8 Phil. 70

[G.R. No. 3083. March 18, 1907]

RAFAELA PAVIA ET AL., PLAINTIFFS AND APPELLEES, VS. BIBIANA DE LA ROSA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

By an amended complaint filed on the 23d of November, 1904, in the Court of First Instance of Manila, the plaintiffs prayed that a judgment be rendered in their favor and against the defendants for the sum of 15,000 pesos, Philippine currency, as damages, together with costs of action, alleging in effect that by reason of the death of the testator, Pablo Linart e Iturralde, Francisco Granda e Iturralde was appointed executor under the will of the said deceased, in which will the minor Carmen Linart y Pavia was made the only universal heir, and that owing to the death of the executor Francisco Granda toward the end of December, 1893, there was substituted as executor Jose de la Rosa, who took possession of the personal property of the estate, amounting to 10,673 pesos, Mexican currency, as well as the property situated at No. 27 Calle Solana, Walled City, likewise the property of the testator; that during the month of April, 1904, the plaintiff, Rafaela Pavia, in her own behalf, and as guardian of Carmen Linart y Pavia, executed a power of attorney in behalf of the aforesaid Jose de la Rosa with the powers therein expressed, and the attorney having accepted such power proceeded to administer the aforesaid estate in a careless manner until the 20th of August, 1903, neglecting the interests of the plaintiffs and wasting the capital, and causing damages amounting to over 15,000 pesos, Philippine currency, owing to the fact of having retired or disposed of without any necessity the sum of 7,207 pesos, Mexican currency, together with interest thereon amounting to 360.25 pesos, which amounts would have produced 12,321.90 pesos, Mexican currency, for the plaintiffs; that the executor and attorney De la Rosa neglected to appraise, count, and divide the estate of Linart, deceased, notwithstanding it was his duty to do so, and leased the aforesaid house No. 27 Calle Solana to his relatives from December, 1893, to August, 1903, at a much lower rental than could have been obtained, thereby causing the plaintiffs losses amounting to

6,570 pesos, Mexican currency; that the aforesaid Jose de la Rosa died on the 14th of September, 1903, leaving the defendants Bibiana and Salud de la Rosa as his only heirs and representatives, Eusebio Canals being the husband of the said Bibiana.

The demurrer filed by the defendants was overruled and through their attorney, Ramon Salinas, they answered the former amended complaint praying judgment in their behalf, as against the plaintiffs for the payment of the sum of 1,794.42 5/8 pesos, Mexican currency, as a counterclaim, and for the costs, and denying specifically facts 1, 2, and 9 of the amended complaint; admitting facts 3, 4, 6, 7, 10, and 11 of the same; that they admit the facts stated in paragraphs 5 and 8, respectively, in that the said De la Rosa at the death of said Granda substituted him, the said Granda, as executor, and the fact regarding the omission of the making of the partition of the properties pertaining to the estate of the deceased, and denying all others referring to the properties taken charge of by the said De la Rosa and the rendering of accounts; that in their special defense they allege that they, the defendants, are not responsible for the personal actions of the person from whom they derived their possession and title, against whom the plaintiffs neglected to bring action during his lifetime, and even then being without any justifiable reason as they now actually pretend; that the deceased De la Rosa upon his taking charge of the properties of the said estate only received from the widow of the former executor the draft of payment on the *Caja de Depositos* (Savings Bank) for the said sum of 7,207 pesos together with interest at the rate of 5 per cent, and not the amount referred to by the plaintiffs, as well as taking over the charge of the said property at No. 27.

They further admitted that in 1894, De la Rosa, duly authorized by the plaintiff Rafaela Pavia and with the formalities of law and in order to attend to the maintenance or subsistence of same (the plaintiffs) who were then in Spain, withdrew from the *Caja de Depositos* (Savings Bank) the said capital, together with interest thereon, which two sums together with the rentals of the aforesaid house have been paid out in full by De la Rosa in the maintenance and support of the plaintiffs and in the care of the building and property and other expenses well known to the same plaintiffs; that, during the time of his administration, De la Rosa rendered accounts on two different occasions, which said accounts showed all transactions had during the entire period of his administration; that Señora Pavia did not object to the first account rendered although she had the same in her possession for three years; that the rents mentioned were adequate with respect to the value of the building erected on land belonging to some other person; that having paid out in expenses all of the money belonging to the estate, of which estate the daughter of the testator is the only heir and the owner of the said house, the partition of same was therefore

impracticable, and that the plaintiffs were then indebted to De la Rosa in the amount claimed in the counterclaim and which amount is the balance due to De la Rosa and mentioned in the last account rendered.

After hearing the oral testimony presented by both parties, including the documentary evidence attached to the record herein, the court below, on October 13, 1905, rendered judgment in favor of the plaintiffs and against the defendants for 3,488.27 pesos, Mexican currency, equivalent to P3,171.09, Philippine currency, together with interest thereon at the rate of 6 per cent per annum from the 27th day of June, 1904, and the costs of the action, from which judgment the defendants filed an exception and moved for a new trial, which motion was also denied.

The action brought by the plaintiffs, as has been seen, has for its object that of making effective, or of collecting by means of a judgment of the court, the amount of damages alleged to have been caused by De la Rosa, now deceased, to the plaintiffs in the performance of his duties during his lifetime, as attorney for Rafaela Pavia, guardian of the minor Carmen Linart.

The defendants, Bibiana and Salud de la Rosa and her husband, in answering the complaint filed by the plaintiffs allege, among other reasons, that they are not responsible for the personal acts of De la Rosa, now deceased, and from whom they derived their right and title; and, perhaps owing to this allegation the plaintiffs, with the consent of the court, filed in writing the additional pleading on March 10, 1905, in the Court of First Instance, amending their amended complaint in the following terms:

> "That the aforesaid Jose de la Rosa died on September 14, 1903, leaving as his only heirs and representatives the defendants Bibiana and Salud de la Rosa and that said defendants Bibiana and Salud de la Rosa received and accepted from the estate of the said Jose de la Rosa the aforesaid inheritance without benefit of inventory and received and divided among and between themselves, as such heirs, all of the estate, property, and effects left by the aforesaid deceased Jose de la Rosa."

It has not been shown, as appears by the record in this cause, that the estate or the intestate succession of the deceased, Jose de la Rosa, was ever opened or that an inventory of his estate was ever made, nor has a copy of such inventory ever been presented in

evidence in this cause, notwithstanding that at the time of the death of De la Rosa, on the 14th day of September, 1903, the Code of Civil Procedure—that is, Act No. 190—was already in force, and that in accordance with its provisions the estate of the deceased should have been administered and liquidated.

The provisions of this law of procedure have abrogated, among others, the provisions of article 1003 of the Civil Code and others in relation to the same article with regard to the simple acceptance of the estate of a deceased person, or to that made with benefit of inventory and the consequences thereof.

In accordance with the provisions of the aforesaid Act No. 190 it is understood that a testate or intestate succession of a deceased person is always accepted and received with benefit of inventory, and his heirs, even after having taken possession of the estate of the deceased, do not make themselves responsible for the debts of said deceased with their own property, but solely with that property coming from the testate or intestate succession of said deceased.

The Code of Civil Procedure now in force makes necessary the opening of a testate or intestate succession immediately after the death of the person whose estate is to be administered, the appointment of an executor or administrator, the taking of an inventory of the estate of the deceased, and the appointment of two or more commissioners for the purpose of appraising the property of the estate and deciding as to the claims against said estate. (Secs. 641, 642, 656, 660, 668, 669, Code of Civil Procedure.)

Section 596 of the aforesaid code provides, nevertheless, for the extrajudicial division of an intestate estate among the heirs of legal age, whenever the succession is free from debts or whenever such debts have been paid by the heirs, without proceedings in court, and without prejudice to the right of any creditor therein within the period of two years commencing from the date of the partition of the property belonging to the estate, a right recognized in section 597 of the said code.

The powers and duties of the commissioners are established in sections 686, and those following, of the Code of Civil Procedure, which sections determine the proceedings which must be followed to admit, hear, and examine all claims filed against the estate of the deceased.

With regard to the executor or administrator of the estate of the deceased, section 702 of the Code of Civil Procedure provides:

> "An executor or administrator may commence, prosecute, or defend, in the right of the deceased, actions which survive to such executor or administrator and are necessary for the recovery and protection of the property or rights of the deceased, and may prosecute or defend such actions or suits commenced in the lifetime of the deceased."

From the above-quoted section, as well as from the following sections and others included in Part II of the aforesaid Code of Civil Procedure, it is deduced that after the death of a person the only entity which may lawfully represent a testate or intestate succession is the executor or administrator appointed by the court charged to care for, maintain, and administer the estate of the deceased in such a manner that no action to recover the title or possession of lands, or for damages done to such lands, shall be instituted or maintained against him by an heir or devisee, until such time as there is entered a decree of the court assigning such lands to the heir or devisee, or until the time or period allowed for paying the debts of the estate has expired, unless the executor or administrator surrenders the possession of the lands to the heir or devisee. (Sec. 704, Code of Civil Procedure.)

And lastly for the partition of the properties belonging to the estate, section 753 of said code provides:

> "After payment of the debts, funeral charges, and expenses of administration, and the allowances, if any, made for the expense of maintenance of the family of the deceased, the court shall assign the residue of the estate to the person entitled to the same, and the court in its decree shall name the persons and proportions or parts to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or from any other person having the same in his possession."

From the legal provisions contained in the aforesaid code with regard to testate or intestate succession, it is deduced that the heir lawfully succeeds the deceased from whom he derives his inheritance only after the liquidation of the estate, the payment of the debts of same, and the adjudication of the residue of the estate of said deceased, and in the meantime the only person in charge by law to consider all claims against the estate of the deceased and to attend to or consider the same is the executor or administrator appointed by a competent judge or court.

From the above it appears evident that whatever may be the right of action on the part of Rafaela Pavia and the minor, Carmen Linart, the latter represented by the former as guardian, as to the obligations assumed by Jose de la Rosa, now deceased, it must be prosecuted against the executor or administrator of the estate of said deceased Jose de la Rosa, whose executor or administrator is at this time the only representative of the testate or intestate succession of said deceased; and that in view of this fact and considering the law before us, they should not have brought action against Bibiana and Salud de la Rosa for the mere fact that they were the sisters of said deceased Jose de la Rosa, inasmuch as it is not actually shown that the deceased De la Rosa died intestate or left during his lifetime any will, or that the two defendants are the heirs of the deceased by virtue of an executed will or by reason of existing law, or whether or not the deceased has left properties, or who is the executor or administrator of the said properties, or whether the properties belonging to the estate of the deceased brother of the defendants were ever adjudicated or partitioned by virtue of an order of court in favor of the defendants.

Wherefore, taking into consideration the reasons and facts hereinbefore given, we reverse the judgment appealed from, and find for the defendants Bibiana and Salud de la Rosa and Eusebio Canals, without special finding as to the costs herein, reserving to the plaintiffs the right to institute proper action against the executor or administrator of the properties of the estate of the deceased, Jose de la Rosa, in accordance with the provisions of the Code of Civil Procedure now in force covering the subject-matter herein.

After the expiration of twenty days from the date of the notification of this decision, let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

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

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