

MAGIN RIOSA, PLAINTIFF AND APPELLANT, VS.. PABLO ROCHA, MARCELINA CASAS, MARIA CORRAL AND CONSOLACION R. DE CALLEJA, DEFENDANTS AND APPELLEES.*G.R. No. 23770, February 18, 1926*

Ponente: AVANCEÑA, C.J.

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Maria Corral was united in marriage with the deceased Mariano Riosa, it being her first and only marriage and during which time she bore him three children named Santiago, Jose and Severina. The latter died during infancy and the other two survived their father, Mariano Riosa. Santiago Riosa, now deceased, married Francisca Villanueva, who bore him two children named Magin and Consolacion Riosa. Jose Riosa, also deceased, married Marcelina Casas and they had one child who died before the father, the latter therefore leaving no issue. Mariano Riosa left a will dividing his property between his two children, Santiago and Jose Riosa, giving the latter the eleven parcels of land described in the complaint. Upon the death of Jose Riosa he left a will in which he named his wife, Marcelina Casas, as his only heir.

On May 16, 1917, the will of Jose Riosa was filed for probate. Notwithstanding the fact that Marcelina Casas was the only heir named in the will, on account of the preterition of Maria Corral who, being the mother of Jose Riosa, was his legitimate heir, Marcelina Casas and Maria Corral, on the same date of the filing of the will for probate, entered into a contract by which they divided between themselves the property left by Jose Riosa, the eleven parcels of land described in the complaint being assigned to Maria Corral.

On October 26, 1920, Maria Corral sold parcels Nos. 1, 2, 3, 4, 5, 6, 10 and 11 to Marcelina Casas for the sum of P20,000 in a public instrument which was recorded in the registry of deeds on November 6, 1920. On November 3, 1920, Marcelina Casas sold these eight parcels of land to Pablo Rocha for the sum of P60,000 in a public document which was recorded in the registry of deeds on November 6, 1920. On September 24, 1921, Pablo Rocha returned parcels Nos. 1, 2, 3, 4, 5 and 6 to Maria Corral stating in the deed executed for the purpose that these parcels of land had been erroneously included in the sale made by Maria Corral to Marcelina Casas.

The Court of First Instance denied the probate of the will of Jose Riosa, but on appeal this court reversed the decision of the lower court and allowed the will to probate:[1] The legal proceedings for the probate of the will and the settlement of the testate estate of Jose Riosa were followed ; and, at the time of the partition, Maria Corral and Marcelina Casas submitted to the court the contract of extrajudicial partition which they had entered into on May 16, 1917, and which was approved by the court, by order of November 12, 1920, as though it had been made within the said testamentary proceedings.

From the foregoing it appears that the eleven parcels of land described in the complaint were acquired by Jose Riosa, by lucrative title, from his father Mariano Riosa and that after the death of Jose Riosa, by operation of law, they passed to his mother Maria Corral. By virtue of article 811 of the Civil Code these eleven parcels of land are reservable property. It results, furthermore, that parcels 1, 2, 3, 4, 5, 6, 7, 8 and 9 still belong in fee simple to

Maria Corral, and that parcels 10 and 11 were successively sold by Maria Corral to Marcelina Casas and by the latter to Pablo Rocha. Lastly, it appears that Magin Riosa and Consolacion Riosa are the nearest relatives within the third degree of the line from which this property came.

This action was brought by Magin Riosa, for whom the property should have been reserved, against Maria Corral, whose duty it was to reserve it, and against Marcelina Casas and Pablo Rocha as purchasers of parcels 10 and 11. Consolacion Riosa de Calleja who was also bound to make the reservation was included as a defendant as she refused to join as plaintiff.

The complaint prays that the property therein described be declared reservable property and that the plaintiffs Jose and Consolacion Riosa be declared reservees; that this reservation be noted in the registry of deeds; that the sale of parcels 10 and 11 to Marcelina Casas and Pablo Rocha be declared valid only in so far as it saves the right of reservation in favor of the plaintiff Magin Riosa and of the defendant Consolacion Riosa, and that this right of reservation be also noted on the deeds of sale executed in favor of Marcelina Casas and Pablo Rocha; that Maria Corral, Marcelina Casas and Pablo Rocha give a bond of P50,000, with good and sufficient sureties, in favor of the reservees as security for the conservation and maintenance of the improvements existing on the said reservable property.

The dispositive part of the court's decision reads as follows:

"For the foregoing reasons it is held:

"1. That the eleven parcels of land described in paragraph 6 of the complaint have the character of reservable property; 2. That the defendant Maria Corral, being compelled to make the reservation, must reserve them in favor of the plaintiff Magin Riosa and the defendant Consolacion Riosa de Calleja in case that either of these should survive her; 3. That Magin Riosa and Consolacion Riosa de Calleja have the right, in case that Maria Corral should die before them, to receive the said parcels or their equivalent.

"In virtue whereof, the defendant Maria Corral is ordered: 1 To acknowledge the right of Magin Riosa and Consolacion Riosa de Calleja to the reservation of the said parcels of land described in the complaint, which she shall expressly record in the registration of said lands in the office of the register of deeds of this province; 2. To insure the delivery of said parcels of land, or their equivalent, to Magin Riosa and Consolacion Riosa de Calleja, should either of them survive her, either by a mortgage thereon or by a bond in the amount of ₱30,000, without express pronouncement as to costs.

"The other defendants are absolved from the complaint." Inasmuch as the reservation from its inception imposes obligations upon the reservor (reservista) and creates rights in favor of the reservees (reservatarios) it is of the utmost importance to determine the time when the land acquired the character of reservable property.

It will be remembered that on May 16, 1917, Maria Corral and Marcelina Casas entered into a contract of extrajudicial partition of the property left by Jose Riosa, in which they assigned to Maria Corral, as her legitimate, the parcels of land here in question, and at the same time petitioned for the probate of the will of Jose Riosa and instituted the testamentary proceeding. In support of the legality of the extrajudicial partition between Maria Corral and Marcelina Casas the provision of section 596 of the Code of Civil Procedure is invoked, which authorizes the heirs of a person dying without a will to make a partition without the intervention of the courts whenever the heirs are all of age and the deceased has left no debts. But this legal provision refers expressly to intestate estates and, of course, excludes testate estates like the one now before us.

When the deceased has left a will the partition of his property must be made in accordance therewith. According to section 625 of the same Code no will can pass property until it is probated. And even after being probated it

cannot pass any property if its provisions impair the legitime fixed by law in favor of certain heirs. Therefore, the probate of the will and the validity of the testamentary provisions must be passed upon by the court.

For the reasons stated, and without making any express finding as to the efficacy of the extrajudicial partition made by Maria Corral and Marcelina Casas, we hold that for the purposes of the reservation and the rights and obligations arising thereunder in connection with the favored relatives, the property cannot be considered as having passed to Maria Corral but from the date when the said partition was approved by the court, that is, on November 12, 1920. In the case of *Pavia vs. De la Rosa* (8 Phil., 70), this court laid down the same doctrine in the following language:

"The provisions of Act No. 190 (Code of Civil Procedure) have annulled the provisions of article 1003 and others of the Civil Code with regard to the pure or simple acceptance of the inheritance of a deceased person or that made with benefit of inventory and the consequences thereof.

* * * * *

"The heir legally succeeds the deceased from whom he derives his right and title, but only after the liquidation of the estate, the payment of the debts of same, and the adjudication of the residue of the estate of the deceased, and in the meantime the only person in charge by law to attend to all claims against the estate of the deceased debtor is the executor or administrator appointed by a competent court."

As has been indicated, parcels 10 and 11 described in the complaint were first sold by Maria Corral to Marcelina Casas who later sold them to Pablo Rocha. In this appeal it is urged that Marcelina Casas and Pablo Rocha, who were absolved by the court below, be ordered to acknowledge the reservation as to parcels 10 and 11, acquired by them, and to have the said reservation noted on their titles. This argument, of course, is useless as to Marcelina Casas for the reason that she transferred all her rights to Pablo Rocha.

It has been held by jurisprudence that the provisions of the law referred to in article 968 tending to assure the efficacy of the reservation by the surviving spouse are applicable to the reservation known as "reserva troncal," referred to in article 811, which is the reservation now under consideration.

In accordance with article 977, Maria Corral, reservor, is obliged to have the reservation noted in the registry of deeds in accordance with the provisions of the Mortgage Law which fixes the period of ninety days for accomplishing it (article 199, in relation with article 191, of the Mortgage Law). According to article 203 of the General Regulation for the application of the Mortgage Law, this time must be computed from the acceptance' of the inheritance. But as this portion of the Civil Code, regarding the acceptance of the inheritance, has been repealed, the time, as has been indicated, must be computed from the adjudication of the property by the court to the heirs, in line with the decision of this court herein-above quoted. After the expiration of this period the reservees may demand compliance with this obligation.

If Maria Corral had not transferred parcels 10 and 11 to another there would be no doubt that she could be compelled to cause the reservable character of this property to be noted in the registry of deeds. This land having been sold to Marcelina Casas who, in turn, sold it to Pablo Rocha the question arises whether the latter can be compelled to have this reservation noted on his title. This acquisition by Pablo Rocha took place when it was the duty of Maria Corral to make the notation of the reservation in the registry and at the time when the reservees had no right to compel Maria Corral to make such notation, because this acquisition was made before the expiration of the period of ninety days from November 12, 1920, the date of the adjudication by the court, after which the right of the reservees to commence an action for the fulfillment of the obligation arose. But the land first passed to Marcelina Casas and later to Pablo Rocha together with the obligation that the law imposes upon Maria Corral. They could not have acquired a better title than that held by Maria Corral and if the latter's title was limited by the

reservation and the obligation to note it in the registry of deeds, this same limitation is attached to the right acquired by Marcelina Casas and Pablo Rocha.

In the transmission of reservable property the law imposes the reservation as a resolutive condition for the benefit of the reservees (article 975, Civil Code). The fact that the reservable character of the property was not recorded in the registry of deeds at the time that it was acquired by Marcelina Casas and Pablo Rocha cannot affect the right of the reservees, for the reason that the transfers were made at the time when it was the obligation of the resorvor to note only such reservation and the reservees did not then have any right to compel her to fulfill such an obligation.

Marcelina Casas, as well as Pablo Rocha, knew of the reservable character of the property when they bought it. They had knowledge of the provisions of the last will and testament of Mariano Riosa by virtue of which these parcels were transferred to Jose Riosa. Pablo Rocha was one of the legatees in the will. Marcelina Casas was the one who entered into the contract of partition with Maria Corral, whereby these parcels were adjudicated to the latter, as a legitimate heir of Jose Riosa. Pablo Rocha was the very person who drafted the contracts of sale of these parcels of land by Maria Corral to Marcelina Casas and by the latter to himself. These facts, together with the relationship existing between Maria Corral and Marcelina Casas and Pablo Rocha, the former a daughter-in-law and the latter a nephew of Maria Coral, amply support the conclusion that both of them knew that these parcels of land had been inherited by Maria Corral, as her legitime from her son Jose Riosa who had inherited them, by will, from his father Mariano Riosa, and were reservable property. Wherefore, the duty of Maria Corral of recording the reservable character of lots 10 and 11 has been transferred to Pablo Rocha and the reservees have an action against him to compel him to comply with this obligation.

The appellant also claims that the obligation imposed upon Maria Corral of insuring the return of these parcels of land, or their value, to the reservees by means of a mortgage or a bond in the amount of P30,000, also applies to Pablo Rocha. The law does not require that the resorvor give this security, the recording of the reservation in the registry of deeds being sufficient (art. 977 of the Civil Code). There is no ground for this requirement inasmuch as, the notation once is made, the property will answer for the efficacy of the reservation. This security for the value of the property is required by law (art. 978, paragraph 4, of the Civil Code) in the case of a reservation by the surviving spouse when the property has been sold before acquiring the reservable character (art. 968 of the Civil Code), but is not applicable to reservation known as *reserva troncal* (art. 811 of the Civil Code). In the case of *Dizon and Dizonvs.. Galang* (page 601, ante), this court held that:

" * * * As already intimated, the provisions of the law tending to give efficacy to a reservation by the widowed spouse mentioned in article 968 are applicable to the *reserva troncal* provided for in article 811. But as these two reservations vary in some respects, these rules may be applied to the *reserva troncal* only in so far as the latter is similar to a reservation by the widowed spouse. In the *reserva troncal* the property goes to the resorvor as reservable property and it remains so until the reservation takes place or is extinguished. In a reservation by the widowed spouse there are two distinct stages, one when the property goes to the widower without being reservable, and the other when the widower contracts a second marriage, whereupon the property, which theretofore had been in his possession free of any incumbrance, becomes reservable. These two stages also affect differently the transfer that may be made of the property. If the property is sold during the first stage, before becoming reservable, it is absolutely free and is transferred to the purchaser unencumbered. But if the sale is made during the second stage, that is, when the duty to reserve has arisen, the property goes to the purchaser subject to the reservation, without prejudice to the provisions of the Mortgage Law. This is the reason why the law provides that should the property be sold before it becomes reservable, or before the widower contracts another marriage, he will be compelled to secure the value of the property by a mortgage upon contracting a new marriage, so that the reservation may not lose its efficacy and that the rights of those for whom the reservation is made may be assured. This mortgage is not required by law when the sale is made

after the reservation has arisen, for the reason that the reservation will follow the property, without prejudice to the contrary provisions of the Mortgage Law and the rights of innocent purchasers, there being no need to secure the value of the property since it is liable for the efficacy of the reservation. For this reason the rules established for a reservation by a widowed spouse to secure the value of the property sold by the widower, before becoming reservable, are not applicable to the reserva troncal where the property goes to the ascendant already reservable in character. A sale in the case of reserva troncal might be analogous to a sale made by the widower after contracting a second marriage in the case of a reservation by the widowed spouse."

Since Maria Corral did not appeal, we cannot modify the appealed judgment in so far as it is unfavorable to her. As she has been ordered to record in the registry the reservable character of the other parcels of land, the subject of this action, the questions raised by the appellant as to her are decided.

The judgment appealed from is modified and Pablo Rocha is ordered to record in the registry of deeds the reservable character of parcels 10 and 11, the subject of this complaint, without special pronouncement as to costs. So ordered.

Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] In re will of Riosa, 39 Phil., 23.

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