

IN THE MATTER OF THE WILL OF THE DECEASED MAURO SALVACION. GREGORIA REYNOSO, ADMINISTRATRIX AND APPELLANT, VS. JOSE E. TOLENTINO, GUARDIAN AD LITEM OF THE MINORS MAURITO AND REM...

G.R. No. 46078. May 25, 1939

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

Mauro Salvacion died on June 30, 1932 in the municipality of Lucena, Province of Tayabas, without leaving any descendant or ascendant. His widow, Gregoria Reynoso, who survived him, is now the administratrix appointed in this testate proceeding.

The properties left by the deceased are conjugal in nature because they were acquired during his marriage with his widow. He left a will and a codicil upon his death, wherein he made a partition of the conjugal properties between him and his widow, and disposed by way of legacy of the half corresponding to him.

The attorney of the administration of this testate thereafter prepared the partition of the properties left by the deceased between the widow and the legatees.

The widow opposed the approval of this partition as to the coconut trees, alleging that it is unequal not only as to the number of trees but also as to the quality thereof. Over this opposition of the widow, the court, without affording her an opportunity to substantiate her opposition and present evidence in support thereof, approved the partition. To this resolution the widow excepted.

The legatees, on the other hand, also opposed the approval of the partition in so far as it casts the burden of the widow's usufruct upon one-half of what corresponds to each one. Moreover, these legatees contend that the allowance received by the widow during the liquidation of the conjugal properties should be charged against her in so far as it exceeds the products of the properties allotted to her. The court also overruled this opposition and approved the partition in this respect.

In so far as it refers to the appeal of the widow, we are of the opinion that the resolution of the court, approving the partition, is erroneous. The court should have substantiated the opposition of the widow and should have given her an opportunity to adduce evidence in its support. However, the court, relying only upon the fact that the partition was made in accordance with the will of the deceased, approved it. The will, in so far as the testator alone made therein a partition of the conjugal properties by assigning to himself those which he liked and to the wife those which she did not like, is illegal. The conjugal property is one between husband and wife wherein each one, except as to the administration thereof, has equal rights. Each one has a right to one-half of these properties and each one occupies the same position as to its ownership. It is an encroachment upon these rights of each of the spouses if one of them could designate which and how much of these properties should correspond to him. Any of the spouses is entitled to be heard in the partition of the conjugal properties in order to defend his or her equal

share.

As to the appeal of the legatees, the theory upon which it is based is plainly erroneous. The usufruct which article 837 of the Civil Code gives to the widow is upon one-half of the properties of the deceased spouse and not upon the properties of the widow herself, such as the half of the conjugal properties corresponding to her.

The contention that the allowance received by the widow should be charged against her share in the conjugal properties in so far as it exceeds the fruits of the properties corresponding to her, is perfectly legal. But we are precluded from ruling upon this point, because there is neither showing nor allegation as to the amount of the fruits of the properties during the liquidation. Without this, we are not in a position to decide whether or not the widow received by way of allowance more than that corresponding to her from the fruits of the properties.

In view, of the foregoing, the appealed judgment is modified in the sense that the court should permit the widow to substantiate her opposition and to present evidence in support thereof, and is affirmed in all other respects, with the costs to the defendants as appellants and legatees. So ordered.

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

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