

FAUSTINA UDARBE ET AL., PLAINTIFFS AND APPELLANTS, VS. MARCIANA JURADO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 38499. December 06, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The plaintiffs herein brought this action in the Court of First Instance of Ilocos Sur to obtain the partition of 38 parcels of land situated in the said province, and to compel the defendants as well as those persons who are similarly situated, to bring to collation the lands which they received from their predecessor in interest in the form of donations inter vivos and propter nuptias, together with the proceeds thereof.

The aforesaid plaintiffs appealed from the judgment rendered therein, the dispositive part of which reads as follows:

"Wherefore, the court renders judgment holding:

"(1) That the properties described in Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of paragraph 8 of the amended complaint should be divided among the plaintiffs and the defendants Udarbe in the following manner: One-half of the said properties corresponds in equal parts to the children of the first marriage, named Primitivo Udarbe, Luciana Udarbe, Monica Udarbe, Clemente Udarbe and Faustina Udarbe, and the other half corresponds in equal parts to the aforesaid children of the first marriage and those of the second marriage, named Inocencio Udarbe, Fernando Udarbe, Faustino Udarbe and Carlos Udarbe.

"(2) That the properties described in Nos. 15, 21 and 22 of paragraph 8 of the amended complaint belong absolutely to the defendants Marciana Jurado and her children. Wherefore, they are absolved from the complaint with respect to the said properties.

"(3) That the defendant Ignacia Battad is the owner of the lands described in Nos. 37 and 38 of paragraph 8 of the amended complaint, and therefore, she is absolved from the complaint with respect to the said properties.

"(4) Without special pronouncement as to the costs of the suit.

"(5) If within thirty days, the parties do not come to an agreement regarding the partition and distribution of the properties subject to division in accordance with this decision, the court shall appoint partition commissioners whose salary and other expenses incurred in connection therewith, shall be paid pro rata by the parties in interest. So ordered."

The plaintiffs and the defendants are descendants of the deceased Agustin Udarbe who contracted marriage twice and died on February 2, 1925, leaving various parcels of land, among which are the 38 parcels described in paragraph 8 of the amended complaint. His widow is the codefendant herein, Ignacia Battad. During his lifetime, he made donations consisting in some of the aforesaid properties to his children, on the occasion of their marriage. Said children, together with their respective spouses, then took possession of the lands donated to them and ever since have enjoyed the fruits thereof to the exclusion of their co-heirs. The lands designated in the complaint with

Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 remained undivided at the death of the said deceased and belonged to the conjugal partnership formed by him and his first wife. Therefore, one-half thereof corresponds to the children by the first marriage, and the other half to all the children by both marriages. Such was the conclusion reached by the trial court, which conclusion is not only supported by the evidence but admitted by the parties as well.

The difficulty arose by reason of the trial court's denial of the plaintiffs' motion to the effect that all the children who received donations inter vivos submit an accounting of the portions they had so received in order that they might be collated, together with the value of the fruits obtained therefrom. The plaintiffs contend that it was the duty of the court to compel the defendants to such collation and that it erred in denying the remedy sought and in not ordering that the complaint be amended so as its allegations may conform to the facts found, in accordance with the provisions of section 109 of the Code of Civil Procedure.

We are of the opinion that this contention is untenable. In accordance with the provisions of article 1035 of the Civil Code, it was the duty of the plaintiffs to allege and prove that the donations received by the defendants were inofficious in whole or in part and prejudiced the legitime or hereditary portion to which they are entitled. In the absence of evidence to that effect, the collation sought is untenable for lack of ground or basis therefor. The records show that, aside from the lands donated and those subject to distribution, there are 18 parcels more not included in the amended complaint, which are subject to partition among the co-heirs. This circumstance constitutes an indication strong enough to justify the belief that perhaps the donations inter vivos in question are not inofficious, nor do they prejudice the plaintiffs. Commenting on the significance" of the article cited above, the commentator Manresa says the following:

"Having established this basis, which we believe is beyond question, as well as the fact that donations are collationable only when the heirs of the deceased are forced heirs and when it is proven that it prejudices their legitime, let us now find out what amount of the estate will serve as a basis to determine whether or not the donation in question is inofficious, and when and how such heirs are to be reimbursed if such an excess exists. Inasmuch as collationable as well as non-collationable donations are governed on this point by different rules, we shall examine them separately." (7 Manresa Civil Code, p. 499, 1900 edition.)

"Therefore, after the donor's death and not before, his forced heirs shall be entitled, at their discretion, to exercise such right, if they cannot come to an agreement, by filing an ordinary complaint for the amount of their respective claims. Inasmuch as this amount can not be determined nor estimated accurately without first liquidating the hereditary estate, hence the necessity or, at least, the convenience of making a previous liquidation of the inheritance, which has to serve as a basis for the complaint." (Id., p. 502.)

We have carefully considered all the assignments of error herein and are convinced that the judgment rendered by the trial court is in accordance with the law, at least, the result thereof. We have deliberately abstained from deciding the question of prescription raised in the issue, with the full conviction that it is unnecessary to decide this point in view of the aforestated result.

The judgment appealed from is hereby affirmed, with the costs of this instance against the appellants. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Hull, JJ., concur.

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