

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT, VS. ANASTASIA ABADILLA ET AL., CLAIMANTS. PEDRO LOYOLA, CLAIMANT AND APPELLEE, AND ANTONIO RAMOS, CLAIMANT AND APPELLANT.

G.R. No. 30035. March 18, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The question raised here is, Which of the two ways proposed by the partitioning commissioner must be followed in the division of lot No. 4844 (formerly Lot No. 217-A) of the above-entitled proceeding?

The appellant alleges that the partition adopted by the court below is unequal and unjust. The subdivision referred to is the second one proposed by the aforesaid partitioning commissioner, whose report, in the portion relevant to the matter in hand, is as follows:

"Both subdivisions equitably divide between the parties, the land and the improvements thereon according to the decision of the court, with the difference that in the first subdivision is included the 'Camarin' where the distillery of Mr. Ramos is located and that the portion for each will be divided into two lots-A, and E, D, for Mr. Loyola; and F and B, C, for those represented by Mr. Ramos. Whereas in the second subdivision each will have only one lot-A, B, E, F, for Mr. Loyola and C, D, for Mr. Ramos. Even the two subdivisions equitably divide the land and the improvements thereon between the parties, yet the first subdivision diminishes the value of the portion of each, for the reason that each will have two lots. Inasmuch as the value of the bigger portion should not be sacrificed for the sake of only including the 'Camarin' in the portion for Mr. Ramos, the undersigned begs leave to recommend to the court the adoption of the second subdivision, with the understanding that Mr. Ramos be given a reasonable period before he should be compelled to remove the said 'Camarin.'"

We deem the second plan of the subdivision to have been rightly chosen by the lower court, the same being more favorable to both parties, because it avoids breaking up of the land which would result in a depreciation in value.

With respect to the distillery which, as it does not belong to the owner of the premises on which it is located, if the division ordered by the court of origin be adopted, would have to be removed, thus occasioning expense; as a matter of fact, according to the evidence, such distillery does not, strictly speaking, belong to the minors who are the parties interested herein, and is no longer in use, the only part of it left being a worthless shed, and an oven which is no longer used. So that, whatever the division adopted may be, said distillery would not go with the land inasmuch as it does not belong to any of the parties in this division; hence it should not be taken into account in choosing the partition most favorable to all the interested parties, nor influence the consideration of the damage resulting to the land by breaking it up and thus depreciating its value.

In cases of this nature, when judicial discretion is called upon to make up for the lack of agreement between the parties, the court must consider and respect the interests of all concerned, and adopt that form of partition nearest

to absolute equity and most consonant with reason and justice.

And, being placed in the alternative of choosing one or the other of the schemes of partition proposed by the judicial partitioning commissioner, in view of the disagreement of the parties on the matter and considering all the circumstances of the case, we find the selection made by the lower court correct, and its decision is hereby affirmed without express finding as to costs. So ordered.

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

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