

AMBROSIA POSTIGO, PETITIONER AND APPELLANT, VS. DOLORES BORJAL, RESPONDENT AND APPELLEE.

G.R. No. 3643. March 23, 1909

Ponente: TORRES, J.

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TORRES, J.:

On the 3d of September, 1903, Enrique Borjal executed his will and testament, of which the following extract is pertinent to this issue:

"I hereby declare that I have been married to Doña Ambrosia Postigo for nearly twenty-five years, and that we have had no issue during bur marriage. I also declare that all our property, with the exception of two parcels of land in the sitio of Caraycayon Gignaroy was acquired during marriage. The first of these parcels is bounded on the north by the great River Baraton (here follows the description); the second, or that of Gignaroy, is bounded on the north (description follows). All of said property shall be administered by my wife for the space of four years in order to satisfy all of our debts, particularly that due to Don Domingo Monasterio. At the expiration of the four years my wife shall transfer the parcels in Gignaroy which extend from the great River Barayon down to the Arroyo de Gigñaroy (description follows) to my sister Dolores Borjal."

On the 26th of November, 1904, the Court of First Instance of Ambos Camarines appointed commissioners to appraise the property of the deceased. They submitted to the court their report on the 30th of October, 1905, stating that they took the oath of office before the justice of the peace of Tigaon and immediately proceeded to assess the property presented by the administratrix of the estate. At the same time they published notices summoning all creditors who had claims against the said property and fixed the 15th and 30th day of each month for the hearing of claims. The first hearing by the commissioners took place on the 30th of December, 1904; successive ones were held on the 15th and 30th of each month from January to October, 1905, but no claims whatever were presented by the creditors of the said estate of the late Enrique Borjal.

The court below, on the 9th of July, 1906, thereupon approved the partition of the hereditary property made by said commissioners in all of its parts, and ordered that the latter place Dolores Borjal in possession of that portion of the inheritance corresponding to her without the necessity of waiting for the four years stipulated in the will. To this end the court ordered that a formal deed of transfer be made out and forwarded to the court in order that it might be included in the proceedings; that a certified copy of the deed of transfer be also sent to the registrar of property in compliance with law; that the fees of the commissioners appointed by the court be charged in equal parts to both inheritances, and that the bond given by the executrix be canceled.

From said decision the latter appealed, and after giving bond for P500 her appeal was admitted and forwarded to this court.

All debts that might be outstanding against the estate of the late Enrique Borjal having been held to be barred by reason of their not being presented for collection within the period fixed for the purpose by the duly appointed commissioners, the question at issue and presented to this court is whether the clause which provided for the

retention by the widow of the property which the deceased willed to his sister, Dolores Borjal, may be considered as set aside, and the usufruct of the said property bequeathed to his widow, Ambrosia Postigo, for the period of four years from the death of the testator for the purpose of meeting the debts of the estate particularly that owing to Domingo Monasterio, should be considered as having terminated.

A rule that is uniformly laid down by the courts is, that the will of the testator is the primary and principal law governing wills and testaments, and when the testamentary provisions are clearly and positively stated, questions arising in the courts in connection with the execution of and compliance therewith shall be adjusted in harmony with the plain and literal meaning of the language of the testator, except where it clearly appears that his intention was other than that actually expressed. (Decisions of the supreme court of Spain of May 24, 1882; October 13, 1896; October 8, 1902.)

The above legal doctrine already constitutes a uniform settled rule and is in accord with the conclusive provision of article 675 of the Civil Code which reads:

"Every testamentary provision shall be understood in the literal meaning of its words, unless it clearly appears that the will of the testator was different. In case of doubt, that which appears most in accordance with the intention of the testator, according to the tenor of the same will, shall be observed."

Section 640 of the Code of Civil Procedure provides, among other things, that after payment of the debts and of the expenses of administration, the property of the testator shall be disposed of according to his will; and section 643 of said code when enumerating the duties of an executor states that one of them is to administer all property coming into his possession according to the will of the testator.

The testator bequeathed to his widow the usufruct of two parcels of land for the period of four years, in order that she might meet the debts of her husband. Consequently, the circumstance that outstanding debts of the said estate were declared to be barred, owing to the failure of the various creditors and especially of the one named in the will, to appear within the time specified by the commissioners, is no valid reason for shortening the period fixed in the will within which the usufruct should accrue to the widow and executrix. The barring of the debts of the estate can not effect a modification of the will, nor cause the testamentary provision of the testator to be interpreted as meaning anything but that stated in his will.

Clearly and precisely the testator provided as his last will that his said wife should administer the said parcels of land for four years, in order that she might pay his debts. The fact that no creditor ever appeared to collect them is no reason why the widow and executrix should be deprived of the usufruct of said properties before the lapse of the said four years. Such deprivation would be in violation of the special law that governs the matter, that is, the will of the testator, by which his property must be administered, according to the legal provisions and settled rules hereinbefore cited.

The validity and efficiency of the usufruct bequeathed to the widow and executrix of the testator is not incompatible with the provisions of section 695 of the Code of Civil Procedure, because apart from the obligation imposed by the testator upon his wife in the matter of the payment of his debts, which obligation she was unable to fulfill inasmuch as no creditor presented himself, there exists the order or request that she should retain the said lands in her possession for four years, and there is no valid reason why the will of the testator should not be complied with, and the land be delivered to Dolores Borjal at the expiration of said four years.

Therefore, in view of the foregoing, it is our opinion that the judgment appealed from should be reversed, and that it be held, as we do hereby hold, that Ambrosia Postigo is entitled to possession and to administer for the period of four years, from the death of the testator, the two parcels of land, and that Dolores Borjal can not take possession thereof until after the lapse of the said term. No special ruling is made as to the costs in either instance.

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

WILLARD, J., concurring in the result:

I concur in the result on the ground that this case falls within the provisions of article 797 of the Civil Code, and of the decisions entered in the matters of Chiong Joe-Soy vs. Vaño (8 Phil. Rep., 119), and Fuentes vs. Canon (6 Phil. Rep., 117).

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