

**FLORENTINA PISALBON ET AL., PLAINTIFFS AND APPELLANTS, VS. PLACIDA BEJEC, DEFENDANT AND APPELLEE.***G.R. No. 48430. January 30, 1943*

Ponente: OZAETA, J.

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Hipolito Manuel, who died on April 26, 1926, left two widows and a homestead. The widows are Florentina Pisalbon and Placida Bejec, whom he married on June 23, 1903, and November 9, 1914, respectively. The homestead is lot No. 754 of the Umingan cadastre, with an area of 13.85 hectares and described in original certificate of title No. 1749 of the register of deeds of Pangasinan. In his homestead application which was filed on September 3, 1917, and approved by the Director of Lands on August 23, 1918, Hipolito Manuel named Placida Bejec as his lawful wife; and in fact he and she were the ones who cleared and worked the land from the date the homestead application was filed until the death of Hipolito Manuel on April 26, 1926. Thereafter Placida Bejec continued in the possession of the land, ignorant of the existence of Florentina Pisalbon and of the latter's previous marriage to Hipolito Manuel until Florentina Pisalbon began to assert an adverse claim to the homestead in question. In view of the conflicting claims of the two widows, the Director of Lands, on August 23, 1934, ordered that the homestead patent be issued in favor of the heirs of Hipolito Manuel, and accordingly the register of deeds of Pangasinan subsequently issued original certificate of title No. 1749 in favor of the heirs of Hipolito Manuel.

As already intimated, Placida Bejec had no knowledge of the undissolved marriage between Hipolito Manuel and Florentina Pisalbon; but she admits that neither did Florentina Pisalbon know of the marriage of Hipolito Manuel and Placida Bejec until after his death. No child was born to the second marriage, but a daughter was born to the first, namely, Margarita Manuel, one of the original plaintiffs herein, who died on August 17, 1939, during the pendency of this action, leaving two children named Cristeta and Esmedia Ancheta.

This action was instituted on June 28, 1938, by Florentina Pisalbon and her daughter Margarita Manuel, the latter assisted by her husband Pedro Ancheta, against Placida Bejec to recover from her the ownership and possession of the homestead above mentioned. Upon a stipulation of facts the substance of which has been set forth above, the trial court held that in view of the fact that Placida Bejec together with Hipolito Manuel cleared and worked the land in question, and considering that homesteads are granted to actual occupants of the public land, she is entitled to the homestead both in law and in equity, and dismissed plaintiffs' action with costs against the plaintiffs.

In their appeal the plaintiffs invoke the doctrine laid down by this Court in *Lao and Lao vs. Dee Tim* (45 Phil., 739), and pray "that the decision of the lower court be reversed and another entered in lieu thereof declaring that the plaintiffs-appellants are entitled to and own one half (½) pro indiviso of the land described in homestead patent title No. 1749 issued by the register of deeds of Pangasinan in the name of the heirs of Hipolito Manuel \* \* \*"

We note at the outset that the finality of the order of the Director of Lands directing the issuance of the homestead

patent in favor of the heirs of Hipolito Manuel has not been pleaded and invoked by the plaintiffs in their complaint; neither was said order offered in evidence during the trial. It was only mentioned in the stipulation of facts to show how the title came to be issued in the name of the heirs of Hipolito Manuel. Plaintiffs based their claim to the homestead in question upon the following allegations of their complaint:

"3. That the plaintiffs Florentina Pisalbon and Margarita Manuel acquired the above-described property thru inheritance from the deceased Hipolito Manuel, who died intestate in the municipality of San Manuel, Province of Pangasinan, on April 26, 1926, leaving the property in question as his hereditary estate and the said Margarita Manuel and Florentina Pisalbon as his sole and exclusive heirs, they being his legitimate daughter and lawful wife respectively.

"4. That upon the death of the said Hipolito Manuel, the defendant Placida Bejec took possession of the property in question against the will and express opposition of the herein plaintiffs, resulting in their damage and prejudice."

But in the light of the facts stipulated during the trial, the plaintiffs have modified their claim to conform to the doctrine laid down in *Lao and Lao vs. Dee Tim*, supra, thus recognizing the right of the defendant to one half of the land in question. On the other hand the defendant asserts exclusive ownership of the entire homestead under section 103 of Act No. 2874, on the theory that she is a lawful widow of the deceased. We shall therefore decide the case upon the issue thus formulated.

Section 103 of Act No. 2874, which was in force at the time the application and the final proof covering the home- stead in question were filed, provides in substance that if the applicant shall die before the issuance of the patent or while he still has obligations pending towards the Government, he shall be succeeded in his rights and obligations, with respect to the land applied for, by his widow or, in her default, by his heirs in law.[1] At the time the homestead applicant Hipolito Manuel died in 1926, he had submitted the final proof and paid all the necessary homestead fees, and all that remained was the ministerial act of issuing the title, which accordingly was ordered issued by the Director of Lands not to either of the two widows but to the heirs of Hipolito Manuel.

But regardless of the validity or invalidity of the marriage between Hipolito Manuel and the defendant Placida Bejec, we are of the opinion and so hold that the latter is entitled to one half of the homestead in question as a co-applicant and co-owner and that, consequently, only the other half thereof passed to the heirs of Hipolito Manuel upon his death. Altho the homestead application was made in the name of Hipolito Manuel alone, who represented himself as being married to Placida Bejec, the land in question was occupied, cleared, and worked by both Hipolito Manuel and Placida Bejec. It was thru their joint efforts and industry that the requisites of the Public Land Act for the acquisition of title to a homestead were complied with. Therefore, independently of their marriage, they must be considered as co-owners of the homestead.

In *Lao and Lao vs. Dee Tim*, supra, a Chinese named Yap Siong married Dee Tim in China in 1893 and Maria Lao in the Philippines in 1903. Neither of the two wives knew of the existence of the other marriage until after the husband's death. This Court, applying the Laws of the Partidas, held that where two women innocently and in good faith are legally united in holy matrimony to the same man, their children born will be regarded as legitimate children and each family will be entitled to one half of the estate of the husband upon the distribution of his estate. Under that doctrine, the half of the homestead in question corresponding to Hipolito Manuel belongs to his heirs, Cristeta Ancheta and Esmedia Ancheta, the children of his now deceased legitimate daughter Margarita Manuel, subject to the usufruct of the two widows over one third thereof. (Article 834, Civil Code.) The right to usufruct of the defendant Placida Bejec may equitably be considered compensated by the legitimate claim of the plaintiffs for one-half share in the products of the homestead in question from June 28, 1938, the date of the filing of the complaint.

Wherefore, with revocation of the judgment of the trial court, let another judgment be entered ordering that lot No. 754 of the cadastral survey of Umingan, Pangasinan, covered by homestead title No. 1749 of said province, be divided into two equal parts, the cost of the partition, the preparation of the corresponding plan, and the issuance of new certificates of title to be borne equally by the plaintiffs and the defendant. Once the subdivision plan and technical description are approved by the Director of Lands, a new certificate of title shall be issued for one half of said lot in favor of Placida Bejec, and another certificate for the other half in favor of Cristeta Ancheta and Esmedia Ancheta pro indiviso, subject to the usufruct of Florentina Pisalbon over one third of the portion corresponding to the Ancheta children. From the time this judgment becomes final and pending the partition herein ordered, the defendant shall account for and deliver to the plaintiffs one half of the net produce of said lot No. 754. No pronouncement as to costs in either instance. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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[1] This has been amended by section 20 of Act No. 3517 (now embodied in section 105 of Commonwealth Act No. 141), which provides for succession by the heirs in law of the applicant, eliminating the widow.

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