

**IN RE ESTATE OF THE DECEASED VICTORIANA SAAVEDRA.
MACARIO MACROHON ONG HAM, ADMINISTRATOR AND
APPELLANT, VS. JUAN SAAVEDRA ET AL., OPPONENTS AND
APPELLEES.**

G.R. No. 27531. December 24, 1927

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Macario Macrohon Ong Ham, widower and executor of the joint last will and testament of Victoriana Saavedra and himself, presented said will for probate, which was ordered by the Court of First Instance of Zamboanga in its decree of February 21, 1924.

This executor submitted a scheme of partition and distribution of the property in accordance with the terms of the joint will, to which Juan Saavedra and others filed an opposition. The executor rejoined insisting upon the approval of the scheme and asking that the opposition of Juan Saavedra and others be overruled.

On March 25, 1926, the parties submitted a statement of facts, which reads as follows:

"1. That Victoriana Saavedra died in the municipality and Province of Zamboanga, P. I., without descendants or ascendants, being at that time married to Macario Macrohon Ong Ham, both of them having executed a joint will, which joint will has been duly admitted to probate in this court.

"2. That the only near relations of the said Victoriana Saavedra, with the right to inherit her estate are her brothers Juan and Segundo Saavedra; her nephews and nieces, Teofilo Saavedra, Manuel Saavedra, Victoriana Saavedra, Mariano Saavedra, Froilan Saavedra, Josefa Saavedra, Encarnacion Carpio and Macra Carpio, in case that the said Victoriana Saavedra died intestate, or did not dispose of her property in said will.

"3. That aside from the estate mentioned in the said last will and testament, duly probated by this Honorable Court, there exists another parcel of land, acquired by Ong Ham the year 1920, by purchase from Ong Tah, and adjudicated to the said Ong Ham in Expediente No. 6 (Cadastral).

"Lot No. 3057, with the improvements thereon in favor of the persons named below in the following proportions: Ong Ham, aged 65 years, married to Victoriana Saavedra, 19/20 parts; Crispulo Macoto Cruz, of legal age, 1/40 part; and Juan Mocoto, 1/40 part.

"4. That the interested parties in this proceeding herewith submit to this Honorable Court the rights of the respective parties in this estate, in accordance with the terms of this joint last will and testament of the spouses, Macario Macrohon Ong Ham, and of Victoriana Saavedra, deceased.

"5. That the parties representing Macario Macrohon Ong Ham admit that he sold lots Nos. 34 and 35, of Expediente No. 8196, for the sum of P1,900, believing in good faith that he could sell the same for his personal uses.

"6. That the party representing Juan Saavedra, and the other relations heretofore named hereby withdraw their

opposition which they have presented to the final account of the surviving spouse, Macario Macrohon Ong Ham, and conform to the same, and ask that the Court approve the said final account."

The will referred to in the statement of facts above quoted reads as follows:

"That we, Macario Macrohon Ong Ham and Victoriana Saavedra, both residing at San Roque, municipality and Province of Zamboanga, Philippine Islands, and both of about 70 years of age, realizing that we have but a few more years to live, and each of us being in the full enjoyment of his intellectual faculties and not acting by virtue of threats, force or undue influence, individually and conjointly do hereby make public, declare, and execute this, our last will and testament, in the following terms:

"We hereby declare that we are husband and wife; that we have had no issue, nor have we adopted children.

"We hereby likewise declare that Macario Macrohon Ong Ham is a native of China, having resided in Zamboanga, Philippine Islands for over 40 years, and that Victoriana Saavedra is a native of the Philippine Islands.

"We furthermore declare that Macario Macrohon Ong Ham has two nephews at present residing in Zamboanga, Philippine Islands, whom he has always treated as his own sons, following the custom of Amoy, China, whose names and ages are respectively as follows:

"Ong Ka Chiew, residing at San Roque, Zamboanga, P. I., about 20 years of age, single, and Ong Ka Jian, also residing at San Roque, Zamboanga, P. I., about 18 years of age, single.

"We also declare that there are actually registered in our names, as conjugal property, the following parcels of land located in Zamboanga, P. I., to wit:

Lot No. 838-A, proceeding 7880, certificate No. 1257
Lot No. 825, proceeding 7880, certificate No. 1783
Lot No. 832, proceeding 7880, same certificate
Lot No. 330, proceeding 7880, certificate No. 4027
Lot No. 1, proceeding 7880, same certificate
Lot No. 199, proceeding 7880, certificate No. 736
Lot No. 329, proceeding 7880, certificate No. 858
Lot No. 838-C, proceeding 7880, certificate No. 1259
Lot No. 831-B, proceeding 7880, certificate No. 1256
Lot No. 817, proceeding 7880, certificate No. 1247
Lot No. 768, proceeding 7880, certificate No. 1105
Lot No. 35, proceeding 8196, certificate No. 1257
Lot No. 65-A, proceeding 8196, certificate No. 3688
Lot No. 834, proceeding 7880, certificate No. 4025
Lot No. 96, proceeding 8196, certificate No. 4025
Lot No. 57-A, proceeding 8196, certificate No. 4871
Lot No. 222, proceeding 7880, certificate No. 861
Lot No. 34, proceeding 8196, certificate No. 4858
Lot No. 137-C, proceeding 8196, certificate No. 2223

"We do hereby agree jointly and individually, that our properties above described be disposed of in the following manner:

"In case of the death of Macario Macrohon Ong Ham before Victoriana Saavedra, we hereby order that the properties hereinafter described be jointly given to Ong Ka Chiew and Ong Ka Jian, and should either of the two die before Macario Macrohon Ong Ham, we order that all the said properties be given to the survivor, which

properties 'are described as follows:

- Lot No. 838-C, proceeding 7880, certificate 1259
- Lot No. 831-B, proceeding 7880, certificate 1256
- Lot No. 825, proceeding 7880, certificate 1783
- Lot No. 832, proceeding 7880, same certificate
- Lot No. 330, proceeding 7880, certificate 4027
- Lot No. 1, proceeding 8196, same certificate
- Lot No. 199, proceeding 7880, certificate 736
- Lot No. 329, proceeding 7880, certificate 858
- Lot No. 35, proceeding 8196, certificate 1257
- Lot No. 65-A, proceeding 8196, certificate 3688
- Lot No. 834, proceeding 7880, certificate 4025
- Lot No. 96, proceeding 8196, same certificate
- Lot No. 57-A, proceeding 8196, certificate 4871
- Lot No. 222, proceeding 7880, certificate 861
- Lot No. 34, proceeding 8196, certificate 4858
- Lot No. 137-A, proceeding 8196, certificate 2223

"In case that Victoriana Saavedra should survive Macario Maerohon Ong Ham, the lands and properties described below shall belong exclusively to Victoriana Saavedra, to wit:

- Lot No. 838-A, proceeding 7880, certificate 1257
- Lot No. 817, proceeding 7880, certificate 1247
- Lot No. 768, proceeding 7880, certificate 1105

"Should Victoriana Saavedra die before Macario Maerohon Ong Ham, we order that lot No. 817-A, proceeding No. 7880, certificate No. 1247, be adjudicated to Segunda Saavedra, widow, sister of Victoriana Saavedra, free of all liens and encumbrances.

"We further order that all our debts and just obligations, including the expenses of our last illness and funerals, be paid by Ong Ka Chiew and Ong Ka Jian.

"If any of the legatees named herein should question or in any way attempt to alter the disposition of any of our several properties, such legatee is to lose and shall no longer receive the benefits and rights herein specified.

"We individually and jointly declare that the contents of this document have been read aloud to us in our dialect and that we understand said contents, this document having been read in the presence of each of us and in the presence of the witnesses whose names are mentioned further on and who have signed the present instrument together with ourselves.

"In witness whereof, we sign this our last will and testament at Zamboanga, Zamboanga, Philippine Islands, on this second (2) day of January, 1923.

"We, Ong Peh, Ong Chua, and T. Arquiza, do hereby certify that the foregoing document consisting of five (5) sheets including the present, was on the date above-mentioned, signed by the testators Macario Macrohon Ong Ham and Victoriana Saavedra on all its sheets, in our presence at their request, in their presence, and in the presence of each other we have signed our names as witnesses on all the sheets of said will."

The lower court solving the question raised by the parties in their agreement of facts, held that one-half of the property described in the will, all of lot No. 3057, cadastral case No. 6; one-half of the cash balance of the final account to be rendered by the executor, and half of the proceeds of the sale of lots Nos. 34 and 35 of Proceeding

No. 8196, belong to Macario Macrohon Ong Ham; and as it appears from the will quoted, as well as from the agreement dated March 25, 1926, that Victoriana Saavedra left no legitimate ascendants or descendants at the time of her death, Macario Macrohon Ong Ham, her widower, is, according to the provisions of article 837 of the Civil Code, entitled to the usufruct of one-half of the estate of the said Victoriana Saavedra, consisting of one-half of the property described in the will, excluding lots Nos. 817 and 768 of proceeding No. 7880, given to Segunda Saavedra with the consent of Macario Macrohon Ong Ham; of one-half of the cash balance of the executor's final account, and of half of the proceeds of the sale of lots Nos. 34 and 35 in proceeding No. 8196, and said estate is adjudicated as follows: one-half of the same belongs in usufruct to the widower Macario Macrohon Ong Ham, and the naked ownership of this half as well as the full ownership of the other half is adjudicated to Victoriana Saavedra's heirs, named in the said agreement dated March 25, 1926, in the following manner: sixteenths of the naked ownership of the one-half in usufruct and sixteenths of the other half in full ownership, to Juan Saavedra; sixteenths of the naked ownership of the one-half in usufruct and sixteenths of the other half in full ownership, to Segunda Saavedra; and, sixteenths of the naked ownership of the one-half in usufruct and sixteenths of the other half in full ownership to Teofilo Saavedra, Manuela Saavedra, Victoriana Saavedra, Mariano Saavedra, Froilan Saavedra and Josefa Saavedra, children of Mateo Saavedra, deceased brother of Victoriana Saavedra, in equal parts; and to Encarnacion Carpio and Macra Carpio, daughters of Petrona Saavedra, deceased sister of Victoriana Saavedra, sixteenths of the naked ownership of the one-half in usufruct and sixteenths of the other half in full ownership, in equal parts.

"As regards lots Nos. 817 and 768 of proceeding No. 7880, given to Segunda Saavedra, the court adjudicates the same to the said Segunda Saavedra, in accordance with the clauses on lines 99-111 of the will.

"Finally, the court orders that the executor, after paying the inheritance tax, distribute among Victoriana Saavedra's heirs named in the agreement of March 25, 1926, the part belonging to each of them as hereinabove stated, and after this delivery is made and the inheritance tax, if any, is paid, this proceeding is to be considered closed ipso facto."

Counsel for the executor appealed from this decision and assigns in his brief the following alleged errors as committed by the lower court:

"I. In holding in its auto, of November 26, 1926, that the deceased, Victoriana Saavedra, died partially intestate, and did not dispose of all her¹ property by the joint last will and testament executed by herself and her husband, Macario Macrohon Ong Ham, and in not finding that under the terms of the aforesaid joint will the legatees, Ong Ka Chiew and Ong Ka Jian, named therein, were entitled to receive her estate and participation in the sixteen parcels of land devised under the said joint will, by the said spouses.

"II. In holding that the brother and the sister of Victoriana Saavedra, by name, Juan Saavedra and Segunda Saavedra, and her nephews and nieces, by name, Teofilo Saavedra, Manuela Saavedra, Victoriano Saavedra, Mariano Saavedra, Froilan Saavedra, Josefa Saavedra, Encarnaion Carpio and Macra Carpio, her next of kin were entitled to receive any part of her estate and participation in the said sixteen parcels of land, devised to the above named legatees, Ong Ka Chiew and Ong Ka Jian, under the terms of the said joint last will and testament."

The parts of the will pertinent to the questions raised by the appellant are:

"We do agree jointly and individually that our properties above described be disposed of in the following manner:

"In case of the death of Macario Macrohon Ong Ham before Victoriana Saavedra, we hereby order that the properties hereinafter described be given to Ong Ka Chiew and Ong Ka Jian jointly, and should either of the two die before Macario Macrohon Ong Ham, we order that all the said properties be given to the survivor,

which properties are described as follows:

"(Here follows a description of 16 of the 19 lots that are also described in the will as conjugal property of the testator and testatrix.)

"In case that Victoriana Saavedra should survive Macario Macrohon Ong Ham, the lands and properties described below shall belong exclusively to Victoriana Saavedra, to wit:

Lot No. 838-A, proceeding 7880, certificate 1257

Lot No. 817, proceeding 7880, certificate 1247

Lot No. 768, proceeding 7880, certificate 1105

"Should Victoriana Saavedra die before Macario Macrohon Ong Ham, we order that lot No. 817-A, proceeding No. 7880, certificate No. 1247, be adjudicated to Segunda Saavedra, widow, sister of Victoriana Saavedra, free of all liens and encumbrances.

"We also order that lot No. 768, proceedings No. 7880, certificate No. 1105, be adjudicated to Segunda Saavedra and her heirs, on condition that she devote the products of the same to having masses said for the repose of the soul of Victoriana Saavedra.

"In case of the death of either of us, we order that the surviving spouse be appointed executor of this our last will and testament."

Appellant alleges that the trial court erred in holding that Victoriana Saavedra died partly intestate. Article 658 of the Civil Code provides:

"ART. 658. Succession is effected either by the will of man expressed by testament or, in the absence of a testament, by operation of law.

"The first is called testamentary, the second legal succession.

"It may also be effected partly by the will of man and partly by operation of law."

According to this, there are three ways in which succession may be effected: by the will of man, by the law, or by both at the same time. In the first case the succession is called testamentary, because it is based on the last will and testament, which is the orderly manifestation of the testator's will; in the second, it is called legal, because it takes effect by operation of the law; and the third is called mixed, because it partakes of the character of both testamentary and legal succession.

Commenting on the third mode of effecting succession, Mr. Manresa says: "The rule of indivisibility and incompatibility was transferred to our laws from pure Romanism, and it remained in them until the XV Century, when the law of the Ordenamiento previously cited repealed the maxim *nemo pro parte testatus pro parte intestatus decedere potest*. This same repeal is confirmed in paragraph 3 of the article under consideration (658), which prescribes that it may also be effected partly by the will of man and partly by operation of law, and in articles 764 and 912 above cited which call the legal heirs to the enjoyment of the part of the inheritance not disposed of by the testator in his will." (Vol. 5, 1921 ed., pp. 326, 327.)

This is a refutation of the appellant's argument that no one who has executed a will can die partly intestate. That the rule of indivisibility of the testator's will invoked by the appellant does not hold good in this jurisdiction, is shown, moreover, by articles 764 and 912 of the Civil Code. According to the first of these articles, a will is valid even though it does not contain any institution of an heir, or if such institution does not include the entire estate, and even though the person instituted does not accept the inheritance or is disqualified to inherit; according to the second, one of the ways in which legal succession may take place is when the will does not institute an heir to all

or part of the property, or does not dispose of all that belongs to the testator, in which case legal succession shall take place only with respect to the property which the testator has not disposed of.

Assuming that the joint will in question is valid, it follows that the deceased Victoriana Saavedra specified therein that parcels 187 and 768 in proceeding No. 7880 be delivered as a legacy to her sister Segunda Saavedra, the first parcel free of all liens and encumbrances, and the second on the condition that the legatee devote the products of the same to having masses said for the repose of the testatrix's soul. As to the remaining sixteen parcels, the testatrix disposed of her part in them conditionally, that is to say, in case her husband Macario Macrohon Ong Ham died before she did, said parcels were to be awarded to her husband's nephews, or to either of them in case one should have died before the said Macario Macrohon Ong Ham. The condition imposed in the will as precedent to the vesting in the alleged legatees Ong Ka Ghiew and Ong Ka Jian of the right to the legacy, not having been complied with, the trial court found that the part of said property belonging to the testatrix should be partitioned among the persons called on to succeed her under the law. We are of the opinion that this finding is in accordance with the law, since, under article 791 of the Civil Code, conditions imposed upon heirs and legatees shall be governed by the rules established for conditional obligations in all matters not provided for by this section (articles 790 to 805). And, in accordance with article 1114 of the Code, in conditional obligations the acquisition of rights, as well as the extinction or loss of those already acquired, shall depend upon the occurrence of the event constituting the condition.

Another error assigned by the appellant consists in the trial court not having found that, under the terms of the joint will, the legatees Ong Ka Chiew and Ong Ka Jian were entitled to receive the testatrix's share in the sixteen parcels of land mentioned in said will.

The part of the will invoked by the appellant, states:

"In case of the death of Macario Macrohon Ong Ham before Victoriana Saavedra, we hereby order that the properties hereinafter described be jointly given to Ong Ka Chiew and Ong Ka Jian, and should either of the two die before Macario Macrohon Ong Ham, we order that all the said properties be given to the survivor."

The trial court, in interpreting this paragraph of the will in regard to legatees Ong Ka Chiew and Ong Ka Jian, reached the right conclusion, and rightly, in our opinion, that it provides for the substitution of legatees in case either of them should die before Macario Macrohon Ong Ham; and that the acquisition by these legatees of any right to the property described in the will depended on the condition that Macario Macrohon Ong Ham died before Victoriana Saavedra.

The appellant also assigns as error the holding of the trial court that the opponents, the brother, sister, nephews, and nieces of the testatrix, were entitled to receive her share in the said sixteen parcels of land, given to the legatees, Ong Ka Chiew and Ong Ka Jian, under the terms of the said joint will. Such a contention is untenable. As we have said, the acquisition of right by the alleged legatees depends on the occurrence of the event constituting the condition, that is, the death of Macario Macrohon Ong Ham prior to that of his wife; and this condition not having been complied with, the said Ong Ka Chiew and Ong Ka Jian have not acquired any right, and therefore the testatrix's estate is to be divided among her heirs in accordance with the law.

To the sixteen parcels of land to which reference is here made, that is, those given to the nephews of the testator, should be added lot No. 838-A, proceeding No. 7880, certificate 1257, which the testatrix had reserved to herself (together with lots 817 and 768), in case she survived her husband Macario Macrohon Ong Ham.

One-half of these seventeen parcels of land belong to the widower, Macario Macrohon Ong Ham, and the trial court shall order the division of the other half, that is, the estate of the deceased Victoriana Saavedra, being one-half of the conjugal property, between the widower and the opponents, as provided for in articles 945, 948

and 953 of the Civil Code. With this modification, the order appealed from is affirmed in all other respects. So ordered.

Johnson, Street, Malcolm, and Ostrand, JJ., concur.

Avanceña, C. J., and Johns, J., dissent.

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