

MAURICIO RAMIREZ, ADMINISTRATOR OF THE ESTATE OF MOISES RAMIREZ, DECEASED, PLAINTIFF AND APPELLEE, VS. SIMEON BAUTISTA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 5075. December 01, 1909*

Ponente: ARELLANO, C.J.

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The subject of this complaint is two fish ponds, left by Moises Ramirez on his demise, and subsequently illegally sold. This action was brought for the purpose of having the sale declared to be void, to secure the recovery of possession of the fish ponds, their restitution to the administrator of the estate of the deceased owner, and indemnity for damages.

Moises Ramirez, who died intestate in February, 1900, was married twice. By the first marriage he had five children, named Rosa, Carmen, Francisco, Mauricia, and Ignacia; by the second marriage three, to wit, Cirila, Isabel, and Serapio, of whom Isabel alone survives. At the time of his death he left two fish ponds in the sitio of Tagalag, in the municipality of Polo, Province of Bulacan, the specific details of which are described and admitted in the case. The two wives are also dead.

The children of the first marriage, Rosa, Carmen, Francisco, Mauricia, and Ignacia, sold the two fish ponds on the 28th of November, 1901, to Simeon Bautista and Raymundo Duran for the sum of 1,100 pesos. The only surviving child of the second marriage, Isabel, was not a party to said sale, hence the suit now filed by the administrator of the intestate estate to have the sale declared null and void and the fish ponds restored to the intestate estate of Moises Ramirez.

The two purchasers proved their purchase by two documents, one of which was a private and the other a notarial one executed for the purpose. When summoned to answer the complaint they requested that the vendors be cited also, but the latter although so summoned did not appear at the trial.

The action was proceeded with against the purchasers, and the Court of First Instance of Bulacan, before whom the matter was heard, rendered judgment holding that the fish ponds in question pertained to the intestate estate of the late Moises Ramirez, and that the sale effected by the said Rosa, Carmen, Francisco, Mauricia, and Ignacia to the defendants, Simeon Bautista and Raymundo Duran, was null and void. The court decreed that the possession of the fish ponds be restored to the plaintiff, Mauricio Ramirez, as administrator of the property of the late Moises Ramirez, and accorded him the right to recover from the defendants 200 pesos per annum, as loss and damages, to commence from the day they were notified of the complaint, without prejudice to their right, which was reserved to them, of action against the said vendors; the court also sentenced the defendants to pay the costs.

From the above judgment the defendants appealed. The appeal having been heard before this court, together with the respective allegations of the parties, it appears that the appellants have made the following assignments of error to the judgment of the lower court:

I. In that it was not held in the judgment that the children of the late Moises Ramirez, of both the first and the second marriage, had become owners in common of the two fish ponds in question by reason of the death of their ancestor.

II. In that it was found therein that, without a partition having been made of the property left by Moises Ramirez, the children of his first marriage could not validly have transmitted their rights of partition in common to the property which is the subject of this suit.

III. In that the sale of the thirteen-sixteenths of the two parcels of land in question was not declared valid, and void only as to three-sixteenths thereof.

IV. In that it was not found that, as a result of the evidence, the plaintiff had no legal capacity to bring suit.

The appeal having been heard and the evidence reviewed, the following facts must be held to have been proven:

That Moises Ramirez was first married to Apolinaria Guillermo and by her had the above-mentioned five children, Rosa, Carmen, Francisco, Mauricia, and Ignacia Ramirez.

That by his second wife, Alejandra Capistrano, he had three children, as already stated, named Cirila, Isabel, and Serapio Ramirez.

That Moises Ramirez and his two wives are now dead, as are also the two children of the second marriage, Cirila and Serapio. Isabel, a girl of about eight years of age, alone survives.

That the two fish ponds in question were acquired by Moises Ramirez during the time of his first marriage with Apolinaria Guillermo, on the 7th of March, 1895, which is the date of the title by composition with the Spanish Government that constitutes his title of ownership.

On this supposition, the two fish ponds in litigation belonged to the conjugal partnership between Moises Ramirez and Apolinaria Guillermo. (Civil Code, art. 1401, par. 1.)

By virtue of the conjugal partnership, these two fish ponds belonged half to the husband and half to the wife upon the dissolution of the marriage by reason of the death of either of them. (Civil Code, art. 1392.)

Consequently, upon the death of Apolinaria Guillermo one-half of the fish ponds belonged to Moises Ramirez, and the other half, that belonging to Apolinaria Guillermo, to the children of the said married couple, Rosa, Carmen, Francisco, Mauricia, and Ignacia, as the lawful heirs of their mother. (Civil Code, art. 931.)

Inasmuch as the said property continued undivided between the father on the one hand and the children on the other, and as the conjugal partnership had terminated, a community of property maintained the father and the children in the joint dominion. (Civil Code, art. 392.)

By the second marriage three additional children survived the father, and upon his death the first five children, together with the latter three, became his heirs, and all are entitled to divide the said half share belonging to their father into eight parts.

By the death of two of these last three children, their respective shares fell to Isabel as their sole heir, inasmuch as they were children of the same parents. (Civil Code, art. 947.)

In view of these considerations, the claim of the appellants is entirely legal that thirteen-sixteenths should be apportioned among the children of the first marriage—to wit, eight as their own, already inherited from their mother, Apolinaria Guillermo, and five subsequently inherited from their deceased father, Moises Ramirez—and three-sixteenths should be the share of the three children of the second marriage, which accrued to Isabel

Ramirez.

Therefore, in the succession of Moises Ramirez that is now opened the whole of these fractional parts can not be included, but only the eight which actually constitute his share in the community of property maintained by him with his children of the first marriage, Rosa, Carmen, Francisco, Mauricia, and Ignacia, since the death of his first wife.

The above five children of the first marriage, upon the death of Moises Ramirez, continued the aforesaid community of property with their three half sisters and brother, Cirila, Isabel, and Serapio; that is to say, now with Isabel, their share being thirteen-sixteenths, and that of Isabel three-sixteenths.

The present status of the two fish ponds in question is that of community of property.

"It is certain that when two or more heirs appear at the opening of a testamentary succession, or during the progress of the settlement of an intestate estate, and each turns out to be an owner pro indiviso of the inheritance, by reason of the share he may be entitled to receive, a community of property then exists between the participants as long as the estate remains undivided * * * and nothing more tangible can be imagined than this necessary community, which arose at the moment when the coheirs assumed the entire representation of the person of the deceased with respect to all of his property, rights, and actions, both active and passive." (3 Manresa, 357.)

With regard to the community of property the Civil Code provides that—

"Every coowner shall have full ownership of his part and in the fruits and benefits derived therefrom, and he therefore may alienate, assign, or mortgage it, and even substitute another person in its enjoyment, unless personal rights are in question. But the effect of the alienation or mortgage, with regard to the coowners, shall be limited to the share which may be awarded him in the division on the dissolution of the community." (Art. 399, Civil Code.)

If Rosa, Carmen, Francisco, Mauricia, and Ignacia Ramirez could lawfully alienate their respective shares in the joint ownership of the two parcels of land sold to the defendants, Simeon Bautista and Raymundo Duran, it is evident that the sale of thirteen-sixteenths of the said two lands could not be void; the sale of the three-sixteenths which belonged to Isabel alone is illegal, as alleged in the third assignment of error.

Therefore, the sale described in the public instrument of the 29th of November, 1901, of the thirteen-sixteenths of the lands belonging to the vendors is valid, and that of the three-sixteenths which pertain to Isabel, who neither by herself nor by means of another took part in said sale, is null.

Simeon Bautista and Raymundo Duran succeed to the vendors and are subrogated thereto in the joint ownership of the two fish ponds sold; their shares are the same that were owned by the vendors, that is, thirteen-sixteenths.

The whole of the two fish ponds can not pertain to the intestate estate of Moises Ramirez, but merely the half that belonged to him and which at his death became a part of his intestate estate.

Intestate succession can not disturb the lawful holder in his possession of property, which it is thought should constitute a part of the hereditary property.

Only in the event of a division of the common property, or upon dissolution of the community of property now existing between the purchasers, Simeon Bautista and Raymundo Duran, on the one hand and Isabel Ramirez on the other, can the fruits, rents, of benefits received, and the part thereof, as well as of the expenses, corresponding to the coowner Isabel Ramirez in maintaining the community, be considered, as well as of the rights and actions that may pertain to the purchasers as against the vendors (who have taken no part in these proceedings), by reason of the total consideration paid for the two properties, and other obligations which may have arisen because of the

sale.

The present cause of action and the complaint based thereon being limited to the recovery of the two properties in question, and the restitution of the possession thereof to the administrator of the intestate estate of Moises Ramirez, in consequence of the latter's hereditary succession, it is evident that neither the recovery of possession nor the restitution asked for can be granted, as the defendants are the legitimate proprietors and possessors in joint ownership of the greater portion of the common property claimed.

While the question of the nullity of the entire sale was previously raised in the action, the illegality of the sale of the three-sixteenths of the common property made by the vendors is evident.

In view of the foregoing, it is our opinion that the judgment appealed from should only be affirmed in so far as it declares that the sale made by Rosa, Carmen, Francisco, Mauricia, and Ignacia Ramirez of the three-sixteenths parts belonging to Isabel Ramirez in the two fish ponds claimed is null and void; in all other respects the said judgment is hereby reversed, without any special ruling as to the costs of both instances. So ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ. concur.

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