

**NAZARIO CABALLO ET AL., PLAINTIFFS AND APPELLEES, VS.
CIPRIANO DANDOY ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 7420. March 25, 1913*

Ponente: TORRES, J.

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Appeal by defendants, from the judgment of October 25, 1910, by which the Honorable F. Santamaria, judge, set aside the sale of a house and of the land described in the complaint made by the defendant Cipriano Dandoy to his codefendant, Fruto Alarba, with respect to two-thirds of the property, of which the said Dandoy was not the owner, and declared that the said land belonged pro indiviso to Cipriano Dandoy and his nephews, Juan and Dominga Dandoy, represented by the plaintiffs, with right to apply for the partition thereof; with the costs of the suit against the defendants, Dandoy and Alarba.

On October 14, 1909, the attorney for Isidoro Caballo, curator ad litem of the minors Emiliano, Policronia and Petronilo Caballo, and counsel for Nazario and Celerina Caballo, Gregoria Dandoy and her husband Ciriaco Partis and Demetria Dandoy, filed a complaint in the Court of First Instance of Bohol, setting forth that the spouses Geronimo Dandoy and Gertrudis Semano had died intestate more than twenty years before, and had at their death left in the pueblo of Baclayon of the said province a parcel of land 9 brazas in width by 12 in length, bounded on the north by the lot of Narciso Cañete and Catalino Pates, on the south by Washington Street, on the east by a lot of Narciso Cañete, and on the west by that of Fruto Alarba; a house of mixed materials, constructed on said land; a wooden bed, and a glass lamp; all of which property was worth P500; that the said deceased spouses had three children who, upon the death of their parents, came into possession of the property aforementioned and of their rights and obligations as sole heirs; they were named Dominga, Juan, and Cipriano Dandoy, of whom Juan also died and left two children, Gregoria and Demetria, who likewise succeeded to their rights in the aforementioned property; that afterwards, more than eight years ago, Juan's sister, Dominga Dandoy, also died in the same pueblo and was succeeded by her only daughter, Juana Dandoy, who likewise subsequently died in the said pueblo and left five children, Nazario, Emiliano, Policronia, Petronilo, and Celerina, surnamed Caballo, which children succeeded their mother, Juana, as her heirs, and inherited her rights in the said property; that, after the death of the spouses, Geronimo Dandoy and Gertrudis Semano, the property specified in the complaint remained intact; and after the death of Dominga and Juan the said property still remained to be divided between the defendant Cipriano Dandoy and the successors in interest of the two aforesaid deceased persons, two-thirds belonging to the plaintiffs and the remaining third to Cipriano Dandoy; that the latter, with no right and without the consent of the plaintiffs, sold the said property, in 1908, to Fruto Alarba who, knowing that it was not owned exclusively by Cipriano, purchased it and exercised dominion over the same, against the plaintiffs' will; that, both prior and subsequent to the sale, the partition of the said property having been demanded of Cipriano Dandoy, he refused to accede to such demand and, up to the date of the complaint, had continued so to refuse, thereby causing to the plaintiffs losses and damages to the amount of P500; that also the defendant Alarba, after the purchase, declined to divide the said property, resulting in additional loss to the plaintiffs; wherefore counsel for the latter asked that judgment be rendered in favor of his clients awarding the property described in the complaint to the deceased spouses

Geronimo Dandoy and Gertrudis Semano; that both the plaintiffs and the defendant Cipriano Dandoy were the heirs and, as such, the owners pro indiviso of the said property; and further requested that, after annulment of the said sale, it be ordered that the property in question be divided between the plaintiffs and the defendant Dandoy, or, should such partition of the property not be feasible, that it be ordered sold and the proceeds divided in legal shares among the said heirs, and that the defendants be sentenced to pay to each one of the plaintiffs an indemnity of P500 as losses and damages, and the costs.

The demurrer filed by counsel for the defendants having been overruled, the attorney for Cipriano Dandoy in his answer denied generally and specifically all of the facts alleged in the complaint, with the exception of those clearly admitted and, as a special defense, alleged: That the spouses Antonio Geronimo Dandoy and Juana Gertrudis Dolores Semano, at the time of their death more than thirty years ago, left three legitimate children, named Dominga, Juan, and Cipriano, and three parcels of land situated, the first, in the barrio of Cambayado, pueblo of Baclayon, and bounded on the north by the land of Catalino Pates, on the south by a thoroughfare, on the east by the property of Clemente Realista, and on the west by that of Faustino Buhion; the second, in the barrio of Baclayon, of the pueblo of the same name, bounded on the north by the main highway, on the south by the seashore, on the east by the Bahabaha estero, and on the west by the land of Isidro Semano; and the third parcel, within the town, bounded on the north by the land of Catalino Pates, on the south by America Street, on the east by the property of Demetrio Narciso Ginete, and on the west by that of Fruto Alarba, on which parcel there was a house constructed of mixed materials; that, prior to the death of the said spouses, their son, Juan Dandoy, occupied the first parcel of land, Dominga Dandoy the second parcel, and Cipriano Dandoy the third parcel aforementioned; that, after the death of the said spouses, their children divided the said three parcels of land among themselves, each of them taking what he had occupied for more than twenty years, and that the parcel which fell to Dominga was in the possession of her husband, Isidoro Caballo; that Cipriano Dandoy, to whom in the partition the third parcel was allotted, which he held in good faith peaceably and publicly as the owner thereof, sold the same in 1898 to Fruto Alarba, and that Juana and Dominga Dandoy, the plaintiffs' predecessors in interest, each received a wooden bed and a glass lamp, which came to them in the division made. Therefore, said counsel for Cipriano Dandoy requested that judgment be rendered absolving the latter from the complaint and sentencing the plaintiffs to recognize the ownership and possession of the said house and lot which Cipriano Dandoy had enjoyed up to 1898, to hold their peace forever, and to pay the costs.

The other defendant, Fruto Alarba, in his written answer, denied generally and specifically each and all of the facts contained in each and all of the allegations of the complaint, with the exception of those clearly admitted hereinafter. As a special defense he alleged that the correct description of the land is as follows: A parcel of land within the town, bounded on the north by the property of Catalino Pates, on the south by America Street, on the east by the land of Nemesio Narciso Ginete, and on the west by that of Fruto Alarba, on which lot there is a house constructed of mixed materials; that the said house and lot were purchased in 1898 from Cipriano Dandoy and since then he had been in quiet, peaceable, public, and continued possession adverse to the petitioner as the owner thereof, and that the plaintiffs were not entitled to ask for the nullification of the said sale. This defendant, therefore, requested that judgment be rendered in his behalf by sentencing the plaintiffs to recognize his ownership and possession of the said house and lot, to hold their peace forever, and to pay the costs.

The motion presented by the plaintiffs having been overruled, the case came to trial and, after the introduction of evidence by the parties, the court rendered the judgment aforementioned, to which the defendants excepted and presented a written petition for the annulment of the said judgment and for a new trial, upon the grounds set forth. This motion was overruled, exception was entered by the appellants, who presented the proper bill of exceptions, which was approved and forwarded to the clerk of this court.

The action brought by the plaintiffs against the defendant Cipriano Dandoy, their coheir in the intestate succession of the deceased Geronimo Dandoy and Juana Gertrudis Dolores Semano, the ancestors and predecessors in interest of the litigants, must be characterized as an action for partition of an inheritance. They agree that the house and lot in question, sold by the defendant Cipriano Dandoy to his codefendant, Fruto Alarba, originally belonged to those deceased spouses, Geronimo and Juana, from whom they derive their rights in this property of disputed ownership.

The record does not show satisfactory proof that, during the lifetime of the original owners of the house and lot in litigation, a partition of their property was made among their three children, named Dominga, Juan, and Cipriano, or that the said house and lot were awarded to the defendant Cipriano, as he alleges.

It is neither natural nor likely that, while the parents were still living, a partition of their property was made among their children, as averred by the defendant, because it does not appear from the record that, after the alleged division of the property of the parents among their three children, there remained any part thereof which might have afforded subsistence for the parents, especially since the latter were not rich or had any other property or means whereby to obtain a livelihood.

Aside from this, the evidence adduced at the trial does not substantiate the defendant's allegation that such partition of the property was made and that, besides the house and lot which the defendant Cipriano appropriated to the prejudice of his coheirs, there existed other property belonging to his deceased parents, and that, in the alleged division, such other property was allotted respectively to his brother and sister, Juan and Dominga, whose rights are now represented by the plaintiffs.

The partition of an estate determines the property belonging to each heir; so long as such partition has not been made, the property belongs to them all in common.

For this reason, the house and lot in question have the status of pro indiviso property, common to the three heirs of the said deceased, and, on this hypothesis, the defendant Cipriano Dandoy could make no absolute disposal of the two-thirds of the property, without the consent of his coowners, to whom such part belongs; as Cipriano is the owner of only one-third, he could not dispose of the entire property or sell it, without the consent of his coowners, to the other defendant, Fruto Alarba, to whom he could transmit no owner's rights whatever except with respect to one-third of the said land and house, two-thirds of which unquestionably belong to his legitimate coheirs between whom the same must be divided.

The right to an inheritance is transmitted immediately to the heirs by operation of law, at the moment of the death of their predecessor in interest. Possession of hereditary property belonging to several heirs, but held by one of them only, is understood to be enjoyed by him in the name and representation of his coheirs, for they are all entitled to be regarded as coowners of the common property.

For the foregoing reasons, refuting the errors assigned to the judgment appealed from, we hereby affirm the same as being in accord with the law and the evidence, with the costs against the appellants.

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

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