

IN THE MATTER OF THE WILL OF THE DECEASED PAULINO DIANCIN. TEOPISTA DOLAR, ADMINISTRATRIX AND APPELLANT, OLIMPIA, RITA, JOSEFINA AND ROSARIO DIANCIN, APPELLANTS, VS. ROMAN CATHO...

G.R. No. 46521. October 14, 1939

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Paulino Diancin's first wife was Margarita Doctura and Teopista Dolar his second.

By his first marriage he had five children, named Lucas, Guadalupe, Bibiana, Fidel and Tiburcio. Lucas died leaving three children, named Natividad, Jose and Demetria. Guadalupe also died leaving three children also, named Natalia, Jesus and Sulpicio Palma. Bibiana, Fidel and Tiburcio are still living.

By his second marriage, he had four children, named Olimpia, Rita, Josefina and Rosario.

He acquired certain properties during his first marriage and still others during his second. He left a will before he died wherein he sets out all his properties and distributes them among his widow Teopista Dolar and his heirs by both marriages. He also left a legacy of P8,000 to be spent for the altar of the church under construction in the Municipality of Dumangas, ordering that this be taken from the fruits of all the properties before they are partitioned among his heirs.

After the commencement of the testamentary proceedings and the appointment therein of Teopista Dolar as judicial administratrix, the latter first filed a project of partition which was not approved because of the opposition of certain heirs, and thereafter, on November 30, 1936, filed another project of partition which was not also approved because of the opposition of the representative of the Church of Dumangas, the Bishop of Jaro. In disapproving this last project of partition, the Court ordered the administratrix to take immediate possession of all the properties of the estate and pay from the products thereof the legacy of P8,000 in favor of the Bishop of Jaro and, upon payment of this legacy, to submit another new project of partition for its approval. From this resolution the administratrix Teopista Dolar and the heirs of the deceased by his second marriage, appealed.

We note, first of all, that the last project of partition submitted by the administratrix is not concurred in by the heirs of the deceased by his first marriage to whom have been allotted their shares of the estate corresponding to them.

In the light of the foregoing facts and the allegations of the parties in this instance, we hold that, unless the widow Teopista Dolar, the heirs of the deceased by his two marriages, the representative of the legacy for P8,000, and the creditors of the estate, otherwise come to an agreement, the partition should be made with the intervention of all the interested parties according to law. All the debts and administration expenses shall first be paid. (Section 753 of the Code of Civil Procedure). The conjugal properties of the first marriage shall be liquidated so as to determine those corresponding to the children had with the deceased Margarita Doctura, as her heirs, and those

corresponding to the deceased. Likewise, the conjugal properties of the second marriage shall be liquidated, so as to determine the half corresponding to the widow Teopista Dolar and the other half corresponding to the deceased (article 1426 of the Civil Code). The properties corresponding to the deceased, acquired during his first and second marriages, constitute his estate, which should be partitioned among his heirs, namely, his children by his two marriages and his widow Teopista Dolar (articles 931 and 834 of the Civil Code). There being forced heirs, the legacy of P8,000 should be taken from the free third only, without touching the obligatory legitime (article 813 of the Civil Code), and for this purpose, the properties to be partitioned should first be divided into three equal parts, two of which constitute the obligatory legitime, and the other the free third, so as to determine the properties from which the legacy should be taken. On the other hand, this legacy being by way of usufruct, the heirs may comply therewith or deliver to the legatee properties equivalent to the free third (article 820, paragraph 3, of the Civil Code). The fruits of the properties already received or to be received shall answer for the legacy with respect to one-third thereof only, the remaining two-thirds being those of the heirs (article 813 of the Civil Code). The legal usufruct of the widow should be taken from the third available for betterment (article 835 of the Civil Code).

After the partition is made in accordance with the foregoing, there should be delivered to the heirs the properties corresponding to them as legitime. As to the free third, the testator not having disposed of its ownership, it shall belong to all the forced heirs, in equal parts, subject to the legacy as to its fruits.

The appealed resolution is modified in accordance with the foregoing, without special pronouncement as to the cost. So ordered,

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

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