

**ENCARNACION FLORENTINO ET AL., PLAINTIFFS AND APPELLANTS,
VS. MERCEDES FLORENTINO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 14856. November 15, 1919*

Ponente: TORRES, J.

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On January 17, 1918, counsel for Encarnacion (together with her husband Simeon Serrano), Gabriel, Magdalena, Ramon, Miguel, Victorino, and Antonio of the surname Florfcntino; for Miguel Florentino, guardian ad litem of the minor Rosario Florentino; for Eugenio Singson, the father and. guardian ad litem of Emilia, Jesus, Lourdes, Caridad, and Dolores of the surname Singson y Florentino; and for Eugenio Singson, guardian of the minors Jose and Asuncion Florentino, filed a complaint in the Court of First Instance of Ilocos Sur, against Mercedes Florentino and her husband, alleging as follows:

That Apolonio Isabelo Florentino II married the first time Antonia Faz de Leon; that during the marriage he begot nine children called Jose, Juan, Maria, Encarnacion, Isabel, Espirita, Gabriel, Pedro, and Magdalena of the surname Florentino y de Leon; that on becoming a widower he married the second time Severina Faz de Leon with whom he had two children, Mercedes and Apolonio III of the surname Florentino y de Leon; that Apolonio Isabelo Florentino II died on February 13, 1890; that he was survived by his second wife Severina Faz de Leon and the ten children first above mentioned; that his eleventh son, Apolonio III, was born on the following 4th of March 1890.

That of the deceased Apolonio Isabelo's aforementioned eleven children, Juan, Maria and Isabel died single, without leaving any ascendants or descendants; that Ramon, Miguel, Victorino, Antonio, and Rosario are the legitimate children of the deceased Jose Florentino who was one of the children of the deceased Apolonio Isabelo; that Emilia, Jesus, Lourdes, Caridad, and Dolores are the legitimate children of Espirita Florentino, now deceased, and her husband Eugenio Singson; that Jose and Asuncion are the children of Pedro Florentino, another son of the deceased Apolonio Isabelo Florentino.

That on January 17 and February 13, 1890, Apolonio Isabelo Florentino executed a will before the notary public of Ilocos Sur, instituting as his universal heirs his aforementioned ten children, the posthumos Apolonio III and his widow Severina Faz de Leon; that he declared, in one of the paragraphs of said will, all his property should be divided among all of his children of both marriages.

That, in the partition of the said testator's estate, there was given to Apolonio Florentino III, his posthumos son, the property marked with the letters A, B, C, D, E, and F in the complaint, a gold rosary, pieces of gold, of silver and of table service, livestock, palay, some personal property and other objects mentioned in the complaint.

That Apolonio Florentino III, the posthumos son of the second marriage, died in J[^]91; that his mother, Severina Faz de Leon, succeeded to all his property described in the complaint; that the widow, Severina Faz de Leon died on November 18, 1908, leaving a will instituting as her universal heiress her only living daughter, Mercedes Florentino ; that, as such heir, said daughter took possession of all the property left at the death of her mother,

Severina Faz de Leon; that among same is included the property, described in the complaint, which the said Severina Faz de Leon inherited from her deceased son, the posthumous Apolonio, as reservable property; that, as a reservist, the heir of the said Mercedes Florentino deceased had been gathering for herself alone the fruits of lands described in the complaint; that each and every one of the parties mentioned in said complaint is entitled to one-seventh of the fruits of the reservable property described therein, either by direct participation or by representation, in the manner mentioned in paragraph 9 of the complaint.

That several times the plaintiffs have, in an amicable manner, asked the defendants to deliver their corresponding part of the reservable property; that without any justifiable motive the defendants have refused and do refuse to deliver said property or to pay for its value; that for nine years Mercedes Florentino has been receiving, as rent for the lands mentioned, 360 bundles of palay at fifty pesos per bundle and 90 bundles of corn at four pesos per bundle; that thereby the plaintiffs have suffered damages in the sum of fifteen thousand four hundred and twenty-eight pesos and fifty-eight centavos, in addition to three hundred and eight pesos and fifty-eight centavos for the value of the fruits not gathered, of one thousand pesos (P1,000) for the unjustifiable retention of the aforementioned reservable property and for the expenses of this suit. Wherefore they pray it be declared that all the foregoing property is reservable property; that the plaintiffs had and do have a right to the same, in the quantity and proportion mentioned in the aforementioned paragraph 9 of the complaint; that the defendants Mercedes Florentino and her husband be ordered to deliver to the plaintiffs their share of the property in question, of the palay and of the corn above mentioned, or their value; and that they be condemned to pay the plaintiffs the sum of one thousand pesos (P1,000) together with the costs of this instance.

To the preceding complaint counsel for the defendants demurred, alleging that the cause of action is based on the obligation of the widow Severina Faz de Leon to reserve the property she inherited from her deceased son Apolonio Florentino y Faz de Leon who, in turn, inherited same from his father Apolonio Isabelo Florentino; that, there being no allegation to the contrary, it is to be presumed that the widow Severina Faz de Leon did not remarry after the death of this husband nor have any natural child; that the right claimed by the plaintiffs is not that mentioned in article 968 and the following articles, but that established in article 811 of the Civil Code; that the object of the provisions of the aforementioned articles is to avoid the transfer of said reservable property to those extraneous to the family of the owner thereof; that if the property inherited by the widow Severina Faz de Leon from her deceased son Apolonio Florentino y Faz de Leon (property which originated from his father and her husband) has all passed into the hands of the defendant, Mercedes Florentino y Encarnacion, a daughter of the common ancestor's second marriage (said Apolonio Isabelo Florentino with the deceased Severina Faz de Leon) it is evident that the property left at the death of the posthumous son Apolonio Florentino y Faz de Leon did not pass after the death of his mother Severina, his legitimate heirs as an ascendant, into the hands of strangers; that said property having been inherited by Mercedes Florentino y Encarnacion from her mother (Severina), article 811 of the Civil Code is absolutely inapplicable to the present case because, when the defendant Mercedes, by operation of law, entered into and succeeded to, the possession, of the property lawfully inherited from her mother Severina Faz de Leon, said property had, while in the possession of her mother, lost the character of reservable property—there being a legitimate daughter of Severina Faz de Leon with the right to succeed her in all her rights, property and actions; that the restraints of the law whereby said property may not pass into the possession of strangers are void, inasmuch as the said widow had no obligation to reserve same, as Mercedes Florentino is a forced heiress of her mother Severina Faz de Leon; that, in the present case, there is no property reserved for the plaintiffs since there is a forced heiress, entitled to the property left by the death of the widow Severina Faz de Leon who never remarried; that the obligation to reserve is secondary to the duty of respecting the legitime; that in the instant case, the widow Severina Faz de Leon was in duty bound to respect the legitime of her daughter Mercedes, the defendant; that her obligation to reserve the property could not be fulfilled to the prejudice of the

legitimate which belongsto her forced heiress, citing in support of these statements the decision of the supreme court of Spain of January 4, 1911; that, finally, the application of article 811 of the Civil Code in favor of the plaintiffs would presuppose the exclusion of the defendant from her right to succeed exclusively to all the property, rights and actions left by her legitimate mother, altho the said defendant has a better right than the plaintiffs; and that there would be injustice if the property claimed be adj adicated to the,plaintiffs, as well as a violation of section 5 of the Jones Law which invalidates any law depriving any person of an equal protection. Wherefore they prayed that the demurrer be sustained, with costs against the plaintiffs.

After the hearing of the demurrer, on August 22, 1918, the judge absolved the defendants from the complaint and condemned the plaintiffs to pay the costs.

Counsel for the plaintiffs excepted to this order, moved to vacate it and to grant them a new trial; said motion was overruled; the plaintiffs excepted thereto and filed the corresponding bill of exceptions which was allowed, certified and forwarded to the clerk of this court.

On appeal the trial judge sustained the demurrer of the defendants to the complaint of the plaintiffs, but, instead of ordering the latter to amend their complaint within the period prescribed by the rules—undoubtedly believing that the plaintiffs could not alter nor change the facts constituting the cause of action, and that, as both parties were agreed as to the facts alleged in the complaint as well as in the demurrer, every question reduced itself to one of the law, already submitted to the decision of the court—the said judge, disregarding the ordinary procedure established by law, decided the case by absolving the defendants from the complaint and by condemning the plaintiffs to nav the costs of the instance.

There certainly was no real trial, inasmuch as the defendants, instead of answering the complaint of the plaintiffs, confined themselves to filing a demurrer based on the ground that the facts alleged in the complaint do not constitute a cause of action. However, the judge preferred to absolve the defendants, thereby making an end to the cause, instead of dismissing the same, because undoubtedly he believed, in view of the controversy between the parties, that the arguments adduced to support the demurrer would be the same which the defendants would allege in their answer—those dealing¹ with a mere question of law which the courts would have to decide—and that, the demurrer having been sustained, if the plaintiffs should insist—they could do no less— upon alleging the same facts as those set out in their complaint and if another demurrer were afterwards set up, he would be obliged to dismiss said complaint with costs against the plaintiffs—in spite of being undoubtedly convinced in the instant case that the plaintiffs absolutely lack the right to bring the action stated in their complaint.

Being of the opinion that the emendation of the indicated defects is not necessary—as in this case what has been done does not prejudice the parties—the appellate court will now proceed to decide the suit according to its merits, as found in the record and to the legal provisions applicable to the question of law in controversy so that unnecessary delay and greater expense may be avoided, inasmuch as, even if all the ordinary proceedings be followed, the suit would be subsequently decided in the manner and terms that it is now decided in the opinion thoughtfully and conscientiously formed for its determination.

In order to decide whether the plaintiffs are or are not entitled to invoke, in their favor, the provisions of article 811 of the Civil Code, and whether the same article is applicable to the question of law presented in this suit, it is necessary to determine whether the property enumerated in paragraph 5 of the complaint is of the nature of re~servable property; and, if so, whether in accordance with the provision of the Civil Code in article 811, Severina Faz de Leon (the widow of the deceased Apolonio Isabelo Florentino) who inherited said property from her son Apolonio Florentino III (born after the death of his father Apolonio Isabelo) had the obligation to preserve and reserve same for the relatives, within the third degree, of her aforementioned deceased son Apolonio III.

The above mentioned article reads:

"Any ascendant who inherits from his descendant any property acquired by the latter gratuitously from some other ascendant, or from a brother or sister, is obliged to reserve such of the property as he may have acquired by operation of law for the benefit of relatives within the third degree belonging to the line from which such property came."

During the marriage of Apolonio Isabelo Florentino II and Severina Faz de Leon two children were born, namely the defendant Mercedes Florentino and Apolonio Florentino III (born after the death of his father). At the death of Apolonio Isabelo Florentino under a will, his eleven children succeeded to the inheritance he left, one of whom, the posthumous son Apolonio III, was given, as his share, the aforementioned property enumerated in the complaint. In 1891 the said posthumous son Apolonio Florentino III died and was succeeded by his legitimate mother Severina Faz de Leon, who inherited the property he left and who on dying, November 18, 1908, instituted by will as her sole heiress her surviving daughter, Mercedes Florentino, the defendant herein, who took possession of all property left by her father, same constituting the inheritance. Included in said inheritance is the property, specified in paragraph 5 of the complaint, which had been inherited by the posthumous son Apolonio Florentino III from his father Apolonio Isabelo Florentino, and which, at the death of the said posthumous son, had in turn been inherited by his mother, Severina Faz de Leon. Even if Severina left in her will said property, together with her own, to her only daughter and forced heiress, Mercedes Florentino, nevertheless this property had not lost its reservable nature inasmuch as it originated from the common ancestor of the litigants, Apolonio Isabelo; was inherited by his son Apolonio III; was transmitted by same (by operation of law) to his legitimate mother and ascendant, Severina Faz de Leon.

The posthumous son, Apolonio Florentino III, acquired the property, now claimed by his brothers, by a lucrative title or by inheritance from his aforementioned legitimate father, Apolonio Isabelo Florentino II. Although said property was inherited by his mother, Severina Faz de Leon, nevertheless, she was in duty bound, according to article 811 of the Civil Code, to reserve the property thus acquired for the benefit of the relatives, within the third degree, of the line from which such property came.

According to the provisions of law, ascendants do not inherit the reservable property, but its enjoyment, use or trust, merely for the reason that said law imposes the obligation to reserve and preserve same for certain designated persons who, on the death of the said ascendantsreservists, (taking into consideration the nature of the line from which such property came) acquire the ownership of said property in fact and by operation of law in the same manner as forced heirs (because they are also stock) — said property reverts to said line as long as the aforementioned persons who, from the death of the ascendantsreservists, acquire in fact the right of reservatarios (persons for whom property is reserved), and are relatives, within the third degree, of the descendant from whom the reservable property came.

Any ascendant who inherits from his descendant any property, while there are living, within the third degree, relatives of the latter, is nothing but a life usufructuary or a fiduciary of the reservable property received. He is, however, the legitimate owner of his own property which is not reservable property and which constitutes his legitime, according to article 809 of the Civil Code. But if, afterwards, all of the relatives, within the third degree, of the descendant (from whom came the reservable property) die or disappear, the said property becomes free property, by operation of law, and is thereby converted into the legitime of the ascendant heir who can transmit it at his death to his legitimate successors or testamentary heirs. This property has now lost its nature of reservable property, pertaining thereto at the death of the relatives, called reservatarios, who belonged within the third degree to the line from which such property came.

Following the order prescribed by law in legitimate succession, when there are relatives of the descendant within the third degree, the right of the nearest relative, called reservatario, over the property which the reservista (person holding it subject to reservation) should return to him, excludes that of the one more remote. The right of representation cannot be alleged when the one claiming same as a reservatario of the reservable property is not among the relatives within the third degree belonging to the line from which such property came, inasmuch as the right granted by the Civil Code in article 811 is in the highest degree personal and for the exclusive benefit of designated persons who are the relatives, within the third degree, of the person from whom the reservable property came. Therefore, relatives of the fourth and the succeeding degrees can never be considered as reservatarios, since the law does not recognize them as such.

In spite of what has been said relative to the right of representation on the part of one alleging his right as reservatario who is not within the third degree of relationship, nevertheless there is right of representation on the part of reservatarios who are within the third degree mentioned by law, as in the case of nephews of the deceased person from whom the reservable property came. These reservatarios have the right to represent their ascendants (fathers and mothers) who are the brothers of the said deceased person and relatives within the third degree in accordance with article 811 of the Civil Code.

In this case it is conceded without denial by defendants, that the plaintiffs Encarnacion, Gabriel and Magdalena are the legitimate children of the first marriage of the deceased Apolonio Isabelo Florentino II; that Ramon, Miguel, Ceferino, Antonio, and Rosario are both grandchildren of Apolonio Isabelo Florentino II, and children of his deceased son, Jose Florentino; that the same have the right to represent their aforementioned father, Jose Florentino; that Emilia, Jesus, Lourdes, Caridad, and Dolores are the legitimate children of the deceased Espirita Florentino, one of the daughters of the deceased Apolonio Isabelo Florentino II, and represent the right of their aforementioned mother; and that the other plaintiffs, Jose and Asuncion, have also the right to represent their legitimate father Pedro Florentino, one of the sons of the aforementioned Apolonio Isabelo Florentino II. It is a fact, admitted by both parties, that the other children of the first marriage of the deceased Apolonio Isabelo Florentino II died without issue so that this decision does not deal with them.

There are then seven "reservatarios" who are entitled to the reservable property left at the death of Apolonio III; the posthumous son of the aforementioned Apolonio Isabelo II, to wit, his three children of his first marriage—Encarnacion, Gabriel, Magdalena; his three children, Jose, Espirita and Pedro who are represented by their own twelve children respectively; and Mercedes Florentino, his daughter by a second marriage. All of the plaintiffs are the relatives of the deceased posthumous son, Apolonio Florentino III, within the third degree (four of whom being his halfbrothers and the remaining twelve being his nephews as they are the children of his three half-brothers). As the first four are his relatives within the third degree in their own right and the other twelve are such by representation, all of them are indisputably entitled as reservatarios to the property which came from the common ancestor, Apolonio Isabelo, to Apolonio Florentino III by inheritance during his life-time, and in turn by inheritance to his legitimate mother, Severina Faz de Leon, widow of the aforementioned Apolonio Isabelo Florentino II.

In spite of the provision of article 811 of the Civil Code already cited, the trial judge refused to accept the theory of the plaintiffs and, accepting that of the defendants, absolved the latter from the complaint on the ground that said article is absolutely inapplicable to the instant case inasmuch as the defendant Mercedes Florentino survived her brother, Apolonio III, from whom the reservable property came and her mother, Severina Faz de Leon, the widow of her father, Apolonio Isabelo Florentino II; that the defendant Mercedes, being the only daughter of Severina Faz de Leon, is likewise her forced heiress; that when she inherited the property left at the death of her mother, together with that which came from her deceased brother Apolonio III, the fundamental object of article

811 of the Code was thereby complied with, inasmuch as the danger that the property coming from the same line might fall into the hands of strangers had been avoided; and that the hope or expectation on the part of the plaintiffs of the right to acquire the property of the deceased Apolonio III never did come into existence because there is a forced heiress who is entitled to such property.

The judgment appealed from is also founded on the theory that article 811 of the Civil Code does not destroy the system of legitimate succession and that the pretension of the plaintiffs to apply said article in the instant case would be permitting the reservable right to reduce and impair the forced legitime which exclusively belongs to the defendant Mercedes Florentino, in violation of the precept of article 813 of the same Code which provides that the testator cannot deprive his heirs of their legitime, except in the cases expressly determined by law. Neither can he impose upon it any burden, condition, or substitution of any kind whatsoever, saving the provisions concerning the usufruct of the surviving spouse, citing the decision of the Supreme Court of Spain of January 4, 1911.

The principal question submitted to the court for decision consists mainly in determining whether the property left at the death of Apolonio III, the posthumous son of Apolonio Isabelo II, was or was not invested with the character of reservable property when it was received by his mother, Severina Faz de Leon.

The property enumerated by the plaintiffs in paragraph 5 of their complaint came, without any doubt whatsoever, from the common ancestor Apolonio Isabelo II, and when, on the death of Apolonio III without issue, the same passed by operation of law into the hands of his legitimate mother, Severina Faz de Leon, it became reservable property, in accordance with the provision of article 811 of the Code, with the reject that the same should not fall into the possession of persons other than those comprehended within the order of succession traced by the law from Apolonio Isabelo II, the source of said property. If this property was in fact clothed with the character and condition of reservable property when Severina Faz de Leon inherited same from her son Apolonio III, she did not thereby acquire the dominion or right of ownership but only the right of usufruct or of fiduciary, with the necessary obligation to preserve and to deliver or return it as such reservable property to her deceased son's relatives within the third degree, among whom is her daughter, Mercedes Florentino.

Reservable property neither comes, nor falls under, the absolute dominion of the ascendant who inherits and receives same from his descendant, therefore it does not form part of his own property nor become the legitimate of his forced heirs. It becomes his own property only in case that all the relatives of his descendant shall have died (reservista), in which case said reservable property loses such character.

With full right Severina Faz de Leon could have disposed in her will of all her own property in favor of her only living daughter, Mercedes Florentino, as forced heiress. But whatever provision there is in her will concerning the reservable property received from her son Apolonio III, or rather, whatever provision will reduce the rights of the other reservatarios, the half brothers and nephews of her daughter Mercedes, is unlawful, null and void, inasmuch as said property is not her own and she has only the right of usufruct or of fiduciary, with the obligation to preserve and to deliver same to the reservatarios, one of whom is her own daughter, Mercedes Florentino.

It cannot reasonably be affirmed, founded upon an express provision of law, that by operation of law all of the reservable property, received during lifetime by Severina Faz de Leon from her son, Apolonio III, constitutes or forms part of the legitime pertaining to Mercedes Florentino. If said property did not come to be the legitimate and exclusive property of Severina Faz de Leon, her only legitimate and forced heiress, the defendant Mercedes, could not inherit all by operation of law and in accordance with the order of legitimate succession, because the other relatives of the deceased Apolonio III, within the third degree, as well as herself are entitled to such reservable property.

For this reason, in no manner can it be claimed that the legitime of Mercedes Florentino, coming from the

inheritance of her mother Severina Faz de Leon, has been reduced and impaired; and the application of article 811 of the Code to the instant case in no way prejudices the rights of the defendant Mercedes Florentino, inasmuch as she is entitled to a part only of the reservable property, there being no lawful or just reason which serves as real foundation to disregard the right to Apolonio III's other relatives, within the third degree, to participate in the reservable property in question. As these relatives are at present living, claiming for it with an indisputable right, we cannot find any reasonable and lawful motive why their rights should not be upheld and why they should not be granted equal participation with the defendant in the litigated property.

The claim that because of Severina. Faz de Leon's forced heiress, her daughter Mercedes, the property received from the deceased son Apolonio III lost the character, previously held, of reservable property; and that the mother, the said Severina, therefore, had no further obligation to reserve same for the relatives within the third degree of the deceased Apolonio III, is evidently erroneous for the reason that, as has been already stated, the reservable property, left in a will by the aforementioned Severina to her only daughter Mercedes, does not form part of the inheritance left by her death nor of the legitimate of the heiress Mercedes. Just because she has a forced heiress, with a right to her inheritance, does not relieve Severina of her obligation to reserve the property which she received from her deceased son, nor did same lose the character of reservable property, held before the reservarios received same.

It is true that when Mercedes Florentino, the heiress of the reservista Severina, took possession of the property in question, same did not pass into the hands of strangers. But it is likewise true that the said Mercedes is not the only reservataria. And there is no reason founded upon law and upon the principle of justice why the other reservarios, the other brothers and nephews, relatives within the third degree in accordance with the precept of article 811 of the Civil Code, should be deprived of portions of the property which, as reservable property, pertain to them.

From the foregoing it has been shown that the doctrine announced by the Supreme Court of Spain on January 4, 1911, for the violation of articles 811, 968 and consequently of the Civil Code is not applicable in the instant case.

Following the provisions of article 813, the Supreme Court of Spain held that the legitime of the forced heirs cannot be reduced or impaired and said article is expressly respected in this decision.

However, in spite of the efforts of the appellee to defend their supposed rights, it has not been shown, upon any legal foundation, that the reservable property belonged to, and was under the absolute dominion of, the reservista, there being relatives within the third degree of the person from whom same came; that said property, upon passing into the hands of the forced heiress of the deceased reservista! formed part of the legitime of the former; and that the said forced heiress, in addition to being a reservataria, had an exclusive right to receive all of said property and to deprive the other reservarios, her relatives within the third degree, of certain portions thereof.

Concerning the prayer in the complaint relative to the indemnity for damages and the delivery of the fruits collected, it is not proper to grant the first for there is no evidence of any damage which can give rise to the obligation of refunding same. As to the second, the delivery of the fruits produced by the land forming the principal part of the reservable property, the defendants are undoubtedly in duty bound to deliver to the plaintiffs six-sevenths of the fruits or rents of the portions of land claimed in the complaint, in the quantity expressed in paragraph 11 of the same, from January 17, 1918, the date the complaint was filed; and the remaining seventh part should go to the defendant Mercedes.

For the foregoing reasons it follows that with the reversal of the order of decision appealed from we should declare, as we hereby do, that the aforementioned property, inherited by the deceased Severina Faz de Leon from her son Apolonio "Florentino III, is reservable property; that the plaintiffs, being relatives of the deceased

Apolonio III within the third degree, are entitled to six-sevenths of said reservable property; that the defendant Mercedes is entitled to the remaining seventh part thereof; that the latter, together with her husband Angel Encarnacion, shall deliver to the plaintiffs, jointly, six-sevenths of the fruits or rents, claimed from said portion of the land and of the quantity claimed, from January 17, 1918, until fully delivered; and that the indemnity for one thousand pesos (P1,000) prayed for in the complaint is denied, without special findings as to the costs of both instances. So ordered.

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

Order reversed.

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