

43 Phil. 492

[G. R. No. 18104. June 10, 1922]

JUANA MARTINEZ IN HER OWN BEHALF AND AS NATURAL GUARDIAN OF HER DAUGHTER SINFOROSA VILAR, PLAINTIFFS AND APPELLEES, VS. JUANA TOLENTINO ET AL., DEFENDANT AND APPELLANTS.

D E C I S I O N

ROMUALDEZ, J.:

This is an action for the partition of real properties. The partition was decreed by the lower court, requiring the parties to submit a tentative partition, the same to be drawn in such a way that one-half of said properties should be awarded to Juana Tolentino, and one-eighth to Pio Vilar, Generosa Vilar, and Bernardino Vilar, and ordering, in case they could not come to an agreement, that they suggest the names of disinterested persons to be appointed by the court as commissioners to make said partition.

No agreement was arrived at, and the trial court appointed Fausto Aquino, Ramon Kipse, and Matias Neri as commissioners. On September 2, 1920, these commissioners submitted their report, which, upon the objection of the plaintiffs, was disapproved by the court, and on June 21, 1921, another report was filed which is set forth on page 29, and the following, of the bill of exceptions, and which met with the approval of the court on July 22, of that year.

It is from this order approving the aforesaid report that this appeal has been taken, the appellants alleging that the trial court committed the following two errors: (a) In approving said report although the partition therein referred to is not in conformity with the decision of the court, and (b) in approving said report without the defendants or their counsel having been heard.

We have examined the decision alluded to and the controverted report, and find that the partition was made in accordance with the bases fixed in the decision for the distribution of the aforesaid properties, so far as the proportionate shares awarded to the defendants are

concerned. In their argument on this first assignment of error, appellants lay stress on the fact that the commissioner, Matias Neri, then absent, did not take part in the preparation of the report. This objection was not raised in the court below, nor specifically assigned as error in this court. We do not believe this new point to be worth taking into consideration.

With regard to the second assignment of error, it appears from the record that after the filing of the above-mentioned report, the defendants, through their counsel, asked the trial court not to proceed with the hearing on the said report until the commissioners or the plaintiffs have furnished the attorney for the defendants With a copy of the aforesaid report.

The court, by an order dated July 15, 1921, ruled on this petition, fixing the 21st day of that month for the hearing on the report above referred to.

When this last date came, the defendants did not appear, but the hearing was held, and the report in question approved.

We find no error in this action of the trial court. The request of defendants' counsel that he be furnished with a copy of the report had no support whatever in law and was impliedly denied by the trial court.

The order appealed from is affirmed with the costs against the defendants. So ordered.

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