

INTESTATE ESTATE OF FRANCISCO DERAYUNAN, DECEASED. ELISA DOMINADO, PETITIONER AND APPELLANT, VS. NICOMEDES DERAYUNAN, ADMINISTRATOR AND APPELLEE. NARCISO DERAYUNAN, APPELLEE.

G. R. No. 25594. October 18, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In the administration proceedings for the settlement of the estate of Francisco Derayunan, deceased, pending in the court of First Instance of Iloilo, the judicial administrator submitted a scheme of partition of the estate of the said deceased. The widow, by the second marriage, Elisa Dominado, objected to said partition. After a hearing of the parties the court ordered the partition to be made upon the following basis:

"In the scheme of partition there shall first be separated the conjugal property belonging to the widow and half of the conjugal property belonging to the deceased which, together with his private property, will constitute the inheritance to be partitioned. This inheritance shall be divided into three equal parts: Two thirds thereof shall constitute the legitime of the two children of the deceased according to article 808 of the Civil Code, and the remaining one-third shall be the free portion from which shall be taken that which is to go to the widow Elisa Dominado in usufruct. This portion, which legally belongs to the widow in usufruct, shall be equal to the legitime of each of the children who has not received any betterment. (See article 834 of the Civil Code.) The betterment, according to article 808 of the Civil Code, is one-third of the estate—one of the two-thirds which constitutes the legitime, or one-half of the legitime,

"According to the law, then, two-thirds of the inheritance must be adjudicated to the children, one-half to the son Narciso Derayunan and the other half to the daughter Margarita Derayunan. Under the law the widow Elisa Dominado is entitled to one-sixth of the inheritance in usufruct, which one-sixth part shall be taken from the free portion.

"Furthermore, there shall be adjudicated to each of the children Narciso Derayunan and Margarita Derayunan, one-half, in full ownership, of the free portion not adjudicated to the widow Elisa Dominado and, in addition, the naked ownership of the portion allotted in usufruct to the widow Elisa Dominado.

"This is the basis to be followed in the scheme of partition of the estate of the deceased Francisco Derayunan."

Upon this basis determined by the court, the administrator of the intestate estate presented another scheme of partition on April 24, 1925, which, after a hearing, was approved by the court in an order dated December 2, of the same year. The widow appealed from this order.

One of the questions raised in the appellant's brief refers to the manner of determining the portion of the inheritance which pertains to the widow in usufruct, two children of different marriages of the deceased Francisco Derayunan inheriting with her. According to the appellant, the widow's usufruct in the present case constitutes one-third of the inheritance, citing in support of her contention the opinions of the illustrious commentators on the

Civil Code, Messrs. Manresa and Sanchez Roman. On the other hand, the appellee maintains that said usufruct consists of one sixth part of the inheritance as found by the trial court.

Article 834 of the Civil Code provides that "any widower or widow who, on the death of his or her spouse, is not divorced, or should be so by the fault of the deceased, shall be entitled to a portion in usufruct equal to that corresponding by way of legitime to each of the legitimate children or descendants who have not received any betterment."

What is necessary, then, to determine is the legitime of the children who have not received any betterment. First of all, it must be noted that the legitime which serves as a point of comparison is that of the children or descendants who have not received any betterment, which implies that the deceased has made use of the right to give a betterment. But, in the present case, there being no betterment, what is the legitime of the two children?

Sanchez Roman, in solving the legal problems that might arise in the interpretation of article 834 of the Civil Code, among other things, says:

"According to article 834, the legitime that pertains to a legitimate child, or descendant not received any betterment or the legitime by which the amount of the widow's usufruct is regulated in order that said legitimes may be equal in amount, is the two-thirds of the inheritance as maximum when there is no betterment; as a minimum, the one-third constituting the short legitime only when the whole of the second third constituting the betterment is given as such; and as a medium, said one-third constituting the short legitime, to which is to be added what remains of the third constituting the betterment when only a part and not the whole thereof is given; and fixing within these limits, maximum, minimum and medium, the amount which must be allotted to the widow in each case as her share, which must be equal to that of the child or each of the children not receiving any betterment, according to their number." (6 Sanchez Roman, vol. 2, p. 878.)

Manresa fully solves the same question as follows:

"What is the legitime pertaining to each of the children not having received any betterment? It is necessary to get the meaning of the words 'pertaining' and 'not receiving any betterment/ What pertains to each of the children by way of legitime is the portion to which he is entitled according to the law whether there is a surviving spouse or not, for the fact that the latter inherits with descendants cannot alter their legitimes. The children not receiving any betterment are those in whose favor the testator has not expressly disposed of any part of the one-third constituting the betterment, for the code, as shown by articles 825 and 828, does not admit of implied betterments. The law excludes, therefore, the amount of the express betterments whether or not they absorb the one-third constituting the same. The legitime, therefore, that must be taken into account is the two-thirds, if no betterment is given, the one-third constituting the short, legitime if the other third was given entirely as a betterment, or said one-third plus the residue of the other not given as a betterment by the testator. It is this portion, or the two-thirds, one third and the one-third plus the residue, according to the case, that must be divided equally by the number of the children and will give the legitime belonging or pertaining, by force of law, to each of the children not receiving any betterments" (6 Manresa, p. 541.)

Perhaps Mr. Arturo Casanueva may be cited in support of appellant's contention, said author being of the opinion that, in order to determine the widow's usufruct, the short legitime of the children, or, one-third of the inheritance constituting the same must be considered as the basis of the computation. In an article on usufruct of the spouse published in the *Revista de Legislation y Jurisprudencia*, vol. 134, p. 532, Mr. Casanueva, among other things, says:

"Does the phrase 'not receiving any betterment' refer to express betterment? *Ubi lex non distinguit, nee nos distinguere debemus*. It is conclusive—not receiving any betterment. And those who appear to have received betterments impliedly are as much bettered as those who do so expressly. In the three cases which are possible, namely, some having received a betterment and others not, all having received expressly or impliedly equal

betterments, and all having received betterments but unequal, only the latter two give rise to doubt. But in both cases * * *. Art we going to accept a different view ? From a reading of article 834 of the Civil Code we draw the inference that the portion in usufruct is equal to that which pertains to each one as his legitime, and as things equal to the same things—portion in usufruct—are equal to each other, it results that that part which pertains to each of them as legitime, is equal. Does this occur when all have received unequal betterments? The absurdity is evident if it is admitted that those unequal parts are real legitimes. In a decision rendered December 2, 1893, the Supreme Court has held that 'any interpretation or construction which leads to an absurdity must be rejected.' Therefore, the view whereby the legitime of a legitimate child or descendant is considered as a part of the two-thirds must be rejected.

"Having established that the legitime to be taken into account in the computation of the usufruct of the widow is an aliquot part of the one-third, a divisor of the said one-third still remains to be found, which is also much debated. Some are of the opinion that it must be the number of the children, and others that it is the number of the children plus one, because they consider the surviving spouse as another child.

"Let us admit as the divisor the number of children plus one, and as we can give the number of children any value whatever, let us give it the value of one, and we will find as divisor one plus one equals two. What will be the result? It will be that in case a surviving spouse inherits with a single child, one-half of the one-third constituting the betterment would belong to him in usufruct, which is against the conclusive provisions of the Civil Code, which precisely determine that in the case where there is only one child he will receive the whole third in usufruct. It is therefore an inadmissible divisor because it leads to a manifest juridical absurdity, manifestly contrary to the law.

"In short, the portion in usufruct pertaining to the widow is obtained by dividing one-third of the inheritance by the number of children."

But in this jurisdiction the legal doctrine laid down in the case of *Chico vs. Viola and Reyes* (40 Phil., 316), is that under articles 825 and 828, there can be no implied betterments that, under article 808, the two-thirds of the inheritance of the father or of the mother constitute the legitime of the legitimate children and descendants without prejudice to the right to give a betterment; and when this right has not been made use of, the two-thirds pertain to them as legitime; but this does not mean that they thereby receive a betterment. Dividing, then, the two thirds of the inheritance of the deceased Francisco Derayunan between the two children by his two marriages, one-third of the said inheritance pertains to each one as his legitime and this one-third is the measure of the portion that must go to the widow-appellant in usufruct, or one- third also of the same inheritance, which must be the one-third of free disposal in accordance with article 839 of the Civil Code. Therefore, we find that the trial court committed an error of law in holding that the portion which belongs to the widow-appellant in usufruct consists of one-sixth part of the inheritance.

Another error assigned by the appellant as committed by the court is that the ^court adjudicated to the widow Elisa Dominado half of the expenses incurred in sowing the 798 cocoanut trees, instead of half of the said trees. the planting of these cocoanut trees took place during the marriage of Domiirgo Derayunan and Elisa Dominado, the land being exclusive property of the former. The appellant claims half of these cocoanut trees as her half of the conjugal property, invoking paragraph No. 1 of article 1407 of the Civil Code in support of her contention. This contention is untenable. A similar question was raised in the case of *Tabotabo vs. Molero* (22 Phil., 418). Diego Tabotabo was married the second time to Gregoria Molero. He had a piece of land as his exclusive property which had been planted with more than 2,000 cocoanut trees during his second marriage with Molero. The latter claimed the right to one- half of the said coconut trees, but this court denied her claim enunciating the following doctrine:

"To the owner of realty also belongs, by right of accession, the improvements made thereon. Buildings, crops

and other improvements upon land belong to the owner of the realty. To this rule there is an exception in the case of married persons. Paragraph 2 of article 1404 of the Civil Code provides that buildings constructed during the marriage, on land belonging to one of the spouses, are conjugal property, but the owner of the realty shall be entitled to credit for the value of the land. This exception, however, is limited to buildings and does not apply to crops and other improvements, with respect to which the general rule applies. Expenses incurred in making such crops and improvements are conjugal expenses, for which the conjugal partnership must be reimbursed.

The second error, therefore, must be overruled.

The determination of the part of the land described in tax assessment No. 3308, the subject-matter of the third assignment of error, lies within the sound discretion of the court, taking into account the interests of the parties, regarding which it is not incumbent upon us to make any pronouncement.

For the foregoing, the judgment appealed from must be, as it is hereby, modified in that the portion pertaining to the widow in usufruct consists of one-third of the estate of the deceased Francisco Derayunan, without any special findings as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, and Romualdez, JJ., concur.

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