

DONATO CRUZ ET AL., PLAINTIFFS AND APPELLANTS, VS. TEOFILO DE JESUS ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 30491. March 02, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present appeal is taken by plaintiffs Donato Cruz and others, from an order of the Court of First Instance of Nueva Ecija, denying the motion presented by them, praying that they be permitted to amend their complaint as follows:

"1. That instead of the title Partition the said complaint should be entitled Liquidation and partition, and

"2. That the following should be inserted after par. 5 as paragraph 5A:

1" "That Juliana Nabong left no debt outstanding at her death nor any money or credit payable to the estate and that lands described from section (a) to section (m) inclusive of paragraph 4 are free from all liens and incumbrances since then up to the present time.' "

The plaintiffs filed said motion in pursuance of the order dated May 2, 1928, the dispositive part of which is as follows:

"By virtue of these considerations, the court holds that the proper action for the partition of property belonging to a conjugal partnership dissolved by the death of one of the spouses, one of the participants being the surviving spouse, is the testate or intestate proceeding for the settlement of the estate of the deceased spouse, wherein said conjugal property must first be liquidated before the partition is made. Five days are hereby given the plaintiff, from the receipt hereof, to amend the complaint, if it admit of the same, in order to make it accord with the theory sustained by the? court in this order."

In support of their appeal, the appellants assign the following alleged errors as committed by the court below in its judgment, to wit:

"The lower court erred:

**1. In denying the partition of the lands in question among the parties concerned;

"2. In being of opinion that liquidation and administration are necessary before partition when there are no debts or credits to be liquidated;

"3. In not admitting the amendment to the complaint; and

"4. In refusing to hear the case fully and denying the motion for new trial."

The only question to determine in the present appeal is whether or not an action lies for the liquidation and partition of the property of a conjugal partnership dissolved by the death of the wife, said property having been in the possession of the surviving spouse for many years, without his having made any inventory thereof, nor

liquidated and partitioned it, and it not appearing that there is any debt to pay.

Section 685 of Act No. 190, as amended by Act No. 3176, provides as follows:

"Sec. 685. When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof shall be paid, in the testamentary or intestate proceedings of the deceased spouse, in accordance with the provisions of this Code relative to the administration and liquidation of the estates of deceased persons, or in an ordinary liquidation and partition proceeding, unless the parties, being all of age and legally capacitated, avail themselves of the right granted to them by this Code of proceeding to an extra judicial partition and liquidation of said property.

"In case it is necessary to sell any portion of said community property in order to pay the outstanding debts and obligations of the same, such sale shall be made in the manner and with the formalities established by this Code for the sale of the property of deceased persons. Any sale, transfer, alienation or disposition of said property effected without said formalities shall be null and void, except as regards the portion that belonged to the vendor at the time the liquidation and partition was made."

It is to be noted that this legal provision establishes two methods of liquidating the property of a conjugal partnership, if the marriage is dissolved by the death of one of the spouses: the first by a testate or intestate proceeding according to whether the deceased died with or without a will; and the other by an ordinary proceeding for liquidation and partition.

According to the legal provision quoted above, when the marriage is dissolved by the death of the wife, the legal power of management of the husband ceases, passing to the administrator appointed by the court in the testate or intestate proceedings instituted to that end if there be any debts to be paid, and when there is no debt pending, the liquidation and partition may be made in an ordinary proceeding for that purpose.

Since the complaint for partition alleges that there are no debts to pay, and as it does not appear that there are any, said action will lie, for while it is true that it prays for a liquidation of the property of the conjugal partnership dissolved by the death of Juliana Nabong, said liquidation is implied in the action for partition (*Remolino and Bautista vs. Peralta*, G. R. No. 10834).[1]

For the foregoing considerations, we are of the opinion and so hold, that in accordance with section 685 of Act No. 190, as amended by Act No. 3176, when there are no debts to pay, the liquidation and partition of the property of the conjugal partnership, dissolved by the death of one of the spouses, may be made in an ordinary action instituted for that purpose.

By virtue whereof, the order appealed from is revoked, and it is ordered that the case be remanded to the court of origin for further proceedings, without prejudice to the right of any creditor of the dissolved conjugal partnership, and without special pronouncement as to costs.

Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

[1] Promulgated November 16, 1917, not reported.

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