

**CIRIACO PILAPIL ET AL., PLAINTIFFS AND APPELLANTS, VS.
ROSENDO PONCIANO, DEFENDANT AND APPELLEE.***G.R. No. 3158. March 27, 1907*

Ponente: MAPA, J.

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This is an action brought in the matter of the partition of property. The plaintiffs allege that they are legitimate heirs of Dorotea Francisco, the wife of the defendant, who died March 5, 1898; that at the time of her marriage to the defendant on the 18th day of May, 1867, she brought with her property consisting of a store and stock of woven goods of the value of 10,000 pesos, Mexican currency, together with several lots situated on Calle Diaz, district of Trozo, of this city; and that during their married life one of these lots was sold and the amount received therefor used in the construction of two houses of strong materials upon the other lot, the description of which appears duly set out in the complaint herein. The complaint herein does not show other properties left by Dorotea Francisco. The court below rendered judgment dismissing the case on the ground that the plaintiffs had no right or interest in the property or properties described in the complaint in that she, Dorotea Francisco, left no property of any sort at her death.

The point in question in the present case is the period or time in which the lots mentioned in the complaint were acquired for the purpose of determining their character, whether brought by the wife Dorotea Francisco at the time of her marriage to the defendant or whether community properties belonging to the deceased wife and the defendant. This question, however, has little importance or bearing on the case actually at issue. Whether, paraphernal or community property, it is true that the property now in question was sold by Dorotea Francisco and her husband, the defendant herein, on October 15, 1886, to one Ignacia Herrera for the sum of 1,100 pesos. The sale was consummated under a public instrument and was a conditional sale (*venta con pacto de retro*) having for its term of redemption the period of two years, and capable of being extended for another two years thereafter. This deed of sale appears duly registered in the office of the registrar of property. The period mentioned in the instrument, together with the said extension, matured on October 15, 1890. The vendors did not redeem the property within this period, for which reason the instrument became final and the title and domain in and to the said property passed irrevocably to the purchaser, Ignacia Herrera, all of which also appears in the office of the registrar of property. From this moment the vendors lost absolutely all right and interest in the said property. Such was the state of things at the time of the death of Dorotea Francisco in March, 1898, and therefore, she left no right, nor could she have left any right in favor of her heirs in the said property.

This property was afterwards purchased by the defendant from Ignacia Herrera under a public instrument, which has also been duly registered in the office of the registrar of property. This purchase was consummated on August 22, 1900; that is to say, two years after the death of Dorotea Francisco, the person from whom the plaintiffs claim to derive their rights herein, when in fact and law the legal partnership of the community property belonging to herself and the defendant had been, by such demise, already dissolved. It is evident that the property acquired by this defendant through the deed of sale, of which mention has just been made, belongs to him exclusively, and that

the plaintiffs herein have no right whatsoever to any participation in such property.

The plaintiffs herein claim that the said purchase was consummated by the defendant through the use of the right of repurchase as reserved by him and his wife, Dorotea Francisco, when selling such property conditionally to the said Ignacia Herrera in 1886; but this is completely unfounded in that said right of repurchase became extinguished in fact and in law at the expiration of the time stipulated in said sale, which right to repurchase was not taken advantage of by the defendant or his deceased wife, Dorotea Francisco, and also for the greater reason that the consolidation and passing of title and domain to the property sold to the purchaser, Ignacia Herrera, is duly entered in the Registry of Property.

The appellants have also denied the authenticity of the deeds of sale of which mention has been made above. The proofs, however, have shown the legality of the same; this legality on the other hand, and referring to public documents, is always presumed in law during such time as the contrary is not fully proven. The appellants have not presented any proof in this connection.

In regard to the store and stock of woven materials or goods, as mentioned in the complaint herein, it has not been proved that the same existed at the time of the death of Dorotea Francisco. Even less has it been proved that the administration or management of the same had ever been handed over to the defendant, yet according to the complaint the said store pertained to the property brought by Dorotea Francisco at the time of her marriage, and it is well known that the administration of such property always remains with the wife in such case unless it is duly delivered to the husband for the purpose of administration by him under a notarial act, as provided for in article 1384 of the Civil Code.

And it not having been proven by the appellants that their ancestor, Dorotea Francisco, left at her death any kind of property, whether paraphernal or community, it is evident that the court below did not err, but on the contrary acted in accordance with law in the dismissing of the case, for the reason that before proceeding with the partition of property which is prayed for in the complaint herein, it is necessary to show the existence of property to be partitioned.

Wherefore the judgment appealed from is affirmed, with the costs of this instance against the appellants. After the expiration of twenty days from the notification of this decision let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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