

**IN THE MATTER OF THE INTESTATE ESTATE OF THE DECEASED  
CRISPULO JAVILLO. ROSARIO OFTAS, OPPOSITOR AND APPELLANT,  
VS. CONSOLACION JAVILLO ET AL., PETITIONERS AND APPELLEES.***G. R. No. 39670. March 20, 1934*

Ponente: GODDARD, J.

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This is an appeal from an order of the Court of First Instance of Capiz approving a project of partition of the property belonging to the estate of the deceased Crispulo Javillo valued at P16,000 more or less.

Crispulo Javillo died intestate on the 18th of May, 1927, in the municipality of Sigma, Province of Capiz, Philippine Islands. On the 25th day of July, 1927, a petition was filed in the Court of First Instance of that province praying that an administrator of this estate be appointed, and after hearing Santiago Andrada was named administrator. He submitted two projects of partition. The first was disapproved by the lower court and from that order some of the heirs appealed to this court which appeal was dismissed.[1] The second project of partition dated September 9, 1931, is the one now on appeal in this case.

Crispulo Javillo contracted two marriages. The first, with Ramona Levis. To this marriage five children were born, to wit, Consolacion, Mercedes, Caridad, Soledad and Jose Javillo, the appellees in this case. After the death of Ramona Levis, Crispulo Javillo married Rosario Onas. To this marriage four children were born, to wit, Joaquin, Ana, Bernardo and Porillana. Rosario Onas is the appellant in this case.

The parties entered into the following agreement as to the property acquired during the first and second marriages:

"CONVENIO: Ambas partes convienen que los terrenos designados como parcelas 1<sup>a</sup>, 2. <sup>a</sup>, 3. <sup>a</sup>, 4. <sup>a</sup>, 5. <sup>a</sup>, 6. <sup>a</sup>, 7. <sup>a</sup>, 8. <sup>a</sup>, 9. <sup>a</sup>, 10. <sup>a</sup>, y 11. <sup>a</sup> del inventario de los comisionados de avaltio y reclamaciones obrantes a folios 40 al 43 del expediente han sido encontrados durante la vida marital de Crispulo Javillo con su primera esposa, madre de Consolation, Mercedes, Caridad, Soledad y Jose Javillo; y que las parcelas 12. <sup>a</sup>, 13. <sup>a</sup>, 14. <sup>a</sup>, 15. <sup>a</sup>, 16. <sup>a</sup>, 17. <sup>a</sup>, 18. <sup>a</sup>, 19. <sup>a</sup>, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 y 31 de dicho inventario fueron comprados o encontrados durante la vida marital de Crispulo Javillo con Rosario Onas. Que durante el primer matrimonio fueron adquiridos cinco carabaos y el resto de los carabaos as! como los vacunos fueron encontrados durante el matrimonio de Crispulo Javillo con Rosario Onas."

The appellant alleges that the lower court committed the following errors:

"I. The lower court erred in holding that all the properties acquired during the second marriage of Crispulo Javillo with Rosario Onas were acquired with the products of the properties of the first marriage of said Crispulo Javillo with Ramona Levis, and in approving the manner of distributing the estates among the heirs of the first and second marriages, as indicated in the project of partition now in question.

"II. The lower court erred in approving the second project of partition dated September 9, 1931, notwithstanding that the same did not include all the properties of the deceased Crispulo Javillo."

The first assignment of error is well taken. Crispulo Javillo lived for about twenty years after his second marriage and during that marriage acquired twenty parcels of land. Only eleven parcels were acquired during the first marriage. It would take a person with a very vivid imagination to believe that the product of eleven parcels of land acquired during the first marriage supplied all of the capital used in acquiring the twenty parcels of the second marriage. Such a claim is preposterous.

"Some Spanish commentators have suggested that upon the death of the husband or wife, the community continues between the survivor and the heirs of the deceased until partition has actually taken place, and that the latter are entitled to share in its acquisitions during its continuance. \* \* \* But this view was never generally accepted by the Spanish jurists<sup>1</sup>, and an examination of the provisions of the Civil Code makes it clear that the authors of that body of laws did not contemplate any such extension of the life of the community. Gutierrez adopting the views of Matienzo says:

" 'The community partnership being as permanent as the state that produces it, there can be no doubt that the same causes influence it as marriage. The first of them is death. Some have believed that the community might continue to exist between the surviving spouse and the heirs of the deceased husband or wife; but, in the opinion of Matienzo, which appears to us to be well-founded, there are reasons for believing otherwise, to wit: (1) When the marriage is dissolved, the cause that brought about the community ceases, for the principles of an ordinary partnership are not applicable to this community, which is governed by special rules. (2) In the absence of the reasons that induced the legislator to establish it, the provisions of law governing the subject should cease to have any effect for the community of property is admissible and proper in so far as it conforms to unity of life, to the mutual affection between husband and wife, and serves as a recompense for the care of preserving and increasing the property; all of which terminates by the death of one of the partners. (3) The partnership having been created by law, it has no object and it is unsafe to extend it on pretext of tacit consent/ (Gutierrez, 3d ed., vol. 1, p. 579.)

"Manresa, discussing the status of the community (sociedad) after dissolution of the conjugal relations makes the following comment:

"\* \* \* The community terminates when the marriage is dissolved or annulled, or when during the marriage an agreement is entered into to divide the conjugal property. The conjugal partnership exists therefore so long as the spouses are legally united; the important thing is not exactly the bond, the tie formed by the marriage, but, the existence in the eyes of the law of the life in common. It is this life in common that creates common necessities and represents common efforts, the result of which should be that both partners should share in the profits.

" 'When, for any cause, the conjugal partnership established upon the basis of the system of community property is dissolved, all the provisions of articles 1401 to 1416, based upon the existence of that partnership, cease to apply.

" 'Consequently, whatever is acquired by the surviving spouse on the dissolution of the partnership by death or presumption of death, or by either of the spouse on termination of the partnership for other reasons and when this latter no longer exists, whether the acquisition be made by his or her labor or industry, or whether by onerous or by lucrative title, it forms a part of his or her own capital, in which the other consort, or his or her heirs, can claim no share. The fruits, as an accessory, follow the property; the buildings, the soil; the plantings', the land—all according to the general rules of accession," (Noble Jose vs. Noble Jose, 41 Phil., 713, 717-719.)

"\* \* \* it may fairly be deduced that prior to the liquidation, the interest of the wife, and in case of her death, of her heirs, is an interest inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement. \* \* \* " (Noble Jose vs. Noble Jose, supra.)

In this case it does not appear that there was a liquidation of the partnership property of the first marriage nor does it appear that they asked for such a liquidation.

The project of partition approved by the lower court is based on the above-mentioned absurd claim and furthermore is not in conformity to law. One-half of all the conjugal property of both marriages corresponds to the deceased Crispulo Javillo and must be divided share and share alike among all the children of both marriages. One-half of the conjugal property pertaining to the first marriage should be divided share and share alike among the five children of that marriage. One-half of the conjugal property of the second marriage must be adjudicated to the widow Rosario Onas and furthermore she has a right of usufruct over the property of her deceased husband equal to one-ninth of the two-thirds of that property which constitutes the legitime of the children of both marriages which is two-twenty-sevenths of the property corresponding to her husband. This usufruct should be taken from the property pertaining to the second marriage.

The property corresponding to the first marriage consists of parcels 1 to 11, inclusive, and 5 carabaos. The property of the second marriage consists of parcels 12 to 31, inclusive, and the remainder of the carabaos and large cattle mentioned in the agreement copied above.

If it is true as alleged by the appellant that there are houses on any of these parcels of land, it is to be presumed that they were included in the valuation made by the committee on claims and appraisal and therefore they would belong to the person to whom the land, upon which they are built, is adjudicated.

The judgment of the lower court is reversed and this case is remanded for further proceedings in conformity with this decision without pronouncement as to costs.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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[1]54 Phil., 602.

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