7 Phil. 526

[G.R. No. 3650. February 23, 1907]

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

D E C I S I O N

WILLARD, J.:

The complaint in this action alleged that Clara Chaves, the grandmother of the plaintiffs, died in 1860, leaving surviving her, her husband, Narciso Natalio Lopez; that there belonged to the conjugal society, dissolved by her death, property of the value of 25,000 pesos; that there was no liquidation of the conjugal society but that the husband, Narciso Natalio Lopez, continued in charge thereof; that he afterwards married Maria Castelo, one of the defendants, and had children by her, among them some of the other defendants; and that he died in 1884 leaving certain property, all of which is particularly described in the complaint. The complaint further alleged that after the death of Narciso Natalio Lopez the property was in the possession of and was administered by the defendants, and there is an allegation to the effect that all of the property which Narciso Natalio Lopez brought to the second marriage as capital was the property belonging to the first conjugal society. The prayer of the complaint is as follows:

> "Por tanto las demandantes suplican al Juzgado que previa citacion y emplazamiento a los demandados practicada en forma legal, se digne ordenar a los demandados Doña Maria Castelo, y Don Lorenzo Lopez:—Primero. Presenten a este Juzgado un inventario exacto y detallado con la descripcion de todos los bienes dejados por Don Narciso Natalio Lopez a su fallecimiento. Segundo. Rindan cuentas justificadas de la administracion de los mismos bienes desde 1884 hasta la fecha. Una vez aprobados dichos inventario y cuentas se digne fallar en definitiva ordenando la particion de los expresados bienes entre las demandantes y demandados, mandando que se entregue a cada una de dichas

> demandantes la parte proporcional que les corresponda en los mismos e igual proporcion en frutos producidos por dichas porciones desde 1884 hasta la percepcion de las mismas, imponiendose las costas a los demandados.—Tambien piden otro cualquier amparo que de conformidad con los hechos proceda otorgarles en justicia."

The defendants demurred to the complaint, the demurrer was sustained and the cause dismissed in the court below. The plaintiffs having appealed to this court, the order sustaining the demurrer was reversed and the case remanded for further proceedings. The defendants then answered, setting up various defenses and counterclaims, the case was tried, and the following decision made by the court below:

> "Por la dilacion causada en la presentacion del informe de la parte demandante, tanto como las opiniones emitidas por los Sres. Asesores, los presentes autos llegan al infrascrito Juez casi la vispera de la salida de estas Islas. El tiempo asi no permite la extendida discusion de esta causa.
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> "Brevemente los siguientes hechos aceptados como probados indiquen la cuestion suscitada por la presente actuacion:
>
> "1. Que Da. Cornelia Lopez y Chaves era hija de Don Narciso Natalio Lopez por su primera esposa Da. Clara Chaves.
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> "2. Que dicha Da. Cornelia se caso con D. Guillermo Toribio naciendo de esta union las presentes demandantes Margarita Toribio y Celestina Toribio y la demandada Modesta Toribio.
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> "3. Que al fallecimiento en el año 1861 de la dicha Da. Clara Chaves existian bienes gananciales adquiridos por ella y su marido D. Narciso Natalio Lopez por valor de veinticinco mil pesos.
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> "4. Que el dicho D. Narciso Natalio Lopez casandose en segundas nupcias con la demandada Doña Maria Castelo continuo administrando dichos bienes del valor de veinticinco mil pesos—hasta el dia del fallecimiento del dicho D. Narciso Natalio Lopez en el año 1884.
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> "5. Que los demandados estan administrando en la actualidad los bienes del

> dicho finado D. Narciso Natalio Lopez.
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> "Por lo tanto el Juzgado considerando los hechos probados y las leyes en la materia ordena que los dichos demandados dentro de sesenta dias sometan a la consideracion del Juzgado un inventario de todos los dichos bienes relictos de dicho finado D. Narciso Natalio Lopez, rindiendo cuentas de la administracion de los mismos para que el Juzgado pueda ordenar lo que sea procedente en atencion a los derechos respectivos de todas las partes interesadas, reservando su decision definitiva en la materia para el tiempo oportuno.
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> "Asi se ordena, en la ciudad de Manila este dia veintiocho de Septiembre de 1904."

The defendants excepted to this decision, considering it as a final judgment, and brought the case here by bill of exceptions. The plaintiffs and appellees now move to dismiss the bill of exceptions on the ground that this decision or resolution is not a final judgment and is, therefore, not appealable. Section 123 of the Code of Civil Procedure is as follows:

> *"Interlocutory and incidental orders.*—No interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceeding therein pending, but only such ruling, order, or judgment as finally determines the action or proceeding; nor shall any ruling, order, or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other."

Section 143 of the same code is, in part, as follows:

> "Upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action to which the party has duly excepted at the time of making such ruling, order, or judgment."

The provisions of this code are substantially the same as the provisions in force in the Federal courts in the United States. We think it is well settled there that such a judgment as the one here in question is not a final judgment.

In the case of the Guarantee Company *vs*. Mechanics' Savings Bank and Trust Company (173 U. S. 582) the court said at page 585:

> "The circuit court of appeals was without jurisdiction to review the decree of the circuit court because that decree was not a final one. (26 Stat. L., 826, c. 517, § 6.) The circuit court disallowed all of the defenses made by the Guarantee Company and adjudged that upon the showing made that company was primarily liable to the extent of the penalty of each bond, with interest. But the liability of the defendant company was held to be secondary to that of Schardt's estate which was in course of administration, and the amount for which it could be held finally liable on execution was left to be ascertained by a master commissioner who was directed to take into account 'all collections realized on assets or collaterals turned over to the bank by Schardt to reimburse it against his shortage,' or which the bank 'with due diligence may collect hereafter,' and the case was retained for the purpose of fixing the amount of this ultimate liability to make good Schardt's shortage, 'whatever that may be.' In effect, the circuit court only determined that none of the defenses were good in law, and that the Guarantee Company was liable on its bonds for such sum as might thereafter be found to be due after crediting the amounts that might be realized from the assets turned over to the plaintiff bank by Schardt. Notwithstanding the company's defenses were adjudged to be bad in law, it remained for the circuit court by proper orders to accomplish the object of the suit, namely, to ascertain the amount for which the plaintiff was entitled to judgment and execution."

In the case of Lodge *vs*. Twell (135 U. S., 232) the court said at page 235:

> "It will be perceived that the decree did not identify the particular property to be delivered nor specify the amount of money to be paid or collected. The court had found that Lodge and Beaumont had sold part of the original property and realized therefrom about $2,500, but the exact amount was not determined by the decree, nor the amount of the rents, issues, and profits received by them, nor that Lodge and Beaumont, while directed to account for the property, should respond, as of the date of the invalidated sale, for the value of so much as they had disposed of, or for the proceeds only. The receiver was directed to sell the property delivered to him, but what that property would be necessarily could not

> appear until what had been sold by Lodge and Beaumont had been ascertained. Until these matters were adjusted, and the account taken, it was impossible to tell for what amount an order of payment or a money decree should go against the defendants Lodge and Beaumont, after the delivery of the property they had on hand to the receiver. What was left to be done was something more than the mere ministerial execution of the decree as rendered.
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> "The decree was interlocutory, and not final, even though it settled the equities of the bill. (Craighead *vs*. Wilson, 18 How., 199; Young *vs*. Smith, 15 Pet., 287; Keystone Iron Co. *vs*. Martin, 132 U. S., 91.)"

In Perkins *vs*. Fourniquet (6 How., 206) the circuit court decreed that the plaintiffs were entitled to two-sevenths of certain property and referred the matter to a master to take and report an account of it, and reserving all other matters of controversy until the coming in of the master's report. It was held that that was not an appealable decree. (See Clark *vs*. Roller, 199 U. S., 541; Araullo *vs*. Araullo, No. 1432, 2 Off. Gaz., 463, 3 Phil. Rep., 567.)

It will be noticed that the complaint in this action does not allege what the specific property was, which constituted the property of the conjugal society dissolved by the death of Clara Chaves in 1860. The property described in detail in the complaint is not that property, but is all of the property left by the husband, Narciso Natalio Lopez, at his death in 1884. The court in its decision found that property amounting to 25,000 pesos belonged to the conjugal society aforesaid, but it did not determine what that property was or whether it was then in existence or not. Neither did it determine what the respective rights of the plaintiffs and the defendants were to the property which was described in the complaint as being the property left by Narciso Natalio Lopez at his death. It seems very clear that the judgment which the court entered below was not a final judgment disposing of the action within the provisions of the Civil Code above cited and of the said decisions of the Supreme Court of the United States. The motion to dismiss the bill of exceptions must therefore be granted.

This dismissal, however, does not prevent the defendants hereafter from presenting and having decided the same questions which they seek now to have decided by the present bill of exceptions. Having taken an exception to this order or resolution of the court, it can be embodied in a bill of exceptions when a final judgment is rendered, and in accordance with the express provisions of article 143 can then be reviewed by this court. In the case of

Perkins *vs*. Fourniquet, above cited, the court said:

> "And the appellant is not injured by denying him an appeal in this stage of the proceedings. Because these interlocutory orders and decrees remain under the control of the circuit court, and subject to their revision, until the master's report comes in and is finally acted upon by the court, and the whole of the matters in controversy between the parties disposed of by a final decree. And upon an appeal from that decree every matter in dispute will be open to the parties in this court, and may all be heard and decided at the same time."

The bill of exceptions is dismissed, with costs against the appellant. After expiration of ten days let judgment be entered in accordance herewith and the record remanded to the court from whence it came for proper action. So ordered.

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

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