

**GENEROSA TEVES DE JAKOSALEM, PLAINTIFF-APPELLANT, VS.
NICOLAS RAFOLS, ET ALS., DEFENDANTS-APPELLEES.***G.R. No. 48372. July 24, 1942*

Ponente: MORAN, J.

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The land in question, described in the appealed decision, originally belonged to Juan Melgar. The latter died and the judicial administration of his estate was commenced in 1915 and came to a close on December 2, 1924, only. During the pendency of the said administration, that is, on July 5, 1917, Susana Melgar, daughter of the deceased Juan Melgar, sold the land with the right of repurchase to Pedro Cui, subject to the stipulation that during the period for the repurchase she would continue in possession of the land as lessee of the purchaser. On December 12, 1920, the partition of the estate left by the deceased Juan Melgar was made, and the land in question was adjudicated to Susana Melgar. In 1921, she conveyed, in payment of professional fees, one-half of the land in favor of the defendant-appellee Nicolas Rafols, who entered upon the portion thus conveyed and has been in possession thereof up to the present. On July 23, 1921, Pedro Cui brought an action to recover said half of the land from Nicolas Rafols and the other half from the other defendants, and while that case was pending, or about August 4, 1925, Pedro Cui donated the whole land in question to Generosa Teves, the herein plaintiff-appellant. After trial, the lower court rendered a decision absolving Nicolas Rafols as to the one-half of the land conveyed to him by Susana Melgar, and declaring the plaintiff owner of the other half by express acknowledgment of the other defendants. The plaintiff appealed from that part of the judgment which is favorable to Nicolas Rafols.

The lower court absolved Nicolas Rafols upon the theory that Susana Melgar could not have sold anything to Pedro Cui because the land was then in custodia legis, that is, under judicial administration. This is error. That the land could not ordinarily be levied upon while in custodia legis, does not mean that one of the heirs may not sell the right, interest or participation which he has or might have in the lands under administration. The ordinary execution of property in custodia legis is prohibited in order to avoid interference with the possession by the court. But the sale made by an heir of his share in an inheritance, subject to the result of the pending administration, in no wise stands in the way of such administration.

Article 440 of the Civil Code provides that "the possession of hereditary property is deemed to be transmitted to the heir without interruption from the instant of the death of the decedent, in case the inheritance be accepted." And Manresa with reason states that upon the death of a person, each of his heirs "becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the coowners of the estate while it remains undivided." (3 Manresa, 357; Alcala vs. Alcala, 35 Phil. 679.) And according to article 399 of the Civil Code, every part owner may assign or mortgage his part in the common property, and the effect of such assignment or mortgage shall be limited to the portion which may be allotted him in the partition upon the dissolution of the community. Hence, in the case of Ramirez vs. Bautista, 14 Phil. 528, where some of the heirs, without the concurrence of the others, sold a property left by their deceased father, this Court, speaking thru its then Chief Justice Cayetano Arellano, said that the sale

was valid, but that the effect thereof was limited to the share which may be allotted to the vendors upon the partition of the estate.

It results therefore that the sale made by Susana Melgar in favor of Pedro Cui was valid, but it would be effective only as to the portion to be adjudicated to the vendor upon the partition of the property left by her deceased father Juan Melgar. And as on December 12, 1920, upon the partition of said property, the land in question was adjudicated to Susana Melgar, the sale of the whole land which the latter made in favor of Pedro Cui was entirely confirmed.

Upon the confirmation of the sale on December 12, 1920 in favor of Pedro Cui, the conveyance by Susana Melgar in favor of Nicolas Rafols in 1921 could no longer be done. And even in the case of a double sale, where neither of the purchasers has registered the sale, the first in possession, namely, Pedro Cui, should be preferred. When the sale made in the latter's favor was confirmed on December 12, 1920, Susana Melgar was in possession of the land as lessee, and this possession should be considered as that of Pedro Cui. The possession of Nicolas Rafols commenced in 1921 only, wherefore, it is subsequent to that of Pedro Cui.

Nicolas Rafols may not allege prescription of action, for Pedro Cui filed the first complaint in 1921, or the year following the confirmation of the sale in his favor. And as Nicolas Rafols deprived Pedro Cui of the possession and enjoyment of one-half of the land since 1921 to the present, it is only just that he should pay an indemnity therefor, Six per cent of P1,500, which is the price of one-half of the land, may be considered as the reasonable amount of this indemnity.

Wherefore, the appealed decision is reversed, and Nicolas Rafols is sentenced to deliver to the plaintiff Generosa Teves de Jakosalem, one-half of the land conveyed to him by Susana Melgar, and to pay, by way of damages, the sum of P90 a year from the filing of the complaint, that is, from July 23, 1921, until the delivery of the land, with the costs of both instances against him. So ordered.

Yulo, C. J., Ozaeta, Paras, and Bocoho, JJ., concur.

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