

GABINO PISARRILLO ET AL., PLAINTIFFS AND APPELLEES, VS. VICENTE LADIA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3481. January 30, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiffs, as children of Bartolome Pisarrillo, brought this action in the Court of First Instance of Ilocos Norte against Vicente Ladia and Anastasia Pisarrillo to recover 24 gold coins of the value of 4 pesos each, to which they claimed they were entitled as heirs of their aunt, Cornelia Pisarrillo. Judgment was entered in the court below in favor of the plaintiffs and from that judgment the defendants have appealed.

It appears from the evidence that the property of the deceased was in the possession of the defendant Anastasia Pisarrillo; that she made a division of the real estate, the silver money, and the gold money among the heirs; that the plaintiffs, as the children of Bartolome Pisarrillo, a brother of the deceased, received their share of the real estate and of the silver, but did not receive their share of the gold, and that the other heirs received their share of the land, gold, and silver. The defendants introduced no evidence, and in this court rely principally upon an alleged want of evidence to sustain the case of the plaintiffs.

The appellants claim that the remedy of the plaintiffs is not an action against the defendants to recover this money, but an action to seek a partition and division of the entire property left by the deceased, saying that if the division was unequal and the plaintiffs have suffered loss, that is their remedy. But it appears in this case that the division was not unequal; on the contrary, the evidence shows that the property was fairly divided by the defendant Anastasia among the heirs, but after that division she has failed to deliver to the plaintiffs the part which belongs to them. In such a case the action brought by the plaintiffs here is the proper one.

The appellants rely also upon section 598 of the Code of Civil Procedure, which provides that an extrajudicial partition of the property of a deceased person is not valid unless in writing. That code is not applicable to this case because it appears that the deceased died in February, 1900, and that the partition was made one year thereafter, and therefore before the code went into effect.

The testimony of Fausta Gorospe, in the absence of all evidence to the contrary, is sufficient to show that the defendant Anastasia had in her hands 24 pieces of gold belonging to the plaintiffs.

It is said that Anastasia was one of the heirs, was entitled to one portion, and did not receive it. She was the person who made the distribution and presented no evidence in the case to show that she had not retained her share. It appears, as we have said, that in this distribution the plaintiffs were entitled to 24 pieces of gold and the plaintiff Gabino Pisarrillo testified in answer to a question by the judge that the property should be divided into four parts.

The principal defect in the plaintiff's evidence was a failure to show explicitly that the plaintiffs were all the heirs of Bartolome Pisarrillo. It does not appear that this question was raised in the court below. The defendants offered no evidence therein and there is nothing in the case to indicate that they are not all the heirs, and the statement of

Gabino Pisarrillo as to who were present at the time the silver was divided is sufficient, we think, under the circumstances, to show that the plaintiffs are all the heirs of Bartolome.

Why Vicente Ladia was made a party defendant does not appear. There was no evidence in the case to show that he ever had anything to do with this property, and the judgment against him can not be sustained. The judgment against Anastasia Pisarrillo is affirmed. The judgment against Vicente Ladia is reversed, and he is acquitted of the complaint. No costs will be allowed to any party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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