

## GREGORIO JOAQUIN Y TUASON ET AL., PLAINTIFFS AND APPELLANTS, VS. MAXIMO JOAQUIN ET AL., DEFENDANTS AND APPELLEES.

*G. R. No. 14084. February 16, 1920*

Ponente: AVANCEÑA, J.

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### AVANCEÑA, J.:

In January, 1870, Maximo Joaquin was married for the first time to Juana Bernardo with whom he had five children named Elias, Sixto, Dorotea, Maria and Simeona. Neither Maximo Joaquin nor Juana Bernardo brought property of any kind to this marriage; but during said marriage and until November 1, 1882, when Juana Bernardo died, they acquired properties belonging to the conjugal partnership (*bienes gananciales*) and amounting to P1,800. Upon the death of Juana Bernardo, her brother Simeon Bernardo, demanded of Maximo Joaquin one-half of the P1,800 which belonged to Juana Bernardo as her half of the property of the conjugal partnership and which must go to her children Elias, Sixto, Dorotea, Maria, and Simeona. Instead of delivering this half, Maximo Joaquin entered into an agreement with the said Simeon Bernardo whereby it was stipulated that Maximo Joaquin would form a partnership with his children with the P1,800 as capital, one-half of which would be considered as his share and the other half as his children's share, and the earnings thereof were to be divided between him and his children equally. In this manner Maximo Joaquin during his widowhood continued managing the P1,800 until July 7, 1885, when he was married to Francisca Tuason, said capital of P1,800 having increased to that date to P3,677. When Maximo Joaquin was married to Francisca Tuason, the latter did not bring property of any kind to this marriage, while the former brought the sum of P3,677 aforesaid. During the second marriage which lasted until February 26, 1909, when Francisca Tuason died, this capital of P3,677 increased to P163,250. Maximo Joaquin had four children by the second marriage, named Gregorio, Fidela, Domingo, and Feliza.

The plaintiffs herein are Maximo Joaquin's children by his second marriage, that is, with Francisca Tuason, and the defendants herein are Maximo Joaquin and his children by his first marriage, that is, with Juana Bernardo. The parties having entered into an agreement, the question in this case is reduced to Maximo Joaquin's liquidating all of his properties, determining the portion corresponding to him, to his children by first marriage and to the children by his second marriage. Maximo Joaquin presented this liquidation in which he enters the following items:

#### SUMS TO BE DEDUCTED.

The capital and earnings of the first marriage of Maximo Joaquin, i. e., with Juana Bernardo, which was brought wholly to his second marriage, i. e., with Francisca Tuason and with which the properties A, B, C, D, and E were acquired

P3,677.00

This sum of P3,677 deducted from the grand total of P163,250 gives a balance of P159,573 as net profit,

one-half of which belongs to the deceased Juana Bernardo, or rather to her children Elias, Dorotea, Sixto, Maria, and Simeona Joaquin y Bernardo, and the net profit of their capital in the partnership between them and their father Maximo Joaquin

79,786.50

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Total

83,463.50

ADJUDICATIONS.

SHARE OF MAXIMO JOAQUIN.

For his share of one-half of the capital and earnings of his first conjugal partnership with his wife Juana Bernardo

P1,838.50

For his share of one-half of the sum of P79,786.50, which is the sum total of the asset of the conjugal partnership with his second wife, Francisca Tuason

39,893.25

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Total

41,731.75

SHARE OF THE DECEASED JUANA BERNARDO, OR HER CHILDREN ELIAS, DOROTEA, SIXTO, MARIA, AND SIMEONA JOAQUIN Y BERNARDO.

For their share of one-half of the capital and earnings obtained during the first marriage of Maximo Joaquin with the said Juana Bernardo

P1,838.50

For their share of one-half of the sum of P159,575, the net partnership profit obtained after deducting the capital of the partnership between Maximo Joaquin and his children of the first marriage Elias, Dorotea, Sixto, Maria, and Simeona Joaquin y Bernardo

79,786.50

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Total

81,625.00

SHARE OF THE DECEASED FRANCISCO TUASON, OR HER CHILDREN GREGORIO, FIDELA, DOMINGO, AND FELIZA JOAQUIN Y TUASON.

For their share of one-half of the sum of P79,786.50, the net profit obtained during the marriage of Maximo Joaquin with his second wife, Francisca Tuason, after deducting from the total liquidated profit (P163,250) the capital of the first conjugal partnership (P3,677) and one-half of the net profit (P79,786.50) corresponding to the children of the first marriage

39,893.25

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Total

39,893.25

EXEMPLIFICATION.

Value of all the properties included in this liquidation

P163,250.00

Share of Maximo Joaquin

P41,731.75

Share of the children of the first marriage

81,625.00

Share of the children of the second marriage

39,893.25

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Grand total

163,250.00

The lower court rendered its judgment accepting the foregoing liquidation and ordering, in accordance there-with, the delivery of the properties to the respective in-terested parties. From this judgment plaintiffs appealed.

Maximo Joaquin's liquidation is based on the following considerations:

That, the sum of P1,800, being the profit during his con-jugal partnership with his first wife, one-half of said sum belonged to him and the other half to his children of the first marriage; that, having entered into a partnership with his said children with this capital (P1,800), the sum of P3,677, to which the said capital amounted when he was married for the second time to Francisca Tuason, also belonged in equal parts to him and to his children of the first marriage; that, having brought this entire capital of P3,677 to his second marriage—as the capital of the part-nership between him and his children of the first marriage—and this capital having produced P159,573 during his second marriage, one-half of the latter amount should be-long to his children of the first marriage, as his partners; that the other half of this sum of P159,573, which should be treated as the earnings of the second marriage, should be divided into two equal parts, one of which belongs to him and the other to his children of the second marriage. The legality of this liquidation depends upon whether or not it may be accepted that, when Maximo Joaquin was married for the second time to Francisca Tuason, he brought to this second marriage the sum of P3,677 as the capital of the partnership he had with his children of the first marriage.

The appellant alleged that, if there was such partnership between Maximo Joaquin and his codefendants, it was a universal partnership and, consequently, the latter should also bring to the liquidation the properties they acquired during the existence of this partnership. This claim, how-ever, is devoid of any foundation. According to the evi-dence said partnership was limited to only the sum of P1,800. It was, therefore, a limited partnership for the

sum of P1,800.

The appellants also claim that, in accordance with the laws in force on the date of the organization of said partnership between Maximo Joaquin and his children of his first marriage, one-half of the said sum of P1,800, inherited by his children from their mother, Juana Bernardo, par-took of the nature of adventitious property, the usufruct of which lawfully belonged to Maximo Joaquin. Although this claim is true, nevertheless, when Maximo Joaquin entered into a partnership with his children for said sum of P1,800, agreeing to divide with them the profits thereby obtained, he renounced this usufruct. There was no law prohibiting him from making this renunciation.

The appellants contend that, at any rate, Maximo Joaquin's children of the first marriage being then below age at the time said partnership was organized, they (children) could not enter into such contract with their father. But, it will be noted that this contract was entered into between Maximo Joaquin and his children of the first marriage, who were represented by Simeon Bernardo.

It is said by the appellants that, even in this case, such contract could not be made inasmuch as Simeon Bernardo, being a mere uncle of Maximo Joaquin's children, did not have the legal representation of the latter. Simeon Bernardo did not in fact have the legal representation of Maximo Joaquin's children of the first marriage and the partnership agreement he had entered into with the said Maximo Joaquin in representation of the latter is invalid. However, it was an agreement which could be ratified by said children upon their attaining majority (article 1259, Civil Code), and no doubt there was such ratification. The youngest of said children became of age in the year 1904. As they grew old and were able to work, they helped their father in the cultivation of the lands for the benefit of the partnership, and when all of them reached the age of majority, they assented thereto and continued helping their father in said cultivation. It is hardly necessary to mention this, for the defendants' attitude in setting up their defense in this case, precisely invoking the existence of the partnership, is a proof that they ratify said partnership. It does not appear that they had ever repudiated it. On the other hand, up to the time this action was filed, neither the defendants nor their father during his lifetime had ever shown their objection to the continuance of this partnership. This ratification has therefore produced the effect of curing this partnership of its original vice, and it was lawfully in existence from the moment of its organization.

It further clearly appears from the evidence that the properties which are the object of this liquidation came from the sum of P3,677, which from the beginning was the capital of the defendants' partnership aforesaid when Maximo Joaquin entered into second marriage with the plaintiffs' mother, and that such properties are but the legitimate fruits of the defendants' mutual and faithful cooperation with each other.

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

Arellano, C. J., Torres, Johnson, Araullo, Street, and Malcolm, JJ., concur.

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