

44 Phil. 76

[ G. R. No. 18032. November 23, 1922 ]

**ELISEO SANTOS, AS ADMINISTRATOR OF ESTANISLAO SANTOS, PLAINTIFF AND APPELLANT, VS. PABLO BARTOLOME, AS ADMINISTRATOR OF MARCELA TIZON, DEFENDANT AND APPELLEE.**

## **D E C I S I O N**

### **STREET, J.:**

The questions involved in this appeal arise in connection with the liquidation of the community estate pertaining to the spouses Estanislao Santos and Marcela Tizon, both of whom are now deceased, and whose respective estates are now represented before the court by Eliseo Santos, as administrator of Estanislao Santos, and Pablo Bartolome, as administrator of Marcela Tizon. Briefly stated, the facts giving rise to the questions here presented are these: Estanislao Santos and Marcela Tizon were united in marriage many years ago and lived together as man and wife in the Province of Pampanga until in the year 1914, when Estanislao Santos died. The widow, Dña. Marcela Tizon, survived until December, 1917, when she also died. No children appear to have been born to the pair, and the persons now interested in their properties are the collateral heirs of the two spouses respectively.

After the death of Estanislao Santos the community property pertaining to the two spouses came into the possession and under the control of his administrator, Eliseo Santos, with the corresponding duty to collect assets, pay off the debts, and liquidate the estate according Mo law. In connection with the discharge of these duties, said administrator also came into the possession of certain property pertaining to the widow in her own right, which he managed to the same extent as the community, property itself.

In the course of the proceedings conducted as aforesaid for the settlement of the estate of Estanislao Santos, the Court of First Instance of Pampanga, by order of June 12, 1921, ordered Eliseo Santos, as administrator, to submit a project for a division of the property pertaining to the estate; and pursuant to this order the said Eliseo Santos presented such a

project, accompanied by a general inventory. In Base II of this project were included seven items, lettered respectively (a), (b), (c), (d), (e), (f), and (g), representing certain sums which, it was submitted, constituted valid charges against Marcela Tizon in the liquidation of the ganancial property. A more detailed statement concerning these items will be necessary later. Suffice it at this point to say that opposition to the allowance of these charges against Marcela Tizon was made by Pablo Bartolome, as her administrator. At the same time said administrator submitted a counter-project of partition in which these items were eliminated.

When the two opposing projects of division came under the consideration of the trial judge, his Honor admitted the propriety of items (a) and (b) in the project of partition submitted by Eliseo Santos, and he accordingly allowed those items as valid charges against Marcela Tizon, though it is erroneously supposed in the appellant's assignment of errors that he had disallowed those items. The other items, included in Base II of the same project and lettered respectively (c), (d), (e), (f), and (g), were disallowed. In thus rejecting the project of Eliseo Santos and adopting the counter-project of Pablo Bartolome to the extent stated, his Honor proceeded on the idea that, even assuming the facts regarding these items to be as claimed, they did not constitute legal charges against Marcela Tizon; and he accordingly disallowed the same without giving to the administrator of Estanislao Santos an opportunity to prove said claims in fact.

From the action thus taken, Eliseo Santos, as administrator appealed, and in this appeal the heirs of Estanislao Santos have joined. In the form in which the case is thus brought before us it is apparent that, if we should arrive at the conclusion that any of the items (c), (d), (e), (f), and (g) represent claims which as a matter of law could constitute valid charges against Marcela Tizon in the settlement of the ganancial estate, the order appealed from should be reversed as to such item or items and the cause remanded in order that proof may be submitted with respect thereto.

Four legal questions are thus presented which must be considered in turn. The first relates to item (c), representing P1,292, said to have been paid by Estanislao Santos out of the community property to redeem certain lands belonging to his wife (Marcela Tizon), situated in Bacolor, Pampanga, which lands had been sold, prior to the marriage, under a contract of sale with *pacto de retro*.

Assuming the facts as to this item to be as thus suggested, there can be no doubt that the amount thus paid out to effect the redemption of the property should be deducted from the

community assets in liquidation, thereby in effect charging one-half thereof against the portion pertaining to Marcela Tizon. 4 It is undeniable that when the property to which reference is here made was redeemed, it remained, as it had been before, the particular property of Marcela Tizon, for if the right of redemption pertained to her, so also must the property belong to her .after redemption. (Civ. Code, arts. 1337-2; 1396-3.) And of course where community assets have been used to effect the redemption, the community estate becomes creditor to the extent of the amount thus expended. It follows that, in the liquidation of the community property, account should be taken of this obligation (arts. 1404, 1419, Civ. Code).

As already stated, the item (c), now under consideration, is identical in character with items (a) and (b), which were allowed without question by the trial judge; and the only reason suggested for making any distinction between this and the items (a) and (b) is that the latter had been recognized by Judge Moir of the Court of First Instance of Pampanga in a prior litigation between the guardian of Marcela Tizon, then still living, and the administrator of Estanislao Santos. Into the details of that proceeding it is unnecessary here to enter. It is enough to say that the validity of the claim constituting item (c) in the project of division now under consideration was in no wise brought in question in that litigation and the fact that it was not recognized in Judge Moir's decision is immaterial. It results that his Honor, the trial Judge, erred in the court below in holding that item (c) could not constitute a legal charge against the interest of Marcela Tizon in the proceedings for the liquidation of the ganancial estate of the spouses Estanislao Santos and Marcela Tizon.

The second point to be considered relates to item (c), representing the sum of P8,000, said to have been expended out of the community assets for the construction of an irrigation system upon the lands of Marcela Tizon, resulting in an appreciation of their value to the extent of 300 per centum. In respect to this item also, it is evident that the trial judge fell into error in holding the claim to be inadmissible against the estate of Marcela Tizon. An irrigation system beneficial to real property is a useful expenditure within the contemplation of article 1404 of the Civil Code and, if financed from the community assets, is chargeable against the party benefitted when the time comes for the liquidation of the conjugal partnership.

The third point to be considered relates to item (e), representing the sum of P7,140.97, expended by Eliseo Santos, as administrator of Estanislao Santos, for the support and maintenance of Marcela Tizon during the period that elapsed between the death of Estanislao Santos and that of Marcela Tizon herself. It is undeniable that the expense of the

maintenance and support of Marcela Tizon, during widowhood, and while the conjugal partnership had not as yet been liquidated, was properly borne by the administrator of the deceased husband, but this expenditure was in the nature of a mere advancement and under article 1430 of the Civil Code is to be deducted from the share pertaining to the heirs of Marcela Tizon in so far as it exceeds what they may have been entitled to as fruits or income. It results that there was error in the disallowance of this item. We should add, however, that when this claim is again brought under the consideration of the trial judge, the administrator of Estanislao Santos should be required to show the source, or sources, from which the funds used for the maintenance and support of Marcela Tizon were derived; and if it should appear that any part thereof was derived from the net income of the proper property of Marcela Tizon, such amount should not be charged against her heirs, in conformity with the precept of the article above cited.

The last point to be considered relates to items (*f*), and (*g*) representing expenditures of the sums of P1,034.95 and P209.85, respectively. The first of these represents the cost of purchase, transportation, and erection of a grave stone of Italian marble, placed to the memory of Marcela Tizon. The second represents the cost of a memorial crown on a porcelain frame, with gold lettering, dedicated to the memory of Marcela Tizon. As we understand the record, these expenditures were incurred just after the death of Marcela Tizon and at the request of her own administrator, Pablo Bartolome, there being a verbal agreement between the two administrators to the effect that Eliseo Santos should advance the necessary sums for these expenditures, the same to be subsequently reimbursed by Pablo Bartolome, as administrator of Marcela Tizon. There can be no doubt whatever as to the propriety of allowing these items against the estate of Marcela Tizon in the liquidation of the partnership property; and his Honor, the trial judge, was mistaken in rejecting the same.

From an observation contained in the appealed decision we infer that the action of the trial judge in rejecting the various claims to which reference has been made was based in part on the idea that said claims should have been submitted to the committee appointed to appraise the property and allow claims against the estate of Marcela Tizon in administration, in conformity with the requirements of section 695, and related provisions of the Code of Civil Procedure. This suggestion is in our opinion untenable as regards all of said items. Items (*f*) and (*g*) were not proper to be submitted to the committee because they relate to expenditures made after the death of Marcela Tizon; and as regards the other items the provisions of the Code of Civil Procedure requiring the presentation of claims to the committee are not pertinent to proceedings for the liquidation of the conjugal

partnership.

From what has been said it results that the judgment appealed from must be reversed, and the cause will be remanded for further proceedings in conformity with this opinion. It is so ordered, without express pronouncement as to costs.

*Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.*

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