

7 Phil. 75

[G.R. No. 2835. November 27, 1906]

FELICIANO ALONSO ET AL., PLAINTIFFS AND APPELLEES, VS. RAMON LAGDAMEO, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

On the 1st day of June, 1903, the plaintiff sold to the defendant, by a public instrument, the coasting vessel, *Sta. Maria* for the sum of 7,000 pesos. After setting forth the measurement and tonnage of the vessel, the plaintiffs, as parties to the said instrument, made the following statement: "of which said vessel we are the owners, I, Feliciano Alonso y Ramos, in my own right am the owner of one half and Isabel Carlos and Alberta Yoingco, the widow and heir respectively of Estanislao Yoingco being the owners of the other half. We hereby undertake to secure and deliver to the purchaser, *the decree declaring that we are the heirs of the deceased Estanislao Yoingco, or such proof as may be necessary* to establish this right, within the period of sixty days from the date of this instrument, unless for some unforeseen accident, more time is required. We hereby declare that the purchase price agreed upon is 7,000 pesos, to be paid by the purchaser in Mexican currency or its equivalent in local currency *upon the delivery to him of the said declaration of heirs of Estanislao Yoingco in favor of his daughter and widow*; and in case that the said document or decree can not be secured within the period of sixty days as aforesaid, the purchaser shall only be obliged to pay upon the expiration of the said period the sum of 3,000 pesos, Mexican currency, or its equivalent in local currency, *the remaining 4,000 pesos to be paid by him when the vendees comply with that obligation.*"

Upon these conditions, and others of a secondary nature which are of no importance in this case, the defendant agreed to buy the said vessel and undertook to pay the purchase price of 7,000 pesos *in the manner stated by the vendors*. He took possession of the vessel thus purchased on the same day the contract was executed—that is to say, on the 1st day of June,

1903—and paid on account of the purchase price the sum of 3,000 pesos in the month of September following and 1200 pesos in the month of October of the same year. In January, 1904, the plaintiffs instituted certain special proceedings for the perpetuation of testimony in order to establish that Estanislao Yoingco died intestate and that Isabel Carlos and Alberta Yoingco were the widow and daughter, respectively, of the said Yoingco, and that there was no other surviving legitimate descendant of the deceased, and the testimony thus taken in the month of April, 1904, was certified to by the judge to whom the petition was presented. Subsequently, to wit, in the month of October of the same year, and in these same proceedings for the perpetuation of testimony, the court, upon motion by the said Isabel Carlos and Alberta Yoingco, declared, without any further proceedings, that they were the sole lawful heirs and successors of the deceased, Estanislao Yoingco., stating, however, that such declaration was made without prejudice to the interests of third persons with better rights. After securing the perpetuation of this testimony the plaintiffs made a demand upon the defendant for the payment of the remaining 3,800 pesos of the purchase price¹, the defendant refused to comply, and the plaintiffs, considering his refusal as a breach of the contract, brought this action for the rescission of the contract and a mutual restitution of what the parties had respectively received from each other, relying upon the provisions of article 1124 of the Civil Code which reads in part as follows: “The right to rescind the obligations is considered as implied in mutual ones, in cast¹ one of the obligated persons does not comply with what is incumbent upon him.”

The case was decided in the court below in favor of the plaintiffs. The defendant objected to the judgment, made a motion for a new trial on the ground that the said judgment was plainly and manifestly against the weight of the evidence, and brought the case to this court for review by means of a bill of exceptions. It is a positive fact according to the express terms of the contract, in question, and it has been so admitted by the parties to this action, that the amount claimed in the complaint should be paid by the defendant when the plaintiff's complied with the obligation incurred by them under the said contract, to wit, to secure and deliver to the defendant the declaration of heirs of Estanislao Yoingco in favor of Isabel Carlos and Alberta Yoingco or such proof as might be necessary to establish this fact. The question, therefore, reduces itself to determining whether the plaintiffs have actually complied with this obligation.

Inasmuch as there exists a declaration of heirs made in proceedings relating to the perpetuation of testimony instituted by the plaintiffs, the first point to be decided is whether or not such declaration is valid under existing laws. We are of the opinion that it is not. The only purpose of the perpetuation of testimony being to preserve and perpetuate the

testimony of the witnesses who testified in the proceedings (section 370 of the Code of Civil Procedure), it necessarily follows that this is not the adequate procedure for obtaining a declaration of heirs. There is no provision of law which directly or indirectly authorizes the making of such declaration in proceedings for the perpetuation of testimony. The law provides special procedure for this purpose, which is to be found in section 753 of the aforesaid Code of Civil Procedure, under which an inventory of the property of the estate should be first made, the property appraised, all debts paid, and the estate settled before such declaration of heirs can be made. The declaration of heirs referred to in this case was not only not made in accordance with the provisions of that section but was obtained through a procedure not authorized by law. It is therefore null and void and of no effect. It is of no more value than as though it had never been made, in so far as complying with the conditions stipulated in the contract is concerned. It can hardly be believed that the contracting parties had in mind a declaration of heirs secured in an improper way; that is to say, without the formalities prescribed by law, and even against the express provisions of the statute. It would be absurd to suppose such a thing. The intention of the contracting parties in inserting this condition in the contract was doubtless to give to the purchaser a security, a guarantee as to the right and power of the vendors to make the sale and protection against the creditors which the deceased Estanislao Yoingco might have had. The declaration of heirs made in the manner above stated can not be, and could not be, used for that purpose for the reason that it is manifestly null and void.

It is contended by the plaintiffs that the perpetuation of the testimony in question should at least be considered as sufficient proof of the right of Isabel Carlos and Alberta Yoingco to inherit the property of the deceased Estanislao Yoingco, and that this being so the condition stipulated in the contract has been complied with, since the said condition requires either a *declaration of heirs or such proof as may be necessary to establish this right.*

This contention on the part of the plaintiffs is absolutely unfounded. The perpetuation of testimony in itself does not prove the existence of any right. By reason of its very nature it can refer to nothing but facts, it consisting only of the mere declarations of witnesses. In proceedings for the perpetuation of testimony no question of law is involved; the court makes no decision therein; no right is recognized or declared in favor of or against anyone, and all that the court has to do is to hear the witnesses and certify to their depositions. (Section 373, Code of Civil Procedure.) The court can not even make any findings as to the credibility of the witnesses or the probatory value of their testimony. The only time when this can be done is at the trial where the testimony thus preserved is to be utilized or offered in evidence in such cases; and in such manner as provided in section 375 of the

code, being subject even then to any objection in the same manner as the testimony of any other witness. (Section 376.) Therefore, properly speaking, the testimony thus perpetuated is not in itself conclusive proof, either of the existence of any right nor even of the facts to which they relate, as it can be controverted at the trial in the same manner as though no perpetuation of testimony was ever had.

The plaintiffs finally contend that Isabel Carlos and Alberta Yoingco being of legal age made an extrajudicial partition of the estate of Estanislao Yoingco between themselves and had one undivided half of the vessel in question registered in their names in the month of September, 1903, in the custom-house of the city of Manila, and that the said extrajudicial partition being authorized by the provisions of section 596 of the Code of Civil Procedure is sufficient proof of the fact that they are the heirs of the deceased Estanislao Yoingco.

Extrajudicial partitions may be made by a simple agreement between those who believe themselves entitled to the estate of the deceased. It is merely a private act which does not carry with it the sanction or approval of the court. Those who believe themselves to be the heirs might not in fact be such, or they might not be the only heirs. In any event their claim may be disputed by another person even after such extrajudicial partition has been made, and it is evident that in such a case they could not set up as a defense the mere fact that a partition has been made. This shows that an extrajudicial partition, in itself, is not conclusive proof of the fact that those who made that partition were the rightful heirs of the deceased.

Nor is the registration of a vessel in the custom-house of the city of Manila in the name of Isabel Carlos and Alberta Yoingco proof of such fact. Such registration can not even be considered as sufficient proof of the fact that they were the real owners of the vessel. The best evidence of this is that they were able to register the said vessel in their name in the month of September, when as a matter of fact the said vessel had belonged to the defendant since the month of June of the same year.

It is also contended in plaintiff's brief that the bill of exceptions should be dismissed for the reason that the defendant did not perfect his appeal in due time. This question has already been decided in the negative, when this court passed upon plaintiff's motion to dismiss the said bill of exceptions presented on the 25th day of September, 1905. It is therefore improper to again raise this question.

The judgment of the court below is hereby accordingly reversed and the action of the

plaintiff is dismissed without special provision as to the costs of both instances. After the expiration of twenty days let judgment be entered in accordance herewith and the case remanded in due time to the court below for execution. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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