

JULIA DEL ROSARIO ET AL., PLAINTIFFS AND APPELLANTS, VS. ANTONIO DEL ROSARIO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 45761. April 28, 1939

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

The complaint alleges: That Ramon del Rosario and Florencia Arcega were husband and wife, the former having died in 1895 and the latter in 1933; that the plaintiffs and the defendants are the heirs of both; that Ramon del Rosario died without a will, leaving properties of the conjugal partnership valued at P19,000; that after the death of Ramon del Rosario, his widow Florencia Arcega administered these properties and with the products thereof acquired others, which are those described in paragraph 9 of the complaint. It is, moreover, inferred from the complaint that after the death of Ramon del Rosario, his intestate was not commenced and the conjugal properties were not liquidated until Florencia Arcega died, after which the latter's testamentary proceedings were initiated and are now in progress.

The plaintiffs bring this action to recover their share not only in the conjugal properties left by Ramon del Rosario but also in those acquired by Florencia Arcega with the products of said properties.

A demurrer was interposed to the complaint on the ground that there is another action pending between the same parties and for the same cause of action; that there is a defect of party plaintiffs and party defendants, and that the complaint does not allege facts sufficient to constitute a cause of action.

The court sustained this demurrer and dismissed the case. From this resolution an appeal was taken.

Both in the Court of First Instance as well as in this court, the parties discuss whether Act No. 3176, or the former law, is applicable to the case. Act No. 3176 only amends the former law in the sense that upon the death of any of the spouses the community property shall be liquidated in the testamentary or intestate proceedings of the deceased spouse. But whatever law might be applicable, and even assuming that it was that prior to Act No. 3176, the intestate of Ramon del Rosario not having been commenced upon his death in 1895 until his widow Florencia Arcega also died in 1933, and the testamentary proceedings of Florencia Arcega having been subsequently initiated, wherein, among other things, the liquidation of her conjugal properties with the deceased Ramon del Rosario should be made, the pendency of these testamentary proceedings of the deceased wife excludes any other proceeding aimed at the same purpose (*Zaide vs. Concepcion and Quintana*, 32 Phil., 403). At any rate, the plaintiffs have a right to intervene in these proceedings as parties interested in the liquidation and partition of the conjugal properties of the deceased spouses Ramon del Rosario and Florencia Arcega among their heirs.

The appealed judgment is affirmed, with the costs to the appellants. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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