

DAMASA ALCALA, PLAINTIFF AND APPELLEE, VS. MODESTA PABALAN, PROCOPIO PABALAN, BASILIO SALGADO AND JUAN BANAY-BANAY, DEFENDANTS AND APPELLANTS.

G.R. No. 6463. August 12, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 11th day of June, 1910, the plaintiff and appellee presented a petition in the Court of First Instance of the Province of La Laguna, praying that she be appointed administratrix of the property described in paragraph 4 of her petition.

After hearing the respective parties, the lower court appointed the plaintiff as administratrix of said property. From that decision the defendants appealed to this court and made several assignments of error.

The undisputed facts, as presented by the record brought to this court, seem to be as follows:

That on the 23d day of April, 1897, Juan Banatin died, leaving a widow (Damasa Alcala), the plaintiff herein, and seventeen nieces and nephews, whose names are set out in the petition; that on the 13th day of June, 1897, the said widow and all of the seventeen nieces and nephews, except Tranquilina Banatin, entered into a voluntary agreement among themselves for the division "entre ellos," of all of the property left by the said Juan Banatin, deceased, except the house described in paragraph 4 of the petition; that by the terms of said agreement, the said house was to remain undivided; that the widow (the plaintiff herein) should receive the one-half of the usufruct of said house during her lifetime; that the other one-half of the usufruct should be distributed equally among the other seventeen heirs; that Francisco Salgado, one of the nephews, should administer the said house, collecting the rents of the same and deliver one-half to the widow (Damasa Alcala) and the other one-half to the nieces and nephews; that Francisco Salgado, having failed to pay to Damasa Alcala her share of the usufruct of said property, was sued by her and a judgment was finally rendered against him for the same. (Alcala vs. Salgado, 7 Phil. Rep., 151.) An execution was issued upon said judgment and one-half of the undivided property in question was sold some time in the year 1907, to one Macario Decena. On the 22d and 24th days of October, 1908 (see Exhibits 2 and 3), the said one-half of the property in question was repurchased by the heirs of Francisco Salgado. The money used in repurchasing the property by the heirs of Francisco Salgado was the money of four of the heirs of Juan Banatin, to wit: Modesta Pabalan, Procopio Pabalan, Basilio Salgado, and Juan Banay-banay (see Exhibit 4 of defendants herein), and not the money of the heirs of Francisco Salgado. On the 25th day of November, 1908, thirteen of the nieces and nephews or heirs of Juan Banatin, by means of a public document, recognized the right of the said Modesta Pabalan, Procopio Pabalan, Basilio Salgado, and Juan Banay-banay as the owners of the one-half of the undivided property in question. (See Exhibit 5.) On the 25th day of November, 1908, sixteen of the heirs of the said Juan Banatin, by a public document, unanimously appointed the said Modesta Pabalan as "administradora" of all of the house in question, in substitution of the said Francisco Salgado deceased. (See Exhibit 6.) Since the 25th day of November, 1908, until the commencement of the present action, Modesta

Pabalan had administered the property in question, collected the rents of the same and had paid the one-half of said rents to the plaintiff herein as the usufructuary of the one-half of said property.

The first assignment of error made by the plaintiff is that "El juzgado erro al estimar que la testamentaria del finado Juan Banatin no ha finalizada."

With reference to this assignment of error, the heirs of Juan Banatin were at perfect liberty to divide the estate among themselves, assuming the responsibility of any debts which might exist. There is no proof that any debts existed. After the actual division of the estate among themselves they became the absolute owners of their respective allotments and were tenants in common of that portion of the property which remained pro indiviso. After the mutual agreement among themselves for the division of the estate, either actually distributing their respective shares or leaving the same undivided, the property in question was no longer the property of the estate of Juan Banatin, but the undivided property of the heirs. They were tenants in common of that portion of the property which remained undivided. As such tenants in common the majority of them had a right to agree upon the appointment of an administrator of their property. (Art. 398, Civil Code.) The property belonged to them. They had a right to administer it.

The lower court in appointing the plaintiff and appellee as administratrix of the property in question, evidently did so upon the theory that the said property was still the property of the estate of Juan Banatin. In this theory the lower court was mistaken. There was nothing left of the estate of Juan Banatin to be administered. The heirs by mutual agreement had divided the property among themselves. There was no occasion and no reason for the appointment of an administrator by the probate court, and, therefore, the judgment of the lower court appointing Damasa Alcala as administratrix of the estate of Juan Banatin for the purpose of administering the property mentioned in paragraph 4 of the petition, is hereby revoked.

We deem it unnecessary in the present case to discuss the right of a usufructuary to manage or assist in managing or to administer the property in usufruct which belongs to tenants in common. That question is not presented in the present cause.

Without any finding as to costs, it is hereby directed that a judgment be entered reversing the judgment of the lower court appointing Damasa Alcala as administratrix of the property in question. It is so ordered.

Torres and Mapa, JJ., concur.

Carson and Moreland, JJ., concur in the dispositive part.

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