

JUANA PICHAY, PLAINTIFF AND APPELLEE, VS. EULALIO QUEBOL ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4452. October 01, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

From the admissions made in the pleadings, and from the facts agreed upon in the court below, it appears that the plaintiff, Juana Pichay, in April, 1905, conveyed to the defendants an undivided one-third interest in twenty-five parcels of land situated in the Province of Ilocos Sur, as payment of a debt of P1,500 which she owed them. The contract by which this conveyance was made contained the following clause:

"Third. The one-third part of these lands belongs to me, it being my share in the inheritance left by my deceased parents; but I have requested my said creditors to allow me to enjoy the usufruct of the same until my death, notwithstanding the fact that I have conveyed the said lands to them in payment of my debt, and I bind myself not to sell, mortgage, or leave the said lands as inheritance to any person."

The defendants and appellants claim that this clause above quoted gave plaintiff no right of usufruct in the land, saying that it appears that she only asked for this right and it does not appear that the defendants gave it to her. This contention can not be sustained. The only reason for inserting this clause in the contract was for the purpose of securing to the plaintiff the right which is therein set out, The form of the words used is not sufficient to defeat this purpose.

On the 10th of August, 1905, the owners of the twenty-five parcels of land made a partition thereof among themselves, in which the plaintiff took no part, and in this partition certain Specific tracts of land were assigned to the defendants as the third to which they were entitled by reason of the conveyance from the plaintiff to then They have been in possession of the tracts so assigned to them in the partition since the date thereof, and are now in such possession, and have refused to recognize in the plaintiff any right of usufruct therein.

In February, 1907, the plaintiff brought this action against the defendants, asking that it be declared that she had a right of usufruct in a third of the twenty-five parcels of land; that she had the right to the administration of all of the land, and that the appellees pay to her the rents which they had received during the time of her dispossession.

The court rendered the following judgment:

"In view of the allegations and evidence adduced by the parties, the court concludes: (1) That all the lands described in the complaint be delivered to Juana Pichay for administration; (2) that Juana Pichay has a right of usufruct in a third part of the said lands until her death; (3) that the partition of the said lands, made by the co6wners of Juana Pichay can not affect the latter; (4) Eulalio Querol is hereby directed to deliver to Juana Pichay two crops from the third part of the lands in question, or the equivalent thereof, taking as a basis the present crop—that is, the crop to be harvested within a short time—and (5) Juana Pichay is sentenced to indemnify Eulalio Querol in the sum of P300 on account of the past suit, without costs."

The first proposition contained in this judgment finds no support in the record, and there is nothing therein to

show that the plaintiff had any acquired right to the administration of all the lands described in the complaint.

The second proposition finds its support in the record if it is limited to the lauds which were assigned to the defendants in the partition.

The third proposition can not be supported. Article 490 of the Civil Code is as follows:

"ART. 490. The usufructuary of part of a thing held in common shall exercise all the rights corresponding to the owner thereof with regard to the administration and collection of fruits or interests. Should the community cease by reason of the division of the thing possessed in common, the usufruct of the part awarded to the owner or coowner shall appertain to the usufructuary."

As to the fourth proposition, the agreed statement of facts shows that, while the defendants were in possession of the tracts which had been assigned to them, they received the crops for only two years; that the crop for the year 1906 amounted to 14 uyones and 13 manojos, of the value of P4 for each uyon, and that the crop of 1907 amounted to 15 uyones and 4 manojos of the value of P6.25 for each uyon. These are the only amounts which the plaintiff is entitled to recover.

As to the fifth proposition, while it appears that the plaintiff excepted to the judgment, and stated that she desired to present a bill of exceptions, yet she in fact did not present any. The error, therefore, assigned by her with reference to this fifth proposition can not be considered. (Naval vs. Benavides, 8 Phil. Rep., 250; Puruganan vs. Martin, 8 Phil. Rep., 519; Ullmann vs. Ullmann & Co., 10 Phil. Rep., 459.)

The judgment of the court below is reversed and the case remanded, with directions to enter a judgment in favor of the plaintiff to the effect that she is entitled to the right of usufruct in the lands assigned to the defendants by the partition of August 10, 1905, and to enter a judgment against the plaintiff and in favor of the defendant Querol for 149.48 without costs to either party. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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