

GREGORIO MAGDUSA, ET AL., PETITIONERS, VS. GERUNDIO ALBARAN, ET AL., RESPONDENTS.*G. R. No. L-17526. June 30, 1962*

Ponente: REYES, J.B.L., J.

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Appeal from a decision of the Court of Appeals (R.G. No. 24248-R) reversing a judgment of the Court of First Instance of Bohol and ordering appellant Gregorio Magdusa to pay to appellees, by way of refund of their shares as partners, the following amounts: Gerundio Albaran, P8,223.10; Pascual Albaran, P5,394.78; Zosimo Albaran, 11,979.28; and Telesforo Bebero, P3,020.24, plus legal interests from the filing of the complaint, and costs. The Court of Appeals found that appellant and appellees, together with various other persons, had verbally formed a partnership de facto, for the sale of general merchandise in Surigao, Surigao, to which appellant contributed P2,000 as capital, and the others contributed their labor, under the condition that out of the net profits of the business 25% would be added to the original capital, and the remaining 75% would be divided among the members in proportion to the length of service of each. Sometime in 1953 and 1954, the appellees expressed their desire to withdraw from the partnership, and appellant thereupon made a computation to determine the value of the partners' shares to that date. The results of the computation were embodied in the document Exhibit "C", drawn in the handwriting of appellant. Appellees thereafter made demands upon appellant for payment, but appellant having refused, they filed the initial complaint in the court below. Appellant defended by denying any partnership with appellees, whom he claimed to be mere employees of his.

The Court of First Instance of Bohol refused to give credence to Exhibit "C" and dismissed the complaint on the ground that the other partners were indispensable parties but had not been impleaded. Upon appeal, the Court of Appeals reversed, with the result noted at the start of this opinion.

Gregorio Magdusa then petitioned for a review of the decision, and we gave it due course.

The main argument of appellant is that the appellees' action can not be entertained, because in the distribution of all or part of a partnership's assets, all the partners have an interest and are indispensable parties without whose intervention no decree of distribution can be validly entered. This argument was considered and answered by the Court of Appeals in the following, words;

"We now come to the last issue involved. While finding that some amounts are due the plaintiffs, the lower court "withheld ail award in their favor, reasoning that a judgment ordering the defendant to pay might affect the rights of other partners who were not made parties in this case. The reason cited by the lower court does not constitute a legal impediment to a judgment for the plaintiffs in this case. This is not an action for a dissolution of a partnership and winding up of its affairs or liquidation of its assets in which the interest of other partners who are not brought into the case may be affected. The action of the plaintiffs is one for the recovery of a sum of money with Gregorio Magdusa as the principal defendant. The partnership, with Gregorio Magdusa as managing partner, was brought into the case as an alternative defendant only. Plaintiffs' action was based on the allegation, substantiated in evidence, that Gregorio Magdusa, having taken delivery of their shares, failed

and refused and still fails and refuses to pay them their claims. The liability, therefore, is personal to Gregorio Magdusa, and the judgment should be against his sole interest, not against the partnership's although the judgment creditors may satisfy the judgment against the interest of Gregorio Magdusa in the partnership subject to the conditions imposed by Article 1814 of the Civil Code."

We do not find the preceding reasoning tenable. A partner's share can not be returned without first dissolving and liquidating the partnership (*Po Yeng Cheo vs. Lim Ka Yam*, 44 Phil., 177), for the return is dependent on the discharge of the creditors, whose claims enjoy preference over those of the partners; and it is self-evident that all members of the partnership are interested in its assets and business, and are entitled to be heard in the matter of the firm's liquidation and the distribution of its property. The liquidation Exhibit "C" is not signed by the other members of the partnership besides appellees and appellant; it does not appear that they have approved, authorized, or ratified the same; and, therefore, it is not binding upon them. At the very least, they are entitled to be heard upon its correctness.

In addition, unless a proper accounting and liquidation of the partnership affairs is first had, the capital shares of the appellees, as retiring partners, can not be repaid, for the firm's outside creditors have preference over the assets of the enterprise (Civ. Code, Art. 1839), and the firm's property can not be diminished to their prejudice. Finally, the appellant can not be held liable in his personal capacity for the payment of partners' shares, for he does not hold them except as manager of, or trustee for, the partnership. It is the latter that must refund their shares to the retiring partners. Since not all the members of the partnership have been impleaded, no judgment for refund can be rendered, and the action should have been dismissed.

In view of the foregoing, the decision of the Court of Appeals is reversed, and the action ordered dismissed, without prejudice to a proper proceeding for the dissolution and liquidation of the common enterprise. Costs against appellees.

Bengzon, CJ., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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