

**IN RE INTESTATE ESTATE OF THE DECEASED MANUEL TINIO.
EULOGIO CRESPO, IN HIS CAPACITY AS JUDICIAL GUARDIAN OF
THE PERSONS AND PROPERTIES OF THE MINORS SILVERIA TINIO,
MARTIN TINI...**

G.R. No. 42213. September 30, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

This is an appeal by the guardian of the persons and properties of the four minor children of Manuel Tinio, deceased, born in lawful wedlock to his third wife, Basilia Huerta, from the order of the Court of First Instance of Nueva Ecija, dated March 31, 1934, approving an amended project of partition, dated November 19, 1933, in which it was provided that an indebtedness of the deceased in the sum of P108,314.56 should be charged against the properties of the conjugal partnership of the third marriage of said deceased. There is practically no dispute as to the facts in this case. The principal question is purely one of law.

On February 22, 1924, Manuel Tinio died intestate in the municipality of Cabanatuan, Province of Nueva Ecija. He was survived by his third wife, Basilia Huerta, and by Mariano Q. Tinio and Manuel Q. Tinio, Jr., legitimate children of his first marriage with Laureana Quijano; by Rafael Tinio and Bertila Tinio, legitimate children of his second marriage with Maura Quijano; by Teodoro Tinio, Silveria Tinio, Martin Tinio, Vivencio Tinio and Dolores Tinio, legitimate children of his third marriage with Basilia Huerta; and by Catalina C. Tinio, a recognized natural child of the deceased. During the course of the administration, the following heirs died: Teodoro Tinio, September 19, 1927; Basilia Huerta, April 11, 1928; and Rafael Tinio, August 27, 1928.

At the time of his first marriage, the deceased Manuel Tinio brought into the first conjugal partnership property valued at P35,770 indicated in the project of partition as parcels T(a), T(b) and T(c). During his first marriage with Laureana Quijano the following properties were acquired: Parcels L(a), L(b), L(c), L(d) and L(e), valued at P193,973.71, aside from the personal properties not evaluated. Upon the death of Laureana Quijano no liquidation of the first conjugal partnership properties was made and all of said properties remained in the possession of Manuel Tinio.

After the death of his first wife Manuel Tinio contracted a second marriage with Maura Quijano and all the conjugal property of the first marriage and the separate property of Manuel Tinio were brought into the second marriage. During said second marriage the properties designated in the project of partition as M(a) and M(b) and valued at P17,400 were acquired. Upon the death of Maura Quijano no liquidation of the second conjugal partnership properties was made and they also remained in the possession of Manuel Tinio until his death.

After the death of his second wife Manuel Tinio contracted marriage for the third time with Basilia Huerta and brought into said marriage all the properties of the first and second conjugal partnerships as well as his own separate property. During this marriage the properties designated in the project of partition as B(a), B(b), B(c), B(d), B(e), B(f), B(g), B(h), B(i), B(j), B(k), B(n), B(o), B(p), B(q), B(r) and B(s), valued at P122,553.83 were

acquired. Besides the above mentioned properties there were personal properties consisting of 1,000 heads of large cattle, 100 carabaos and furniture, all unappraised, designated in the project of partition as B (1), B(m) and B(t).

At his death Manuel Tinio left an indebtedness amounting to P108,314.56, all of which was contracted during the third marriage. Of the above amount of P70,822 was owed to the Philippine National Bank and was secured by two mortgages, the first being on four parcels of land, three of which constituted the separate property of Manuel Tinio and the fourth being one of the properties acquired during the third marriage. The second mortgage was on the % interest of Manuel Tinio in two parcels of land acquired during the first marriage. The balance of the above indebtedness amounting to P37,492.56 was owed to several persons and was unsecured.

On May 13, 1924, proceedings for the administration of the estate of said deceased Manuel Tinio were commenced. J. Vicente Salazar was appointed as administrator and Simeon Ocampo and Ambrosio Abesamis were appointed as a committee of appraisal and claims. None of the creditors presented their claims to that committee. Nevertheless, the administrator, with the consent, it is alleged, of the heirs of the deceased who were of age, paid the total indebtedness of P108,314.56 from the proceeds realized by the sale of the crops gathered yearly from all the properties administered by him which belonged to the estate of the deceased, either as his separate property or his one-half interest in the conjugal partnerships of the first two marriages, and from the properties acquired during the third marriage. The record shows that during the period from 1924 to 1929 the net income thus realized from the products of the shares of the deceased in the properties of the first two conjugal partnerships, and from the products of the separate property of the deceased amounted to P1 14,341.06 and that during the same period, the net income realized from the properties belonging to the third conjugal partnership amounted to P32,808.62 and that an additional sum of P13,014.32 was collected from several debtors of this partnership.

The appellant makes the following assignments of error:

"I. The trial court erred in declaring that the payment of the indebtedness due from the estate to the Philippine National Bank amounting to P70,822, secured by two mortgages, should be charged solely against the properties of the conjugal partnership of the third marriage and not against the properties mortgaged to secure said indebtedness, when the mortgagee, Philippine National Bank, did not present its claim for said indebtedness before the committee on claims and appraisal, but relied entirely upon its security, there being no evidence to show that the borrowed money had been used by the mortgagor to improve or increase the properties of the conjugal partnership of the third marriage.

"II. The trial court erred in declaring that the payment of the unsecured indebtedness amounting to P37,492.56 due from the estate to various creditors should be charged entirely against the properties of the conjugal partnership of the third marriage and not against the whole estate of the deceased, said unsecured creditors not having presented their claims to the committee on claims and appraisal for approval and allowance, the administrator having paid them out of the general assets of the whole estate of the deceased with the knowledge and consent of the heirs of the deceased who were of age.

"III. The trial court erred in not granting the motion for reconsideration presented by the appellant." It will be seen from the above assignments of error that the questions submitted for decision upon this appeal are:

(1) What properties and income of this estate should be charged with the payment of the mortgage indebtedness to the Philippine National Bank amounting to P70,822?

(2) What properties and income of this estate should be charged with the payment of the unsecured indebtedness to creditors amounting to P37,492.56 ?

Upon these two questions the contentions of the parties are:

By the appellant.—It is contended by the appellant, with regard to the first question, that the properties mortgaged to secure the indebtedness of P70,822 should be charged with the payment of that sum; and, as to the second question, that, under the special circumstances and the facts of this case, the indebtedness of P37,492.56 should be charged against all of the properties of the estate and the products therefrom.

By the appellees.—It is contended by the appellees, children of the first and second marriage, that the whole amount of the indebtedness should be paid, first, with the sum realized from the sale of the products of the properties of the third conjugal partnership and, second, if that sum is not sufficient, with the properties of that partnership, and, third, in case there is still an unpaid balance of said indebtedness then and then only can recourse be had to the separate property of the deceased for the payment of such balance.

The record does not show how the sum of P108,314.56 was utilized by the deceased.

Under the first assignment of error the appellant lays great stress on the provisions of articles 1876 and 1877 of the Civil Code and section 708 of the Code of Civil Procedure. The first provides that "a mortgage directly and immediately subjects the property on which it is imposed, whoever its possessor may be, to the fulfillment of the obligation for the security of which it was created." The second provides that "a mortgage includes the natural accessions, improvements, growing fruits and rents not collected when the obligation is due, * * *." The third provides three means whereby a mortgagee may collect his claim against a deceased mortgagor, to wit: (1) File his claim before the committee on claims and appraisal and share in the general distribution of the assets of the estate; (2) foreclose his mortgage with the right to present to the committee on claims and appraisal any deficiency judgment which results from the sale of the mortgaged property; and (3) rely upon his mortgage alone and foreclose it, within the period of the statute of limitations, but he shall not receive any share in the distribution of the other assets of the estate.

It will be noted from the above that articles 1876 and 1877 regulate and govern the relationship between a mortgagor and a mortgagee and that section 708 of the Code of Civil Procedure provides the means whereby a creditor having a claim against a deceased, secured by a mortgage, may collect such a claim. No such relationship is in question in this case.

Article 1408 of the Civil Code enumerates the obligations chargeable to conjugal partnerships. That article reads as follows:

"Art. 1408. The conjugal partnership shall be liable for:

"1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in the cases in which she can legally bind the partnership;

"2. Any arrears or interest, matured during the marriage, upon obligations which affect either the separate property of the spouses or that of the conjugal partnership ;

"3. Any minor repairs, or repairs of mere preservation, made during the marriage upon the separate property of the husband or wife; extensive repairs shall not be chargeable to the partnership;

"4. Extensive or minor repairs to the property of the partnership; "5. The support of the family and the education of the children born of the marriage and that of the legitimate children of either of the spouses."

It will be noted that under one of the provisions of the above article, the conjugal partnership is liable for all the debts and obligations contracted by the husband during the marriage. There is no doubt that the debt of P70,822 in favor of the Philippine National Bank was contracted by Manuel Tinio during his third marriage. It logically

follows that the third conjugal partnership was the real debtor. To guarantee the payment of this indebtedness some of the separate property of Manuel Tinio was mortgaged. While it is true that the mortgage creditor may subject the mortgaged property and its products to the payment of his credit, it is also true that if such action is taken by the creditor the owner of the mortgaged property so subjected, if he is not the real debtor, would have a right of action to recover from the true debtor such damages as he may have suffered.

It must be remembered that in this case the sum of P70,822-was paid by the administrator after the death of Manuel Tinio and that, as stated above, under the first assignment of error the only question to be decided is as to what properties and income of this estate should be charged with that payment. From the foregoing and in view of the provision of article 1408 of the Civil Code it is apparent that the properties of the third conjugal partnership and the income therefrom should be charged with the payment in question.

While it is true that the products of the separate property of both the husband and the wife form part of the conjugal partnership property during the existence of that partnership, it must be borne in mind that article 1417 of the Civil Code provides that the conjugal partnership ceases upon the dissolution of the marriage. The third marriage of Manuel Tinio was dissolved by his death. Therefore it is clear that the products of the separate property of Manuel Tinio, which accrued after his death, did not belong to the third conjugal partnership and consequently were not, as between the parties in this case, primarily liable for the payment of the indebtedness of that partnership. The same is true as to the separate property of Manuel Tinio. In case the property of the third marriage and the products therefrom are insufficient then and then only can recourse be had to the separate properties of the husband and the products therefrom.

The first assignment of error is overruled.

As to the second assignment of error we have a different situation. It is true that under the general doctrine enunciated above ordinarily the sum of P37,492.56 would also be chargeable to the property of the third conjugal partnership as that amount forms a part of the total indebtedness incurred by the deceased during the existence of that partnership. As stated above this sum consists of unsecured debts of the deceased to different persons. The record shows that these creditors did not present their claims to the committee on claims as required by law. However the record does disclose the fact that these debts were paid by the administrator in the course of the administration of the estate, with the knowledge and consent of the heirs of the deceased who were of age, except Catalina Tinio, the natural daughter, out of the proceeds derived from the sale of the products of all the properties of the estate under administration in these proceedings. The children of the third marriage, who are all minors, did not and could not consent to these payments. If these claims had been duly presented to the committee on claims the minors could have been notified of the hearings, appeared through a guardian, opposed, if they so desired, their approval and in case of a contrary decision appealed to the Court of First Instance and later to this court.

The heirs who were of age are not questioning these payments, nor can they now question them in view of the fact that they consented to their payment by the administrator. However the minors should not be prejudiced and this court is therefore constrained to agree with the appellant that the third conjugal partnership property should not be held exclusively responsible for the payment of this sum.

The second assignment of error is therefore sustained.

Wherefore the questioned order of the trial court is modified in so far as it holds that the third conjugal partnership should be charged with the payment of the sum of P37,492.56 and consequently the project of partition in question should be amended in conformity with this decision. As thus modified the appealed order of the trial court is affirmed without costs.

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

Order modified.

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