

INTESTATE ESTATE OF MARCELINO TONGCO, REPRESENTED BY JOSEFA TONGCO, ADMINISTRATRIX, PLAINTIFF AND APPELLANT, VS. ANASTACIA VIANZON, DEFENDANT AND APPELLEE.*G.R. No. 27498[1]. September 20, 1927*

Ponente: MALCOLM, J.

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The fundamental question which is being litigated in this case and its companion case, R. G. No. 27499,[1] is whether the property in dispute should be assigned to the estate of Marcelino Tongco, or whether it should be set aside as belonging exclusively to the widow.

Marcelino Tongco and Anastacia Vianzon contracted marriage on July 5, 1894. The first named died on July 8, 1925, leaving the second named as his widow. The niece of the deceased, Josefa Tongco, was named administratrix of the estate. It appears that shortly before the death of Marcelino Tongco, he had presented claims in a cadastral case in which he had asked for titles to certain properties in the name of the conjugal partnership consisting of himself and his wife, and that corresponding decrees for these lots were issued in the name of the conjugal partnership not long after his death.

In the cadastral case, the widow began action on April 28, 1926, when she presented a motion for a revision of certain decrees within the one-year period provided by the Land Registration Law. Issue was joined by the administratrix of the estate. A decision was rendered by Judge of First Instance Rovira concluding with this pronouncement of a judgment: "Therefore, and by virtue of the provisions of section 38 of Act No. 496, decrees Nos. 191390, 191504, and 190925, relative to lots Nos. 1062, 1263, and 491 of this cadastral record, as well as the original certificates of title Nos. 3247, 3298, and 3297 in regard thereto, are hereby annulled and set aside, and it is ordered that in lieu thereof new decrees and certificates of title be issued for lots Nos. 1062, 1263, and 491, as the exclusive property of Anastacia Vianzon, of legal age, widow, and resident of Orani, Bataan, free from all encumbrances and liens. In regard to lot No. 460, the court sustains the decree already issued in due time with respect to said lot." Sometime later, a motion for a new trial was presented with accumulated affidavits by counsel for the losing party. This motion was denied by the trial judge.

On July 19, 1926, the administratrix of the estate began action against Anastacia Vianzon for the recovery of specified property and for damages. The issue was practically the same as in the cadastral case. Judgment was rendered by Judge Rovira couched in the following language: "Therefore, the court renders judgment absolving the defendant from the complaint in this case, and only declares that one-half of the value of the shares in the Sociedad Cooperatives de Credito Rural de Orani, to the amount of ten pesos (P10), belong to the intestate estate of Marcelino Tongco, which one-half interest must appear in the inventory of the property of the estate of the deceased Marcelino Tongco." The motion for a new trial was denied by His Honor, the trial judge.

From both of the judgments hereinbefore mentioned, the administratrix of the estate of Marcelino Tongco has appealed. The first action filed, which was in the cadastral case, has now become the last in number and is 27499.

The second action filed in the property case has now become the first in number and is 27498. As pursuant to the agreement of the parties the two cases were tried together, they can be best disposed of together, on appeal.

The first, third, fourth, and fifth errors assigned in the property case and the second error assigned in the cadastral case primarily concern findings of fact and relate to the discretionary power of the trial judge. The second error assigned in the property case and the first error assigned in the cadastral case attack the ruling of the trial judge to the effect that the widow was competent to testify.

It is true that by reason of the provisions of article 1407 of the Civil Code the presumption is that all the property of the spouses is partnership property in the absence of proof that it belongs exclusively to the husband or to the wife. But even proceeding on this assumption, we still think that the widow has proved in a decisive and conclusive manner that the property in question belonged exclusively to her, that is, it would, unless we are forced to disregard her testimony. No reversible error was committed in the denial of the motion for a new trial for it is not at all certain that it rested on a legal foundation, or that if it had been granted it would have changed the result.

Counsel for the appellant, however, asserts that if the testimony of the widow be discarded, as it should be, then the presumption of the Civil Code, fortified by the unassailable character of Torrens titles, arises, which means that the entire fabric of appellee's case is punctured. Counsel relies on that portion of section 383 of the Code of Civil Procedure as provides that "Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator or other representative of a deceased person, * * *, upon a claim or demand against the estate of such deceased person * * *, cannot testify as to any matter of fact occurring before the death of such deceased person * * *." Counsel is eminently correct in emphasizing that the object and purpose of this statute is to guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party. He has, however, neglected the equally important rule that the law was designed to aid in arriving at the truth and was not designed to suppress the truth.

The law twice makes use of the word "against." The actions were not brought "against" the administratrix of the estate, nor were they brought upon claims "against" the estate. In the first case at bar, the action is one by the administratrix to enforce a demand "by" the estate. In the second case at bar, the same analogy holds true for the claim was presented in cadastral proceedings where in one sense there is no plaintiff and there is no defendant. *Director of Lands vs. Roman Catholic Archbishop of Manila* [1920], 41 Phil., 120—nature of cadastral proceedings; *Fortis vs. Gutierrez Hermanos* [1906], 6 Phil., 100—in point by analogy; *Maxilom vs. Tabotabo* [1907], 9 Phil., 390 and *Kiel vs. Estate of P. S. Sabert* [1924], 46 Phil., 193—both clearly distinguishable as can be noted by looking at page 197 of the last cited case; *Sedgwick vs. Sedgwick* [1877], 52 Cal., 336, 337; *Myers vs. Reinstein* [1885], 67 Cal., 89; *McGregor vs. Donnelly* [1885], 67 Cal., 149, 152; *Booth vs. Pendola* [1891], 88 Cal., 36; *Bernardis vs. Allen* [1902], 136 Cal., 7; *Calmon vs. Sarraile* [1904], 142 Cal., 638, 642; *Bollinger vs. Wright* [1904], 143 Cal., 292, 296; *Whitney vs. Fox* [1897], 166 U. S., 637, 648.) Moreover, a waiver was accomplished when the adverse party undertook to cross-examine the interested person with respect to the prohibited matters. (4 *Jones on Evidence*, pp. 767 et seq.; *Stair vs. McNulty* [1916], 133 Minn., 136; *Ann. Cas.*, 1918D 201.) We are of the opinion that the witness was competent.

The result, therefore, must be to adhere to the findings and rulings of the trial judge. No prejudicial error is noted in the proceedings.

Judgment affirmed, with the costs of this instance against the appellant.

Avanceña, C. J., Johnson, Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] Decision on motion of reconsideration, see page 1009, post.

[1] Government of the Philippine Islands vs. Tongco, promulgated September 20, 1927, not reported.

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