

**IN THE MATTER OF THE ESTATE OF SEVERINA GONZALEZ,
DECEASED. SINFOROSO ONA, ADMINISTRATOR AND APPELLEE, VS.
SERAPIA DE GALA, EXECUTRIX AND APPELLANT.**

G.R. No. 37756. November 28, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the executrix-appellant Serapia de Gala from the order of the Court of First Instance of Tayabas, which reads as follows:

"The executrix herein prays that the project of partition submitted by her on May 4, 1932, be approved. The widower files opposition thereto on the alleged ground that the project of partition in question is not in accordance with the order of this court of April 7, 1931, and in turn, prays that the same be modified so as to conform to the terms proposed in the project of partition submitted by him on September 2, 1931.

"In the said order of this court of April 7, 1931, Judge Francisco Enage, after a careful examination of the pertinent facts of this case, of the properties and rights left by the deceased, and of the nature thereof, determines which properties belong to the conjugal partnership formed by the deceased and Sinforoso Ona, and which constitute the separate properties of each of them at the time of the wife's death. Lastly, he specifies those which should correspond to the widower, Sinforoso Ona, as his share of the conjugal property and as his inheritance, declaring that the remainder thereof should belong to the Candelaria Hospital Foundation provided for in the will of the deceased. In the said order of April 7, 1931, the court ordered the executrix to submit a 'project of partition, liquidation and adjudication of the paraphernal properties of the deceased Severina Gonzalez and of the conjugal properties accumulated during her marriage with Sinforoso Ona, in accordance with the aforesaid conclusions arrived at in this decision.'

"Inasmuch as the project of partition submitted by the executrix is not in conformity with the aforesaid order of April 7, 1931, and, it appearing, on the other hand, that the project of partition submitted by the widower Sinforoso Ona on September 2, 1931, literally conforms to the aforesaid order, the project of partition in question submitted by the executrix is hereby disapproved and, by way of modification thereof, the one submitted by the widower Sinforoso Ona on September 2, 1931, is hereby approved.

"There being no objection on the part of Sinforoso Ona, the supplement to the bill of exceptions filed by the executrix, is hereby approved. So ordered."

In support of her appeal, the appellant assigns four alleged errors in the aforesaid order of the trial court, which we shall discuss in the course of this decision.

The first question to decide in this appeal, which is raised in the first assignment of error, is whether or not the area of the land situated in the barrio of Cabay, municipality of Tiaong, Tayabas, in excess of the 56 hectares, 48 ares and 40 centares stated in the composition title, Exhibit A, as the area of the land belonging to Josefa de Gala, predecessor in interest of Severina Gonzalez, should be considered conjugal or paraphernal property of the deceased Severina Gonzalez.

The evidence presented by the parties on this point is extremely contradictory. After a careful consideration thereof and the circumstances surrounding the case, we have not found sufficient grounds to justify any modification of the conclusions arrived at by the trial court in its decision appealed from, taking into account the advantages offered by its knowledge of the customs of the locality in passing upon the credibility of the witnesses.

With respect to the question raised in the second assignment of error, whether the improvements made by the surviving spouse, Sinforoso Ona, upon the paraphernal property of the deceased Severina Gonzalez, during her lifetime, constitute conjugal partnership property, or only the expenses incurred therein, in accordance with article 1404 of the Civil Code, this question had already been discussed and decided in the cases of *Tabotabo vs. Molero* (22 Phil., 418); *Santos vs. Bartolome* (44 Phil., 76); *Dominado vs. Derayunan* (49 Phil., 452), to the effect that only the expenses for improvements, not including buildings, made by one of the spouses upon the separate property of the other, are considered conjugal property and that such improvements made thereon are paraphernal property. We do not see any reason of sufficient weight to justify the reversal of the said doctrine.

With regard to the question raised in the third assignment of error, whether or not Sinforoso Ona has already been credited with the sum of P3,000 included in the accounts submitted by him as special administrator on September 9, 1931, the records show that the only items which the court, by its decree of September 20, 1931, ordered eliminated from the aforesaid final account submitted by Sinforoso Ona on the said date of September 9, 1931, in case No. 1620 of the Court of First Instance of Tayabas, G. R. No. 37313[1] of this court, are as follows: the expenses for the transportation of the products; the salary of the man employed to look after the properties; the fees of attorneys Diokno, Azada and Veluz, and the expenses of the suit. These items alone were the subject of the appeal taken in the aforesaid case. The order of the trial court relative to the aforesaid sum of P3,000 included in the final account submitted by Sinforoso Ona, as special administrator, has become final and conclusive. Therefore, the item in question should not be included in the project of partition as a debt of the conjugal partnership.

With respect to the question raised in the fourth assignment of error, whether or not Act No. 3176 authorizes the court, taking cognizance of the testamentary or intestate proceedings of a deceased spouse, to liquidate the properties belonging to the conjugal partnership formed by the said deceased and the surviving spouse, although the law in question does not designate expressly who should liquidate the properties of a conjugal partnership, in providing that the properties in question should be administered and liquidated in the same manner and under the same procedure as in ordinary testamentary cases, the executor or the testamentary or judicial administrator is the one called upon to liquidate the properties of the conjugal partnership in question under the supervision and control of the court taking cognizance of the special proceeding. Although it is anomalous to order a person who is neither the duly appointed administrator nor the executor to draw up and submit the project of partition on the ground that the court may compel such administrator or executor to do so under pain of incurring in contempt of court, however, the fact that it did so as in the present case, does not constitute a reversible error sufficient to justify the annulment of said proceeding, inasmuch as it is the court itself which has to finally approve or disapprove the project of partition submitted.

In view of the foregoing considerations, we are of the opinion and so hold (1) that the expenses incurred by the husband in the planting of coconuts and in the construction of irrigation ditches on land belonging exclusively to his wife are for the account of the conjugal partnership formed by them, but not the improvements themselves (*Tabotabo vs. Molero*, 22 Phil., 418; *Santos vs. Bartolome*, 44 Phil., 76; *Dominado vs. Derayunan*, 49 Phil., 452); and (2) that the court which takes cognizance of a testamentary proceeding may compel the administrator or executor thereof, under pain of contempt of court, to submit a project of partition, and to make use of another person for that purpose, although anomalous, does not constitute a reversible error sufficient to justify the

annulment of said proceeding.

Wherefore, with the sole modification that the value of the improvements amounting to P36,500 on lot No. 2, which is paraphernal property of the deceased Severina Gonzalez, is hereby declared also paraphernal property; and that the sum of P3,000, charged to the conjugal partnership, is hereby eliminated from the project of partition approved by the lower court; in all other respects the judgment appealed from is hereby affirmed, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

[1]Ona vs. De Gala, promulgated July 25, 1933, page 923, post.

DECISION ON THE MOTION FOR RECONSIDERATION

January 11, 1934

VILLA-REAL, J.:

This is a motion filed by the administrator-appellee Sinforoso Ona, to have the original decision rendered on November 28, 1933, by the second division of this court, composed of Chief Justice Avanceña and Justices Malcolm, Villa-Real, Hull, and Imperial, reconsidered; and to have this court pass upon the legal question of whether or not in the liquidation of the conjugal partnership, the value of the inspection and supervision by one or both of the spouses of improvements thereon and in the preservation thereof, constitute useful expenditures, in accordance with the provisions of article 1404 of the Civil Code, and is, therefore, partnership property.

The pertinent facts relative to this point, as admitted by the parties, are as follows:

The land, the nature of the improvements of which is under discussion, was paraphernal property of the deceased Severina Gonzalez. At the time of contracting marriage with her surviving spouse, Sinforoso Ona, on July 16, 1888, the assessed value thereof was P1,000. During the marriage in question, coconuts were planted and irrigation ditches and dams were constructed thereon. The planting of the coconuts was done by planters who were paid a certain sum for each tree planted upon its attaining a certain age, in accordance with the custom of the place. The irrigation ditches and dams were constructed by masons. At the time of the dissolution of the marriage through the death of the wife, the property thus improved was assessed at P37,500.

The petitioner herein contends that the sum of P36,500, representing the difference between the original assessed value of the land before the improvements thereon, which was P1,000, and the assessed value of the same with the improvements thereon, which was P37,500, at the time of the dissolution of the conjugal partnership, should be considered partnership property inasmuch as it was the result of his industry and labor consisting in having directed and inspected such improvements and the preservation thereof for the period of 38 years. In support of his contention, he cites the following opinion of Manresa appearing on page 607, vol. 9, 2d edition, of his commentaries on the Spanish Civil Code, which reads as follows:

"* * * but if the improvement is due to the labor or industry of the spouses; or partly to such industry and partly to the partnership funds; or if the sum invested or expended thereon is not known; how is the amount of the useful expenditures determined? How is the partnership to be reimbursed?

"In all of these cases the increase in the value of the property, resulting from the improvements thereon, shall

have to be taken into account, which increase in value shall be represented by the difference between the value thereof at the time it was brought to the marriage or it was acquired, and that which it had at the time the partnership was dissolved or extinguished, separating or deducting therefrom that part produced by improvements thereon dependent upon nature or time, as the case may be."

In the case at bar, the planting of the coconuts and the construction of the irrigation ditches and dams on the paraphernal property of his deceased wife, Severina Gonzalez, were not done by the petitioner personally, but by planters and masons who were paid to do that work. Inasmuch as it was not Sinforoso Ona, surviving spouse of Severina Gonzalez by her third marriage, who undertook such plantings and constructions, the improvements in question cannot be said to be due to his industry and labor. Although inspection and direction constitute work and the value thereof is considered useful expenditure under the law, nevertheless, it is but a small part of the total amount of the useful expenditures thereon. The records show that a watchman was employed to inspect and supervise the work of those whose duty it was to take care of and clean the coconut groves and to gather the fruits. The records also show that the petitioner herein had abandoned his wife, Severina Gonzalez, and lived almost, all the time with a concubine. If this is true, he can not claim that the improvements in question have been due, even partly, to his industry and labor.

Furthermore, the land as well as the coconut trees are, by nature and time, susceptible to increase in value: the land, through the development of the town, of commerce and of industry; the coconut groves; through the growth of the coconut trees from the time they are planted until they bear, and also through the development of commerce and of the coconut oil industry. This increase in value due to nature and time is not considered partnership property under the law on the ground that it is neither produced with funds from the conjugal partnership nor with the work or industry of any of the spouse.

Therefore, the solution proposed by Manresa is not applicable to this case on the ground that the cost of planting the coconuts and of constructing the irrigation ditches and dams can be determined herein, and that none of the spouses has contributed with either his or her personal work or industry in the introduction of the improvements in question, except with money belonging to the conjugal partnership.

In view of the foregoing considerations, we conclude that although the value of inspection work made by any of the spouses in the introduction of improvements upon the separate property of one or of the other forms part of the useful expenditures and is, therefore, partnership property, however, the petitioner herein is not entitled to it on the ground that it has not been proven that he had ever made such inspection, and even if he had done so, he would be entitled to only one half of the value of his work and not to the total value of such improvements, a great part of which is due to nature and time.

Wherefore, the motion for reconsideration is hereby denied. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

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