

**NATIVIDAD CENTENO ET AL., PLAINTIFFS AND APPELLANTS, VS.
MARTINA CENTENO ET AL., DEFENDANTS AND APPELLEES.
NICOLAS CENTENO ET AL., INTERVENORS AND APPELLANTS.**

G.R. No. 28265. November 05, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiffs Natividad Centeno in her own behalf and as administratrix of the estate of her deceased father, Valentin Centeno, Jesus Centeno First, Rosalia and Rosario Centeno, and by the intervenors Nicolas, Emilio, Isaac and Jesus Centeno Second, from the judgment of the Court of First Instance of Ilocos Sur, of which the following is the dispositive part:

"The agreement of partition in question is hereby upheld, with the adjudications to the parties thereto, and therefore the partition prayed for in this civil case by plaintiffs and intervenors respecting the realty described in the sixth paragraph of the original complaint is denied. The other petition that said partition be held void and of no effect in so far as it refers only to the said portion adjudicated to defendants, is also denied.

"It is held that parcels Nos. 70, 86, and 95, described in the aforementioned sixth paragraph of the original complaint, are held by defendants pro indiviso; and the others, Nos. 53, 54, 55, 60, 62, and 69, with the metes and bounds given in the said sixth paragraph, which are in possession of the plaintiff Jesus Centeno First, as well as the others, Nos. 82, 85, and 99, which are in their possession of the defendant Telesforo Centeno.

"The defendants' petition that the first 51 parcels of land described in the said sixth paragraph of the original complaint, reproduced in the last amendatory complaint, be partitioned in this case and parcel No. 116 described in the inventory Exhibit F of the plaintiffs, and 6 of the defendants, as well as the said parcels Nos. 53, 54, 55, 60, 62, and 69, and the credits is denied; all of which are considered and declared to be pro indiviso (Exhibit 7 of the defendants), without prejudice to said partition being made in such manner as they may agree upon.

"It is ordered that the plaintiffs deliver to defendants the two parcels of land described in the latter's cross-complaint in their second cause of action, and said two mares and harness cannot be ordered delivered, because they are not formally detailed and difficulties would arise in the execution of such an order.

"As Fabian Cabanilla and Simplicio Gaberto possessors of parcels Nos. 76, 77, 59, and 100 claimed by plaintiffs and intervenors, were not made defendants in this case, no pronouncement is here made against them nor as to parcels Nos. 52, 66, 94, and 61, the possessors of which are unknown.

"Defendants are absolved from the claims with respect to parcels Nos. 105, 106, 107, 11, 57, 75, 93, 102, 112, 115, 56, 58, 63, 64, 65, 67, 68, 71, 72, 73, 74, 78, 79, 80, 81, 83, 84, 87, 88, 89, 90, 91, 92, 96, 97, 98, 101, 103, 108, 109, 110, 113, and 114 (43) described in the complaint.

"The pious legacy of parcel No. 104 made by the testatrix Melchora Arroyo, is upheld.

"It is ordered that each of the parties, plaintiffs, intervenors, and defendants, pay a third part of the costs of the

trial.

"It is so ordered."

Plaintiffs support their appeal by assigning nineteen alleged errors, and the intervenors another nineteen, to the trial court in its judgment, which we shall discuss hereinafter: In their second and last amended complaint, the plaintiffs pray for judgment on the causes of action therein set forth: (a) Ordering the partition between plaintiffs and intervenors in accordance with the law and the wills of Isaac Centeno and Melchora Arroyo of all properties described in the sixth paragraph of the original complaint, together with the property constituting the portion then adjudicated to the defendants in the said partition; (b) holding the said partition to be void and of no effect, only insofar as it refers to the portion adjudicated to the defendants and ordering the latter to deliver the property in their possession numbered from 52 to 115, with all its fruits, and to return what they have unduly received in said erroneous partition; (c) ordering the defendants to pay the costs of the action; and (d) granting plaintiffs such further remedy not herein prayed for as may be just and equitable.

In their second amended complaint the intervenors pray for the causes of action therein set forth that the voluntary partition of the property left by the deceased spouses Isaac Centeno and Melchora Arroyo be declared null and void, in so far as it respects the portion adjudicated to the defendants, ordering the latter to return to said plaintiffs and intervenors what they have unduly received in said partition.

In their amended answer, the defendants generally and specifically deny each and every one of the allegations of the complaints of the plaintiffs and the intervenors, with a special defense and cross-complaint and pray the court: (a) To absolve the said defendants from the complaint entirely; (b) to order the partition of the property under Nos. 1 to 51, 53, 54, 55, 60, 61, 62, 69, 116, 119 and 120, with their corresponding fruits or their equivalent in money, and that their respective portions be adjudicated and delivered to these defendants, and that the credits of the deceased so far collected be equally distributed among the heirs; (c) that the plaintiff Valentin Centeno be ordered to deliver to said defendants Martina Jose and Telesforo Centeno, the property specified in paragraph 3 of the cross-complaint, with all the fruits they produced or should have produced from 1911 up to present date, or in default thereof, to pay the value of said fruits with the proper legal interest; (d) that the plaintiff Valentin Centeno be ordered to pay the costs of this action; and (e) grant said defendants all such further remedies with respect to their rights as may be just and equitable.

The case having passed through all the proper proceeding and after hearing the evidence presented by the parties in support of their respective claims, the lower court rendered judgment, the dispositive part of which is quoted above.

The preponderance of the evidence establishes the following pertinent facts necessary to the solution of the questions of fact and of law raised in the present appeal.

Isaac Centeno and Melchora Arroyo were husband and wife who brought no property to the marriage but acquired much property during their married life.

Isaac Centeno died on October 7, 1905, and was survived by his wife Melchora Arroyo, and their three sons, Valentin, Faustino and Antonio Centeno. Before his death, that is, on June 30, 1904, Isaac Centeno executed a will, one of the clauses of which contained the following provision: "I hereby named and institute as my sole and universal heirs my three sons Antonio, Valentin and Faustino Centeno or their heirs, if any, to one-half of the above-named property, provided, that the same be divided equally among my three said sons" (Exhibit D of plaintiffs and Exhibit 4 of defendants.) The will having been admitted to probate and his widow Melchora Arroyo, appointed administratrix of the property left by him, said Melchora Arroyo, as such administrator, filed with the

court a detailed inventory of all the property left by her deceased husband which had come into her possession. (Exhibit F of plaintiffs and Exhibit 6 of defendants.)

On October 30, 1907, Antonio Centeno died leaving a widow, Gabriela Fernandez, and a will executed on October 9, 1907, clauses 3 and 8 of which are as follows:

"Third. I declare that I was married once, being still married to Dña. Gabriela Fernandez y Bribiesca, and during our union we had not a single child; I also declare that although I said I have no child, the God of pity has given me eight, who are my children by another woman, three of whom are called natural, who are Martina, Jose (alias Pepe), and Telesforo Centeno, because they were born even before I married my aforesaid wife, Ma. Gabriela; the five are Sisenando, Antonina, Gregorio, Jose (alias Peping), and Gabriel Centeno, and are called illegitimate, because they were born after my marriage; nevertheless I acknowledge them all for I have had them since their birth supporting and bringing all of them, up until now.

"Eighth. Of my portion from my deceased father Isaac Centeno Purugganan, and of my future portion from my mother Dña. Melchora Arroyo, I institute as my universal heirs my three children called natural, to have and to hold in fee simple during their lives, under God's blessing and my own." (Exhibit 9-b of defendants.)

This will was probated on petition of his mother Melchora Arroyo de Centeno, and his widow, Gabriela Fernandez de Centeno.

Melchora Arroyo de Centeno died on December 8, 1909, leaving one son named Valentin Centeno, and a will executed on November 3, 1909, clause 3 of which provides:

"(c) The third part shall be divided equally, neither more nor less, among my sons Antonio and Faustino Centeno, may they rest in peace, and Valentin Centeno." (Exhibit E of plaintiffs and Exhibit 5 of defendants.)

This will was probated upon petition of Valentin Centeno, one of the executors named therein.

While testamentary proceedings for the settlement of the estates of Isaac Centeno and Melchora Arroyo were being had, the heirs of both, desiring a just and lawful partition in accordance with the wills of both, submitted for its approval to the Court of First Instance of Ilocos Sur, in November, 1910 an agreement of partition executed in October, 1910 wherein Valentin Centeno, Gabriela Fernandez de Centeno widow of Antonio Centeno, and the latter's acknowledged natural children, Martina and Emilio A. Centeno, and Asuncion Arcebal, widow of Faustino Centeno, for herself and in behalf of her minor son Jesus Centeno, jr., intervened as parties. (Exhibit 7 of defendants.)

On March 10, 1911, the court, acting on the motion presented by said heirs, ordered the publication in newspaper of the largest circulation in the locality once a week for three consecutive weeks, of a notice of the filing in said court of the agreement of partition of the testate estate of the deceased spouses, Isaac Centeno and Melchora Arroyo, so that each and every person interested in said property and those who might have claims thereto may present themselves before the court on the day appointed and show cause if any, why said agreement of partition should not be approved or why said estates should not be declared closed. (Exhibit 8-6 of defendants.) On March 8, 1911, in pursuance of said order, the clerk of the Court of First Instance of Ilocos Sur set the 8th of April 1911 for the hearing of the approval of the said agreement of partition. On April 20, 1911, the Court of First Instance of Ilocos Sur issued the following order:

"All the heirs in this case and in No. 264 having bound themselves to answer for all just claims against the estates the subject matter of the aforesaid two cases, and having complied with the order of March 10, 1911 issued in the present case with respect to the publication in the newspapers of the proper notification to those interested in the estate or those holding any claim against said estate, for the approval of the scheme of partition filed by the heirs, the court, notwithstanding the opposition of Pedro Arroyo to such approval, hereby

approves said scheme of partition declaring said two cases closed, without prejudice to the oppositor, Pedro Arroyo, claiming his rights and legal fees from said heirs.

"It is so ordered." (Exhibit FF of plaintiffs and Exhibit 8-c of defendants.)

On October 22, 1913 the said Court of First Instance of Ilocos Sur issued also the following order:

"The present case being called for trial for the approval of the account presented by the administratrix Gabriela F. de Centeno, the latter appeared with, the heirs named Telesforo and Sisenando Centeno, and the legatee Antonina Centeno, minor.

"Inasmuch as said administratrix declares that the aforesaid heirs Telesforo and Sisenando, as well as the other heirs not present, Martina and Jose Centeno, have already received their corresponding share of the inheritance; and as the said present heirs confirm this declaration of the administratrix; and as the latter further declares that she holds the legacy corresponding to said Antonina and her three brothers Gregorio, Jose (alias Peping), and Gabriel, all sumamed Centeno, the court orders that Mr. Sisenando Centeno be appointed guardian of the said minors with his consent, and with the acquiescence of the said minor Antonio Centeno.

"It is likewise ordered that the said heirs file a statement showing those who have already received their proper share of the inheritance.

"The administratrix is also ordered to present the inventory of the property given as a legacy to said minors, which will be turned over to the guardian appointed upon his giving bond, the amount of which is to be fixed according to the aforementioned inventory. So ordered."

In the partition agreement submitted by the heirs to the court and approved by the latter, the property mentioned in plaintiffs' account Exhibit G, was adjudicated to Antonio Centeno, said exhibit being signed by all the heirs who took part in said agreement of partition.

Besides the property left by the deceased spouses, Isaac Centeno and Melchora Arroyo, which was partitioned among the heirs, 115 parcels of land described in the sixth paragraph of plaintiffs' complaint remained undistributed, of which fifty-one, marked Nos. 1 to 51, were in the possession of the plaintiff Valentin Centeno and is now held by his sons, the herein plaintiffs, who took his place after his death which occurred in the course of the present proceeding in the lower court; two, designated Nos. 76 and 77 were in the power and possession of Fabian Cabanilla who has had them in his possession as owner for more than ten years previous to the filing of the complaint having inherited them from his father, who, in turn, inherited them from his father, having paid the land tax on the same; two others, designated Nos. 59 and 100, are held by Simplicio Gaberto, who has been in possession thereof from time immemorial without any interruption of any kind, having inherited them from his father.

As to those marked Nos. 52, 66 and 94, there is no evidence showing who holds and possesses them. Moreover, the two alleged possessors named are not parties in the present suit.

The parcel of land marked No. 104, tax No. 10318, is the same parcel bearing the same tax number included in the partition made in October, 1910 (Exhibit 7), destined to pious purposes by the deceased Melchora Arroyo, according to her will (Exhibit E of the plaintiffs).

The four parcels of land marked Nos. 105, 106, 107 and 111, and identified by sworn declarations of ownership Nos. 10328, 10329, 10330 and 10335, respectively, are the same parcels of land referred to in the said partition made in the month of October, 1910 (Exhibit 7 of defendants), designated as the legacy of Martina Centeno one of the defendants according to the will of the deceased Isaac Centeno (Exhibit D of plaintiffs).

The parcels of land marked Nos. 57, 75, 93, 102, 112 and 115 and identified by sworn declarations of ownership

Nos. 10374, 10474, 10533, 10549, 10388 and 10429, respectively, were adjudicated to the defendants in the said partition made in October, 1910 (Exhibit G of defendants, who hold them).

The parcels of land marked Nos. 53, 54, 55, 60, 62 and 69, and identified by sworn declarations of ownership Nos. 10333, 10337, 10367, 10410, 10425 and 10459, respectively, and mentioned in defendants' answer, are held by Jesus Centeno First.

The declarations of ownership in the name of Melchora Arroyo de Centeno of the parcels designated by Nos. 82, 85 and 99, in the complaint were cancelled and substituted by those numbered 37522, 39333 and 21058, respectively (Exhibit 1 of the defendants). It does not appear in whose possession said parcels are, but it is to be presumed that they are held by Telesforo Centeno in whose name the new declarations were made. Neither does it appear how the latter acquired them. As they are not included in the partition they should be considered as part of the undivided share of Melchora Arroyo de Centeno in the estate.

The parcels of land designated by Nos. 56, 58, 101 and 103 in the complaint have been in possession of the herein defendants Telesforo and Martina Centeno since the death of the deceased spouses Isaac Centeno and Melchora Arroyo, which took place on October 7, 1905 and December 8, 1909, respectively, who have been gathering their products and enjoying their fruits exclusively. These four parcels of land are not included in the inventory of the conjugal property left by said deceased spouses, which gives rise to the presumption that said four parcels do not belong to their share in the estate; otherwise, Melchora Arroyo, who must have known all the property of the conjugal partnership, would have included them in said inventory which she submitted to the court.

The parcels of land bearing Nos. 70, 86 and 95, are the same ones designated by Nos. 145, 132 and 135 in said inventory, but which were not included in the partition agreement. These three parcels of land are in possession of the herein defendants, but it does not appear that said possession meets all the requirements prescribed by law in order that it may ripen into title.

The parcels of land Nos. 113 and 114, which are also enumerated in the said inventory, have been in possession of the herein defendants since the death of the spouses Isaac Centeno and Melchora Arroyo, who have been gathering their fruits and enjoying them exclusively. The parcels of land designated in the complaint by Nos. 63, 64, 65, 67, 68, 71, 72, 73, 74, 78, 79, 80, 81, 83, 84, 87, 88, 89, 90, 91, 92, 96, 97, 98, 108, 109 and 110 also are not mentioned in the aforesaid inventory and are possessed by the defendants, who have been enjoying their products exclusively.

As to the parcels of land Nos. 116, 119 and 120, which are the subject matter of the defendants' cross-complaint said three parcels belonged to the spouses Isaac Centeno and Melchora Arroyo during their lifetime and are now in the possession of the plaintiffs. Two of said parcels, those designated by Nos. 116 and 120 are identified with Nos. 57 and 251 in the inventory of the estate of Isaac Centeno. The parcel of land No. 120 is the same parcel No. 60 mentioned in the complaint. The parcel of land 119 is the same parcel No. 23 in the same complaint. The parcel of land No. 116 must be added to the one hundred and fifteen parcels claimed in the complaint as having belonged to the deceased spouses Isaac Centeno and Melchora Arroyo and is pro indiviso.

There are two more parcels of land with sworn declarations of ownership Nos. 10375 and 10386, which appear in the list of the properties adjudicated to Antonio Centeno (Exhibit G of plaintiffs) and which are in the possession of the plaintiffs.

The chattels and cattle adjudicated to Antonio Centeno in the scheme of partition and which were in the possession of Valentin Centeno have not yet been delivered to the defendants.

With respect to the uncollected credits which amount to P8,950 according to the partition agreement, Exhibit 7 of

the defendants, and the collection of which was intrusted to Valentin Centeno, the latter collected P300 owed by Pedro Bioria, leaving P8,650 uncollected, which is pro indiviso, as well as the house and lot valued at P300 and adjudicated in part payment of said credit.

To summarize, then, it appears that the only parcels of land which may be the subject matter of the partition among the parties are the following: Those designated in the original complaint by Nos. 1 to 51, and which are in possession of the plaintiffs; those designated in said original complaint by Nos. 53, 54, 55, 60, 62 and 69 which are in possession of Jesus Centeno First; those designated in said original complaint by Nos. 82, 85 and 99, which are in the possession of Telesforo Centeno; those designated in said original complaint by Nos. 70, 86 and 95, which are in the possession of the defendants; and those designated in the cross-complaint by Nos. 116, 119 and 120, which are in the possession of the plaintiffs, the two last of which are designated in the complaint as Nos. 23 and 60, respectively.

The credits should also be partitioned.

Before entering fully into a discussion of the questions of law raised by the plaintiffs and the intervenors in their respective briefs, it is well to decide the legal question of procedure raised by said parties as to whether or not the trial court erred in not declaring the defendants in default for not having answered the plaintiffs' second amended complaint and in permitting said defendants to present their answer on the day of the trial, upon oral motion made in open court.

In maintaining the affirmative, the plaintiffs-appellants invoke the provisions of articles 10 and 11 of the Rules of Courts of First Instance, which require that all motions shall be in writing and shall be filed with the proper court making it appear that the adverse party had notice thereof three days before the time set for the hearing thereof, and providing that unless it so appears, no action shall be taken on them.

The purpose of requiring such conditions is doubtless to give sufficient time and opportunity to the adverse party to become informed of any motion which may be presented in which he may be interested, and may interpose his objection should he so desire. When a motion is made in open court and in the presence of all the parties, it is not necessary to make it in writing nor that the adverse party be notified thereof, since proceedings in Courts of First Instance as courts of record, are reduced to writing by the official court stenographer, and the adverse party has an opportunity to become informed of said motion and of its nature and may object to it at once if he so desires, or may ask the court for a period within which to file his opposition.

Since the defendants made the motion for the admission of their answer to the second amended complaint in open court and in the presence of all the parties, the trial court did not err in granting it and admitting said answer and in not declaring them in default, in accordance with section 110 of the Code of Civil Procedure.

Entering now upon the discussion of the questions on the merit, we may say at the outset that with respect to the questions of fact raised by the plaintiffs-appellants and intervenors-appellants in their respective briefs, we have examined the evidence, both documentary and oral, adduced at the trial by the respective parties in support of their respective contentions, and have found the preponderance of the evidence fully justifies the findings of fact made by the trial court in its judgment, and they are the same as set forth above.

Touching the questions of law raised also by the plaintiffs-appellants and intervenors-appellants in their respective briefs, they may be reduced to the following:

- Are the defendants entitled, as acknowledged natural children of Antonio Centeno, to inherit by will the hereditary portion which the latter might inherit from his legitimate father Isaac Centeno?

- Are said defendants entitled; as such acknowledged natural children of Antonio Centeno, to the reservation of one-half of said hereditary portion which Melchora Arroyo inherited from her legitimate son Antonio Centeno, which hereditary portion the latter had inherited from his likewise legitimate father Isaac Centeno?
- Are the defendants entitled, as such acknowledged natural children of Antonio Centeno, to represent their natural father Antonio Centeno in the inheritance of their natural grandmother Melchora Arroyo, legitimate mother of Antonio Centeno?
- Is the partition made among the plaintiffs, intervenors and defendants, and duly approved by the court, of the conjugal property left by the deceased spouses Isaac Centeno and Melchora Arroyo, valid?
- Did the defendants acquire by prescription the ownership of the parcels of land adjudicated to them in the partition, and of the parcels of land included in the inventory of the properties left by Isaac Centeno and not adjudicated to them in the partition but which are in the possession of said defendants?
- Are the defendants entitled, as acknowledged natural children of Antonio Centeno, to recover from the heirs of Valentin Centeno the personal and real property, cattle and credits which were adjudicated to them in said partition and which remained in the possession of said Valentin Centeno?
- Are said defendants entitled, as such acknowledged natural children of Antonio Centeno, to participate in the conjugal property left by Isaac Centeno and Melchora Arroyo included in the inventory but not included in the partition?
- May the partition of the conjugal property left by the spouses Isaac Centeno and Melchora Arroyo and still remaining pro indiviso be ordered in these proceedings?

With regard to the first question, the defendants-appellees did not inherit from their natural grandfather Isaac Centeno by intestate succession, but from their natural father Antonio Centeno, who acknowledged them in his will and named them heirs to the property he had inherited from his deceased father Isaac Centeno, who had died before him. The fact that the inheritance left by Isaac Centeno remained pro indiviso when Antonio Centeno died, did not prevent him from acquiring during his lifetime, a right to inherit from his deceased father, since article 657 plainly provides that the rights to succession of any person are transmitted from the moment of his death.

As to the second question, the defendants, as acknowledged natural children of Antonio Centeno, are not entitled to more than the half of the part of the inheritance which could be freely disposed of by their natural father, the latter not having left any legitimate descendants, but a legitimate ascendant, who is his mother Melchora Arroyo, without prejudice to the legitime of his widow Gabriela Fernandez, in accordance with article 841 in connection with article 836 of the Civil Code, the other half of his estate going to his mother Melchora Arroyo as her legitime, as provided in article 809 of the same Code. Melchora Arroyo having died, said defendants, as acknowledged natural children of Antonio Centeno, are not entitled to the reservation of the hereditary portion which said Melchora Arroyo acquired gratuitously from her legitimate son Antonio Centeno who, in turn, also acquired it gratuitously, from his legitimate father Isaac Centeno, according to the doctrine laid down by this court in the case of Nieva and Alcala vs. Alcala and Deocampo ([1920], 41 Phil., 915), as follows:

"RESERVABLE RIGHTS IN PROPERTY; INHERITANCE BY RELATIVES WITHIN THE THIRD DEGREE; ILLEGITIMATE RELATIVES.—Article 811 of the Civil Code which provides that any ascendant who inherits from his descendant any property acquired by the latter gratuitously from some other ascendant, or from a brother or sister, is obliged to reserve such of the property as he may have acquired by operation of law for the benefit of relatives within the third degree, belonging to the line from which such property came does not apply to illegitimate relatives." (See also the decision of the Supreme Court of Spain rendered on June 10, 1918.)

Passing now to the third question, while it is true that in his will Antonio Centeno named the herein defendants as his heirs, not only with respect to the hereditary portion given him in the will of his father Isaac Centeno, but also with respect to the hereditary portion of the property left by his mother Melchora Arroyo, which he would inherit, nevertheless said testamentary disposition with regard to the property of his mother is void and of no effect, because, since his mother still lived, he had not acquired any right to her inheritance and therefore could not dispose of said property, since it is a rule of law that no one can dispose of anything that does not belong to him. (Sy Joe Lieng vs. Encarnacion, 16 Phil., 137.)

Although Melchora Arroyo in her will named her son Antonio Centeno as one of her heirs, since he died before her, the herein defendants, as acknowledged natural children of said Antonio Centeno have no right to represent their deceased father, according to the doctrine laid down by the Supreme Court of Spain, in the judgment rendered on June 10, 1918, *supra*, which is as follows:

"Considering that the truth of this doctrine, and that the judgment appealed from has not violated the laws cited in the fifth, sixth, and seventh assignments of errors, is shown, besides the text of article 807 already cited, by that of articles 836 and 944 of the same Code, in comparison with articles 808, 843, and 941 thereof, because while the first of these, in dealing with the legitime due to legitimate children includes the legitimate descendants thereof, articles 843 and 941 in connection with natural children specifically provide that the portion corresponding to them in the hereditary estate of the parents who acknowledged them is transmitted upon the death of these children to their legitimate or natural descendants. The latter's right, however, to represent their natural, father in the hereditary estate of their grandfather is not admitted because the law does not call them to participate in the latter's estate, and for a like reason, in default of parents acknowledging the natural child, the grandfather, according to article 945, cannot inherit from the grandchild,—the doctrine laid down by this court in its decision of February 13, 1903, to the effect that a natural child whose deceased father was legitimate, has no right to inherit from his grandfather, even if the latter should die without any surviving legitimate descendant is a necessary consequence of the aforecited legal provisions, because, as children inherit in their own right and grandchildren by representation, it is clear that such representation of the grandchildren only refess to and includes those who are in the same legal status as the person represented, and never those who are in a different legal status." (M. Ruiz, Civil Code, vol. 7, p. 175.)

Touching the fourth question, "the heirs of the deceased Isaac Centeno and his wife Melchora Arroyo de Centeno, also deceased, desiring to make a just and lawful partition, and in accord with the wills of both," submitted to the consideration and approval of the Court of First Instance of Ilocos Sur an agreement of partition of the pro indiviso conjugal property left by the deceased spouses as appearing in instrument Exhibit 7 of the defendants. Said partition agreement having been submitted to the court, the latter ordered the fixing of a day for the hearing of the accompanying motion, and the publication of a notice for the appearance of all who might have an interest therein, and the presentation of the claims and objections they might have. The day for the hearing having arrived, and all the parties having been heard, who stated that they bound themselves to answer for all the just claims against the two estates of Isaac Centeno and Melchora Arroyo, the court approved the partition and declared said two testamentary proceedings closed by its order dated April 20, 1911.

While it is true that the partition agreement was made by all the heirs extrajudicially, in submitting it to the court for approval, and in being approved by the latter after having announced the hearing through publication in the newspapers, said extrajudicial agreement of partition became judicial, and the order of the court approving it and declaring the respective testamentary proceedings involving the estates of the deceased spouses closed, became final and absolute, and binding upon all the parties who took part in the said partition agreement, and acquiesced therein. More than six years having elapsed from the date the order of the court approving the extrajudicial agreement of partition became final until the filing of the first complaint praying for the annulment of said partition, there is absolutely no legal reason for setting aside said order which must therefore be considered

irrevocable, and the partition made in accordance with the agreement valid.

The fact that Jesus Centeno Second was a minor at the time said agreement of partition was entered into, does not render it void with respect to him, because he was represented by his mother Asuncion Arcebal, who was his natural guardian by law, although without the right to the custody of his property unless so authorized by the court (sec. 553, Act No. 190), and when the court approved said agreement, said representation was impliedly approved and the acts of the mother were validated.

Neither does the fact that the defendants were mere acknowledged natural children, and therefore without the right of equal participation with the legitimate children, render said partition void. Article 1081 of the Civil Code provides that a partition made with the inclusion of any person who was believed, but was not, an heir shall be void. The herein defendants-appellees were not strangers to the inheritance for they were named as heirs by their natural father, whom they succeeded in his rights to the hereditary portion which should have gone to him from the unsettled estate left by his deceased father Isaac Centeno.

Furthermore, the plaintiffs and intervenors cannot allege ignorance of the condition of the defendants-appellees as acknowledged natural children, for this condition appeared from the will of Antonio Centeno, and in making the partition in the form in which they made it, they desired to do so, in a just, lawful manner, in accordance with the wills of the deceased spouses Isaac Centeno and Melchora Arroyo, and they made it appear so in the preamble to the scheme of partition, Exhibit 7 of the defendants.

It follows, then, that the defendants-appellees not only were not strangers to the inheritance, but that, with full knowledge of their status of acknowledged natural children, the plaintiffs and intervenors adjudicated to them the property appearing in the agreement of partition, deeming it just, legal, and in conformity with the wills of their predecessors in interest, and said partition is therefore legal and valid.

As to the fifth question, having arrived at the conclusion that the partition made among the plaintiffs, the intervenors, and the defendants is valid and irrevocable, it is needless to discuss whether, in addition, said defendants acquired rights of ownership to the goods adjudicated to them and appearing in Exhibit G of the plaintiffs, by acquisitive prescription, and we shall limit ourselves to considering¹ the conjugal property left by the deceased spouses Isaac Centeno and Melchora Arroyo, included in inventory Exhibit F of the plaintiffs, and 6 of the defendants, and not included in the scheme of partition, Exhibit 7 of the defendants, but which is in the latter's possession.

It cannot be doubted that if the defendants have been in possession of said property adversely, continuously, publicly and as owners thereof for a period of ten years, they have acquired the ownership thereof by prescription. (Sec. 41, Act No. 190; *Casanas vs. Rosello* [1927], 50 Phil., 97.)

Taking up now the sixth question after the fourth has been solved by holding that the partition among the plaintiffs, intervenors, and defendants is legal and valid, and since the personal and real property, the cattle, and credits claimed by the defendants in their cross-complaint are included in said partition, they are entitled to claim them from the plaintiffs who now have them in their possession

With respect to the seventh question, the defendants, as natural children of Antonio Centeno, acknowledged by the latter as such and named as his heirs in his will, are entitled to one-half of the hereditary portion belonging to their natural father from the estate of the deceased Isaac Centeno, which was included in the inventory of the property left by the latter and which was not included in the agreement of partition, the other half of said hereditary portion of Antonio Centeno belonging to his mother Melchora Arroyo who survived him, with said natural children.

As to the eighth question, the plaintiffs and intervenors in their respective complaints pray for the annulment and setting aside of the agreement of partition entered into by and between them and the defendants in October, 1910, in so far only as it refers to the portion adjudicated to the latter; that it be ordered that said defendants return to said plaintiffs and intervenors what they have received in excess; and that it be ordered likewise that in accordance with the wills of Isaac Centeno and Melchora Arroyo, the property mentioned in paragraph six of the original complaint be partitioned between the plaintiffs and intervenors, together with the property constituting the portion adjudicated to the defendants in the said partition.

The defendants in their cross-complaint pray that the property designated by Nos. 1 to 51, 53, 54, 60, 62, 69, 116, 117, 118, 119 and 120, and their corresponding fruits or their equivalent in money, be partitioned, and that plaintiff Valentin Centeno be ordered to deliver to said defendants the property specified in paragraph three of the cross-complaint, with all the fruits produced, or which it should have produced from the year 1911 up to the present time, or in its default thereof to pay the value of said fruits, plus the proper legal interest thereon, and the costs of the action.

As will be seen, the action instituted by the plaintiffs and the intervenors, respectively, is for the recovery of property through the annulment of the partition, and to have another partition made. The defendants' cross-complaint is for the recovery and partition of undivided property. The ownership of the property which is the subject matter of the action for recovery having been settled, and its delivery to the proper party ordered, and the property belonging in common and pro indiviso to the parties determined, there is no bar in law, either positive or adjective, to the partition thereof.

In the case of *Africa vs. Africa* (42 Phil., 934), this court enunciated the following doctrine:

"1. PARTITION; RECOVERY OF PROPERTY; ACTION FOR.—An action cannot be considered as one for the partition of an inheritance, even though it is so entitled and the prayer of the complaint is to this effect, if any party to the suit denies the pro indiviso character of the estate whose partition is sought, and claims exclusive title thereto, or to any part thereof. In such case the action becomes one for the recovery of property in so far as the property claimed exclusively by any of the parties is concerned."

What this court meant in saying that an action cannot be considered as one for the partition of an inheritance, even though it is so entitled and the prayer of the complaint is to this effect, if any party to the suit denies the pro indiviso character of the estate whose partition is sought, is that when the existence of co-ownership is not recognized by all the parties, but that some claim to be exclusive owners thereof, and it is found that there is no property to partition, the action for partition loses its character as such and becomes one for the recovery of property; but when the action is for the recovery of property based upon the annulment of a partition and at the same time for the partition of the property declared to be undivided common property, it is not improper to order the partition of the estate which has been declared to be undivided common property, since there is no incompatibility between the action for the recovery of property and for partition of an inheritance, once the court has declared that the property, the recovery of which is sought, belongs to the parties in common and pro indiviso.

The conjugal property which has just been declared to be pro indiviso, and which must be divided into two equal parts for the purpose of ascertaining the participation of the defendants separating the one-half which corresponds to Isaac Centeno from the other half that belongs to Melchora Arroyo. The defendants, as we have said, are only entitled to the one-half of the hereditary portion which belonged to their natural father Antonio Centeno of the conjugal property left by Isaac Centeno, and not to the conjugal property left by Melchora Arroyo. There being three children who survived Isaac Centeno, namely, Valentin, Faustino, and Antonio Centeno, said one-half of the conjugal property which still remains undivided, left by Isaac Centeno, must be divided into three parts, one-third pertaining pro indiviso to the children of Valentin Centeno, and Faustino Centeno, respectively. Of the one-third

which belongs to Antonio Centeno, one-half, that is, one-sixth of the whole, is what belongs to the defendants, and the other half, or the other sixth part, to his legitimate mother Melchora Arroyo, who inherited from her legitimate son Antonio Centeno, because he died before her, saving always the rights of Gabriela Fernandez, as surviving spouse of Antonio Centeno.

As to the one-half of the undivided conjugal property which belongs to Melchora Arroyo, the only ones entitled to it are the plaintiffs and intervenors.

Summarizing all the above, we are of the opinion, and so hold: (1) That the defendants, as acknowledged natural children and named heirs of Antonio Centeno in his will, are entitled to inherit the one-half of the hereditary portion which their deceased natural father had inherited from his legitimate father by will; (2) that said defendants, though they are acknowledged natural children of Antonio Centeno, are not entitled to the reservation of, the one-half which Melchora Arroyo received as her legitimate from the hereditary portion which her son had received from his father, Isaac Centeno also legitimate; (3) that the defendants, though they are acknowledged natural children of Antonio Centeno, are not entitled to represent the latter in the inheritance of his legitimate mother Melchora Arroyo; (4) that the fact that defendants, as acknowledged natural children of Antonio Centeno, took part, together with Valentin Centeno, legitimate brother of said Antonio Centeno, and with the children of Faustino Centeno, another legitimate brother of said deceased Antonio Centeno, in the partition of the estates left by Isaac Centeno and Melchora Arroyo, father and mother of Antonio, Valentin and Faustino Centeno, does not make the partition void; (5) that the partition made between the heirs, while extrajudicial at the beginning became judicial on being approved by the court after complying with the proper requirements prescribed by the law, and once all the periods have elapsed within which the law permits its revocation for any reason, it became final and irrevocable; (6) that the fact that Jesus Centeno Second, son of Faustino Centeno, was a minor at the time the agreement of partition was entered into, does not make said agreement void, since he was represented by his mother Asuncion Arcebal, and when said agreement was approved by the court, said representation was impliedly approved, and all her acts became validated ipso facto; (7) that in the absence of a preponderance of evidence to the contrary, the defendants are exclusive owners of the parcels of land designated by Nos. 113 and 114, which are included in the inventory of the estate of Isaac Centeno, having acquired title thereto by prescription; (8) that the defendants, as cross-complainants, are entitled to the ownership and possession of the two parcels of land described in the third paragraph of the second cause of action of the cross-complaint, as well as the two mares and the harness which are in possession of the plaintiffs; (9) that the defendants are entitled to one-sixth part of the undivided conjugal property left by Isaac Centeno, which is yet to be partitioned; (10) that the action for the recovery of the undivided property is not incompatible with the action for partition, once the existence of the community of the property of the estate whose recovery and partition are sought, has been declared.

For the foregoing, and with the sole modification of ordering the partition of the conjugal property left by the deceased spouses Isaac Centeno and Melchora Arroyo declared by the lower court to be pro indiviso, the judgment appealed from is affirmed in all other respects, without special pronouncement as to costs. So ordered.

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

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