

ROSALIO BONILLA (A MINOR) SALVACION BONILLA (A MINOR) AND PONCIANO BONILLA (THEIR FATHER) WHO REPRESENTS THE MINORS, PETITIONERS, VS. LEON BARCENA, MAXIMA ARIAS BALLENA, ESPERAN...

G.R. No. L-41715. June 18, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition for review[1] of the Order of the Court of First Instance of Abra in Civil Case No. 856, entitled *Fortunata Barcena vs. Leon Barcena, et al.*, denying the motions for reconsideration of its order dismissing the complaint in the aforementioned case.

On March 31, 1975 *Fortunata Barcena*, mother of minors *Rosalio Bonilla* and *Salvacion Bonilla* and wife of *Ponciano Bonilla*, instituted a civil action in the Court of First Instance of Abra, to quiet title over certain parcels of land located in Abra.

On May 9, 1975, defendants filed a written motion to dismiss the complaint, but before the hearing of the motion to dismiss, the counsel for the plaintiff moved to amend the complaint in order to include certain allegations therein. The motion to amend the complaint was granted and on July 17, 1975, plaintiffs filed their amended complaint.

On August 4, 1975, the defendants filed another motion to dismiss the complaint on the ground that *Fortunata Barcena* is dead and, therefore, has no legal capacity to sue. Said motion to dismiss was heard on August 14, 1975. In said hearing, counsel for the plaintiff confirmed the death of *Fortunata Barcena* and asked for substitution by her minor children and her husband, the petitioners herein; but the court after the hearing immediately dismissed the case on the ground that a dead person cannot be a real party in interest and has no legal personality to sue.

On August 19, 1975, counsel for the plaintiff received a copy of the order dismissing the complaint and on August 23, 1975, he moved to set aside the order of the dismissal pursuant to Sections 16 and 17 of Rule 3 of the Rules of Court.[2]

On August 28, 1975, the court denied the motion for reconsideration filed by counsel for the plaintiff for lack of merit. On September 1, 1975, counsel for deceased plaintiff filed a written manifestation praying that the minors *Rosalio Bonilla* and *Salvacion Bonilla* be allowed to substitute their deceased mother, but the court denied the counsel's prayer for lack of merit. From the order, counsel for the deceased plaintiff filed a second motion for reconsideration of the order dismissing the complaint claiming that the same is in violation of Sections 16 and 17 of Rule 3 of the Rules of Court but the same was denied.

Hence, this petition for review.

The Court reverses the respondent Court and sets aside its order dismissing the complaint in Civil Case No. 856 and its orders denying the motion for reconsideration of said order of dismissal. While it is true that a person who is dead cannot sue in court, yet he can be substituted by his heirs in pursuing the case up to its completion. The records of this case show that the death of Fortunata Barcena took place on July 9, 1975 while the complaint was filed on March 31, 1975. This means that when the complaint was filed on March 31, 1975, Fortunata Barcena was still alive, and therefore, the court had acquired jurisdiction over her person. If thereafter she died, the Rules of Court prescribes the procedure whereby a party who died during the pendency of the proceeding can be substituted. Under Section 16, Rule 3 of the Rules of Court "whenever a party to a pending case dies * * * it shall be the duty of his attorney to inform the court promptly of such death * * * and to give the name and residence of his executor, administrator, guardian or other legal representatives." This duty was complied with by the counsel for the deceased plaintiff when he manifested before the respondent Court that Fortunata Barcena died on July 9, 1975 and asked for the proper substitution of parties in the case. The respondent Court, however, instead of allowing the substitution, dismissed the complaint on the ground that a dead person has no legal personality to sue. This is a grave error. Article 777 of the Civil Code provides "that the rights to the succession are transmitted from the moment of the death of the decedent." From the moment of the death of the decedent, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, and they cannot be deprived of their rights thereto except by the methods provided for by law.[3] The moment of death is the determining factor when the heirs acquire a definite right to the inheritance whether such right be pure or contingent.[4] The right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings.[5] When Fortunata Barcena, therefore, died her claim or right to the parcels of land in litigation in Civil Case No. 856, was not extinguished by her death but was transmitted to her heirs upon her death. Her heirs have thus acquired interest in the properties in litigation and became parties in interest in the case. There is, therefore, no reason for the respondent Court not to allow their substitution as parties in interest for the deceased plaintiff.

Under Section 17, Rule 3 of the Rules of Court "after a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and be substituted for the deceased, within such time as may be granted * * *." The question as to whether an action survives or not depends on the nature of the action and the damage sued for.[6] In the causes of action which survive the wrong complained affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental.[7] Following the foregoing criterion the claim of the deceased plaintiff which is an action to quiet title over the parcels of land in litigation affects primarily and principally property and property rights and therefore is one that survives even after her death. It is, therefore, the duty of the respondent Court to order the legal representative of the deceased plaintiff to appear and to be substituted for her. But what the respondent Court did, upon being informed by the counsel for the deceased plaintiff that the latter was dead, was to dismiss the complaint. This should not have been done for under the same Section 17, Rule 3 of the Rules of Court, it is even the duty of the court, if the legal representative fails to appear, to order the opposing party to procure the appointment of a legal representative of the deceased. In the instant case the respondent Court did not have to bother ordering the opposing party to procure the appointment of a legal representative of the deceased because her counsel has not only asked that the minor children be substituted for her but also suggested that their uncle be appointed as guardian ad litem for them because their father is busy in Manila earning a living for the family. But the respondent Court refused the request for substitution on the ground that the children were still minors and cannot sue in court. This is another grave error because the respondent Court ought to have known that under the same Section 17, Rule 3 of the Rules of Court, the court is directed to appoint a guardian ad litem for the minor heirs. Precisely in the instant case, the counsel for the deceased plaintiff

has suggested to the respondent Court that the uncle of the minors be appointed to act as guardian ad litem for them. Unquestionably, the respondent Court has gravely abused its discretion in not complying with the clear provision of the Rules of Court in dismissing the complaint of the plaintiff in Civil Case No. 856 and refusing the substitution of parties in the case.

IN VIEW OF THE FOREGOING, the order of the respondent Court dismissing the complaint in Civil Case No. 856 of the Court of First Instance of Abra and the motions for reconsideration of the order of dismissal of said complaint are set aside and the respondent Court is hereby directed to allow the substitution of the minor children, who are the petitioners herein for the deceased plaintiff and to appoint a qualified person as guardian ad litem for them. Without pronouncement as to costs. SO ORDERED.

Teehankee, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Which this Court treats as special civil action as per its Resolution dated February 11, 1976.

[2] Section 16. Duty of Attorney upon death, incapacity, or incompetency of party. - Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

Section 17. - Death of party. - After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.

[3] Buan vs. Heirs of Buan, 53 Phil. 654.

[4] Ibarle vs. Po, 92 Phil. 721.

[5] Morales, et al. vs. Ybañez, 98 Phil. 677.

[6] Iron Gate Bank vs. Brady, 184 U.S. 665, 22 SCT 529, 46 L. ed. 739.

[7] Webber vs. St. Paul City Co., 97 Feb. 140 R. 39 C.C.A. 79.

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