

**ANA VERENA VAZQUEZ ARIAS AND MANUEL COLET, PLAINTIFFS
AND APPELLANTS, VS. ANTONIO VAZQUEZ ARIAS AND MARCELINA
ARIAS, DEFENDANTS AND APPELLEES.***G.R. No. 37694. November 28, 1933*

Ponente: BUTTE, J.

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This is an appeal from a judgment of the Court of First Instance of Nueva Ecija, approving a partition of two tracts of land owned in common by the plaintiffs and the defendants and dismissing the plaintiffs' demand for the sum of P22,011.62 claimed as an unpaid balance of the rents and profits of said land due to her by the defendant Antonio Vazquez Arias for the years 1923 to 1928, during which he was charged with the administration of the same.

It appears that two tracts situated in Pinagsugalan, barrio of Santo Tomas, Jaen, Nueva Ecija, one containing 167 6/10 hectares, the other 19 5/10 hectares, are owned in common by the parties hereto as follows: the plaintiff Ana Verena Vazquez Arias, an undivided one-fourth interest; the defendant Antonio Vazquez Arias, an undivided one-fourth interest; the defendant Marcelina Arias, an undivided one-half interest.

On November 28, 1928, the court appointed the following commissioners to make the partition of said lands in the proportions mentioned, namely: Hipolito Valmonte, proposed by the plaintiff; Fernando Busuego, proposed by the defendants, and the clerk of the court, Bonifacio Guzman. On August 29, 1930, Commissioners Busuego and Guzman presented a report to the court in which they recited that they endeavored for a long time to bring about a partition of said lands by mutual agreement of all the parties. Having failed in this, all the commissioners and the parties were present on the land on March 16, 1929, when a thorough inspection was made. It appears that all of the land is cultivated (for palay) and irrigated from the waters of two esteros. After considering the value of the land, its productivity, accessibility and other special circumstances, the commissioners divided each of said parcels into three parts, giving to each party his or her just and equitable share taking all the circumstances into consideration. No objection is made to the partition of the smaller tract recommended by the commissioners, but the appellant insists that instead of lot No. 1 of the larger tract awarded to her by the commissioners, she should have lot No. 3 awarded to Antonio Vazquez by the commissioners. Commissioner Valmonte declined to sign the report of the majority. On October 6, 1930, he filed a separate report in which he asserted that lots No. 1 in both tracts assigned to Ana Verena Vazquez Arias were "altos y pobres en comparacion con los que se recomiendan para ser adjudicados a Antonio Vazquez y Marcelina Arias, ademas de estar lejos de la nueva carretera," and he claimed that they were less in value and, therefore, the partition was unjust and unequitable.

At the hearing upon the report of the commissioners and the trial of this case all of the commissioners testified and the entire matter was thoroughly reexamined by the trial judge. His decision (Bill of Exceptions, pp. 22-47) is a thorough and convincing review of all the factors and considerations that were or should have been taken into account in making the partition of the said larger tract of land. He concluded that the partition recommended by

the majority of the commissioners was not only just and equitable but in every way convenient to all of the parties. Indeed, we may add that there are indications in the record that the commissioners and the trial court were not only fair but specially considerate of the plaintiff. No charge of partiality or fraud or irregularity in the partition proceedings is made. It rarely happens in partition proceedings, where so many conflicting interests and imponderable factors of value, convenience and the like may enter, that all parties are satisfied. Where so much rests upon the informed opinion and sound judgment of impartial commissioners and an impartial trial judge, it would seem inexpedient for the appellate court to reverse their findings and confirm the report of a commissioner who stands alone in his recommendations, especially where, as in this case, the proceedings were entirely regular.

With relation to the accounting as to which the plaintiff alleges in effect that the administrator Antonio Vazquez Arias has defrauded her to the extent of P22,011.62, we have carefully examined the record and concur in the finding of the trial court that the inexact estimates of the tenants as to the number of cavanese of palay that were produced during the years 1923 to 1928 cannot prevail against the books of account of the administrator Antonio Vazquez Arias, in which the entries of receipts and expenditures were made in the due course of the business. It appears from the administrator's book of accounts that in each year from 1923 to 1928, the plaintiff received her due share of the profits of the estate, and there is, therefore, no merit in the second count of the plaintiff's petition.

The judgment is affirmed with costs against the appellants.

Avanceña, C. J., Street, Abad Santos, and Diaz, JJ., concur.

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