

ASUNCION ROJAS ET AL., PLAINTIFFS AND APPELLEES, VS. JOSE SINGSON TONGSON, DEFENDANT AND APPELLANT.

G.R. No. 5521. December 10, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

Remigio Tongson and Doña Marcelina Florentino were husband and wife, the latter dying in the year 1899. Dona Marcelina Florentino brought to the marriage a considerable amount of property, part of which appears in the inventory found on page 8 of the bill of exceptions.

After the death of Doña Marcelina Florentino, her husband continued in the administration of the property of the marital relation until on or about the 30th of April, 1906, when the Court of First Instance of the Province of Ilocos Sur, upon the petition of certain relatives of the deceased Doña Marcelina Florentino, appointed Prudencio Espiritu administrator of her estate and ordered said administrator to take possession of the property found in the said inventory. The appointment of the said administrator was opposed in the Court of First Instance by Remigio Tongson, upon the grounds:

First. That he was the husband of Doña Marcelina Florentino and was, therefore, entitled to the administration of the marital property; and

Second. That much of the property mentioned in said inventory was not the sole and separate property of his former wife, but was conjugal property.

Notwithstanding this objection, however, the court appointed the administrator.

During the pendency of the action in the Court of First Instance, Remigio Tongson died, and the defense was continued by his administrator, Jose Singson Tongson, who had been duly and regularly appointed by the lower court.

From the order of the lower court permitting the administrator of the deceased wife to administer the property in question, the defendant appealed and made several assignments of error in this court.

The important question presented in the record is whether or not, after the death of his wife, a husband can be deprived of the right to administer the marital property, composed of both conjugal and paraphernal property, by the appointment of an administrator for the estate of the deceased wife.

We have already decided in the case of *Alfonso vs. Natividad* (6 Phil. Rep., 240) that when the conjugal partnership is dissolved by the death of the husband, it must be liquidated in proceedings for the settlement of the estate of the husband, basing said decision upon articles 685 [Code of Civil Procedure], and 1407, 1412, 1418, 1426, and 1428 of the Civil Code.

In the case of *Prado vs. Lagera* (7 Phil. Rep., 395), the decision in the case of *Alfonso vs. Natividad* was affirmed and it was there decided that where the affairs of the conjugal partnership, dissolved by the death of the husband,

are in process of litigation in proceedings for the settlement of his estate, the widow can not maintain an action against his administrator for the purpose of recovering either her part of the conjugal property or her bienes parafernales. (Arts. 1421, 1422, 1423, Civil Code.)

The foregoing cases establish the method of administering the estate of a conjugal partnership when the same is dissolved by the death of the husband.

In the case of *Enriquez vs. Victoria* (10 Phil. Rep., 10), this court established the method of administering the property of a conjugal partnership when it is dissolved by the death of the wife. The method established is that when a conjugal partnership is dissolved by the death of the wife, the husband is the administrator of the affairs of the partnership until they are liquidated. In the event of a dissolution by the death of the husband or in case of the demise of the husband after the dissolution by the death of the wife, his administrator is also the administrator of the partnership affairs and is the legal representative of the partnership.

In the case of *Amancio vs. Pardo* (13 Phil. Rep., 297), this court again affirmed its former decision and held that:

"When a conjugal partnership is dissolved by the death of the wife, the surviving husband, and not the judicial administrator appointed in the proceedings for the settlement of the estate, is entitled to the possession of the property of the conjugal partnership until he has liquidated its affairs. It is an error to settle the affairs of the conjugal partnership, dissolved by the death of the wife, in the special proceedings for the settlement of the wife's estate."

These decisions in our opinion are conclusive on the question presented in the present case. Therefore the administrator of the deceased husband, Remigio Tongson, is entitled to the administration of the conjugal property until the same is liquidated. Under the view which we take of the facts in the present case and the doctrine established in the above-cited cases, we deem it unnecessary to discuss more in detail the assignments of error made by the appellant.

Basing our conclusions upon the above decisions of this court, it is hereby ordered that the appointment of the administrator of the estate of the deceased Doña Marcelina Florentino is hereby ordered annulled and it is further ordered that the administrator appointed for the estate of the deceased Remigio Tongson, upon giving a sufficient bond to be approved by the lower court, be given the possession of all of the conjugal property belonging to the said conjugal partnership of Remigio Tongson and Doña Marcelina Florentino, and that he be directed to proceed to the liquidation and distribution of said property as speedily as possible.

Without any finding as to costs, it is so ordered.

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

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