX OF THE ESTATE OF THE DECEASED MAXIMA
SANTOS VDA. DE ...**

G.R. No. 14070. March 29, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

This action was instituted by plaintiffs against the administratrix of the estate of Maxima Santos, to secure a judicial declaration that one-half of the properties left by said Maxima Santos Vda. de Blas, the greater bulk of which are set forth and described in the project of partition presented in the proceedings for the administration of the estate of the deceased Simeon Blas, had been promised by the deceased Maxima Santos to be delivered upon her death and in her will to the plaintiffs, and requesting that the said properties so promised be adjudicated to the plaintiffs. The complaint also prays for actual damages in the amount of P50,000. (Record on Appeal, pp. 1-65.) The alleged promise of the deceased Maxima Santos is contained in a document executed by Maxima Santos on December 26, 1936 attached to the complaint as Annex "H" and introduced at the trial as Exhibit "A". (Ibid., pp. 258-259.) The complaint also alleges that the plaintiffs are entitled to inherit certain properties enumerated in paragraph 3 thereof, situated in Malabon, Rizal and Obando, Bulacan, but which properties have already been included in the inventory of the estate of the deceased Simeon Blas and evidently partitioned and conveyed to his heirs in the proceedings for the administration of his (Simeon Blas) estate.

Defendant, who is the administratrix of the estate of the deceased Maxima Santos Vda. de Blas, filed an answer with a counterclaim, and later, an amended answer and a counterclaim. The said amended answer admits the allegations of the complaint as to her capacity as administratrix; the death of Simeon Blas on January 3, 1937; the fact that Simeon Blas and Marta Cruz begot three children, only one of whom, namely, Eulalia Blas, left legitimate descendants; that Simeon Blas contracted a second marriage with Maxima Santos on June 28, 1898. She denies, for lack of sufficient information and belief, knowledge of the first marriage of Simeon Blas to Marta Cruz, the averment that Simeon Blas and Marta Cruz acquired properties situated in Obando, Bulacan, that said properties were utilized as capital, etc. As special defenses, she alleges that the properties of the spouses Blas and Santos had been settled and liquidated in the project of partition of the estate of said Simeon Blas; that pursuant to the project of partition, plaintiffs and some defendants had already received the respective properties adjudicated to them; that the plaintiffs and the defendants Marta Gervacio and Jose Chivi are estopped from impugning the validity of the project of partition of the estate of the deceased Simeon Blas and from questioning the ownership in the properties conveyed in the project of partition to Maxima Santos as her own exclusive property; that the testament executed by Maxima Santos is valid, the plaintiffs having no right to recover any portion of Maxima Santos' estate now under administration by the court. A counterclaim for the amount of P50,000 as damages is also included in the answer, as also a cross-claim against Marta Gervacio Blas and Jose Chivi.

Trial of the case was conducted and, thereafter, the court, Hon. Gustavo Victoriano, presiding, rendered judgment

dismissing the complaint, with costs against plaintiff, and dismissing also the counterclaim and cross-claim filed by the defendants. From this decision, the plaintiffs have appealed to this Court.

The facts essential to an understanding of the issues involved in the case may be briefly summarized as follows: Simeon Blas contracted a first marriage with Marta Cruz sometime before 1898. They had three children, only one of whom, Eulalia, left children, namely, Maria Gervacio Blas, one of the plaintiffs, Marta Gervacio Blas, one of the defendants, and Lazaro Gervacio Blas. Lazaro died in 1953 and is survived by three legitimate children who are plaintiffs herein, namely, Manuel Gervacio Blas, Leoncio Gervacio Blas and Loida Gervacio Blas. Marta Cruz died in 1898, and the following year, Simeon Blas contracted a second marriage with Maxima Santos. At the time of this second marriage, no liquidation of the properties acquired by Simeon Blas and Marta Cruz was made. Three of the properties left are fishponds located in Obando, Bulacan. Maxima Santos does not appear to have apportioned properties to her marriage with Simeon Blas.

On December 26, 1936, only over a week before his death on January 9, 1937, Simeon Blas executed a last will and testament. In the said testament Simeon Blas makes the following declarations:

I

"2. Sa panahon ng aking pangalawang asawa, Maxima Santos de Blas, ay nagkaroon ako at nakatipon ng mga kayamanan (bienes) at pag-aari (propiedades) na ang lahat ng lupa, palaisdaan at iba pang pag-aari ay umaabot sa halagang anim na raan pitong pu't walong daan libo walong daan at walong pung piso (678,880.00) sang-ayon sa mga halaga sa amillarimento (valor Amillarado.)"

II

"1. Ang kalahati ng lahat ng aming pag-aari, matapos mabayaran ang lahat ng aking o aming pag-kakautang na mag-asawa, kung mayroon man, yayamang ang lahat ng ito ay kita sa loob ng matrimonio (bienes gananciales) ay bahagi ng para sa aking asawa, Maxima Santos de Blas, sang-ayon sa batas." (Record on Appeal, pp. 250-251.)

The above testamentary provisions may be translated as follows:

I

"2. During my second marriage with Maxima Santos de Blas, I possessed and acquired wealth and properties, consisting of lands, fishponds and other kinds of properties, the total assessed value of which reached the amount of P678,880.00."

II

"1. One-half of our properties, after the payment of my and our indebtedness, all these properties having been acquired during marriage (conjugal properties), constitutes the share of my wife Maxima Santos de Blas, according to the law."

At the time of the execution of said will, Andres Pascual, a son-in-law of the testator, and Avelino Pascual and others, were present. Andres Pascual had married a descendant by the first marriage. The will was prepared by Andres Pascual, with the help of his nephew Avelino Pascual. The testator asked Andres Pascual to prepare a document which was presented in court as Exhibit "A", thus:

"Q— Was there anybody who asked you to prepare this document?

A— Don Simeon Blas asked me to prepare this document (referring to Exhibit 'A')." (t.s.n., Sarmiento, p. 24).

The reason why the testator ordered the preparation of Exhibit "A" was because the properties that the testator had

acquired during his first marriage with Marta Cruz had not been liquidated and were not separated from those acquired during the second marriage. Pascual's testimony is as follows:

"Q— To whom do you refer with the word 'they'?

A— Simeon Blas and his first wife, Marta Cruz. When Marta Cruz died they had not made a liquidation of their conjugal properties and so all those properties were included all in the assets of the second marriage, and that is the reason why this document was prepared." (t.s.n., Sarmiento, p. 36.)

The above testimony is fully corroborated by that of Leoncio Gervacio, son-in-law of Simeon Blas:

"Q— Please state to the Court?

A— My children were claiming from their grandfather Simeon Blas the properties left by their grandmother Marta Cruz in the year 1936. * * *

* * * * *

"Q— And what happened with that claim of your children against Simeon Blas regarding these assets or properties of the first marriage that were left after the death of Marta Cruz in 1936?

A— The claim was not pushed through because they reached into an agreement whereby the parties Simeon Blas, Maxima Santos, Maria Gervacio Blas, Marta Gervacio Blas and Lazaro Gervacio Blas agreed that Simeon Blas and Maxima Blas will give one-half of the estate of Simeon Blas." (t.s.n., Sarmiento, pp. 143-144).

The document which was thus prepared and which is marked as Exhibit "A" reads in Tagalog, thus:

"MAUNAWA NG SINO MANG MAKABABASA:

Na akong si Maxima Santos de Blas, nasa hustong gulang kasal kay Simeon Blas, taga bayan ng Malabon, Rizal, Philippines, sa pamamagitan ng kasulatang ito ay malaya kong ipinahahayag:

Na aking nabasa at naunawa ang testamento at huling kalooban na nilagdaan ng aking asawa, Simeon Blas, at ipinahahayag ko sa ilalim ng aking karangalan at sa harap ng aking asawa na igagalang at pagpipitaganan ng lahat at bawa't isang bahagi ng nabanggit na testamento at ipinangangako ko pa sa pamamagitan ng kasulatang ito na ang lahat ng maiiwang pag-aari at kayamanan naming mag-asawa, na nauukol at bahaging para sa akin sa paggawa ko naman ng aking testamento ay ipagkakaloob ko ang kalahati (1/2 sa mga herederos at legatarios o pinamamanahan ng aking nabanggit na asawa, Simeon Blas, sa kaniyang testamento, na ako'y makapipili o makahihirang sa kahi't kangino sa kanila ng aking pagbibigyan at pamamanahan sang-ayon sa paggalang, paglilingkod, at pakikisama na gagawin sa akin.

Sa katunayan ng lahat ng ito, ay nilagdaan ko ang kasulatang ito ngayon ika 26 ng Diciembre ng taong 1936, dito sa San Francisco del Monte, San Juan, Rizal, Philippines." (Exh. "A", pp. 29-30—Appellant's brief).

(Fdo.) Maxima Santos de Blas

and which, translated into English, reads as follows:

"KNOW ALL MEN BY THESE PRESENTS:

"That I Maxima Santos de Blas, of legal age, married to Simeon Blas, resident of Malabon, Rizal, Philippines, voluntarily state:

That I have read and knew the contents of the will signed by my husband, Simeon Blas, (2) and I promise on my word of honor in the presence of my husband that I will respect and obey all and every disposition of said will (3) and furthermore, I promise in this document that all the properties my husband and I will leave, the

portion and share corresponding to me when I make my will, I will give one-half (1/2) to the heirs and legatees or the beneficiaries named in the will of my husband, (4) and that I can select or choose any of them to whom I will give depending upon the respect, service and treatment accorded to me.

In witness whereof, I signed this document this 26th day of December, 1936 at San Francisco del Monte, San Juan, Rizal, Philippines." (Exh. 'A', pp. 30-31, Appellant's brief).

(Sgd.) Maxima Santos de Blas

The court below held that said Exhibit "A" has not created any right in favor of plaintiffs which can serve as a basis of the complaint; that neither can it be considered as a valid and enforceable contract for lack of consideration and because it deals with future inheritance. The court also declared that Exhibit "A" is not a will because it does not comply with the requisites for the execution of a will; nor could it be considered as a donation, etc.

Both the court below in its decision and the appellees in their brief before us, argue vehemently that the heirs of Simeon Blas and his wife Marta Cruz can no longer make any claim for the unliquidated conjugal properties acquired during said first marriage, because the same were already included in the mass of properties constituting the estate of the deceased Simeon Blas and in the adjudications made by virtue of his Will, and that the action, to recover the same has prescribed. This contention is correct. The descendants of Marta Cruz can no longer claim the conjugal properties that she and her husband may have acquired during their marriage although no liquidation of such, properties and delivery thereof to the heirs of Marta Cruz have been made, no action to recover said properties having been presented in the proceedings for the settlement of the estate of Simeon Blas.

But the principal basis for the plaintiffs' action in the case at bar is the document Exhibit "A". It is not disputed that this document was prepared at the instance of Simeon Blas for the reason that the conjugal properties of his first marriage had not been liquidated; that it was prepared at the same time as the will of Simeon Blas on December 26, 1936, at the instance of the latter himself. It is also not disputed that the document was signed by Maxima Santos and one copy thereof, which was presented in court as Exhibit "A", was kept by plaintiffs' witness Andres Pascual.

Plaintiffs-appellants argue before us that Exhibit "A" is both a trust agreement and a contract in the nature of a compromise to avoid litigation. Defendants-appellees, in answer, claim that it is neither a trust agreement nor a compromise agreement. Considering that the properties of the first marriage of Simeon Blas had not been liquidated when Simeon Blas executed, his will on December 26, 1936, and the further fact that such properties were actually included as conjugal properties acquired during¹ the second marriage, we find, as contended by plaintiffs-appellants, that the preparation and execution of Exhibit "A" was ordered by Simeon Blas evidently to prevent his heirs by his first marriage from contesting his will and demanding liquidation of the conjugal properties acquired during his first marriage, and an accounting of the fruits and proceeds thereof from the time of the death of his first wife.

Exhibit "A", therefore, appears to be the compromise defined in Article 1809 of the Civil Code of Spain, in force at the time of the execution of Exhibit "A", which provides as follows:

"Compromise is a contract by which each of the parties in interest, by giving, promising, or retaining something avoids the provocation of a suit or terminates one which has already been instituted." (Italics supplied.)

Exhibit "A" states that, the maker (Maxima Santos) had read and knew the contents of the will of her husband Simeon Blas—she was Evidently referring to the declaration in the will (of Simeon Blas) that his properties are

conjugal properties and one-half thereof belongs to her (Maxima Santos) as her share of the conjugal assets under the law. The agreement or promise that Maxima Santos makes in Exhibit "A" is to hold one-half of her said share in the conjugal assets in trust for the heirs and legatees of her husband in his will, with the obligation of conveying the same to such of his heirs or legatees as she may choose in her last will and testament. It is to be noted that the conjugal properties referred to are those that were actually existing at that time, December 26, 1936. Simeon Blas died on January 9, 1937. On June 2, 1937, an inventory of the properties left by him, all considered conjugal, was submitted by Maxima Santos herself as administratrix of his estate. A list of said properties is found in Annex "E", the complete inventory submitted by Maxima Santos Vda. de Blas, as administratrix of the estate of her husband, dated March 10, 1939. The properties which were given to Maxima Santos as her share in the conjugal properties are also specified in the project of partition submitted by said Maxima Santos herself on March 14, 1939. (Record on Appeal, pp. 195-241.) Under Exhibit "A", therefore, Maxima Santos contracted the obligation and promised to give one-half of the above indicated properties to the heirs and legatees of Simeon Blas.

Counsel for the defendant-appellee claims Exhibit "A" is a worthless piece of paper because it is not a will nor a donation mortis causa nor a contract. As we have indicated above, it is a compromise and at the same time a contract with a sufficient cause or consideration. It is also contended that it deals with future inheritance. We do not think that Exhibit "A" is a contract on future inheritance. It is an obligation or promise made by the maker to transmit one-half of her share in the conjugal properties acquired with her husband, which properties are stated or declared to be conjugal properties in the will of the husband. The conjugal properties were in existence at the time of the execution of Exhibit "A" on December 26, 1936. As a matter of fact, Maxima Santos included these properties in her inventory of her husband's estate of June 2, 1937. The promise does not refer to any properties that the maker would inherit upon the death of her husband. The document refers to existing properties which she will receive by operation of law on the death of her husband, because it is her share in the conjugal assets. That the kind of agreement or promise contained in Exhibit "A" is not void under Article 1271 of the old Civil Code, has been decided by the Supreme Court of Spain in its decision of October 8, 1915, thus:

"Que si bien el art. 1271 del Codigo civil dispone que sobre la herencia futura no se podra celebrar otros contratos que aquellos cuyo objeto sea practicar entre vivos la division de un caudal, conforme al articulo 1056, esta prohibicion no es aplicable al caso, porque la obligacion que contrajo el recurrido en contrato privado de otorgar testamento e instituir heredera a su sobrina de los bienes que adquirio en virtud de herencia, procedentes de su finada consorte que le quedasen sobrantes despues de pagar las deudas, y del ganancial que se expresa, asi como de reconocer, ademas, con alguna cosa a otros sobrinos, se refiere a bienes conocidos y determinados existencias cuando tal compromiso se otorgo, y no a la universalidad de una herencia que, segun el art. 659 del citado Codigo civil, se determina a muerte del causante, constituyendola todos los bienes, derechos y obligaciones que por ella no se hayan extinguido: * * *" (Italics supplied.)

It will be noted that what is prohibited to be the subject matter of a contract under Article 1271 of the Civil Code is "future inheritance." To us future inheritance is any property or right not in existence or capable of determination at the time of the contract, that a person may in the future acquire by succession. The properties subject of the contract Exhibit "A" are well-defined properties, existing at the time of the agreement, which Simeon Blas declares in his testament as belonging to his wife as her share in the conjugal partnership. Certainly his wife's actual share in the conjugal properties may not be considered as future inheritance because they were actually in existence at the time Exhibit "A" was executed.

The trial court held that the plaintiffs-appellants in the case at bar are concluded by the judgment rendered in the proceedings for the settlement of the estate of Simeon Blas for the reason that the properties left by him belonged to himself and his wife Maxima Santos; that the project of partition in the said case, adjudicating to Maxima Santos one-half as her share in the conjugal properties, is a bar to another action on the same subject matter,

Maxima Santos having become absolute owner of the said properties adjudicated in her favor. As already adverted to above, these contentions would be correct if applied to the claim of the plaintiffs-appellants that said properties were acquired with the first wife of Simeon Blas, Marte Cruz. But the main ground upon which plaintiffs base their present action is the document Exhibit "A", already fully considered above. As this private document contains the express promise made by Maxima Santos to convey in her testament, upon her death, one-half of the conjugal properties she would receive as her share in the conjugal properties, the action to enforce the said promise did not arise until and after her death when it was found that she did not comply with her above-mentioned promise. (Art. 1969, old Civil Code.) The argument that the failure of the plaintiffs-appellants herein to oppose the project of partition in the settlement of the estate of Simeon Blas, especially that portion of the project which assigned to Maxima Santos one-half of all the conjugal properties, bars their present action, is, therefore, devoid of merit. It may be added that plaintiffs-appellants did not question the validity of the project of partition precisely because of the promise made by Maxima Santos in the compromise Exhibit "A"; they acquiesced in the approval of said project of partition because they were relying on the promise made by Maxima Santos in Exhibit "A", that she would transmit one-half of the conjugal properties that she was going to receive as her share in the conjugal partnership, upon her death and in her will, to the heirs and legatees of her husband Simeon Blas.

Neither can the claim of prescription be considered in favor of the defendants. The right of action arose at the time of the death of Maxima Santos on October 5, 1956, when she failed to comply with the promise made by her in Exhibit "A". The plaintiffs-appellants immediately presented this action on December 27, 1956, upon learning of such failure on the part of Maxima Santos to comply with said promise. This defense is, therefore, also without merit.

It is next contended by the defendant-appellee that Maxima Santos complied with her above-mentioned promise,—that Andres Pascual, Tomasa Avelino, Justo Garcia, Ludovico Pimpin and Marta Gervacio Blas were given substantial legacies in the will and testament of Maxima Santos. To determine whether she had actually complied with the promise made in Exhibit "A", there is herein set forth a list only of the fishponds and their respective areas as contained in the list of properties she acquired as her share in the conjugal partnership, which list includes, besides, many ricelands as well as residential lots, thus:

"31.

Paco, Obando, Bulacan

5.8396

hectares

32.

Pangjolo, Obando

3.5857

hectares

34.

Batang Pirasuan, Lubao, Pampanga

11.9515

hectares

35.

Calangian, Lubao, Pampanga

30.2059

hectares

38.

Bakuling, Lubao, Pampanga

216.4325

hectares

39.

Bakuling, Lubao, Pampanga

8.3763

hectares

40.

Bangkal, Sinubli,

28.0730

hectares

41.

Tagulod,

6.8692

hectares

44.

Bangkal Pugad,

(a) 34.2779

hectares

(b) 51.7919

hectares

(c) 2.5202

hectares

45.

Magtapat, Bangkal, Lubao, Pampanga

a) 18.0024

hectares

(b) 7.3265

hectares

(c) 58.5180

hectares

46.

Pinanganakan, Lubao, Pampanga

159.0078

hectares

47.

Emigdio, Lingid, Lubao, Pampanga

34.5229

hectares

48.

Propios, Lubao, Pampanga

80.5382

hectares

49.

Batang Mabuanbuan, Sexmoan, Pampanga

43.3350

hectares

50.

Binatang Mabuanbuan, Sexmoan, Pampanga

3.5069

hectares

51.

Sapang Magtua, Sexmoan, Pampanga

56.8242

hectares

52.

Kay Limpin, Sexmoan, Pampanga

5.0130

hectares

53.

Calise Mabalumbum, Sexmoan, Pampanga

23.8935

hectares

54.

Messapinit Kineke, Sexmoan, Pampanga

(a) 5.2972

hectares

(b) 4.9230

hectares

(c) 1.4638

hectares

(d) 1.4638

hectares

(e) 2.8316

hectares

(f) 10.4412

hectares

(g) 3.9033

hectares

(h) 11.8263

hectares

(i) 6.0574

hectares

55.

Dalang, Banga, Sexmoan, Pampanga

23.3989

hectares

62.

Alaminos, Alaminos, Pangasinan

47.1242

hectares

80.

Mangasu, Sexmoan, Pampanga

10.0000

hectares

81.

Don Tomas, Sexmoan, Pampanga

21.6435

hectares

82.

Matikling, Lubao, Pampanga

16.0000

hectares

Total area

1,045.7863

hectares

See record on appeal p. 195-241.

In her will, Maxima Santos devised to Marta Gervacio Blas the 80-hectare fishpond, situated in Lubao, Pampanga. The fishpond devised is evidently that designated as "Propios" in Lubao, Pampanga, item No. 48 in the list of properties adjudicated to her in the project of partition. (Record on Appeal, p. 215.) Considering that the total area of the fishpond, amounts to 1,045.7863 hectares, the 80 hectares devised to Marta Gervacio Blas is not even one-tenth of the total area of the fishponds. Add to this the fact that in the will she imposed upon Marta Gervacio Blas de Chivi an existing obligation on said fishponds, namely, its lease in 1957 and the duty to pay out of the rentals thereof an obligation to the Rehabilitation Finance Corporation (RFC). (Ibid., pp. 262-263.) Angelina Blas was given only a lot of 150 square meters in Hulong Duhat, Malabon, Rizal, and Leony Blas, the sum of P300.00 (Ibid., p. 264.)

It is evident from a consideration of the above figures and facts that Maxima Santos did not comply with her obligation to devise one-half of her conjugal properties to the heirs and legatees of her husband. She does not state that she had complied with such obligation in her will. If she intended to comply therewith by giving some of the heirs of Simeon Blas the properties mentioned above, the most that can be considered in her favor is to deduct the value of said properties from the total amount of properties which she had undertaken to convey upon her death.

All the issues in the pleadings of the parties and in their respective briefs, have now been fully discussed and considered. Reiterating what we have stated above, we declare that by Exhibit "A", a compromise to avoid litigation, Maxima Santos promised to devise to the heirs and legatees of her husband Simeon Blas, one-half of the properties she received as her share in the conjugal partnership of herself and her husband, which share is specified in the project of partition submitted by herself on March 14, 1939 in the settlement of the estate of her husband, and which is found on pages 195 to 240 of the record on appeal and on pages 27 to 46 of the project of partition, submitted by Maxima Santos herself before the Court of First Instance of Rizal in Civil Case No. 6707, entitled "Testamentaria del Finado Don Simeon Blas, Maxima Santos Vda. de Blas, Administradora"; and that she failed to comply with her aforementioned obligation. (Exhibit "A").

Wherefore, the judgment appealed from is hereby reversed and the defendant-appellee, administratrix of the estate of Maxima Santos, is ordered to convey and deliver one-half of the properties adjudicated to Maxima Santos as her share in the conjugal properties in said Civil Case No. 6707, entitled "Testamentaria del Finado Don Simeon Blas, Maxima Santos Vda. de Blas, Administradora", to the heirs and the legatees of her husband Simeon Blas. Considering that all said heirs and legatees, designated in the will of Simeon Blas as the persons for whose benefit Exhibit "A" had been executed, have not appeared in these proceedings, the record is hereby remanded to the court below, with instructions that, after the conveyance of the properties hereinabove ordered had been effected, the said heirs and legatees (of Simeon Blas) file adversary pleadings to determine the participation of each and every one of them in said properties. Costs against the defendant-appellee Rosalina Santos.

Padilla, Paredes, and Dizon, JJ., concur.

CONCURRING OPINION

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

I concur in the opinion of Mr. Justice Labrador, and would only add that the doctrine in the decision of 8 October 1915 of the Supreme Court of Spain, applied in the main opinion, is not a mere accident nor an isolated instance, but one of a series of decisions reaffirming the legal proposition therein laid down. Thus, the Presiding Justice Castan of the Spanish Tribunal Supremo, in volume 3 of his *Treaties on Civil Law* (1951 Edition, page 344, footnote 2), observes that:

"(2) La sentencia de 16 de mayo de 1940 declara que segun la doctrina sentada por el Tribunal Supremo en sus fallos de 8 de octubre de 1915 y 26 de octubre de 1926 y por la Direccion de los Registros en su resolucion de 19 de mayo de 1917, la prohibicion contenida en el art. 1.271 so refiere unica y exclusivamente a los pactos sobre la universalidad de una herencia que, segun el art. 659, se determina a la muerte del causante, constituyendola todos los bienes, derechos y obligaciones que por ella no se hayan extinguido y no al pacto sobre bienes conocidos y determinados, existentes, cuando tal compromiso se otorgo, on el dominio del cedente."

And in a later decision of 25 April 1951, the Supreme Court of Spain once more insisted on the rule that a successional agreement concerning property already owned by the grantor at the time the contract was perfected is not banned by Article 1271 of the Spanish Civil Code (corresponding to Article 1347 of the Civil Code of the Philippines):

"Considerando: Que el tercer motivo del recurso de doña M. G. G, y el sexto del formulado por doña D. G. G., hacen referencia a la ultima de las tres cuestiones que son objeto del debate en ambos recursos interpuestos, esto es, la discutida cesion que las hermanas señoras G. G., hoy recurrentes, hicieron a doña C. A. de la mitad de los bienes muebles e inmuebles que recibiesen por herencia de doña M. P., procedentes de la de doña M. A. P., antes N., consignada en documento privado de fecha 2 de noviembre de 1928, firmado y reconocida su autenticidad por las tres señoras interesadas, cuya validez y eficacia es objeto de la cuarta pieza de los presentes autos acumulados, y si se examina con detenimiento el documento aludio y el pacto que en el so consigna habra de advertirse de mode notorio que se halla afectado de vicio de nulidad, porque su objeto son unos bienes que claramente se expresa que han de entrar en el patrimonio de las cedentes mediante una transmission hereditaria, lo que constituye el pacto sobre herencia futura prohibido por el parrafo segundo del articulo 1271 del Codigo Civil, ya que no se concreta sobre bienes conocidos y determinados, existentes en el dominio del cedente cuando el compromiso se otorgo sino que se refiere a la universalidad de bienes que habrian de adquirirse a la muerte del causante, sentido en el que conforme a la jurisprudencia de esta Sala es de plena aplicacion la norma substantiva antes citada, y al no haberlo asi entendido la Sala de instancia, ha incurrido en la infraccion de interpretar erroneamente y por ello ha hecho aplicacion indebida de dicho precepto y procede la estimacion de los motivos que al principio se citan y que denuncian la estimada infraccion, produciendo la casacion de la sentencia recurrida en el extremo a que los dichos motivos se refieren." (Sentencia 25 abril 1951) (*Italics supplied*)

It can thus be seen that the constant authoritative interpretation of the prohibition against agreements involving future inheritance requires not only that a future succession be contemplated but also that the subject matter of the bargain should be either the universality or complex or mass of property owned by the grantor at the time of his death, or else an aliquot portion thereof. Castan, in his *Treatise* already mentioned, sums up the rulings in this wise:

'Por otra parte, se ha de entender: 1.º Que la cesion o enajenacion de los derechos hereditarios puede hacerse una vez fallecido el causante, aunque no se haya entrado en posesion material de los bienes, 2.º Que la prohibicion legal se refiere solo a los contratos concluidos sobre la herencia misma o alguna de sus cuotas, no

sobre objetos aislados que, eventualmente, hayan de adquirirse a virtud de la herencia."

It has been contended that the doctrine thus stated confuses future inheritance (*herencia futura*) with future property (*bienes futuros*). This is a misapprehension. In construing the term "future inheritance" as the contingent universality or complex of property rights and obligations that are to pass to the heirs upon the death of the grantor, the rule advocated merely correlates the prohibition against contracts over "future inheritance" with the definition of "inheritance" given in Article 659 of the Spanish Civil Code, which is now Article 776 of the Civil Code of the Philippines:

"Art. 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death."

The inheritance of a person may, and usually does, include not only property that he already owns at a given time, but also his future property, that is to say, the property that he may subsequently acquire. But it may include only future property whenever he should dispose of the present property before he dies. And future inheritance may include only property he already owns at any given moment, if he should thereafter acquire no other property until his death. In any case, the inheritance or estate consists of the totality of assets and liabilities he holds at the time of his demise, and not what he possesses at any other time. If the questioned contract envisages all or a fraction of that contingent mass, then it is a contract over "*herencia futura*", otherwise it is not. The statutory prohibition, in other words, is not so much concerned with the process of transfer as with the subject matter of the bargain. It is addressed to "future inheritance", not "future succession".

Of course, it can be said that every single item of property that a man should hold at any given instant of his life may become a part of his inheritance—if he keeps it long enough. But is that mere possibility (or even probability) sufficient to stamp upon a contract over an individualized item of existing property the outlaw brand of "contract over future inheritance"? If it should ever be, then no agreement concerning present property can escape the legal ban. No donation *intervivos*, no reversionary clause, no borrowing of money, and no alienation, not even a contract of sale (or other contract in *praesenti* for that matter), with or without deferred delivery, will avoid the reproach that it concerns or affects the grantor's "future inheritance". It is permissible to doubt whether the law ever contemplated the sweeping away of the entire contractual system so carefully regulated in the Code.

The restrictive interpretation given by the Spanish Supreme Court to the codal prohibition of agreements involving future inheritance is justified not only by the fact that the prohibition limits contractual freedom (and therefore, should not be given extensive interpretation), but also because there is no real or substantial difference between (1) an agreement whereby a person, for a valuable consideration, agrees to bequeath some of the property he already owns, and (2) a contract whereby he disposes of that property, subject to the condition that he will be entitled to its usufruct until the time he dies. The court has repeatedly sanctioned even donations *inter vivos* wherein the donor has reserved to himself the right to enjoy the donated property for the remainder of his days, and defers the actual transfer of possession to the time of his death (*Guzman vs. Ibea*, 67 Phil., 633; *Balagui vs. Dongso*, 53 Phil., 673; *Laureta vs. Mata*, 44 Phil., 668). Whatever objection is raised against the effects of the first kind of contracts can be made to apply to the second.

Mature reflection will show that where present (existing) property is the object of the bargain, all arguments brandished against convention over future succession (*post mortem*) are just as applicable to other contracts *de praesenti* with deferred execution, the validity of which has never been questioned. Thus, the loss of the power to bequeath the bargained property to persons of the grantor's choice, and the awakening of the grantee's desire for the early death of the grantor (the Roman "*votum mortis captandae*") in order to obtain prompt control of the contracted goods, occur in both cases. In truth, the latter ground would bar even a contract of life insurance in favor of a stated beneficiary. It may also be noted that since the later part of the nineteenth century, the civilists

have recognized that the progress in social relations has rendered such objections obsolete (Puig Peña, *Derecho Civil*, Vol. V, part I, p. 613 et seq.).

But where the contract involves the universality of the estate that will be left at a person's death (the "herencia futura" as understood by the Spanish Tribunal Supremo), there is another reason which I believe to be the true justification for the legal interdiction, and it is this: that if a man were to be allowed to bargain away all the property he expects to leave behind (i.e., his estate as a whole), he would practically remain without any incentive to practice thrift and frugality, or to conserve and invest his earnings and property. He would then be irresistibly drawn to be a wasteful spendthrift, a social parasite, without any regard for his future, because whatever he leaves will belong to another by virtue of his contract. The disastrous effects upon family and society if such agreements were to be held binding can be readily imagined. Hence, the interpretation given to Article 1271 (now Art. 1347) by the Supreme Court of Spain appears amply supported by practical reasons, and there is no ground to deny its application.

Much emphasis has been placed on the provisions of the contract Exhibit "A" that the widow, Maxima Santos de Blas, would execute a testament in favor of the appellees. To me this is purely secondary, since it is merely the method selected by the parties for carrying out the widow's agreement to convey to the appellees the property in question without her losing its enjoyment during her natural life, and does not affect the substance or the validity of the transaction. To ensure the widow's possession of the property and the perception of its fruits while she was alive, the means logically selected was to return it by will, since such a conveyance could only be operative after death. There might be a doubt as to the validity of this arrangement if the widow's promise had been purely gratuitous, because then it could be argued that the promise involved a hybrid donation mortis causa yet irrevocable;^[1] but here the obligation to return is concededly irrevocable and supported by adequate consideration duly received in advance.

Since the agreement in the instant case did not refer to the future estate of the widow of Blas, but only to part of her present property at the time the contract was made; since the promise to retransfer one-half of her conjugal share was supported by adequate consideration as shown in the main decision; since the contract obviated protracted litigation and complicated accounting in settling the conjugal partnership of Blas and his first (deceased) wife; and since the testament that the widow promised to make was merely the mode chosen to perform the contract and carry out the promised devolution of the property, being thus of secondary importance, I can see no reason for declaring the entire arrangement violative of the legal interdiction of contracts over future inheritance, and disappoint the legitimate expectation held by the heirs of the first wife during all these years.

[1] Note that the original "pactum successorium" was essentially gratuitous: che e essenzialmente a titolo gratuito", (Stolfi, *Diritto Civile*, Vol. 6. p. 89).

CONCURRING OPINION

BARRERA, J.:

It seems to me clear/that the document Exhibit "A", basis of the action of the plaintiffs-appellants, refers specifically to and affects solely the share of the grantor Maxima Santos in the conjugal properties as determined and specified in the will of her husband Simeon Blas, whose provisions, which she expressly acknowledged to have read and understood, constitute the *raison d'être* of her promise to deliver or convey, by will, one-half of that specific share to the heirs and legatees named in her husband's will (who are his heirs by his first marriage).

Nowhere in the document Exhibit "A" is there reference to her hereditary estate that she herself would leave behind at the time of her own demise which legally would be her "future inheritance". For this reason, I believe the contractual obligation assumed by Maxima Santos in virtue of Exhibit "A" does not come within the prohibition of Article 1271 of the Spanish Civil Code, now Article 1347 of the Civil Code of the Philippines.

I, therefore, concur in the opinions of Justices Labrador and Reyes.

DISSENTING OPINION

BAUTISTA ANGELO, J.:

While I agree with the theory that the document Exhibit A does not involve a contract on future inheritance but a promise made by Maxima Santos to transmit one-half of her share in the conjugal property acquired during her marriage to Simeon Blas to the heirs and legatees of the latter, I am however of the opinion that herein appellants have no cause of action because Maxima Santos has substantially complied with her promise.

It should be noted that Maxima Santos' promise to transmit is predicated on the condition that she can freely choose and select from among the heirs and legatees of her husband those to whom she would like to give and bequeath depending on the respect, service and companionship that they may render to her. Her commitment is not an absolute promise to give to all but only to whom she may choose and select. And here this promise has been substantially complied with.

Thus, it appears that Maxima Santos selected eight of such heirs and legatees instituted in the will of her husband. Note that appellant Marta Gervacio Blas, who was given a legacy of only P38,000.00 in the will of Simeon Blas, was given by her a legacy worth around P400,000.00; appellants Loida Gervacio Blas (or Luding Blas) and Leoncio (Leony) Gervacio Blas were given a legacy of P300.00 each every year to last during their lifetime; and Lorenzo Santos was given a legacy; of two fishponds and one-tenth of the whole residuary estate. It may be stated that although appellant Maria Gervacio Blas was not given any legacy in Maxima Santos' will, yet her son Simeon Dungao was given a legacy of a residential land in Tonsuya, Malabon.

I, therefore, consider not in keeping with the nature of the pledge made by Maxima Santos the decision of the majority in ordering her administratrix to convey and deliver one-half of her share in the conjugal property to all the heirs and legatees of her husband Simeon Blas, because only such heirs and legatees are entitled to share in the property as may be selected by Maxima Santos, and this she has already done. For these reasons, I dissent.

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