

RICARDO PARDELL Y CRUZ AND VICENTA ORTIZ Y FELIN DE PARDELL, PLAINTIFFS AND APPELLEES, VS. GASPAR DE BARTOLOME Y ESCRIBANO AND MATILDE ORTIZ Y FELIN DE BARTOLOME, DEFENDANTS AND...*G.R. No. 4656. November 18, 1912*

Ponente: TORRES, J.

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This is an appeal by bill of exception, from the judgment of October 5, 1907, whereby the Honorable Dionisio Chanco, judge, absolved the defendants from the complaint, and the plaintiff from a counterclaim, without special finding as to costs.

Counsel for the spouses Ricardo Pardell y Cruz and Vicenta Ortiz y Felin de Pardell, the first of whom, absent in Spain by reason of his employment, conferred upon the second sufficient and ample powers to appear before the courts of justice, on June 8, 1905, in his written com alleged that the plaintiff, Vicenta Ortiz, and the defendant, Matilde O are the duly recognized natural daughters of the spouses Miguel Ortiz Calixta Felin y Paula who died in Vigan, Ilocos Sur, in 1875 and 1882, respectively; that Calixta Felin, prior to her death, executed, on Aug 1876, a nuncupative will in Vigan whereby she made her four children, named Manuel, Francisca, Vicenta, and Matilde, surnamed Ortiz y Felix her sole and universal heirs of all her property; that, of the persons enumerated, Manuel died before his mother and Francisca a few years after her death, leaving no heirs by force of law, and therefore the only existing heirs of the said testatrix are the plaintiff Vicenta Ortiz and the def Matilde Ortiz; that, aside from some personal property and jewelry already divided among the heirs, the testatrix possessed, at the time of the execution of her will, and left at her death the real properties which, their respective cash values, are as follows:

1. A house of strong material, with the lot on which it is built, situate Escolta Street, Vigan, and valued at.....

P6,000.00

2. A house of mixed material, with the lot on which it stands, at No. 88 Washington Street Vigan;, valued at

1,500.00

3. A lot on Magallanes Street, Vigan; valued at.....

100.00

4. A parcel of rice land, situated in the barrio of San Julian, Vigan; valued at.....

60.00

5. A parcel of rice land in the
pueblo of Santa Lucia; valued at.....

86.00

6. Three parcels of land in the pueblo of Candon; valued at.....

150

Total

7,896.00

That, on or about the first months of the year 1888, the defendants, wit judicial authorization, nor friendly or extrajudicial agreement, too themselves the administration and enjoyment of the said properties and collected the rents, fruits, and products thereof, to the serious detriment plaintiffs' interests; that, notwithstanding the different and repeated demands extra-judicially made upon Matilde Ortiz to divide the aforementioned properties with the plaintiff Vicenta and to deliver to the latter the one- half of the same which rightly belonged to her, or the value thereof, together with one-half of the fruits and rents collected therefrom, the said defendant and her husband, the self-styled administrator of the properties mentioned, had been delaying the partition and deliver of the said properties by means of unkept promises and other excuses; an that the plaintiffs, on account of the extraordinary delay in the delivery of one-half of said properties, or their value in cash, as the case mi had suffered losses and damages in the sum of P8,000. Said counsel for the plaintiffs therefore asked that judgment be rendered by sentencing t defendants, Gaspar de Bartolome and Matilde Ortiz Felin de Bartolome, to restore and deliver to the plaintiffs one-half of the total value in cash according to appraisal, of the undivided property specified, which one amounted approximately to P3,948, or, if deemed proper, .to recognize the plaintiff Vicenta Ortiz to be vested with the full and absolute right o ownership to the said undivided one-half of the properties in question, universal testamentary heir thereof together with the defendant Matilde to indemnify the plaintiffs in the sum of P8,000, for losses and damages and to pay the costs.

Counsel for the defendants, in his answer denied the facts alleged in paragraphs 1, 4, 6, 7, and 8 thereof, inasmuch as, upon the death of the litigating sisters' brother Manuel, their mother, who was still living, by force of law, and the defendants had never refused to give to the plaintiff Vicenta Ortiz her share of the said properties; and stated that admitted the facts alleged in paragraph 2, provided it be understood, however, that the surname of the defendant's mother was Felin, and not Feliti, and that Miguel Ortiz died in Spain, and not in Vigan; that admitted paragraph 3 of the complaint, with the difference that the said surname should be Felin, and likewise paragraph 5, except the part thereof relating to the personal property and the jewelry, since the latter had been divided; that the said jewelry was in the possession of the plain and consisted of: one Lozada gold chronometer watch with a chain in the form of a bridle curb and a watch charm consisting of the engraving a postage stamp on a stone mounted in gold and bearing the initials M. O. a pair of cuff buttons made of gold coins, four small gold buttons, two finger rings, another with the inatials M. O., and a gold bracelet; and the defendants were willing to deliver to the plaintiffs, in conformity petition, one-half of the total value in cash, according to appraisal, the undivided real properties specified in paragraph 5, which half amount to P3,948.

In a special defense said counsel alleged that the defendants had never refused to divide the said property and had in fact several years before solicited the partition of the same; that, from 1886 to 1901, inclusive, collected from the property on Calle Escolta the sum of 288 pesos, besides a few other small amounts derived. from other sources, which were deliver to the plaintiffs with other larger amounts, in 1891, and from the pr on Calle

Washington, called La Quinta, 990.95 pesos, which proceeds, added together, made a total of 1,278.95 pesos, saving error or omission; that, between the years abovementioned, 765.38 pesos were spent on the house situated on Calle Escolta, and on that on Calle Washington, La Qui 376.33, which made a total of 1,141.71, saving error or omission; that, the work of reconstruction was begun of the house on Calle Escolta, which had been destroyed by an earthquake, which work was not finished until 1903 and required an expenditure on the part of the defendant Ma- tilde Ortiz, of 5,091.52 pesos; that all the collections made up to August 1, 1 including the rent from the stores, amounted to only P3,654.15, and the expenses, to P6,252.32, there being, consequently, a balance of P2,598.17 divided between the sisters, the plaintiff and the defendant, would make letter's share P1,299.08; that, as shown by the papers kept by the plaintiffs, in the year 1891 the defendant Bartolome presented to the plaintiffs a statement in settlement of accounts, and delivered to the person duly authorized by the latter for the purpose, the sum of P2,606.29, which t said settlement showed was owing his principals, from various sources; that, the defendant Bartolome having been the administrator of the undivided property claimed by the plaintiffs, the latter were owing the former the remuneration of the percentage allowed by law for administration; and th the defendants were willing to pay the sum of P3,948, one-half of the to value of the said properties, deducting therefrom the amount found to be owing them by the plaintiffs, and asked that judgment be rendered in their favor to enable them to recover from the. latter that amount, together with the costs and expenses of the suit.

The defendants, in their counterclaim, repeated each and all of the allegations contained in each of the paragraphs of section 10 of their answer; that the plaintiffs were obliged to pay to the administrator of said property the remuneration allowed him by law; that, as the revenues collected by the defendants amounted to no more than P3,654.15, and the expenditures incurred by them, to P6,252.32, it followed that the plaintiffs owed the defendants P1,299.08, that is, one-half of the different between the amount collected from and that expended on the properties, and asked that judgment be therefore rendered in their behalf to enable them to collect this sum from the plaintiffs, Ricardo Pardell and Vice Ortiz, with legal interest thereon from December 7, 1904, the date when accounts were rendered, together with the sums to which the defendant Bartolome was entitled for the administration of the undivided properties question.

By a written motion of August 21, 1905, counsel for the plaintiffs request permission to amend the complaint by inserting immediately after the words "or respective appraisal," fifth line of paragraph 5, the phrase "in accordance with the assessed value," and likewise further to amend the sa in paragraph 6 thereof, by substituting the following words in lieu of t petition for the remedy sought: "By reason of all the foregoing, I beg the court to be pleased to render judgment by sentencing the defendants, Gaspar de Bartolome and Matilde Ortiz Felin de Bartolome, to restore and deliver to the plaintiffs an exact one-half of the total value of the undivided properties described in the complaint, such value to be ascertained by the expert appraisal of two competent persons, one of whom shall be appointed by the plaintiffs and the other by the defendants, and, in c of disagreement between these two appointees such value shall be determine by a third expert appraiser appointed by the court, or, in a proper case, the price offered at public auction; or, in lieu thereof, it is requested court recognize the plaintiff, Vicenta Ortiz, to be vested with a full absolute right to an undivided one-half of the said properties; furthermore is prayed that the plaintiffs be awarded an indemnity of P8,000 for losses and damages, and the costs." Notwithstanding the opposition of the defendants, the said amendment was admitted by the court and counsel for the defendants were allowed a period of three days within which to present a new answer. An exception was taken to this ruling.

The proper proceedings were had with reference to the valuation of the properties concerned in the division sought and incidental issues were r relative to the partition Of some of them and their award to one or the other of the parties. Due consideration was taken of the averments and statements of both parties who agreed between themselves, before the court that any of them might at any time acquire, at the valuation fixed by the expert

judicial appraiser, any of the properties in question, there being existence excluded by the litigants. The court, therefore, by o December 28, 1905, ruled that the plaintiffs were entitled to acquire, at valuation determined by the said expert appraiser, the building known as Quinta, the lot on which it stands and the warehouses and other improvements comprised within the inclosed land, and the seed lands sit in the pueblos of Vigan and Santa Lucia; and that the defendants were likewise entitled to acquire the house on Calle Escolta, the lot on Magallanes, and the three parcels of land situated in the pueblo of Cando

After this partition had been made, counsel for the defendants, by a writ of March 8, 1906, set forth: That, having petitioned for the appraisalment the properties in question for the purpose of their partition, it was not understood that he desisted from the exception duly entered to the ruling made in the matter of the amendment to the complaint; that the properties retained by the defendants were valued at P9,310, and those retained by t plaintiffs, at P2,885, one-half of which amounts each party had to deliver to the other, as they were pro indiviso properties; that, therefor defendants had to pay the plaintiffs the sum of P3,212.50, after deducting the amount which the plaintiffs were obliged to deliver to the defendant one-half of the price of the properties retained by the former; that, notwithstanding that the amount of the counterclaim for the expenses incurred in the reconstruction of the pro indiviso property should deducted from the sum which the defendants had to pay the plaintiffs, the former, for the purpose of bringing the matter of the partition to close, would deliver to the latter, immediately upon the signing of the instrument of purchase and sale, the sum of P3,212.50, which was one-h the value of the properties allotted to the defendants; such delivery, however, was not to be understood as a renouncement of the said counter-claim, but only as a means for the final termination of the pro indiviso is the property.

The case having been heard, the court, on October 5, 1907, rendered judgment holding that the revenues and the expenses were compensated by the residence enjoyed by the defendant party, that no losses or damages were either caused or suffered, nor likewise any other expense besides the aforementioned, and absolved the defendants from the complaint and the plaintiffs from the counterclaim, with no special finding as to costs. A exception was taken to this judgment by counsel for the defendants who moved for a new trial on the grounds that the evidence presented did not warrant the judgment rendered and that the latter was contrary to law. This motion was denied, exception whereto was taken by said counsel, who file the proper bill of exceptions, and the same was approved and forwarded to the clerk of this court, with a transcript of the evidence.

Both of the litigating sisters assented to a partition by halves of the property left in her will by their mother at her death; in fact, during course of this suit, proceedings were had, in accordance with the agreements made, for the division between them of the said hereditary property of common ownership, which division was recognized and approved in the findings of the trial court, as shown by the judgment appealed from.

The issues raised by the parties, aside from said division made during t and which have been submitted to this court for decision, concern: (1) indemnity claimed for losses and damages, which the plaintiffs allege am to P8,000, in addition to the rents which should have been derived from house on Calle Escolta, Vigan; (2) the payment by the plaintiffs to the defendants of the sum of P1,299.08, demanded by way of counterclaim, together with legal interest thereon from December 7, 1904; (3) the payment to the husband of the defendant Matilde Ortiz, of a percentage claimed to be due him as the administrator of the property of common ownership; (4) the division of certain jewelry in the possession of the Vicenta Ortiz; and (5) the petition that the amendment be held to have been improperly admitted, which was made by the plaintiffs in their written motion of August 21, 1905, against the opposition of the defendants, through which admission the latter were obliged to pay the former P910.50.

Before entering upon an explanation of the propriety or impropriety of the claims made by both parties, it is indispensable to state that the trial in absolving the defendants from the complaint, held that they had not caused losses and damages to the plaintiffs, and that the revenues and expenses were compensated, in view of the fact

that the defendants had been living for several years in the Calle Escolta house, which was indiviso property of joint ownership.

By this finding absolving the defendants from the complaint, and which was acquiesced in by the plaintiffs who made no appeal therefrom, the final issue has been decided which was raised by the plaintiffs, concerning indemnity for losses and damages, wherein are comprised the rents which should have been obtained from the upper story of the said house during the time it was occupied by the defendants, Matilde Ortiz and her husband Gaspar de Bartolome.

Notwithstanding the acquiescence on the part of the plaintiffs, assenting the said finding whereby the defendants were absolved from the complaint yet, as such absolution is based on the compensation established in the judgment of the trial court, between the amounts which each party is entitled to claim from the other, it is imperative to determine whether t defendant Matilde Ortiz, as coowner of the house on Calle Escolta, was entitled, with her husband, to reside therein, without paying to her coo Vicenta Ortiz, who, during the greater part of the time, lived with her husband abroad, one-half of the rents which the upper story would have produced, had it been rented to a stranger.

Article 394 of the Civil Code prescribes:

"Each co-owner may use the things owned in common, provided he uses them in accordance with their object and in such manner as not to injure t interests of the community nor prevent the co-owners from utilizing the according to their rights."

Matilde Ortiz and her husband occupied the upper story, designed for use a dwelling, in the house of joint ownership; but the record shows no pro that, by so doing, the said Matilde occasioned any detriment to the int of the community property, nor that she prevented her sister Vicenta from utilizing the said upper story according to her rights. It is to be not the stores of the lower floor were rented and an accounting of the rents duly made to the plaintiffs.

Each co-owner of realty held pro indiviso exercises his rights o whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners, for the that, until a division be made, the respective part of each holder can no determined and every one of the co-owners exercises, together with his other co-participants, joint ownership over the pro indiviso property, i to his use and enjoyment of the same.

As the hereditary properties of the joint ownership of the two sisters, V Ortiz, plaintiff, and Matilde Ortiz, defendant, were situated in the Prov Ilocos Sur, and were in the care of the last named, assisted by her husband while the plaintiff Vicenta with her husband was residing outside of the province the greater part of the time between 1885 and 1905, when sh left these Islands for Spain, it is not at all strange that delays and difficulties should have attended the efforts made to collect the rents a proceeds from the property held in common and to obtain a partition o the latter, especially during several years when, owing to the insurrection country was in a turmoil; and for this reason, aside from that founded o the right of co-ownership of the defendants, who took upon themselves the administration and care of the properties of joint tenancy for purposes their preservation and improvement, these latter are not obliged to pa the plaintiff Vicenta one-half of the rents which might have b derived from the upper story of the said house on Calle Escolta and, much less because one of the living rooms and the storeroom thereof were used for the storage of some belongings and effects of common ownership between the litigants. The defendant Matilde, therefore, in occupying w husband the upper floor of the said house, did not injure the interests of her coowner, her sister Vicenta, nor did she prevent the latter from living but merely exercised a legitimate right pertaining to her as a coowner o property.

Notwithstanding the above statements relative to the joint-ownership r which entitled the defendants to live in the upper story of the said hous in view of the fact that the record shows it to have been proved that th defendant Matilde's husband, Gaspar de Bartolome, occupied for four year a room or a part of the lower floor of the same house on Calle Escolta, using it as an office for the justice of the peace, a position which he the capital of that province, strict justice requires that he pay his sister-in-law, the plaintiff, one-half of the monthly rent which the said quarters could produced, had they been leased to another person. The amount of such monthly rental is fixed at P16 in accordance with the evidence shown in t record. This conclusion as to Bartolome's liability results from the fact as the husband of the defendant coowner of the property, he had no right to occupy and use gratuitously the said part of the lower floor of the house in question, where he lived with his wife, to the detriment of the Vicenta who did not receive one-half of the rent which those quarters co and should have produced, had they been occupied by a stranger, in the same manner that rent was obtained from the rooms on the lower floor that were used as stores. Therefore, the defendant Bartolome must pay t the plaintiff Vicenta P384, that is, one-half of P768, the total amount of the rents which should have been obtained during four years from the quarters occupied as an office by the justice of the peace of Vigan.

With respect to the second question submitted for decision to this court, relative to the payment of the sum demanded as a counterclaim, it was admitted and proved in the present case that, as a result of a serious earthquake on August 15, 1897, the said house on Calle Escolta was left i and uninhabitable, and that, for its reconstruction or repair, the defend had to expend the sum of P6,252.32. This expenditure, notwithstanding t it was impugned, during the trial, by the plaintiffs, was duly proved,b evidence presented by the defendants. Evidence, unsuccessfully rebutted also introduced which proved that the rents produced by all the rural an urban properties of common ownership amounted, up to August 1, 1905, to the,sum of P3,654.15 which, being applied toward the cost of the repair w on the said house, leaves a balance of P2,598.17, the amount actually advanced by the defendants, for the rents collected by them were not sufficient for the termination of all the work undertaken on the said building, necessary for its complete repair and to replace it in a habit condition. It is therefore lawful and just that the plaintiff Vicenta Ortiz was willing to sell to her sister Matilde for P1,500, her share in the house in question, when it was in a ruinous state, should pay the defendants on half of the amount expended in the said repair work, since the building a reconstruction was worth P9,000, according to expert appraisal. Consequently, the counterclaim made by the defendants for the payment to them of the sum of P1,299.08, is a proper demand, though from this sum a reduction must be made of P384, the amount of one half of the rents which should have been collected for the use of the quarters occupied by the justice of the peace, the payment of which is incumbent upon the husband of the defendant Matilde, as aforesaid, and the balance remaining, P915.0 the amount which the plaintiff Vicenta must pay to the defendants.

The defendants claim to be entitled to the collection of legal interest the amount of the counterclaim, from December 7, 1904. This contention can not be sustained, inasmuch as, until this suit is finally decided, not be known whether the plaintiffs would or would not be obliged to pay any sum whatever in reimbursement of expenses incurred by the plaintiffs in the repair work on the said house on Calle Escolta, whether not the defendants, in turn, were entitled to collect any such amount, an finally, what the net sum would be which the plaintiffs might have to pay reimbursement for one-half of the expenditure made by the defendants. Until final disposal of the case, no such net sum can be determined, nor until can the debtor be deemed to be in arrears. In order that there be an obligation to pay legal interest in connection with a matter at issue b the parties, it must be declared in a judicial decision from what date the interest will be due on the principal concerned in the suit. This rule established by the decisions of the supreme court of Spain, in reference articles 1108, 1109, and 1110 of the Civil Code, rendered on April 24, November 19, 1869, and February 22, 1901.

With regard to the percentage, as remuneration claimed by the husband of the defendant Matilde for his

administration of the property of common ownership, inasmuch as no stipulation whatever was made in the matter b and between him and his sister-in-law, the said defendant, the claimant i entitled to the payment of any remuneration whatsoever. Of his own accord and as an officious manager, he administered the said pro indiviso proper one-half, of which belonged to his wife who held it in joint tenancy, wit sister-in-law, and the law does not allow him any compensation as such voluntary administrator. He is merely entitled to a reimbursement for actual and necessary expenditures as he may have made on the undivided properties and an indemnity for the damages he may have suffered while acting in that capacity, since at all events it was his duty to care for preserve the said property, half of which belonged to his wife; and in exchange for the trouble and labor occasioned him by the administration his sister-in-law's half of the said property, he with his wife resided upper story of the house aforementioned, without payment of one-half of the rents said quarters might have produced had they been leased to another person.

With respect to the division of certain jewelry, petitioned for by the defendants and appellants only in their brief in this appeal, the record proceedings in the lower court does not show that the allegation made b the plaintiff Vicenta is not true, to the effect that the deceased mother the litigant sisters disposed of this jewelry during her lifetime, because, had she not done so, the will made by the said deceased would have been exhibited in which them said jewelry would have been mentioned, at leas would have been proved that the articles in question came into the possession of the plaintiff Vicenta without the expressed desire and the consent of the deceased mother of the said sisters, for the gift of this jewelry was previously assailed in the courts, without success; therefor in view of its inconsiderable value, there is no reason for holding th said gift was not made.

As regards the collection of the sum of P910.50, which is the difference between the assessed value of the undivided real properties and the price the same as determined by the judicial expert appraiser, it is shown by t record that the ruling of the trial judge admitting the amendment to the original complaint, is in accord with the law and principles of justice reason that any of the coowners of a pro indiviso property, subject to division or sale, is entitled to petition for its valuation by competent appraisers. Such valuation is not prejudicial to any of the joint owners, beneficial to their interests, considering that, as a general rule, the value of a building or a parcel of realty is less than the actual real of the property, and this being understood by the defendants, they appointed an expert appraiser to determine, in conjunction with the one selected by the plaintiffs, the value of the properties of joint ownership. These two experts took part in the later proceedings of the suit until finally, and during the course of the latter, the litigating parties agreed to an amicable division of the pro indiviso hereditary property, in accordance the price fixed by the judicial expert appraiser appointed as a third in view of the disagreement between and nonconformity of the appraisers chosen by the litigants. Therefore it is improper now to claim a right to the collection of the said sum, the difference between the assessed value that fixed by the judicial expert appraiser, for the reason that the increase in price, as determined by this latter appraisal, redounded to t benefit of both parties.

In consideration of the foregoing, whereby the errors assigned to the court have been duly refuted, it is our opinion that, with a partial reversal the judgment appealed from, in so far as it absolves the plaintiffs from counterclaim presented by the defendants, we should and hereby do sentence the plaintiffs to the payment of the sum of P915.00, the balance of the sum claimed by the defendants as a balance of the one-half of the amount which the defendants advanced for the reconstruction or repair of the Calle Escolta house, after deducting from the total of such sum claim by the latter the amount of P384 which Gaspar de Bartolome, the husband of the defendant Matilde, should have paid as one-half of the rents due f his occupation of the quarters on the lower floor of the said house as an office for the justice of the peace court of Vigan; and we further find; That the defendants are not obliged to pay one-half of the rents which could have been obtained from the upper story of the said house; (2) that the plaintiffs can not be compelled to pay legal interest from December 7, 1904, on the sum

expended in the reconstruction of the aforementioned house, but only the interest fixed by law, at the rate of 6 per cent per annum, from the date of the judgment to be rendered in accordance with this decision; (3) that the husband of the defendant Matilde Ortiz is no entitled to any remuneration for the administration of the pro indiviso property belonging to both parties; (4) that, neither is he entitled to collect from the plaintiffs the sum of P910.50, the difference between the assessed valuation and the price set by the expert appraisal solicited by the plaintiffs amendment to the complaint; and, (5) that no partition shall be made certain jewelry aforementioned now in the possession of the plaintiff Vicenta Ortiz. The said judgment, as relates to the points appealed, is affirmed, in so far as its findings agree with those of this decision, a reversed, in so far as they do not. No special finding is made regard the costs of both instances. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Trent, JJ., concur.

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