

**LIBERATO JIMENEZ, CLAIMANT AND APPELLEE, VS. INES DE CASTRO ET AL., OPPOSITORS AND APPELLANTS.***G.R. No. 46015. April 18, 1939*

Ponente: VILLA-REAL, J.

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Maria de Castro was the registered owner of lots Nos. 312, 998, 717, and 702 of the Baliwag cadastre, with original certificates of title issued in her name. She died on May 3, 1937, without ascendants or descendants, but only brother and sisters, namely, Matias de Castro, Ines de Castro, Pelagia de Castro, Felipe Isidro, widower of Carmen de Castro, and Josefa de Castro.

Alleging that he had lived maritally with the said deceased, Maria de Castro, the herein movant and appellee, Liberato Jimenez, filed an application in the corresponding cadastral case praying that the said lots be subdivided into two equal parts, adjudicating one part to the brother and sisters of Maria de Castro and the other part to him, and that the corresponding certificates of title be cancelled and new ones be issued in lieu thereof. After the publication of the application by order of the Court of First Instance of Bulacan, the same was called for trial at which only the herein oppositors Ines de Castro and others appeared to oppose the application on the ground that the granting thereof would mean the reversal of the corresponding decree of registration, and they in turn asked that the certificates of title to said lots be cancelled and new ones be issued in the name of the heirs of Maria de Castro, to wit, the brother and sisters Matias, Ines, Pelagia and Josefa, surnamed De Castro, and the heirs of her deceased sister Carmen de Castro.

On November 10, 1937, the lower court denied the application of Liberato Jimenez, from which order he did not appeal.

Unable to obtain the affirmative remedy sought by them, the herein oppositors filed a motion for reconsideration and new trial, which was also denied, giving rise to this appeal taken by said oppositors on the ground that the lower court erred in not ordering the cancellation of the certificates of title to lots Nos. 312, 998, 717 and 702 of the Baliwag cadastre, to the end that new ones be issued in the name of Matias de Castro, Ines de Castro, Pelagia de Castro, Josefa de Castro and the heirs of the deceased Carmen de Castro.

In *Government of the Philippine Islands vs. Serafica* (61 Phil., 93), this court held that when the land registered under the Torrens system or under the provisions of the Cadastral Act is subdivided by the new co-owners or co-heirs, and they file a petition in accordance with section 112 of Act No. 496 for the cancellation of the old certificate of title and the issuance of new certificates corresponding to the portions into which the land has been subdivided, these petitioners are entitled to the remedy invoked by them without the necessity of a previous declaration of heirs nor of the institution of intestate proceedings of the original registered owners thereof who have died.

In the present case it is admitted by the parties in their respective application and opposition that the sole heirs of the deceased Maria de Castro are her brother and sisters, the herein oppositors and appellants Matias de Castro,

Ines de Castro, Pelagia de Castro and Josefa de Castro, and the heirs of her other sister, the deceased Carmen de Castro, and pursuant to the above-cited decision, they are entitled to ask in the corresponding cadastral case for the cancellation of the original certificates of title issued in the name of their predecessor-in-Interest and the issuance of new ones in their name, without the necessity of instituting intestate proceedings.

But in view of the claim of the applicant and appellee Liberato Jimenez over the undivided one-half of the said lots and of the fact that the court reserved to him the right to bring the proper action—which amounts to an opposition to the application of the oppositors, barring the granting of what they asked therein—the proper procedure would be to institute the intestate proceedings of the deceased Maria de Castro and to appoint an administrator on behalf of said deceased, to the end that Liberato Jimenez may file against the administrator the corresponding ordinary action to claim his rights over the said lots and to obtain the cancellation of the certificates of title issued in the name of the deceased and the issuance of new ones as the result of the action may warrant.

In view of the foregoing, we are of the opinion and so hold that: (1) When the surviving spouse claims rights of ownership possessed in common with his deceased wife over real property registered exclusively in the latter's name under the Torrens system, the procedure marked out in section 112 of Act No. 496 is not the remedy to be followed so that he may ask for the cancellation of the certificates of title in the name of his deceased wife and the issuance of new ones over one-half of the said properties in his name and the other half in the name of his wife's heirs, and (2) it is not proper to cancel an original certificate of Torrens title issued exclusively in the name of a deceased person, and to issue a new certificate in the name of his heirs, under the provisions of section 112 of Act No. 496, when the surviving spouse claims rights of ownership over the lands covered by said certificate.

Wherefore, the appealed order is affirmed, without special pronouncement as to the costs. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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