

SEGUNDA DEVEZA, PETITIONER, VS. ERIBERTO BALMEO ET AL., RESPONDENTS.

G.R. No. 45508. April 27, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal by way of certiorari from a decision of the Court of Appeals in the suit for partition of the properties of the deceased Mateo Balmeo.

The properties of said deceased were twice partitioned and twice the case has reached this court on appeal.

The first time was when Eriberto Balmeo, one of the brothers of the said deceased, brought suit in the Court of First Instance of Tayabas for the partition of the property of his brother Mateo Balmeo, the defendants being his other brother and sister Felix Balmeo and Maria Balmeo and his sister-in-law, the widow Segunda Deveza. These three defendants had made a partition in the absence of the plaintiff Eriberto Balmeo, and the court decided the case by recognizing the validity and efficacy of the contract of partition which the defendants had executed, and rendered judgment ordering Eriberto's brother and sister to turn over to him, the plaintiff, the part corresponding to him, and absolved the widow from the complaint. The decision was appealed to this court, which reversed the appealed decision (Balmeo vs. Deveza, No. 37484, July 20, 1933). A part of the decision of this court is as follows:

"There is no doubt that the appellant is entitled to share in the properties left by his deceased brother Mateo Balmeo. His part of the inheritance should be one-third of one-half of all the properties, the other half corresponding to the wife in usufruct under the provisions of article 837 of the Civil Code. By properties of the said deceased are meant of course those exclusively his own and one-half of the conjugal property had with his wife, which is only determinable after a liquidation of the said conjugal partnership."

In reversing the appealed decision in the aforesaid case, this court ordered the following:

"* * * that the parties make among themselves, within thirty days, a partition of all the propertied belonging to the deceased Mateo Balmeo; should they fail to reach an agreement, they shall so notify the court, which shall then appoint three qualified and impartial commissioners to partition the properties among the parties pursuant to law * * *."

By virtue of the decision of this court, the case was, remanded to the Court of First Instance of Tayabas which appointed three commissioners of partition who, without first determining the exclusive properties of the said deceased and without liquidating the conjugal partnership of the deceased and his widow as directed in the aforequoted decision of this court, partitioned all the properties set out in the complaint into two equal parts, adjudicating a part in naked ownership to the sister and brothers Maria Balmeo, Felix Balmeo and Eriberto Balmeo, and the other part in usufruct to the widow Segunda Deveza. The house and lot claimed by the widow as conjugal property were adjudicated to the brothers and sister. On May 2, 1934, the clerk of court notified the parties that on April 30, 1934, the report of the commissioners was filed and that the parties had ten (10) days,

under section 31 of the revised rules of Courts of First Instance, to take exceptions or to state their reasons for objecting to the findings of the commissioners.

The widow Segunda Deveza and counsel for the plaintiff Eriberto Balmeo filed their respective motions with the court asking that they be furnished with copies of the commissioners' report. On May 9, 1934, the court denied the motion of Segunda Deveza, who immediately excepted to the order of denial. Upon motion of the plaintiff, the court approved the report and rendered judgment in accordance therewith on June 11, 1934. A motion for new trial filed by Segunda Deveza was denied, and upon elevation of the case to the Court of Appeals, the appealed judgment was there affirmed on February 27, 1937. Hence, this petition for certiorari against the decision of the Court of Appeals, this being the second time this case is before this court.

In her brief the appellant assigns the following errors allegedly committed by the Court of Appeals:

"I. The Court of Appeals erred in holding that the parties in an action of Partition are not entitled to ask that they be furnished with a copy of the report filed by the commissioners of partition.

"II. The Court of Appeals erred in refraining from considering and ruling upon the question, timely and duly raised of the validity of the report of the commissioners of partition.

"III. The Court of Appeals erred in not holding that the commissioners of partition were not legally authorized to partition all the properties left by the deceased before there has been a liquidation of the conjugal partnership and the estate of the said deceased.

"IV. The Court of Appeals erred in not reversing the decision of the Court of First Instance and in not disapproving the report of the commissioners of partition."

As to the first alleged error, the question is resolved by the ruling of this court in *Martinez and Vilar vs. Tolentino* (43 Phil. 492. 494), that "the request of defendants' counsel that he be furnished with a copy of the report had no support whatever in law."

The third assigned error involves a question so important that, even disregarding the other arguments advanced by the appellant, it leads us to hold in favor of the remedy sought by the appellant, and we cannot decide the question otherwise because we believe and so hold that the commissioners in effecting the partition completely and arbitrarily departed from and ignored what this court ordered in its decision when this case was here for the first time on appeal.

We again quote a part of the decision of this court:

"There is no doubt that the appellant is entitled to share in the properties left by his deceased brother Mateo Balmeo. His part of the inheritance should be one-third of one-half of all the properties, the other half corresponding to the wife in usufruct under the provisions of article 837 of the Civil Code. By properties of the said deceased are meant of course those exclusively his own and one-half of the conjugal property had with his wife, which is only determinate after a liquidation of the said conjugal partnership." (Italics ours.)

The commissioners could not therefore include in the partition all the properties set out in the complaint. Their duty was first to separate the exclusive properties of the deceased Mateo Balmeo for which purpose they had to make a liquidation of the conjugal partnership of said deceased during the existence of his marriage with the now widow Segunda Deveza.

The commissioners, however, instead of abiding by the decision of this court, without previously determining the conjugal properties, made a partition of all the properties into two parts, adjudicating one part in naked ownership to the respondents Maria Balmeo, Felix Balmeo and Eriberto Balmeo, and the other part in usufruct to the widow

Segunda Deveza, without likewise determining who is entitled to the usufruct of the portion adjudicated in naked ownership to the sister and brothers.

The second and fourth assigned errors are merely a consequence of those already passed upon.

Wherefore, the appealed decision is reversed, and the commissioners of partition appointed by the court are ordered to make another partition pursuant to the decision of this court, with the costs to the respondents in both instances. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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