

IN RE ESTATE OF THE DECEASED ANDRES REYES. FELISA CAMIA DE REYES, PETITIONER AND APPELLANT, VS. JUANA REYES DE ILANO, OPPOSITOR AND APPELLEE.

G. R. No. 42092. October 28, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the petitioner Felisa Camia de Reyes from the resolution of the Court of First Instance of Cavite, the dispositive part of which reads as follows:

"In view of the foregoing, the court rejects the project of partition of the executrix Felisa Camia and approves the counter-project presented by the heiress, Reyes. The accounts presented by the executrix are approved with the above-stated amendments. The balance of P367.11 against the executrix should be reimbursed by her equally to the heirs of the deceased. It is ordered that the guardian ad litem of the minor Bibiano Reyes be paid the sum of P29.40 for services, as such, rendered to said minor, charging it, as the pensions given to said minor, to the latter's share. So ordered."

In support of her appeal, the appellant assigns eleven alleged errors as committed by the court a quo in its resolution in question, which will be discussed in the course of this decision.

The following facts have been established during the trial of the case:

Andres Reyes and Luciana Farlin were married in the year 1893, having had six children, three of whom died without heirs before their parents' death, and two died also without heirs after the death of their mother Luciana Farlin, leaving the herein oppositor-appellee Juana Reyes de Ilano as their only surviving child. About said year 1893, the parents of Andres Reyes leased certain parcels of land from the Spanish government. Upon their death during the Spanish regime, their son Andres Reyes succeeded them in said lease and the latter afterwards purchased said leased lands as friar lands from the Insular Government in the years 1909, 1910 and 1921, it appearing of record that he was married to Luciana Farlin (Exhibits E, F, G, H, I, J, K, L, and M, and Exhibits 22, 23 to 23-1 and 30). On October 1, 1910, Luciana Farlin also acquired by purchase from the Insular Government certain parcels of friar land described in certificates of sale Exhibits A, B, C and D. After the death of Luciana Farlin on November 12, 1922, her surviving spouse, Andres Reyes, contracted a second marriage with the herein applicant-appellant Felisa Camia. A son named Bibiano Reyes was born of said second marriage. During her marriage to Andres Reyes, Felisa Camia also purchased a parcel of friar land (Exhibit N) from the Government on June 3, 1930, and another on August 2, 1927, from her husband Andres Reyes, who had acquired it on May 16, 1927, by purchase from the Insular Government, as part of the friar lands (Exhibit O). Andres Reyes died on April 20, 1932, leaving a will (Exhibit A) which was duly probated on June 21, 1933. He was survived by his wife, the herein executrix and appellant Felisa Camia, his only son had with her, named Bibiano Reyes, and his daughter by his first marriage, the herein oppositor-appellee Juana Reyes de Ilano. Felisa Camia qualified on June 25, 1932, as executrix of the estate left by the deceased husband Andres Reyes. Severo Abellera and Luis Gaerlan were appointed commissioners on claims and appraisal and, after having qualified for their post, they presented their final report on May 8, 1933. The herein

appellant Felisa Camia filed her first account, as administratrix, on May 13, 1933. The appellee Juana Reyes de Llano filed her opposition to this account in her pleadings of June 3 and 12, 1933, claiming that some of the items of expenses stated therein are unnecessary and inaccurate. On October 13, 1933, said executrix-appellant presented the second account of her administration, which was likewise opposed by the oppositor-appellee Juana Reyes de Llano on the ground that, according to her, it is incomplete and that certain items of expenses and income, which are enumerated in her pleading of opposition, are vague, unnecessary and inaccurate. On October 16, 1933, the executrix-appellant Felisa Camia de Reyes filed a project of partition, which was also opposed by the oppositor-appellee Juana Reyes de Llano in a pleading of October 20, 1933, alleging, among other things, that the valuation of the properties made by the commissioners on claims and appraisal is inadequate and unjust; that said project does not contain all the properties that should be partitioned; that it contains properties belonging to the conjugal partnership of the first marriage; and that said project is based upon the will, some of the provisions of which are in-officious and illegal; at the same time submitting a counterproject of partition with an appraisal of the properties therein enumerated, which appraisal is different from that made by the commissioners on claims and appraisal. This counterproject of partition presented by the oppositor-appellee is the one admitted and approved by the court.

The first legal question to be decided in this appeal, which is raised in the first assignment of alleged error, is whether or not the oppositor-appellee Juana Reyes de Llano is still entitled to impugn, by means of the testimony of the witness Benedicto A. Llano, the valuation or appraisal of the properties of the deceased Andres Reyes, made by the commissioners on claims and appraisal and contained in their report of May 8, 1933.

The executrix-appellant Felisa Camia de Reyes contends that, as the appellee failed to file her objection to said report in due time, all evidence presented to impugn it is untimely after the report in question has been submitted to the court and declared final and conclusive in an order of June 19, 1933, which reads as follows;

"The heiress Juana Reyes has filed a motion to the effect that the administratrix be ordered to present a project of partition as soon as possible.

"At the same time and pursuant to the order of this court of the 6th instant, counsel for Juana Reyes has entered a detailed and specific opposition to the accounts presented by the administratrix, and the committee on claims and appraisal has likewise submitted a final report, rejecting, for the reasons stated therein, the claims of Albino Galeca, Rafaela Dominguez, Raymundo Samson, Filomena Dominguez and Felisa Camana, and no appeal having been duly taken from the resolution of the committee on claims and appraisal, said report is final and conclusive.

"Wherefore, the administratrix is ordered to present a project of partition within the period of ten (10) days, and as soon as the project in question is filed* the court will set the final account as well as the said project of partition for hearing.

"The administratrix is ordered to pay to the commissioners on claims and appraisal their lawful fees and expenses."

It is inferred from the above-quoted order that what was declared final and conclusive was the report of the commissioners on claims and appraisal with respect to the claims of Albino Galeca, Rafaela Dominguez, Raymundo Samson, Filomena Dominguez and Felisa Camana, who took no appeal from the resolution of said commissioners rejecting the claims in question. Section 773 of the Code of Civil Procedure grants the creditor of a deceased person the right to appeal to the competent Court of First Instance from the disallowance, in whole or in part, of his claim by the committee on claims and appraisal, and failure to exercise this right within the period and in the manner prescribed by section 775 of said Code makes the committee's resolution final and prevents the court from acquiring jurisdiction over the matter (*Kette vs. Suarez*, 55 Phil., 712). In the case of *Siy Chong Keng vs. Collector of Internal Revenue* (60 Phil., 493), this court laid down the following doctrine:

- DESCENT AND DISTRIBUTION; COMMITTEE ON CLAIMS AND APPRAISALS; COLLECTOR OF INTERNAL REVENUE.—There is no provision of law which makes it the duty of the Collector of Internal Revenue to take part in the deliberations of the commissioners on claims and appraisals nor is he required to take exceptions to the report of such a committee and appeal to the court for a revision of its appraisals. The statute provides that the committee, after being sworn to make a true appraisal, shall appraise the value of the estate in money and return their warrants with such appraisal to the court and shall deliver a copy of the appraisal to the executor or administrator. (Sec. 670, Code of Civil Procedure.)

- ID.; ID.; ID.; PURPOSE OF INVENTORY AND APPRAISAL OF AN ESTATE.—Apparently the statute does not require approval of the committee's appraisals by the court; but doubtless exceptions thereto might be taken by the executor or administrator upon whom a copy was served. The purpose of the inventory and appraisal of the estate of the decedent is to aid the court in revising the accounts and determining the liabilities of the executor or administrator and in making a final and equitable distribution (partition) of the estate and otherwise to facilitate the administration of the estate."

It is very clear, therefore, that the committee's appraisal of the estate of the deceased is not conclusive and the court is not bound to adopt it.

Therefore, the court a quo committed no error in permitting Benedicto A. Llano to testify for the purpose of impugning the committee's appraisal of the estate of the deceased.

The second question to be decided is whether* or not the lower court erred in rejecting certain items contained in the two accounts of the executrix Felisa Camia de Reyes and stated in the third, fourth, fifth and sixth assignments of error.

Said items refer to certain expenses for transportation and subsistence incurred by the executrix, and her mother and minor child who accompanied her on her trips made for the benefit of the estate during the period from the month of May 1932 to the month of April 1933; for medicine for the minor Bibiano Reyes; for electricity consumed in the house of the deceased wherein his widow, the herein executrix, and her minor child continued to live; and for the funeral and the novenary,, commonly called the "vigil", for the soul of the deceased.

The expenses for transportation and subsistence refer to the trips made by the executrix, accompanied by her mother and son, to the Court of First Instance of Cavite to attend the hearings in connection with the testamentary proceedings; to the hacienda belonging to the estate under her administration; and to Manila in order to interview her attorney also in connection with the testamentary proceedings. All these expenses were necessary for the care and administration of the estate and should, therefore, be approved.

To all appearances the company of the mother of the executrix Felisa Camia de Reyes, surviving spouse, of the deceased whose testamentary estate is under consideration, and that of her minor son were unnecessary. Taking into consideration, however, that the executrix is only 31 years of age and is the widow of a decedent who, in life, had been of good social standing, Philippine idiosyncrasy and tradition demand that she be surrounded by every protection and care needed by a widow of good reputation, in respect of the memory of her deceased husband. For these reasons this court is of the opinion that the company of the mother and son of the executrix during the trips which she had to make in connection with the affairs of the estate of which she was the testamentary executrix, is justified and, consequently, the expenses for transportation and subsistence incurred by her and by her companions should be approved.

However, with respect to the items of June 23 and 25, 1932, which consist of transportation expenses to Cavite of the executrix, her mother and son for the purpose of, looking for a surety, and the sum of P1.50 paid for certified copies of the assessed value of the property of the sureties, which expenses amount to P4.20, they should be

rejected in accordance with the doctrine laid down in *Sulit vs. Santos* (56 Phil, 626).

As to the sum of P6 which the executrix paid for medicine used for her minor child, Bibiano Reyes, while it is true that the sum of P25 a month, chargeable to the estate, is allotted to said minor for his education and support, this court is of the opinion that the extra payment of P6 for medicine is not unwarranted and should, therefore, be also approved.

In the fifth assignment of alleged error, it is claimed that the lower court erred in having disapproved the sum of P58.40 spent for electricity consumed in the house of the deceased. Andres Reyes from April 30, 1932, to the month of October, 1933, or during one year and six months approximately. At the time of the death of Andres Reyes, he was living with his wife by his second marriage, Felisa Camia de Reyes, and his son also by his second marriage, Bibiano Reyes, and it was natural that she should continue living with her said son in said house, not only because it is their home but also to watch over and preserve it, as testamentary executrix, and an expense of P3.19 a month for electricity for the preservation of the house under administration, is not excessive and should be approved.

The item of expenses for the novenary or vigil for the soul of the deceased Andres Reyes, as well as for the funeral and religious ceremonies enjoined by the deceased in his will to be celebrated in accordance with his social standing, is warranted, taking into consideration the social standing of the deceased in the Province of Cavite.

Summarizing all that has been stated in connection with the third, fourth, fifth and sixth assignments of error, this court believes that all the items rejected by the lower court, which are the subject matter of said assignments of error, should be approved with the exception of those of June 23 and 25, 1932, referring to the obtainment of the bond for the executrix and amounting to P4.20. The total amount of said items which should be approved is P1,057.68.

The lower court found that the total amount of the disbursements made by the executrix Felisa Camia de Reyes, after deducting all the expenses rejected by it as improper, is P2,405.42. Adding the P1 ,057.68, which this court found to have been improperly rejected, to said sum, makes P3,463.10 the total amount of the expenses for which the executrix should be reimbursed by the estate. If the sum of P2,772.53, representing the income, is subtracted from the above-stated amount, there is a balance of P690.57 which the estate of Andres Reyes should pay to said executrix. Furthermore said executrix is entitled to collect P81.94 as commission upon the sum of P3,463.10 at the rate of 3 per cent upon the first P2,000 and 1/2 per cent upon the excess, as provided by section 680 of the Code of Civil Procedure.

Turning now to the seventh assignment of alleged error, the question to be decided is whether the parcels of land designated by the letters e, f, g, h, i, j, k, l and m in the inventory of the executrix-appellant Felisa Camia de Reyes are private properties of the deceased Andres Reyes or are properties of his conjugal partnership with his wife by his first marriage, Luciana Farlin.

It appears uncontroverted from the oral as well as the documentary evidence presented at the trial that said parcels were originally friar lands which the parents of Andres Reyes leased from the Government during the Spanish regime. Andres Reyes succeeded his parents in said lease and later acquired said leased lands by absolute purchase from the Insular Government on different dates, that is, he purchased one parcel on May 9, 1910 (Exhibit J, transfer certificate of title No. 1817), another parcel on March 29, 1921 (Exhibit I), and the rest on April 5, 1911 (Exhibits E, F, G, H, K, L and M, and 22, 23 to 23-1 and 30, and transfer certificates of title Nos. 3230, 3228 [Exhibit 26], 3229 [Exhibit 27], 3270 [Exhibit 28], 3231 [Exhibit 29], 4324 [Exhibit 30], and 3232 [Exhibit 31]). All these parcels were acquired by said Andres Reyes during the existence of his first marriage to

Luciana Farlin, who died on November 12, 1922. It does not appear that a liquidation has been made of the ganancial property belonging to the conjugal partnership of Andres Reyes and Luciana Farlin.

Article 1407 of the Civil Code provides as follows:

"Art. 1407. All the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife."

In the case of *Guinguing vs. Abuton and Abuton* (48 Phil., 144), this court laid down the following doctrine:

"2. HUSBAND AND WIFE ; CONJUGAL PROPERTY ; TITLE IN NAME OF ONE SPOUSE ONLY.—Property acquired by the spouses during marriage pertains to the conjugal partnership regardless of the form in which the title is taken; and the fact that a composition title to the property has been taken in the name of one of the spouses only, whether husband or wife, does not change the character of the property."

In the unpublished case of *Espiritu vs. Bernardino* (G. R. No. 36371, promulgated on March 18, 1933 [58 Phil., 902]), one Adriano Espiritu acquired a lot of the friar lands by assignment from Antonio Gregorio, with the approval of the Director of Lands. This acquisition took place during the existence of Adriano Espiritu's marriage to his wife Sotera Ramoy. This court held in a decision of a division of three that said lot had the nature of conjugal partnership property.

Therefore, according to law and jurisprudence, it is sufficient to prove that the property was acquired during the marriage in order that the same may be deemed conjugal property." In this case the parties admit that the parcels of land under consideration were purchased by the deceased Andres Reyes during his marriage to his first wife Luciana Farlin. The mere fact that Andres Reyes appears as purchaser in the certificates of sale and in the certificates of title does not change the ganancial nature of said lands. In the unpublished case of *Benavides vs. Tordilla and Reyes* (G. R. No. 39497, promulgated on March 5, 1934 [59 Phil., 918]), the spouses Jose I. Borja and Sofia Benavides, during their marriage, built a house on a lot which was the paraphernal property of the wife. This court, in a division of three, held that the house is presumed to be conjugal property in the absence of conclusive evidence showing that the money spent in the construction thereof belongs privately to any of the spouses, the testimony of the wife, to the effect that said money exclusively belonged to her and that the posts belonged to the old house which she inherited from her deceased father, not being sufficient to destroy said presumption.

Therefore, the court a quo committed no error in declaring that the above-stated parcels belong to the conjugal partnership of the deceased Andres Reyes and his first wife Luciana Farlin.

With respect to the parcels of land described in Exhibits O and N, which are the subject matter of the eighth assignment of alleged error, they appear to have been purchased by Felisa Camia during her marriage to the deceased Andres Reyes, or in the years 1927 and 1930, respectively. Inasmuch as these parcels were acquired under the same circumstances as those stated in the seventh assignment of alleged error, all that has been said in connection with the latter is applicable to them. Therefore, they are also conjugal property of the spouses Andres Reyes and Felisa Camia de Reyes. Furthermore, on page 210 of the file of exhibits of this case, there is a copy of an affidavit of the deceased Andres Reyes, dated September 2, 1927, wherein the deponent states that he was selling lot No. 6327 to his wife Felisa Camia by means of the certificate of sale, Exhibit O, for the sole purpose of transferring said lot in his wife's name because he had a daughter by his first wife and a son by his second wife, and because he had no time to administer it, but that the first installment was paid with money belonging to both (Andres Reyes and Felisa Camia). This sale is, of course, null and void in accordance with the provisions of article 1458 of the Civil Code, it not appearing that a separation of property has been agreed upon; but this nullity does not change the nature of said lands as conjugal property of the spouses Andres Reyes and Felisa Camia.

As to the ninth assignment of alleged error, the question whether the land described on page 2, paragraph 2, letter m, of the will is conjugal property or private property of Andres Reyes has already been decided upon in discussing the seventh assignment of alleged error. This land is the same lot No. 1686 and it has been stated that it is conjugal property of Andres Reyes and his wife by his first marriage, Luciana Farlin, having been purchased in his name during his marriage to Luciana Farlin, as shown by certificate of sale No. 4320 (Exhibits M, 24 and 31).

With respect to the house mentioned on page 3 of the inventory, its ganancial nature has been established by Petrona Reyes, younger sister of Andres Reyes, in her deposition of October 24, 1933. This witness testified that said house was constructed one year after the death of her sister-in-law Luciana Farlin with money left by the latter upon her death, which was deposited with said witness; that Andres Reyes took from her the money needed by him for the construction of the house; and that said house cost P10,000. The executrix-appellant does not question the ganancial nature of said house of the spouses Andres Reyes and Luciana Farlin but merely alleges that the above-stated deposition of Petrona Reyes, which is the only evidence upon which the lower court bases its opinion that it is conjugal property, is not admissible as evidence because when she was notified of the taking thereof, the only opposition in the case under consideration was that of the oppositor Juana Reyes de llano to the first rendition of accounts of said executrix, dated May 13, 1933, and consequently, every deposition taken not referring exclusively to said account is impertinent and irrelevant. This question leads us to the discussion of the second assignment of alleged error. The record shows that the attorney for the executrix does not deny but, on the contrary, admits as true the testimony of the attorney for the oppositor during the trial of this case that three days prior to the day set for the taking of the deposition, the executrix had been notified of the date thereof, and two days before the date in question she had been served by mail with a copy of the opposition to the second or final account, together with a copy of the opposition to the project of partition and a copy of the counter-project of partition made by said attorney for the oppositor. On page 10 of the appellee's brief it is stated that the originals of said pleadings were mailed to the office of the clerk of the Court of First Instance of Cavite on October 20, 1933, it being presumed that they were received by said office on the following day, October 21, 1933. The deposition in question took place on the 24th and 25th of said month and year. Furthermore, said deposition contains the statement of the attorney for the executrix that he received said copies of the oppositor's opposition to the second account and to the project of partition, and her counterproject of partition at 4.50 p. m. on October 23, 1933, or one day before the taking of the deposition which, as already stated, took place on the 24th of said month and year, at 4.30 p. m. The deposition in question was continued on the following day, October 25, 1933, and said attorney for the executrix had opportunity to cross-examine, and in fact he cross-examined the deponent. In the opinion of this court, these facts are sufficient to show that the admission of said deposition as evidence by the lower court did not constitute an error inasmuch as in the taking thereof there were no defects or irregularities that might have affected the rights of any of the parties.

In the case of *Lim Cuan Sy vs. Northern Assurance Co.* (55 Phil., 248), this court laid down the following doctrine:

"A deposition taken, under the conditions prescribed by law, and upon due notice, allowing two full days, exclusive of Sunday, to the opposite party, should not be suppressed merely because the attorney for such party may have been unable to attend at the time fixed for the taking of the deposition."

In the case of *Muñiz vs. Muñiz* (53 Phil., 782), this court likewise laid down the following doctrine:

"In the present case, counsel for the adverse party had ample notice of the taking of the depositions, and he was present at the taking of the depositions and cross-examined the deponents. The affidavit, accompanying the motion for the taking of the depositions, set forth facts which clearly authorized the taking of the depositions under paragraph 4 of section 355 of the Code of Civil Procedure. Considering these circumstances and it being evident that the rights of the adverse parties were not adversely affected by the fact that no copy of the affidavit

was served on them, the court below did not err in admitting said depositions."

The next question to be decided is that raised in the eleventh and last assignment of alleged error which consists in whether or not the lower court erred in accepting the counter project of partition presented by the oppositor-appellee Juana Reyes de llano.

There is nothing in the law imposing upon the executor or administrator the obligation to present a project of partition for the distribution of the estate of a deceased person. Section 753 of the Code of Civil Procedure authorizes the court to assign " * * * the residue of the estate to the persons entitled to the same, and in its order the court shall name the persons and proportions, or parts, to which each is entitled * * * ." According to section 754 of said Code, the order referred to in the above-cited section shall be issued " * * * on the application of the executor or administrator, or of a person interested in the estate; * * * ." (See also article 1052, Civil Code.) It is inferred from these legal provisions that it is the Court of First Instance of Cavite alone that may make the distribution of his estate and determine the persons entitled thereto and the parts to which each is entitled, and it may require the executrix to present a project of partition to better inform itself of the condition of the estate to be distributed and so facilitate the prompt distribution thereof. The project of partition that the executor or administrator might have presented would not be conclusive and the interested parties could oppose the approval thereof and enter their objections thereto, at the same time presenting their counter project of partition which the court might accept and approve, as it did in this case. In adopting the project of partition of the oppositor-appellee Juana Reyes de llano, said court acted within its discretionary power and committed no error of law.

In view of all the foregoing considerations, and with the sole modification that the estate of the deceased Andres Reyes reimburse the executrix-appellant in the sum of P690.57, plus the sum of P81.94 as commission, the resolution appealed from is affirmed in all other respects, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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