

EUSEBIA BROCE ET AL., PLAINTIFFS AND APPELLEES, VS. PEDRO DE LA VIÑA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 6677. October 24, 1911*

Ponente: CARSON, J.

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The record in this case discloses that Placida Agraviador, the grandmother of the plaintiff Eusebia Broce, died intestate February 14, 1907; that at the time of her death she was a widow; that she was the mother of nine children, including the defendants Ignacio Damaso Apurado, Zacarias Apurado, and Filomeno Apurado, and also Hipolita Apurado, who died before her mother; that the latter was the mother of several children, including Eusebia Broce, one of the plaintiffs in this action, now married to her co-plaintiff, Silverio Vicente; that a tract of land containing some 45 hectares, situated at a place called Tiboco, in the jurisdiction of San Carlos in the Province of Occidental Negros, and fully described in the complaint, constitutes a part of the intestate estate left by Placida Agraviador, deceased; that this intestate estate has never been divided between the heirs, judicially or extrajudicially, and that up to the time of the trial it had not been made the subject of judicial administration; that on the 24th day of November, 1909, the defendants, Ignacio Damaso Apurado, Zacarias Apurado and Filomena Apurado, sons of Placida Agraviador, each sold his interest in this land, which was claimed to be a one-sixth part thereof, to the defendant Pedro de la Vina for the sum of P800.

Plaintiff, Eusebia Broce, in this action, which was instituted January 26, 1910, prays that she be subrogated in place of the defendant Pedro de Li Vina as purchaser of the interests in the land in question purchased by him from her coheirs, and offers to reimburse him the amount paid by him, with interest from the date of his purchase. Judgment was rendered in her favor in the court below, and the defendant, Pedro de la Vina, was therein directed to execute the necessary documents transferring the interests in the land in question purchased by him to the plaintiff Eusebia Broce, upon the payment by her of the sum of P2,400 with legal interest from the 24th day

In the court below plaintiffs' right of subrogation was opposed on two grounds: First, that an extrajudicial partition of the intestate estate of Placida Agraviador, deceased, had been made in the year 1908, by virtue of which the brothers who sold their interests in the land in question to the defendant De la Vina had each become the absolute owner of the one-sixth part thereof sold by him, the plaintiff Eusebia Broce having no right, title or interest in the property sold, from and after the date of the partition; and second, that even if it be admitted that no such partition was in fact made, and that the plaintiff, as one of the heirs of Placida Agraviador, deceased, has an undivided interest in the land in question, nevertheless her right to be subrogated in the place of the purchaser of the shares of some of her co-owners prescribed by the lapse of time between the sale and the date of her claim to be thus subrogated.

The trial judge completely disposes of the first contention "in a careful review of the testimony, wherein he shows that no lawful extrajudicial partition of the estate was made.

Section 596 of Act No. 190 provides as follows:

"Whenever all the heirs of a deceased person are of lawful age and legal capacity, and there are no debts due from the intestate estate, or all the debts have been paid by the heirs, the heirs may, by a family council as known under Spanish law, or by agreement between themselves, duly executed in writing, apportion and divide the estate among themselves, as they may see fit, without proceedings in the court"

Section 598 of the same code provides that:

"Such distribution of an estate outside the courts shall not be effective unless all the heirs assent thereto in writing."

There are indications in the evidence of record that some of the heirs but not all of them, undertook to execute a partition agreement, and it was intimated in the court below that this projected agreement was reduced to writing. But this alleged written partition agreement, was not produced at the trial, and the failure to produce it, in view of the other evidence of record, leaves no room for doubt that no written agreement signed by all the heirs to the estate was ever executed; and we agree with the trial judge that whatever tentative agreement in regard to the partition of the estate may have been entered into by some of the heirs, the plaintiff in this action, Eusebia Broce, was not a party thereto.

Article 1067 of the Civil Code provides that:

If any of the heirs should sell his hereditary rights to a stranger before the division, all or any of the coheirs may subrogate themselves in the place of a purchaser, reimbursing him for the value of the purchase, provided they do so within the period of a month, to be counted from the time they were informed thereof."

Plaintiff's claim of a right to be subrogated in place of the defendant as the purchaser of the interests of some of her coheirs in the intestate estate of her grandmother is based upon this article, and the real contention of the defendant in this court is that she failed to exercise her rights of subrogation within the period of a month from the time when she was informed of the sale of the interests of her coheirs to the defendant; indeed, defendants claim that these sales were made with the knowledge and consent of the plaintiffs. There is nothing in the record, however, which sustains or even tends to sustain defendants' contention. The sales were made on the 24th day of November, 1909, and an attempt was made to prove that Silverio Vicente, the co-plaintiff and husband of the plaintiff Eusebia Broce, had knowledge of the sales before the end of that month or early in the month of December. This is denied by the husband and we think it is quite clearly established that if he knew anything whatever in regard to the transaction, his information was based wholly on current rumor, and was so indefinite and uncertain that it could not have imposed upon him any obligation to exercise or to decline to exercise a right of subrogation under the provisions of the above cited article of the Civil Code, even had he himself been the directly interested party. There is no proof whatever in the record as to the time when Eusebia Broce, herself, had notice of the sales of the shares of her coheirs to the defendant De la Vina, other than her own testimony that she learned that these sales had been made, some time about the middle of the month of January, 1910. Her husband admits that during the month of December, 1909, he heard rumors as to the sales, and alleges that immediately thereafter he made diligent effort to ascertain the truth of these rumors. He employed an attorney and with his assistance made inquiry at the office of the registrar of property of Occidental Negros, but found no documentary evidence or other record in regard to the transaction. He called on the notary who was said to have written the document, but could not at that time secure any accurate information as to the contents of the deeds of sale, because the notary's books had been forwarded to the clerk of the court at Bacolod for some purpose. Later, on or about the 14th day of January, 1910, plaintiff's attorney for the first time learned the date and time of the sales, and the parties thereto, from a record found in the office of the clerk of the court at Bacolod, and immediately notified the plaintiffs of the facts thus discovered. This action was commenced twelve days later, on the 26th day of January, 1910, by the filing of the complaint in the Court of First Instance of Occidental Negros. In our opinion

the record clearly discloses that the plaintiff Eusebia Broce, when she received the first authentic information as to the terms and conditions of the sale of the property of her coheirs to the defendant De la Vina, undertook to assert and did in fact assert her right to subrogation within the period of thirty days prescribed in the above set-out article of the Civil Code.

We are of opinion, therefore, that the trial judge properly recognized her claim to subrogation, and that the judgment of the lower court should be affirmed, with the costs of this instance against the appellants. So ordered.

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

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