

IN RE WILL OF JOSE FLORES, DECEASED. SOTERO FLORES AND AGUEDA FLORES, PETITIONERS AND APPELLANTS, VS. GERARDO FLORES, OPPONENT AND APPELLANT.*G.R. No. 24173. November 24, 1925*

Ponente: STREET, J.

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On October 13, 1919, the Court of First Instance of the Province of Pampanga admitted to probate the will of one Jose Flores, formerly a resident of the barrio of Santa Rita, in the municipality of Macabebe, Province of Pampanga, who had died on May 6, 1919, at the advanced age of about 89 years. Rafael Flores, a brother of the deceased, was named in the will as executor and by him the petition which resulted in the probate of the will was presented. But Romulo Macalino succeeded later to the office of administrator.

It appears that in life Jose Flores had been three times married, and he left children surviving him from each of said marriages. By his first wife, Angela Payuyu, he had had three children named respectively Catalina, Apolonia and Eleuterio Flores. The last named died before his father, leaving three children, to wit, Virginia, Donata and Manuel Flores. By his second wife, Jose Flores had two children, both of whom are still living, namely, Sotero and Agueda Flores. By his third wife, he also had two children named Gerardo and Elcredo (or Alfredo), but the last named died before the testator.

In the course of the settlement of the estate various questions have arisen with reference to the nature of the property to be divided and the respective interests of the different sets of children therein, but for the purposes of this appeal attention will be directed only to the contention over the claims of the two surviving children of the second marriage, Sotero Flores and Agueda Flores, who figure in this proceeding as appellants.

It appears that the deceased lived about twenty-four years with his second wife, and the property with which we are here concerned was acquired during said marriage. In so far as appears from this record the conjugal partnership between Jose Flores and his second wife, Maria Agustin, has never been formally liquidated, and in conformity with well-established precedents it is proper to have said partnership liquidated by the testator's executor or administrator, that is, in the present proceeding. In view of this situation the two children of the second marriage, now appellants, insisted in the lower court that all of the property acquired by the testator during his second marriage pertained to the conjugal partnership that had existed between him and his second wife, and they maintained that said partnership should be liquidated and that the half pertaining to their mother should be segregated before any general distribution of the estate should occur. This general idea seems to have been admitted in a qualified way by the court below in its decision of February 4, 1925, and reiterated in its order of March 11, 1925, denying a motion for reconsideration; but error is assigned to its pronouncement with respect to the lands included in a Torrens certificate of title (Exhibit D-1). This feature of the appeal is, we think, well grounded.

From the Exhibit D, which is a certified copy of the decision in a registration proceeding, it appears that the lands

covered by the certificate of title (Exhibit D-1) had been purchased by Jose Flores on September 15, 1902, or in the lifetime of his second wife, Maria Agustin. After her death Flores instituted proceedings to register said lands and procured the Torrens certificate of title thereto in his sole name. This had the effect, so the court seems to have supposed, of making these lands the exclusive property of Flores and of extinguishing their character as conjugal property of the prior marriage. To hold otherwise, said his Honor, would have the effect of revising the decree of the land court and impairing a title which that court had decreed to Flores.

This idea is clearly incorrect. The surviving husband is ex-officio manager, or administrator, of the conjugal estate. He has the power to alienate the property for the purpose of liquidating the estate and the purchaser under him undoubtedly gets valid title (*Noble Jose vs. Noble Jose*, 41 Phil., 713). But as long as the husband retains the property in whatever form, he holds it in the character of administrator and is virtually a trustee for those interested in the conjugal partnership. Nor does the obtaining of a Torrens title in any wise change the situation. In section 70 of the Land Registration Act (No. 496), it is, among other things, expressly declared that nothing contained in this Act shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife or to change or affect in any other way any other rights or liabilities created by law and applicable to unregistered land, except as otherwise expressly provided in the Act. It is needless to say that there is no express provision anywhere in the Act which has the effect of extinguishing the responsibility of the husband with respect to the conjugal estate or which would enable him, by taking a Torrens title, to escape from his responsibility as administrator and liquidator. Furthermore, in *Severino vs. Severino* (44 Phil., 343), it is clearly shown that the registration of property in the name of one who holds in a trust character does not extinguish the trust or destroy the rights of the beneficiary. His Honor was therefore in error in this case in supposing that the Torrens certificate of title (Exhibit D-1), covering lands which had been acquired during the second marriage had changed in any way the character of the property as ganancial property of the spouses in said marriage. The first assignment of error is therefore well taken in so far as it relates to the ruling of the court with respect to the character of said property. Property acquired during marriage pertains to the conjugal partnership regardless of the form in which the title is then or thereafter taken.

With respect to the second contention of the appellants, it appears that their attorney was desirous of presenting proof with respect to the dates upon which the deceased had contracted the various debts admitted by the committee on claims as valid charges against his estate; and it is said that the appellants were prepared to show, that these debts had all been contracted during his third marriage and hence could not constitute a proper charge against the conjugal property pertaining to the second marriage. That the appellants have a right to submit proof for the purpose suggested is a fact that cannot be questioned, but as we gather from the appealed orders the intention of the court was to reserve this point until the final project of liquidation and partition of the whole estate of Jose Flores should be presented. While something would probably have been gained in the way of clarifying the situation by entering into this question at an earlier stage of the proceedings, the court cannot be put in error in having merely postponed entering into this contention until a later stage of the proceedings.

For the reasons stated the order appealed from will be modified by declaring that the lands covered by Torrens certificate of title Exhibit D-1, like the other properties mentioned in Nos. 1-8, inclusive, of the decision of February 4, 1925, pertain to the conjugal partnership of Jose Flores with his second wife, Maria Agustin. In other respects the orders appealed from are affirmed. So ordered, without special pronouncement as to costs.

Avanceña, C. J., Malcolm, Villamer, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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