

**VALERIANO REYES ET AL., PLAINTIFFS AND APPELLEES, VS.
MATIAS RODRIGUEZ ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. 42276. January 02, 1936*

Ponente: IMPERIAL, J.

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The plaintiffs, half brothers of the defendants, brought this action to compel the latter to partition various parcels of land situated in the Province of Misamis as well as the cattle and carabaos, and to render an accounting of their administration and of the products of said properties from the year 1910.

It was alleged in the complaint that the plaintiffs are co-owners with the defendants of the real property and cattle and carabaos described therein in the following proportion : 23.80 per cent for each of the plaintiffs and 7.15 per cent for each of the defendants; and that the defendants, particularly Matias L. Rodriguez, administered all the properties from the year 1910, without rendering an accounting to the plaintiffs or delivering them their participations therein. By way of relief, the plaintiffs prayed that a partition be made of all the properties and that the defendants render an accounting of their administration, delivering to them their participations in the products, in the proportion above-stated. In their answer, the defendants entered a general and specific denial of all the allegations of the complaint. In the course of the case, the parties stipulated that the plaintiffs reserved, for a later date, their right to and the action prosecuted by them, as the third cause of their complaint, for the rendition of accounts by the defendants. At the trial, the plaintiffs presented no evidence in support of their second cause of action referring to the cattle and carabaos, waiving it. For this reason the court made no pronouncement in this decision regarding said points.

The defendants appealed from the judgment ordering the partition of the 26 parcels of land, to which the 55 parcels described in the complaint were reduced, as follows: Parcel No. 1, the portion of 8 hectares, 12 ares and 50 centiares of parcel No. 2, parcel No. 12 and parcel No. 31, into two equal parts, one of which is for the three plaintiffs, share and share alike, and the other part for the plaintiffs and the defendants, also share and share alike; parcel No. 38 into two equal parts, one part for the defendants, share and share alike, and the other part for the plaintiffs and defendants, also share and share alike; the remaining portion of 65 hectares, 40 ares and 38 centiares of parcel No. 2 and all the other remaining parcels into seven (7) equal parts, one part for each of the plaintiffs and defendants. The judgment provided that should the parties fail to agree on the division of the property as therein indicated, the court, in accordance with the law, would appoint commissioners to make the decreed partition, with the costs and the other incidental expenses prorated among all the co-heirs.

Clodualdo Rodriguez and Encarnacion de Lara lived as husband and wife for many years and had children, the defendants Rita, Matias, Romualdo and Romulo. Clodualdo Rodriguez died in 1886. On January 3, 1888, the widow Encarnacion de Lara contracted a second marriage with Jose Reyes in the town of Butuan, Misamis. The plaintiffs Valeriano, Jose and Tomas were born of this union. During the marriage of Jose Reyes and Encarnacion de Lara they acquired parcel No. 1, the portion of 8 hectares, 12 ares and 50 centiares of parcel No. 2, parcel No. 12 and parcel No. 31. Parcel No. 38 was acquired during the marriage of Encarnacion de Lara to Clodualdo

Rodriguez. The portion of 65 hectares, 40 ares and 38 centiares of parcel No. 2, as well as all the other remaining parcels which are the subject matter of the complaint, was acquired by the defendants for the community property which then existed, with money from the products of the other lands administered by them. Jose Reyes died on June 8, 1901, and Encarnacion de Lara, on May 30, 1910. After the latter's death and while the plaintiffs were under age, Matias Rodriguez and his other brothers of the same family name took over the administration of all the properties acquired during both marriages of their mother, without having delivered to the plaintiffs their participations in the fruits from said year 1910, except that they defrayed the expense for the education and studies of the plaintiffs.

The defendants-appellants assign the following alleged errors as committed in the appealed judgment, to wit: In holding that parcels Nos. 1, 12 and 31, and the portion of 8 hectares, 12 ares and 50 centiares of parcel No. 2 should be divided into two equal parts, one of which belongs, share and share alike, to the plaintiffs-appellees as heirs of Jose Reyes, and the other part, also share and share alike, to said plaintiffs and the defendants as heirs of Encarnacion de Lara; in holding that the portion of 65 hectares, 40 ares and 38 centiares of parcel No. 2, as well as parcels Nos. 5, 6, 8, 10, 18, 22, 24, 25, 26, 27, 29, 30, 33, 35, 36, 38, 40, 41, 46, 47, 48 and 49, should be divided equally among the plaintiffs and the defendants; in admitting Exhibits E-1, E-2, E-3, F-1, K, and S, and in denying their motion for a new trial.

According to Exhibits E-1, E-2 and E-3, parcel No. 1 is composed of real properties Nos. 15, 26 and 27 which were registered in the registry of deeds of the Province of Misamis, the first in the name of Encarnacion de Lara and the second and third in the name of Jose Rteyes Santa Maria, spouses and parents of the plaintiffs, during their marriage. According to said documents, the lands were adjudicated by virtue of a gratuitous adjustment with the State, the titles thereto having been issued by Governor Juan Zanon as Deputy of the Director General of Civil Administration of the Philippines, on May 13, 1893, and registered on June 30th of said year, all in accordance with the provisions of the Royal Decree of August 31, 1888.

The appellants contend that the lands composing parcel No. 1, known as Hacienda Minlagas, had been under cultivation many years prior to the registration thereof in the name of the spouses Reyes and De Lara, by Clodualdo Rodriguez and Gaspar de la Cruz who had formed a partnership engaged in agricultural development, as shown by Exhibits 1 and 1-A, and that at least from the year 1883, the lands in question had been in the possession of said partners who had dedicated them later in the cultivation of sugar cane. The evidence which we have carefully reviewed does not justify the contention of the appellants. While Exhibits 1 and 1-A refer to uncultivated lands of the State situated in Minlagas, they contain no description of any land. In view of this and of the absence of other convincing evidence, it cannot be concluded that said exhibits refer to the lands in question, real properties Nos. 15, 26 and 27 of Exhibits E-1, E-2 and E-3. If Clodualdo Rodriguez and Gaspar de la Cruz really cultivated and possessed parcel No. 1 of the complaint, as claimed by the appellants, there is no doubt that the State would not have permitted other persons to apply for it or issued free composition titles thereto, in accordance with the provisions of the Royal Decree of August 31, 1888, then in force. Lastly, granting that they were lands already cultivated and possessed by said persons, as they have not obtained any title thereto from the State, it is clear that they cannot invoke any right of ownership or question the titles legally issued. It is held, therefore, that the first assignment of error, in so far as it refers to parcel No. 1, is not well taken. Sometime later, upon considering the third assignment of error, we shall discuss the validity of the gratuitous composition titles.

Parcel No. 12 of the complaint was likewise acquired during the marriage of Jose Reyes to Encarnacion de Lara. According to Exhibit K, this land was not registered in the name of anybody prior to the year 1897, but on April 17th of said year it was registered for the first time as real property No. 61 in the name of Jose Reyes, and in the record it was stated that it formed a part of the lands seized from said owner by virtue of a writ of execution

issued by the judge of First Instance of Cagayan de Misamis. This evidence, together with the oral evidence presented, sufficiently shows that it is one of the properties acquired during the marriage of Jose Reyes to Encarnacion de Lara.

Parcel No. 31 of the complaint was also acquired during the marriage of Jose Reyes to Encarnacion de Lara as evidenced by Exhibit S which shows that the land was adjudicated to said Jose Reyes by virtue of a gratuitous adjustment with the State on May 13, 1893, by Governor Juan Zanon as Deputy of the Director General of Civil Administration of the Philippines, in accordance with the provisions of the Royal Decree of August 31, 1888, the title so issued having been registered in the registry of deeds of the Province of Misamis on June 28, 1893. The portion of 8 hectares, 12 ares and 50 centiares of parcel No. 2 is another real property acquired by the spouses Jose Reyea and Encarnacion de Lara during their marriage, as evidenced by Exhibit F-1 which shows that on May 13, 1893, Governor Juan Zanon, as Deputy of the Director General of Civil Administration of the Philippines, issued a gratuitous composition title to the land in favor of Jose Reyes Santa Maria, in accordance with the provisions of the Royal Decree of August 31, 1888, the title having been registered on July 1, 1893.

In the face of so clear and convincing evidence, as that stated in the foregoing paragraphs, this court cannot agree with the appellants that said parcels of land had been acquired during the first marriage of Encarnacion de Lara to Clodualdo Rodriguez, and therefore, the first assignment of error is overruled.

The portion of 65 hectares, 40 ares and 38 centiares of parcel No. 2, and the rest of the parcels of the complaint, are the subject matter of the second assignment of error. We cannot but agree with the court that, according to the documentary and oral evidence, all these lands, with the exception of parcel No. 38, were acquired by the sort of partnership formed by all the brothers and sisters and that Matias Rodriguez, as manager thereof, purchased the lands with funds from the other lands which were in his charge and under his administration, as the plaintiffs were then under age and studying. This court finds no error in the judgment providing for the division of these real properties equally among all the brothers and sisters, the plaintiffs and the defendants. With respect to parcel No. 38, it appears that it had been acquired during the marriage of Encarnacion de Lara to Clodualdo Rodriguez and it should be distributed in the manner provided in the judgment. The second assignment of error is likewise declared unfounded.

When the appellees offered Exhibits E-1, E-2, E-3, F-1, K and S as part of their evidence, the appellants objected vigorously on the ground that they were irrelevant and impertinent. The court overruled the objection and correctly admitted the documents. This resolution gave rise to the third assignment of error. The appellants contend that the documents are inadmissible as evidence because they are mere copies of the records, and the original titles themselves were not presented. As already seen, the documents in question, with the exception of Exhibit K which will be discussed separately, are duly certified copies of records appearing in the books of the registry of deeds of the Province of Misamis, authenticated by the register of deeds. As certified copies of entries or records of public and official nature, they are also public and official documents and, as such, are admissible as evidence in accordance with the express provisions of sections 299, 313 (6) and 315 of the Code of Civil Procedure. They are prima facie evidence that the originals of the gratuitous composition titles with the State, covering the lands in litigation, were really issued by the competent authorities in favor of Jose Reyes' and his wife Encarnacion de Lara, in conformity with the provisions of the Royal Decree of August 31, 1888, and that they were presented for registration and actually registered in accordance with the law. As the appellants failed to prove that said originals never existed, the legal presumption subsists and this court is bound to declare that the titles existed and were issued by the competent authorities in compliance with the laws then in force (sec. 334 [14, 31] of the Code of Civil Procedure).

The appellants invoke the doctrine laid down by this court in the cases of *E. Michael & Co. vs. Enriquez* (33 Phil.,

87), *Government of the Philippine Islands vs. Martinez and Martinez* (44 Phil., 817), and *Rodriguez vs. Tan Yeo Sing* (G. R. No. 25972, promulgated Dec. 14, 1926, not reported), holding that the original documents must always be presented and that secondary evidence thereof are inadmissible until after their existence and loss have been proven. The facts disputed in said cases completely differ from those involved in the present case. In those cases the existence of the documents evidencing the contracts had been denied and naturally the originals or the duplicates thereof had to be presented in accordance with section 321 of the Code of Civil Procedure, and as this requirement had not been complied with it was held that before secondary evidence of the contents of the documents may be admitted, it is necessary to prove the existence and loss thereof and that the entries of such private documents in the public or official registries do not cure the defect or convert them into admissible evidence. The doctrine so established is not applicable to the case under consideration not only because of the foregoing reasons but also because in the case of composition titles, they necessarily had to exist and be acted upon in accordance with the Royal Decree of August 31, 1888 and, under article 15 thereof, their entry in the registry of deeds was inevitable and obligatory.

Referring to Exhibit K, this court is constrained to admit that it is not an entry of any title of ownership. However, it is clearly stated therein that the land described, which is parcel No. 12 of the complaint, had been judicially attached as the exclusive property of Jose Reyes Santa Maria and that it was finally registered as real property No. 61 in the books of the registry of deeds. In the absence of other evidence to the contrary, this authenticated copy of said entry stated and corroborated by the other oral evidence presented by the appellees sufficiently shows that this real property is one of those acquired during the marriage of Jose Reyes to Encarnacion de Lara and should be considered as conjugal property. This" court concludes, therefore, that the third assignment of error is not well founded and is likewise untenable.

The fourth and last assignment of error is a corollary of the former ones and the appellants offer no new arguments in support thereof. This court deems it unnecessary to dwell upon said assignment.

The appellants insinuate in their brief that they are entitled to credit for the improvements made .by them, consisting in the planting of from 4,500 to 6,000 coconut trees 5, 15 and 20 years old. Inasmuch as the parties have agreed to suspend, until a later date, the claim upon fruits of all the lands during the time they were administered by the defendants-appellants, and believing that the credit for improvements may properly be included in the action for rendition of accounts, this court decides that this question should likewise be reserved to the appellants for them to allege and claim when all the questions relative to the rendition of accounts will be determined. In view of all the foregoing considerations, the appealed judgment is affirmed, with the costs of this instance to the appellants.

So ordered.

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

RESOLUTION

January 2, 1936

On September 3, 1935, Rita Rodriguez, one of the defendants-appellants, filed a motion in writing praying: (1) That Attorney Vicente Pelaez, who represents the plaintiffs-appellees, be ordered to reprint the brief for the appellees at his own expense, omitting therefrom all the insulting remarks aimed at the petitioner and (2) that the disciplinary action, which the facts and the law warrant, be taken against him.

The motion alleges that Attorney Pelaez, without any justifiable motive, used in his brief offensive expressions and phrases against the appellant Rita Rodriguez, which are copied in the pleading and appear on pages 33, 40, 41, 45, 47, 50, 54, 96 and 99 of the brief for the plaintiffs-appellees, prepared and signed by said attorney.

In order not to reproduce the offense, we refrain from transcribing in this resolution the expressions objected to, which, in our opinion, are really offensive, reproachful and improper in a brief and which have no other purpose than to humiliate said appellant who, by reason of her sex, is deserving of greater respect and courtesy.

Had the petition been filed before the oral argument of the case and before it had been submitted for decision, this court would not have hesitated to order the brief into the discard and the filing of another at the expense of the attorney, thereby applying the rule established and followed in other similar cases. However, were such measure adopted at this stage of the case, the interests of the parties alone would suffer. For this reason, this court believes that the most proper thing to do is to reprimand Attorney Vicente Pelaez, and he is hereby reprimanded, for the improper and offensive language used by him in said brief, ordering that all the offensive expressions stated in the motion be omitted in the brief in question. So ordered.

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

RESOLUTION OP THE APPELLANTS' MOTION FOR RECONSIDERATION

December 29, 1936

IMPERIAL, J.:

In their motion for reconsideration, the appellants seek to set aside the decision promulgated in the case, with respect to parcels Nos. 1, 2, 5, 7, 8, 18, 22, 27, 29, 33, 35, 36, 38, 40, 46 and 47 (page 1 of the motion).

I. The appellants contend that a portion of parcel No. 1, having an area of 28 hectares and described in Exhibit E-1 as real property No. 15, should be adjudicated and divided equally among the seven (7) brothers and sisters, not into two (2) equal parts, one to be distributed among the appellees and the other among the appellants, as provided for in the decision. The reason alleged therefor is that, according to Exhibit E-1, said portion was acquired by Encarnacion de Lara. The contention is untenable because, as the property had been acquired during Encarnacion de Lara's marriage to her second husband, Jose Beyes, it is the conjugal partnership property of said spouses according to articles 1401 and 1407 of the Civil Code, and it should be distributed in the manner provided in the decision pursuant to the provisions of articles 930 and 931 of said Code.

II. The appellants contend that a portion of 43 hectares of parcel No. 2, covered by Exhibits 3, 4, 5, 6, 7, 8, 12, 19, 20 and 25; parcel No. 5; parcel No. 8; parcels Nos. 18 and 22; parcel No. 27 and parcels Nos. 33 and 35 should be distributed exclusively among them, the four (4) brothers and sisters of the first marriage, because they have proven that the phrase "y hermanawos" appearing in the documents of acquisition refers to them alone, excluding the three (3) brothers of the second marriage surnamed Reyes. The evidence referred to consists in the statements of Rita Rodriguez and Romualdo Rodriguez (not Romualdo Reyes as alleged on page 3 of the motion) who testified that the phrase in question refers to them, the four (4) brothers and sisters of the first marriage, without including their half brothers. These statements, however, are of no probatory value and cannot prevail against the contents of the documents of acquisition because the witnesses were not parties to the contracts entered into by Matias Rodriguez and the vendors. It does not even appear that they were present during the transactions and, therefore, their testimony is not competent or convincing evidence to establish the intention of the contracting parties. Therefore, this court concludes, as already stated in the decision, that all these parcels of land were

acquired by Matias Rodriguez for himself and his brothers and sisters of both marriages inasmuch as he had the administration of the common property of both marriages and it is presumed that he acquired them with the common fund for the benefit of all the brothers and sisters (*Aliasas vs. Alcantara*, 16 Phil., 489; *Cortes vs. Oliva*, 33 Phil., 480; *Dimagiba vs. Dimagiba*, 34 Phil., 357; *Cabello vs. Cabello*, 37 Phil., 328; and *Bargayo vs. Camumot*, 40 Phil., 857).

It is claimed that the doctrine laid down establishes a bad precedent because a co-owner, who administers community property, is thereby deprived of his inevitable right to acquire exclusive property with his own money. This court's answer thereto is that the resolution should not extend or be applied to cases different from the one under consideration where it appears clearly established by the documents of acquisition that the properties have really been purchased for all the brothers and sisters with funds presumed to have come from the income of the common properties. Under the assumption advanced by the appellants, every doubt would vanish if the co-owner administrator had made an inventory of the common undivided properties and had made a liquidation of the income and products thereof, with the knowledge and approval of the other co-owners, which precaution has not been taken in the case under consideration.

III. On page 1 of the motion for reconsideration, parcel No. 7 is included, but this is erroneous because it had been excluded, from the complaint, the latter having been dismissed with respect to said parcel, as stated in the decision, page 31 of the bill of exceptions, and on page 28 of the transcript.

Instead of parcel No. 7, the appellants must refer to parcel No. 6 which they claim should be adjudicated exclusively to Matias Rodriguez because it appears from Exhibit 7 that it was bought by him from Serapion Borromeo. The contention is unfounded because it appears from Exhibit 7 that parcel No. 6 was acquired by barter for another parcel of land belonging to the inheritance left by Encarnacion de Lara, common mother of the appellants and appellees, and, therefore, the land forms a part of the community property of which Matias L. Rodriguez was administrator. Furthermore, Matias L. Rodriguez himself stated in the tax declaration No. 9743, Exhibit H-1, that the land in question belongs to him and his brothers and sisters.

IV. The appellants maintain that parcel No. 24 should be distributed only among Matias Rodriguez and his three brothers and sisters of the first marriage because according to Exhibit 14, the translation of which is Exhibit 14-A, it was acquired by their father Clodualdo Rodriguez on March 31, 1875. This document, however, has nothing to do with parcel No. 24, because it refers simply to the sale of a house 6 1/2 brazas long by 3 1/2 brazas wide, without including any land. The documentary evidence referring to parcel No. 24 is tax declaration No. 8517, Exhibit M wherein Matias Rodriguez stated that the land belonged to him and his brothers and sisters.

V. The appellants maintain that parcel No. 29 should be adjudicated exclusively to Romualdo Rodriguez because he testified that he is in possession thereof from the year 1913. This oral evidence does not detract from the documentary evidence offered by the appellees, consisting in tax declaration No. 7103, Exhibit Q, wherein Matias Rodriguez declared that the land belongs to him and his brothers and sisters. Romualdo Rodriguez's possession must be understood to be exercised in the name of all the co-owners.

VI. The appellants pray that parcels Nos. 46 and 47 be adjudicated exclusively to them because they were acquired by them alone as shown by Exhibits 25 and 26. This court holds that the claim of the appellants with respect to parcel No. 46 is untenable, because according to Exhibit 25 this parcel of land was purchased by Matias Rodriguez from Paulino Donoso for him and his brothers and sisters, without excluding the appellees.

The motion relative to parcel No. 47 is well founded. According to Exhibit 31, not Exhibit 26 as stated in the motion, the land was mortgaged by Marcelino Vasquez to Romualdo Rodriguez on June 12, 1920, for the sum of P100. It is stated in tax declaration Exhibit DD, filed by Romualdo Rodriguez on May 3, 1929, wherein the

portion of Land so acquired appears included, that the entire land therein described exclusively belongs to him. He did not declare that the land belonged to him and his brothers and sisters. For this reason, parcel No. 47 should be excluded from the partition and declared the exclusive property of Romualdo Rodriguez, not belonging to him and his brothers and sisters of the same family name, as prayed by the appellants in this motion for reconsideration.

VII. The appellants pray that this court limit to three (3) months the time within which the appellees should prosecute, in this case or in a separate action, the rendition of accounts which was one of their causes of action but reserved by them for a later date, and that, in case of their failure to do anything within said period, the appellants be entitled to plead in this case their cross-complaint to recover the value of the improvements which they made on the lands to be distributed among all of them. This court is of the opinion that the amendment of the decision to this effect is justified and in order.

For all the foregoing considerations, the decision promulgated in this case on January 2, 1936, is amended so as to exclude from the partition parcel No. 47, which is declared to be the absolute and exclusive property of Romualdo Rodriguez, and it is ordered that the appellees should prosecute their action for rendition of accounts in this case within three (3) months from the time they receive notice of the decision rendered in this case from the Court of First Instance of Oriental Misamis, the appellants being entitled to do what they deem proper in connection with their cross-complaint for the recovery of the value of the improvements made by them on the lands to be distributed in accordance with the terms of the decision of this court. In all other respects, the motion for reconsideration is denied.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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