5 Phil. 520

[G.R. No. 2542. January 08, 1906]

MARGARITA TORIBIO ET AL., PLAINTIFFS AND APPELLANTS, VS. MODESTA TORIBIO ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

JOHNSON, J.:

These plaintiffs filed a complaint in the Court of First Instance of the Province of Batangas for the partition of certain property described in said complaint, located in the said province, and for an accounting of the fruits and products from such parcels of land from the year 1884.

The complaint shows that prior to 1860 Narciso Natalio Lopez and Clara Chaves Avere married. That Doña Clara Chaves died in the year 1860, leaving three children, Cornelia, Mariano, and Lorenzo. The said Dona Cornelia was married to one Guillermo Toribio. Dona Cornelia died leaving three children, the said plaintiffs and the defendant, Modesta Toribio. Modesta Toribio married the defendant Felix Unzon. Some time after the death of Dona Clara Chaves, Narciso Natalio Lopez was married again, to Dona Maria Castelo. From this second marriage of Narciso Natalio Lopez there were born the defendants Sixto, Andrea, Cipriano, Clemencia, Manuel, Juliana, Jose, and Maria Lopez y Castelo. Narciso Natalio Lopez died in the year 1884.

The complaint alleges that at the time of the death of Doiia Clara Chaves, in the year 1860, she and her husband had accumulated during their marriage conjugal property amounting to 25,000 pesos. The complaint further alleges that this property remained in the possession of the said Narciso Natalio Lopez until the time of his death, in 1884. The complaint further alleges that at the time of his deaths in 1884, Narciso Natalio Lopez was possessed of property amounting to 200,000 pesos, more or less, which property is enumerated in paragraph 8 of said complaint. These are the principal facts set out in the complaint. To this complaint the defendants demurred upon the following grounds:

First. That the complaint was defective and there exists in it a confusion of parties.

Second. That the facts alleged in the complaint are not sufficient to constitute a cause of action.

Third. That the complaint was ambiguous, unintelligible, and vague.

The court, after considering the said demurrer, sustained the same and gave the plaintiffs sixty days in which to amend the said complaint. To this decision the plaintiffs excepted and appealed to this court.

An examination of the facts set out in the complaint will show that the plaintiffs and the defendant Modesta Toribio were grandchildren of Narciso Natalio Lopez and Dofia Clara Chaves; that Dofia Maria Castelo was the second wife of the said Narciso Natalio Lopez; that Lo^ renzo Lopez and Mariano Lopez were sons of Narciso Natalio Lopez and Doiia Clara Chaves, and that the other defendants, except Felix Unzon, the husband of the said Modesta Toribio, were children of Narciso Natalio Lopez and his second wife, Dofia Maria Castelo; the plaintiffs and Modesta Toribio, being sisters, have exactly the same interest in this litigation.

Section 114 of the Code of Procedure in Civil Actions provides among other things:

> "If any person having an interest in the subject of the action, and in obtaining the relief demanded, refuses to join as a plaintiff with those having a like interest, he may be made a defendant, the fact of his interest and refusal to join being stated in the complaint."

The defendants claim that the plaintiffs did not comply with this provision inasmuch as they made the said Modesta Toribio a defendant without alleging the reasons therefor.

The above-quoted provision of section 114 has no application to actions of this class. This is made clear from the following example: Suppose that A. and B. were brothers and the only heirs to an estate, having a like interest in the same; that they desired a partition of said estate; that they were unable to agree upon such partition and it became necessary for them to resort to the courts; A. commences an action for the partition of said estate. Certainly the legislature did not intend that in his petition he should make specific allegations showing why B. did not join with him as plaintiff. We therefore conclude that there is no confusion as

to the parties to said complaint.

Moreover, the Civil Code provides that coowners and coheirs may secure a division of an undivided inheritance or of community property. Article 400 of the Civil Code provides:

> "No coowner shall be obliged to remain a party to the community. Each of them may ask at any time (unless there is an agreement to the contrary) the division of the thing owned in common."

Article 1051 of the Civil Code provides:

> "No coheir can be obliged to continue in an undivided inheritance unless the testator should expressly forbid the division."

The Code of Civil Procedure also provides in section 181 that "Persons having or holding real estate with others, in any form of joint tenancy, or tenancy in common, may compel partition thereof" in the manner provided for in said code.

Section 183 of said Code of Civil Procedure provides what, the complaint in such partition proceedings should contain. It provides:

> "The complaint in an action for partition shall set forth the nature and extent of the plaintiff's title and contain an adequate description of the real estate of which partition is demanded and name each tenant in common, co-parcener, or other person interested therein as defendants."

This section clearly shows that section 114 of the same code does not apply to parties in partition cases.

As to the other two grounds of demurrer, we are of the opinion that the facts alleged are sufficient to constitute a cause of action for a partition of the inheritance and that they are not ambiguous, unintelligible; or vague.

Therefore the decision of the inferior court in sustaining the demurrer is reversed and the cause is hereby ordered to be returned to the inferior court after the expiration of ten days,

and the defendants are hereby given ten days after the receipt of the notice of this decision to answer the said complaint. So ordered.

Arellano, C. J., Mapa, Carson, and *Willard, JJ.,* concur.

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