

CELESTINO RODRIGUEZ, ADMINISTRATOR, ET AL., PLAINTIFFS AND APPELLEES, VS. LUISA RAVILAN, DEFENDANT AND APPELLANT.*G. R. No. 5343. September 16, 1910*

Ponente: TORRES, J.

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On November 29, 1904, Jorgia Barte and Donato Mendoza, in representation of their son, Nicolas Mendoza, filed a written amended complaint in the Court of First Instance of Cebu against Luisa Ravilan, the guardian of their daughters Maximina, Paulina, Pelagia, and Maxima, all surnamed Barte. The complaint recites, among other things, that many years ago Javier Barte and Eulalia Seno died in the pueblo of Mandaue, leaving property and, as heirs, Espiridion, Feliciano, Telesfora, Juana, Carmelo, Casimira, Jorgia, Matea, and Pedro, surnamed Barte, and that, although five of them divided among themselves the said property, consisting of lands situated in the said pueblo and several carabaos, the lewd portions which pertained to four of them, Espiridion, Jorgia, Matea, and Pedro, remained undivided, and these latter continued to possess, in common, the property that fell to their shares, and were also associated in business separately from their other coheirs.

The property of the said four children, which remained undivided, consists of one parcel of agricultural land in the pueblo of Mandaue, of an area such as is usually sown with a ganta of seed corn, bounded on the north by property of Damasa Manalili, on the south by that of Telesfora Barte, on the east by that of Maria Mendoza, and on the west by that of Feliciano Barte; another parcel of agricultural land in the barrio of Banilad of the same pueblo, of an area usually covered in sowing a ganta and a half of seed corn, bounded on the north by the street that leads to Talamban, on the south by the land of Dionisio Cortes, and on the east and west by that of Dionisio Cortes and Lucio Ceniza, respectively; another parcel of land, situated in the same barrio and of an area required for the sowing of 2 gantas of seed corn, bounded on the north by the street leading to Talamban, on the south by the land of Dionisio Cortes, on the east by an alley, and on the west by the property of Marcelo Oano.

That the said brothers and sisters purchased, out of the profits obtained from these lands, other lands, to wit, a parcel of land in the barrio of Libog and pueblo of Bogó, of an area usually sown with 14 gantas of seed corn, bounded on the north, south, east, and west by property of Hermenegildo Pelayo, Felieiano Cortes, Domingo Nunez, and Feliciano Cortes, respectively; another parcel in the same barrio, of an area sufficient for 3 gantas of seed corn, bounded on the north by the property of Benito Cabajug, on the south by the lands of Mariano Cabajug, on the east by those of Amadeo Elorde, and on the west by that of Mariano Mendoza; another parcel in the same barrio, of sufficient area for 10 gantas of seed corn, bounded on the north, south, east, and west by the lands of Ciriaco Dajuna, Crisanto Zurra, Felieiano Cortes, and Mariano Fontanosa; another parcel in the same barrio, of an area ordinarily sown with 3 gantas of seed corn, bounded on the north, south, east, and west by the lands of Benito Cabajug, Monico Pajuga, Mariano Cabajug, and Mariano Fontanosa, respectively; another parcel in the said barrio, bounded on the north, south, east, and west by lands of Damiano Pelagio and Crisanto Zurra; another parcel of an area sown by 4 gantas of seed corn, bounded on the north, south, east, and west by lands of Mariano Cabajug, Anacleto Lambojon, Ciriaco Dajuna, and Anacleto Lambojon, respectively; another parcel, situated in

the barrio of Tabayho of the aforesaid pueblo, of an area sown by 14 gantas of seed corn, bounded on the north, south, east and west by lands of Maximino Fernan, Domingo Fontanosa, Vicente Odian, and Meliton Mendoza; another parcel in the barrio of Cadaohan of the pueblo of Tabugon, bounded on the north, south, east, and west by lands of Santiago Ortelano, a creek, and lands of Jose Arfon and Santiago Ortelano, respectively; and another parcel in the barrio of Dughoy, Tabugon, of an area sown with 25 gantas of seed, bounded on the north, south, east, and west by property of Felieiano Cortes, Felix Manalili, Santiago Ortelano, and Donato Mendoza; eleven plow carabaos, three carabao cows with four calves, and four head of cattle, acquired by the community; a mortgage credit of 130 pesos against Laureano Soliano. secured by a mortgage on his land in the barrio of Bagacay of the pueblo of Bogo, and three carabaos.

That the business of the said four brothers and sisters was, by common accord, administered by one of them, Espiridion Barte, and, when he died, the three survivors remained united in their interests and the undivided property was administered, until December, 1901, by Pedro Barte, who at his death left four heirs, the said Maximina, Paulina, Pelagia, and Maxima, represented by their mother, Luisa Ravilan, the wife and widow of Pedro Barte and the defendant in this suit; that the said property, as aforestated, was administered by Espiridion Barte, in common accord with the others, and, he having died without leaving heirs, by force of law the part that pertained to him passed to his brother Pedro and his sisters Jorgia and Matea, as the heirs nearest of kin of the said Espiridion, and, by common agreement, the said brother and sisters continued their partnership organization and appointed the brother Pedro as administrator; that during the latter's administration, Matea Barte also died, leaving as her heir Nicolas Mendoza, represented by his father Donato, one of the plaintiffs; that at the death of Pedro Barte, Jorgia Barte and Donato Mendoza, in the name of their son Nicolas, decided upon the distribution of the property mentioned and so stated, in February, 1902, to Luisa Ravilan, thie'guardian of the heirs of Pedro Barte, but that Ravilan would not agree to the partition, on the pretext that was the administratrix of that property, she had to pay debts of the deceased.

That three years having elapsed, up to the time of the complaint, and the debts having been settled, as admitted by the defendant herself, the latter was requested to present the accounts, which she absolutely refused to do, and that she continued in the possession and to enjoy the usufruct of the said property, without the consent or intervention of the plaintiffs; that Jorgia Barte, Nicolas Mendoza, the heir of Matea Barte, and the heirs of Pedro Barte, named Maximina, Paulina, Pelagia, and Maxima Barte, were then entitled to the property in question, which should be divided among them in three equal parts, one to be allotted to Jorgia Barte, another to Nicolas Mendoza, and the other to the heirs of Pedro Barte.

The demand further recites that the plaintiffs desire that a division be made and therefore pray that a partition of the property, both real and personal, be decreed and also of the profits that may have accrued thereto during the time that it was in the possession of and usufruct enjoyed by the defendant, in accordance with the respective rights of the parties, and that, in case that the distribution can not be made without detriment to such rights, the property be ordered sold and the proceeds divided among the parties. The plaintiffs requested also that the costs of the suit be assessed against the defendant.

A demurrer to the complaint was interposed, although the record does not show how it was decided. The defendants in their answer denied all the allegations of the amended complaint.

The case came to trial and, the testimony having been adduced by both parties, the exhibits being attached to the record, the judge, in view of the conclusions reached therefrom and on the date of November 4, 1907, rendered judgment in favor of the plaintiffs, by ordering the partition of the property mentioned, in the manner and portions expressed in the judgment, and decreeing that such partition must be made in accordance with sections 185 to 195 of the Code of Civil Procedure, with respect to the real property, and that the five carabaos should be distributed

in three equal allotments in the manner determined for the real property. The costs were charged to the plaintiffs and assessed against the divisible property.

Counsel for the defendant excepted to this judgment and prayed for its annulment and a new trial. The motion was overruled, to which exception was taken, and the appellant duly presented his bill of exceptions, which was approved and forwarded to this court.

A demand is made in the complaint for the partition of the common property held undividedly by four brothers and sisters who formed a partnership for the use and enjoyment of the same.

In relating the origin of a part of the property of the four brothers and sisters joined in partnership, the plaintiffs stated that their deceased parents, Javier Barte and Eulalia Seno, left at their death nine children, above mentioned, and property consisting of carabaos, a credit, and lands situated in the pueblo of Mandaue, and that, their property having been divided among their nine children, that portion thereof which corresponded to the brothers and sisters Espiridion, Jorgia, Matea, and Pedro remained undivided and its owners, associated together, continued to enjoy it and manage it in common, separately from their other brothers and sisters.

Although it be decided that it was not necessary to prove that the said nine brothers and sisters were unquestionably the children of the deceased Javier Barte and Eulalia, and are therefore their only heirs, it should at least have been shown that a lawful partition was made among their nine children, of the property left by both spouses at their death, and that the three parcels of land situated in the pueblo of Mandaue, and said to be possessed by the said four brothers and sisters associated together, were awarded to the same. Such a partition, were it made, should appear in an authentic document, which was not exhibited with the complaint, since article 1068 of the Civil Code provides "A division legally made confers upon each heir the exclusive ownership of the property which may have been awarded to him."

Even though titles of ownership of the said property were not exhibited, if it had been shown that the Mandaue lands had been awarded by partition to the four brothers and sisters aforementioned, there would have been prima facie proof that they were and certainly are the owners thereof.

Section 181 of the Code of Civil Procedure reads: "A person having or holding real estate with others, in any form of joint tenancy or tenancy in common, may compel partition thereof in the manner hereinafter prescribed."

Section 183 of the same code also prescribes: "The complaint in an action for partition shall set forth the nature, end extent of the plaintiff's title and contain an adequate description of the real estate of which partition is demanded, and name each tenant in common, coparcener, or other person interested therein, as defendants."

So that he who demands or claims a partition of the property must have the status of; a coproprietor or coowner of the property the partition of which is asked for; and notwithstanding the fact that Jorgia Barte and the son of Matea Barte, through his representative, aver that they are the coowners of the said Mandaue lands and of others situated in the municipalities of Bogo and Tabogon, they have not proved their averment by titles which establish the common ownership alleged. A mere affirmation without proofs is insufficient, since the defendant party, representing the four daughters of the deceased Pedro Barte, absolutely denied all the allegations of the complaint.

It is true that the defendant Luisa Ravilan stated in her sworn testimony that, as the guardian of her children, she had an interest in the lands situated in Mandaue and that the parcels of land situated in Tabogon did not belong to her, nor to her deceased husband, Pedro Barte; but she positively affirmed that the seven parcels of land situated in Bogo were acquired by her said husband during his lifetime and during his marriage with her, and she exhibited five documents, one of them the original of a possessory information, as titles proving the ownership of her said husband.

Against the averment of the plaintiffs appears that of the defendant, in the name of her four daughters, the heirs of Pedro Barte, and while the plaintiff party exhibited no title of ownership whatever, not even of the lands situated in the pueblo of Bogo and which the defendant affirmed were acquired by her deceased husband, Pedro Barte, during his lifetime, it is an indisputable fact that the latter's widow, who in her own behalf and in the name of her four daughters claims the exclusive ownership of the lands in Bogo, is at the present time in possession thereof, and moreover showed documents which prove the acquisition of some of them. The testimony of the defendant to the effect that she only had a share in the lands of Mandaue, but not in those situated in Tabogon, is worthy of serious consideration, although she positively affirmed that those situated in Bogo belonged to her husband and to herself. As she is in possession of these lands and as the record of the trial shows no proof that they belonged to the joint association or partnership existing between the said four brothers and sisters, there are no legal provisions that would support the issuance of an order for the partition of the said lands in Bogo, of which the widow of their alleged former owner is now in possession.

In actions for the partition of property held in common it is assumed that the parties are all coowners or coproprietors of the undivided property to be partitioned. The question of common ownership need not be gone into at the time of the trial, but only how, in what manner, and in what proportion the said property of common ownership, shall be distributed among the interested parties by order of court.

Moreover, for the purposes of the partition demanded, it must be remembered that the hereditary succession of the deceased Espiridion Barte, who it is said left no legitimate descendants at his death, should be divided among his eight brothers and sisters who may have survived him, and in case any of these have died, the children of his deceased brother or sister, that is, his nephews and nieces per stirpes, are entitled to share in his inheritance, according to the provisions of articles 946, 947, and 948 of the Civil Code, the last cited of which prescribes: "Should brothers survive with nephews, children of brothers of the whole blood, the former shall inherit per capita and the latter per stirpes," representing their respective fathers or mothers, brothers or sisters of the deceased.

The record does not show whether Jorgia Barte left any legitimate heir at her death, and if she did not, her collateral relatives succeed her in the manner provided by law.

It is to be noted that the partnership contract entered into by the four brothers and sisters can not affect the hereditary rights which belong to the relatives of the deceased predecessor in interest nor alter the order prescribed by law for testate or intestate successions. (Arts. 744, 763, 806, 808, 913, 946, Civil Code.)

For the foregoing reasons, it is proper, in our opinion, with a reversal of the judgment appealed from, to declare, and we do hereby declare, that the partition prayed for be denied, and to absolve, as we do hereby absolve, the defendant Luisa Ravilan from the complaint, without special finding as to costs.

Arellano, C. J., Johnson, Moreland, and Trent, JJ., concur.

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