

**CIRIACO FULE ET AL., PLAINTIFFS AND APPELLANTS, VS.
ANASTASIO FULE ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 29008. February 08, 1929*

Ponente: STREET, J.

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Pursuant to the reservation contained in the dispositive part of our decision in *Fule vs. Fule* (46 Phil., 317), the present action for partition of real and personal property was instituted in the Court of First Instance of Laguna on November 18, 1924, by Ciriaco Fule and the heirs of Marcial Fule, consisting of Alonso, Felicidad and Maria Purificacion, against Anastasio, Simeona and Felisa, of the surname of Fule. By amendment of the complaint Iluminada Fule was made an additional party defendant. Upon hearing the cause the trial court absolved the defendants from the complaint, and the plaintiffs appealed.

It appears that Saturnino Fule, father of the plaintiff Ciriaco Fule and of the defendants Anastasio, Simeona and Felisa, and grandfather of the plaintiffs Alonso, Felicidad and Maria Purificacion, as well as of the defendant Iluminada, died at his home in San Pablo, Laguna, on April 3, 1923, at the age of over 70 years, leaving as his legal heirs four children, to wit, Ciriaco, Anastasio, Simeona and Felisa, and three grandchildren, Alonso, Felicidad and Maria Purificacion, children of his deceased son Marcial Fule. The defendant Iluminada Fule is a daughter of Anastasio Fule who is still living. The wife of Saturnino Fule was Irene Calampiano, who predeceased her husband by about eight years, having died in 1915. During the married life of Saturnino Fule and Irene Calampiano, a considerable amount of property, real and personal, had been accumulated by them; and Irene had also inherited real property from her own parents, Leonardo Calampiano and Claudia Gavino. The plaintiff Ciriaco Fule was the oldest child of Saturnino Fule and Irene Calampiano; while Marcial Fule was a second son, he having died about the year 1902. Ciriaco appears to have been the first of the children to marry and establish a home for himself, as did Marcial Fule later. Upon the occasion of the respective marriages of these two sons, Saturnino Fule had placed them in possession of certain real properties, the number and value of which have been the subject of controversy in this lawsuit. These properties have been retained respectively by Ciriaco Fule and by Marcial Fule in life; and Ciriaco claims to be the owner in his own right of the properties thus assigned to him, though he admits that the same are subject to collation in this partition suit. The heirs of Marcial Fule make the same claim and admission with respect to such properties as they concede had been assigned to their father by Saturnino Fule. Anastasio Fule, upon his marriage, also appears to have received from his father several parcels of property in the same form of gift or advancement.

The properties above referred to were evidently donated by Saturnino Fule to his three sons to assist them in getting a start in the world and to aid them in the support of themselves and their families. The two daughters, Simeona and Felisa, are unmarried, and as they lived continuously with their father and were supported by him until his death, no similar advancements were ever made to them, though they claim that about four and a half years before his death, Saturnino Fule made a verbal gift and transfer to them, in conjunction with their niece Iluminada, of all the real property of which he was then possessed.

There is credible proof tending to show that some time in the month of October, 1918, Saturnino Fule caused a will to be executed, in which he divided the property of which he was then possessed among his children, at the same time making a modest donation to his granddaughter Iuminada who lived with him. This will was drawn by Florencio Manalo; the attorney and trusted friend of Saturnino Fule. The document was drafted in an unduplicated original and, upon being finished, was left in the possession of Saturnino Fule. This will has not made its appearance since the death of Saturnino Fule, thus giving rise to the inference either that the testator revoked and destroyed

it before his death or that it has been lost or suppressed.

Soon after the death of Saturnino Fule, administration proceedings were instituted at the instance of Ciriaco Fule, and one Cornelio Alcantara was appointed by the Court of First Instance of Laguna to the office of special administrator of his estate. These proceedings were, however, combated by Anastasio Fule and his two sisters on the grounds, first, that their deceased father had left no debts; secondly, that all the heirs were of age; thirdly, that Saturnino Fule had equitably distributed all his property during his life among the persons entitled thereto; and, lastly, that, at any rate, administration proceedings were unnecessary and inappropriate. The trial judge having sustained this contention of the defendants and dismissed the proceedings, an appeal was taken by Ciriaco Fule to this court where the judgment was affirmed. However, the decision was expressly made "without prejudice to the right of the petitioner to commence a new action for a partition of any property left by Saturnino Fule which had not already been partitioned among his heirs." (Fule vs. Fule, 46 Phil., 317, 324.) In the course of the present litigation the exact meaning of the reservation which we have here quoted has been the subject of controversy. To dispose of this matter at once we merely say that the purpose of the reservation was to leave the way open for a partition proceeding like that now before us, without prejudice from the action taken in the case above-mentioned. The result is that the present plaintiffs have a legal right to maintain this action of partition and demonstrate therein their right to relief, if any such right they have. In other words, in this proceeding the former judgment is *res judicata* as to nothing.

Referring now to certain incidents that occurred in connection with the earlier litigation, it may be stated that when the administrator was first appointed and steps taken by him to make an inventory of the property belonging to the deceased, no suggestion was at first made either by Simeona and Felisa or their niece Iuminada to the effect that there was in existence any writing of a documentary character purporting to give them any rights in the undistributed property of Saturnino Fule; but in September, 1923, a paper writing was produced Which has figured largely in this case. This brief document bears date of September 28, 1918, and purports to be signed by Saturnino Fule. The following is a translation of the paper both, in English and Spanish:

"September 28, 1918

"I devise all my property to my two daughters and the grandchild that I have raised, upon my death; I have given the men their part; this is my request to my children; let this my wish be obeyed.

(Sgd.) "SATURNINO FULE

"Todos mis bienes los adjudico a mis dos hijas y a la nieta que he criado para cuando yo muera; mis hijos varones ya han recibido su parte, Este es mi encargo a mis hijos. Obedezcanlo, porque es mi voluntad.

(Fdo.) "SATURNINO FULE"

This paper, identified in the record as Exhibit 10, shows on its face that it was intended by the purported writer as a testamentary disposition of his property. Nevertheless it is completely wanting in the requisites required by law for the making of a will. It is equally defective and worthless as evidence of a present donation. Florencio Manalo, who was familiar with the handwriting of Saturnino Fule, testified that the paper in question was not in the

handwriting of its purported author; and, we may add, if Saturnino Fule in fact wrote it, the act was a singular departure from his known habits. The proof shows that it was with great difficulty that he could wield the pen for any purpose. But he was quite intelligent and meticulously careful about all business matters. In fact he never attempted to make written record of any transaction having a legal aspect without the assistance of a lawyer.

The sole witness who attempts to account for the origin of this paper is Iluminada Fule, who was living in her grandfather's family at the time the paper purports to have been written. She says that upon the date said paper bears date, her grandfather called her into the room where he was sitting and explained to her that he was going to give his property to his two daughters and to her, thereby equalizing them with his sons in respect to gifts already made to them. Iluminada states that the old gentleman occupied nearly an hour in writing the document, and that all the contents of the paper, including the signature, were written by him on that occasion.

We dismiss the document from consideration with the observation that it is open to grave suspicion, to say the least, as regards its authenticity, and that even if authentic, it is devoid of any determinative weight in this lawsuit. We may add that the claim of ownership put forth by Simeona and Felisa, in common with Iluminada, is not based upon Exhibit 10, but upon something that is said to have occurred on September 30, 1918, or two days after that paper purports to have been written. Concerning this later occurrence Iluminada Fule testified that on September 30, 1918, her grandfather made a verbal transfer or assignment to Simeona, Felisa and herself of all of the property of which he was then possessed. She says that Simeona and Felisa were present when this verbal gift was made; and by this act Saturnino Fule is supposed to have completed the partition of his property among his heirs. It is noteworthy that Simeona and Felisa did not take the stand to corroborate the gift.

As tending to show the improbability that such a gift was made, the plaintiffs introduced evidence to the effect that after the date of this alleged donation, Saturnino Fule continued to manage the property which was the subject of the gift in all respects as if it had been his own, and there was nothing in his acts outwardly which comported with the idea that he had stripped himself of all his belongings. Upon the whole we are compelled to record the belief that no such gift, assignment, or transfer as that testified to by Iluminada Fule was ever made by Saturnino Fule in life.

As Iluminada Fule is not one of the heirs of Saturnino Fule—her father being still alive—she was not at first made a party to this partition proceeding, but on account of the claim of joint ownership put forth by her, based on the alleged verbal gift above-mentioned, she was, in the course of these proceedings, made a party by order of the court, over the objection of the plaintiffs.

The foregoing observations prepare us to deal with the case in the simple aspect of a partition suit brought by one coheir and the children of another, against three coheirs in possession of property derived from a common ancestor, with the anomaly—not affecting the merits of the case—that a stranger to the inherited estate (Iluminada Fule) claims an interest in the portions of the two female heirs. We may add here that these two heirs do not combat the claim made by Iluminada; and Anastasio Fule, Iluminada's father, seeks to maintain his daughter's claim.

To complete this preliminary survey of the case it is desirable to add that, although, as originally framed, the complaint in this case seeks a partition of both real and personal property, the appellants have abandoned the fight in so far as relates to personalty; and the controversy ventilated in this court has relation solely to real property.

In formulating their defense, the defendants have used the word "partition" as legally descriptive of the acts ascribed to Saturnino Fule in assigning portions of his property, first to one and then another of his children, until all of his property had been disposed of and each of the children had acquired his equitable portion of the estate. In its narrow and technical sense, "partition" is properly used with respect to the multilateral act by which several

co-owners divide a common property among themselves, or to the act by which the court effects such a division at the instance of one or more of the persons concerned. There seems to be little propriety in using the word "partition" as descriptive of the successive advancements of the portions of property which a father assigns to his several children. We think it will clarify the legal problem somewhat to think of these acts as constituting a distribution of property rather than a true partition. Yet it must be admitted that the word "partition" is not infrequently used both in popular and technical parlance to describe precisely this situation; and if we mistake not, this conception finds expression in article 1056 of the Civil Code which speaks of the partition of property by a testator by acts inter vivos. But whether these acts be considered in the light of a mere distribution or in the more formal character of a partition, their legal effects remain the same.

It is admitted in the complaint that years ago Ciriaco Fule received from his father three parcels of property with which he should be charged in this partition. It is likewise therein admitted that Marcial Fule, while still alive, also received four parcels of property with which he is chargeable. In like manner from the admissions of the defendant Anastasio Fule it appears that he also had received by way of advancement some three parcels from the same source. The parcels which the plaintiffs claim to be as yet unpartitioned and which are alleged to be in the possession of Simeona and Felisa are described in the complaint as consisting of some thirty-one items. But when this allegation is sifted out in the proof, it appears that these defendants (with Iluminada) are claiming in their own right about twenty parcels.

This brings us to what we consider the field of vital combat, namely, the question raised in paragraph No. 2 in the first special defense set up in the defendants' answer. It is there stated that, in addition to the properties which Ciriaco admitted having received from his father, he had also received a number of other parcels; and when these charges are examined in the light of the proof, it will be found that this contention comes down to some fourteen items, to wit, parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A, 10, 11, 11-A, 12, described in the answer. With respect to these Ciriaco Fule claims that he did not acquire them from his father Saturnino, but that they came to him either from, his grandparents on his mother's side (the Calampianos) or from other independent sources, that they therefore belong to him in his own right and are not of a collationable nature. The proof with respect to these properties in our opinion leads to the conclusion that they were in effect derived from Saturnino Fule and that the plaintiff Ciriaco Fule is chargeable with their value. We have no doubt that all or nearly all of this property originally belonged to the Calampiano estate. In this aspect said properties, or most of them, must originally have pertained to the paraphernal estate of Irene Calampiano, mother of the principal litigants in this case. But we find that said paraphernal property has been swallowed up in the conjugal properties of Saturnino Fule and his wife Irene; and the plaintiffs in this case admit that no evidence has been produced showing the present existence of any property which should now be considered paraphernal property of Irene Calampiano. Indeed, as regards at least part of these items, it appears that they are covered by composition titles taken in the name of Saturnino Fule as far back as April, 1886. Our conclusion is that, admitting the possibility of error as to a few items not affecting the main conclusion, Ciriaco Fule is chargeable with the real properties above mentioned.

Taking proper account of the foregoing conclusion and adding together the values of all the properties of which account should be taken in this lawsuit, as shown in the tax books, we discover that the total is approximately P84,800. Of this total Ciriaco Fule appears to have received, by way of advancement, properties of a value of P18,631; while Marcial Fule has in the same manner received properties of the approximate value of P18,340. On the other hand, the defendant Anastasio Fule has received by way of advancement properties of the value of only about P7,720; and the defendants Simeona and Felisa (with Iluminada) appear to be in possession of properties pertaining to the estate of Saturnino Fule, of a value of about P40,242.

Upon dividing the total value of all these properties by five, which is the number of the heirs, it will be seen that

the aliquot part of each, upon division, should be approximately P16,960. In other words the plaintiffs Ciriaco Fule and the children of Marcial Fule have received, and are chargeable with, more than their aliquot portion of the estate. On the other hand, Anastasio Fule has received less than half of what would pertain to him upon a fair division; but this defendant makes no complaint about having received too little and on the contrary adheres to the side of the defendants. Taking together the three defendants who are heirs of Saturnino Fule, it will be seen that they have received, or are in possession of, properties of the value of P47,832, or less than P16,000 each; and although the properties of which Simeona and Felisa (with Iluminada) are in possession have a value somewhat in excess of their portions, this does not operate to the prejudice of the plaintiffs, who have already received more than their portions.

The estimation above made is based upon the values of the property for purposes of taxation as now assessed; and although these values may possibly differ somewhat from the actual market values of said properties, it is probable that, taken as a whole, the estimate thus made is fair to all. We may add that the same conclusion as to the relative value of the distributed properties may be derived from an actual count of the coconut-bearing trees on most of the parcels and the character of others; and the conclusion to which we are inevitably driven is that the plaintiffs have already received and are holding properties at least equal to, or slightly in excess of, their fair portions of the estate.

It results, in our opinion, that no error was committed by the trial court in dismissing the action; and the legal proposition which is applicable to the case is this, namely, that, where one or more coheirs in a partition proceeding appear to be in possession of portions of the ancestral estate which they have received by way of advancement, and which they are claiming in their own right, the same having a value equal to, or in excess of, the portion that would come to them upon proper division of the estate, the action cannot be maintained. In other words, before one coheir, who has, received and holds advancements of a collationable character, can maintain an action of partition, he must show that he has suffered prejudice (lesion); for a court cannot be required to entertain actions of this character, to the disturbance of other heirs, when, if the action be prosecuted to a conclusion, the plaintiff will get no more than what he already has. By holding and claiming what he has received in excess of that which, would be his lawful portion, he estops himself from obtaining any relief. In the case before us the only person prejudiced by what has happened in the past history of these lands is Anastasio Fule. But he is not complaining.

It follows that, although we do not exactly agree with the trial judge in all his processes of reasoning and are unable to accept his conclusion that there has been in fact a technical partition, or distribution, of all the property of Saturnino Fule, in the end we reach the same result, which is that the plaintiffs have demonstrated no right to maintain this action.

The judgment appealed from is therefore affirmed, and it is so ordered, with costs against the appellants.

Johnson, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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