

**ISABEL CABRERA ET AL., PLAINTIFFS AND APPELLANTS, VS.
MANUEL QUIOGUE, AS GUARDIAN OF THE MINORS REMEDIOS,
GONZALO, JOSE, ANDRES, MANUEL, FIDELA, LUISA, AND ELISA, ALL
SURNAMED, ...**

G.R. No. 41700. August 30, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an action for partition of real property. The appeal was taken by the plaintiffs from a decision approving the partition of the realty made by the majority of the commissioners, but modifying the account of administration filed by the plaintiff Isabel Cabrera and ordering that the balance thereof be divided into four parts, two-fourths of which are to be adjudicated to the plaintiff, one-fourth to the coplaintiff, and the remaining one-fourth to the defendants in equal parts.

The real property and most of the houses of mixed materials constructed thereon formerly belonged to the spouses Prudencio Cabrera and Isidra Ventura, parents of the plaintiffs and grandparents of the minor defendants. When the former died on April 6, 1918, special proceeding No. 16184 for the probate of the will left by him was begun in the Court of First Instance of Manila. Isabel Cabrera was appointed administratrix of the property left under the will. After the usual proceedings, the probate court issued an order of partition on October 7, 1921, adjudicating undivided all the property, including that involved in this appeal, to all the coheirs in the following proportion: fivetenths in full ownership in favor of the widow Isidra Ventura, plus one-tenth in usufruct, and one-tenth in full ownership and one-fourth of one-tenth in naked ownership to each of the coheirs named Juana, Alexandra, Isabel and defendants, minor children of the deceased Felisa. No Mie disputed the distribution and adjudication of the inheritance thus made, and after the testamentary proceedings were closed, Isabel Cabrera continued to administer all the property until the death of her mother when she commenced the action for partition.

On November 28, 1931, a decision was rendered in the partition case and it was there ordered that the parties partition the property among themselves in accordance with the partition already decreed in the testamentary proceedings, and that Isabel Cabrera render an accounting of her administration from January, 1923. The account filed showed that the income amounted to P16,834.50 and the expenses to P17,013.13, and that there was a balance against the administration in the sum of P178.63. The defendants contested the correctness of the account, and as the parties failed to reach an amicable partition of the property, the court had to appoint commissioners in accordance with law.

Two of the commissioners filed their written reports, and the third filed a separate one. The majority report shows the following: The real property and the improvements belonging to the coowners were valued at P29,322.05, of which P14,661.02 corresponded to Isabel Cabrera as her share and that of Juana Cabrera who acquired the same; to Alejandra Cabrera the sum of P7,330.51 and the same amount to the defendants as children of Felisa Cabrera; to Isabel Cabrera were adjudicated the houses, including those which were sold for P4,050 and the northeastern

portion of the lot, 22 meters long from San Andres Street, 760.76 square meters, valued at P10,713.12, the total value of which is P14,763.12, reimbursing her coo'wners in the sum of P102.10; to Alejandra Cabrera was adjudicated a portion on the southeastern part of the lot, 18.50 meters wide on Singalong Street, 644.14 square meters, valued at P7,308.18, plus P22.33 which should be paid to her by Isabel Cabrera, or a total of P7,330.51; and to the defendants, the Quiogue brothers, the rest of the lot containing 797 square meters, valued at P7,250.44, plus the reimbursement due from Isabel Cabrera in the amount of P79.77, making a total of P7,330.51. As to the account of administration, the majority of the commissioners found that the income amounted to P24,829.80 after deducting ten per cent of gross income due to the houses for rent which were left vacant and to the uncollectible accounts. As to the expenses,, the majority fixed them at not more than P5,290.79, thereby giving a balance of P19,538.41 which can be partitioned as follows: P9,769.20 to Isabel Cabrera, P4,884.60 to Alejandra Cabrera, and the same amount to the minors Quiogue, defendants herein.

Isabel Cabrera interposed a written opposition to the report of the majority, and after trial the court approved the said report as to the partition and adjudication of the real estate. As to the account of administration, the income was reduced to P22,070.40. As to the expenses, the court made certain modifications which are not of sufficient importance to set out.

The plaintiffs contend that the appealed judgment is erroneous for the following reasons: In not adjudicating to Isabel Cabrera the betterment of P1,500 which the testator provided in his will should be given to her; in not deducting from the share of Alejandra Cabrera the sum of P378 which she received in advance, and from the share of the Quiogue brothers the sum of P566 which their guardian, Manuel Quiogue, likewise received in advance; in not paying Isabel Cabrera the compensation to which she was entitled by virtue of her administration from January, 1923, to date; in fixing the income of the administration at P22,070.40, instead of P16,834.50, and the expenses of administration at P8,692.40, instead of P15,083.69; in adjudicating to her the houses built on the portion of land adjudicated to her, instead of selling them at public auction, and in denying her motion for new trial instead of granting the same.

In the will which was probated, the testator provided that Isabel Cabrera should receive a betterment of P1,500. During the judicial administration, the administratrix made the following advances: To Alexandra Cabrera P378, to Juana Cabrera P1,716.45, and to Manuel Quiogue, in behalf of his minor children, P566. In the order of partition entered in the testamentary proceedings on October 7, 1921, the judge decreed that the coheirs should pay Isabel Cabrera the amount of her betterment as well as the amounts which she had advanced as administratrix. The latter now contends, as plaintiff-appellant, that neither the betterment nor the advances has been paid to her. We hold that the claim should have been filed in the same testamentary proceedings and before the said proceedings had been closed and declared at an end. Moreover, there is no sufficient evidence to show that neither the betterment nor the advances has been paid. The fact that she accepted the administration of the same real estate without putting up any claim against those who were bound to pay the betterment and to reimburse the advances, seems to indicate that all this had already been done. In the amended complaint which she filed and which gave rise to the action for partition, she did riot make any allegation relative to her betterment or to the advances which she. made, and the first time she laid claim to her betterment was when she opposed in writing the report of the majority of the commissioners.

The facts before us do not support the contention of the appellant that she is entitled to a certain compensation for having administered the common property. It appears that she tried to appropriate for herself the share of her deceased mother by alleging that she had acquired the same from Fred M. Harden. The court held that both the conveyance made in favor of the latter and that made in her favor are fraudulent. In view of this breach of trust in the administration of the property and the inexperienced manner in which she managed the same, the court

completely disregarded her claim for remuneration. From these facts, we do not feel inclined to believe that the appellant is in truth entitled to such compensation.

The income fixed by the court is based on the facts and figures found by the commissioners in their report, and resolving in favor of the appellant any doubt or error which might have existed, reduced the same by 20 per cent instead of 10 per cent found by the commissioners. We have not found any evidence hostile to the conclusion arrived at, wherefore, we overrule the assignment of error bearing on this point.

The houses of mixed material were adjudicated to the appellant Isabel Cabrera because the portion of land upon which they stand was also adjudicated to her. She does not question the adjudication of the land to her. If the houses were to be sold and the proceeds thereof distributed, it is almost certain that they would not command a reasonable price in view of the fact that they are constructed on property belonging to another. For this reason, and in view of the fact that the price assigned to them is not excessive or unreasonable, we see no ground to set aside the partition thus made.

The last assigned error refers to the denial of the motion for a new trial, and we are convinced that there exists no sufficient ground to set aside the decision rendered.

In view of the foregoing, the appealed judgment is affirmed, with the costs of this instance to the appellants. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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