

**FRUCTUOSA CADIZ ET AL., PLAINTIFFS AND APPELLANTS, VS.
GREGORIO CABUÑAG ET AL., DEFENDANTS AND APPELLEES.***G. R. No. 33609. December 31, 1931*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Tayabas by Fructuosa Cadiz, assisted by her husband Cosme Rañola, and her son Vicente Rodriguez, against Gregorio Cabuñag and his five minor children Rosario, Flora, Gregorio, Jr., Vivencio, and Primitivo, and also against Felisa Rodriguez, assisted by her husband Lorenzo Luna, and Regina Rodriguez, an incapacitate, assisted by Gregorio Cabuñag as guardian ad litem. The purpose of the action is to procure partition of various parcels of land described in the complaint, and to obtain from Gregorio Cabuñag an accounting for the value of the produce obtained in the past from said parcels. Upon hearing the cause the trial court dismissed the complaint with respect to several of the parcels but ordered the defendant, Gregorio Cabuñag, to render a detailed account showing receipts and expenditures during his administration of four other parcels, at the same time requiring Fructuosa Cadiz to render like account with respect to four parcels which had been under her administration, the right being reserved to the parties to seek subdivision in the cadastral expediente of the said parcels so severally administered by them, including lot 16-B. From this decision the plaintiffs appealed, error being assigned to so much of the decision as refused partition to the plaintiffs of the lots bearing the numbers 2031, 2059, 4988, 2408, 2420, 2461, 2463, 2464, 2470, 2474, and 546, as to which the complaint was dismissed.

Petronilo Rodriguez, ancestor or predecessor in interest of the various parties to this action, was a resident of the municipality of Sariaya, in the Province of Tayabas. He was twice married, first to Josefa Dedicatoria, who died in 1890, and, secondly, to Fructuosa Cadiz. To the first marriage there were born three daughters, namely, Eugenia, Regina, and Felisa, and to the second marriage there was born, on November 28, 1896, a sole son, Vicente Rodriguez. Petronilo Rodriguez died on October 25, 1897. His second wife survived, and she figures as principal actor among the plaintiffs in this lawsuit.

The first wife, Josefa Dedicatoria, was the owner in her own right of various parcels of land which had come to her by inheritance from her parents; and during this first marriage the spouses acquired various other pieces of land, as community property. After the death of Josefa and the subsequent marriage, celebrated in 1893, between Petronilo Rodriguez and Fructuosa Cadiz, two other parcels were acquired by Petronilo, these being ganancial property of the second marriage. From this it is evident that Vicente Rodriguez, the son of the second marriage, had no right to any of the property which had belonged to the first wife as her separate property. Furthermore, his interest in the community property of the first marriage was limited to a child's part in his father's half only. Nevertheless, after the death of his father, the other individuals in interest admitted Vicente to share equally with the children of the first marriage in the entire estate, except that the two parcels which had been acquired during the second marriage were assigned exclusively to his mother Fructuosa Cadiz.

Petronilo Rodriguez had a brother named Venancio, and before his death Petronilo requested this brother to see to

the distribution of Petronilo's property among his children in such way that there should be no grievance or ground for dissension among them. In compliance with this request Venancio caused the coconut trees on the improved portions of the estate to be counted and superintended the division of the property among the four heirs, consisting of the three girls born to the first marriage and the boy born of the second marriage. In those days the coconut trees constituted almost the sole element of value in the lands pertaining to the estate of Petronilo Rodriguez, and when the division was made, only the number of trees assigned to each was considered important, without reference precisely to the area of the land covered by the trees. In this way around 800 or 900 trees were assigned to each of the girls and to the boy, the mother, Fructuosa Cadiz, representing him in the division. The two girls, Regina and Felisa, were given the lots containing the most mature trees, while to Eugenia (with her husband Gregorio Cabuñag) was assigned an equivalent number of trees scattered over a much larger area of ground, in great part undeveloped. The land thus assigned to Eugenia and her husband was very rocky and to some extent it was cut by streams which made it less valuable as coconut land. Nevertheless, Gregorio Cabuñag set to work in improving said land, and with the assistance of his wife and the family of children that grew up around them, the property assigned to them was conquered and in course of time converted into a valuable coconut grove.

The distribution thus made occurred in 1904, and from that date each of the four heirs held separate possession of the part assigned to each, until Eugenia died in 1923, leaving her property to her husband and their five children. But said partition did not cover all of the lands included in the estate. The unpartitioned parcels were eight in number and thereafter four were administered by Gregorio Cabuñag and four by Fructuosa Cadiz. In course of time also a cadastral survey covering the entire estate was made and the land was registered. In this proceeding registration was effected in the names of several heirs, so far as concerns the land that had been separately assigned to them, while the unpartitioned portions were registered in the name of the heirs of Petronilo Rodriguez, in equal shares. The present proceeding to obtain repartition of the, lands that had been assigned to the respective heirs back in 1904 was instituted on February 23, 1927, some four years after the cadastral registration above referred to had been accomplished.

The decision of the trial court was in all respects correct, and the contention of the appellants that the court should have ordered partition of the lands that had been registered in the respective names of the several heirs is untenable. The partition made in 1904, though informal, was sufficient to give to each of the several heirs the benefit of possession as a basis of prescription, except as against Vicente Rodriguez who continued to be a minor until 1917. *Ang Giok Chip vs. Springfield Fire & Marine Insurance Co.* But his rights were not asserted within the period of scription after he attained the majority, and the subsequent registration of the parcels in the names of the other heirs was fatal to his hitherto unasserted claim. Moreover, even prescinding the effects of prescription and registration, it is evident that under the last paragraph of article 1077 of the Civil Code, Vicente Rodriguez cannot maintain this action because he suffered no lesion by the informal division made in 1904, since in that division he received much more than he could have been legally entitled to.

The judgment appealed from is without error of law and is in accordance with the facts proved. Said judgment will therefore be affirmed, and it is so ordered, with costs against the appellants.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Romualdez, Villa-Real, and Imperial, JJ., concur.

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