

LEONARDO OSORIO, PLAINTIFF AND APPELLEE, VS. TOMASA OSORIO, ADMINISTRATRIX OF THE ESTATE OF PETRONA REYES, AND THE YNCHAUSTI STEAMSHIP CO., DEFENDANTS AND APPELLANTS.

G. R. No. 16544. March 30, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The plaintiff seeks to recover 610 shares of stock of "Ynchausti Steamship Co." and the dividends corresponding to them, which were included in the inventory of the properties of the deceased Da. Maria Petrona Reyes, whose estate is administered by the defendant. The facts of this case are:

D. Antonio Osorio had formed with Ynchausti & Co., a joint account association for the exploitation of the shipping business, he being the owner of one-third of the company's capital. This capital amounted to P500,000, of which P166,666.66, that is, one-third belonged to D. Antonio Osorio. Upon his death, his heirs agreed to authorize the defendant Da. Tomasa Osorio, then administratrix of the estate of the deceased, to present a project of partition, and said administratrix inserted in the project with the consent of all the heirs, among the properties which belonged to the widow Da. Petrona Reyes, the sum of P94,000 as her part in the "share of the estate in the shipping business of Ynchausti & Co.," that is, a little over P166,666.66, which was the share in said business of the deceased Osorio during his lifetime. The project of partition was approved on May 10, 1915, with the consent of the heirs, by the Court of First Instance of Cavite, which had cognizance of the testamentary and administration proceedings of the estate of the deceased Osorio.

On February 28, 1914, the widow of D. Antonio Osorio, Da. Petrona Reyes, now also deceased, executed before the notary D. Florencio Gonzales Diez a document of gift in favor of her son D. Leonardo Osorio, the plaintiff, giving to him one-half of her share in the one-third part which belonged to her husband in the shipping business of Ynchausti & Co., a donation which was duly accepted by the donee D. Leonardo Osorio, who signed said document with the plaintiff. On that date, February 28, 1914, the estate of D. Antonio Osorio was not yet distributed among his heirs, and the donor Da. Petrona Reyes in order to correct the error in said document, wherein it was stated that said half was adjudicated to her as part of her conjugal property, when the partition was yet being effected, executed another document dated July 3, 1915, maintaining said donation in effect in the sense that she ceded and donated to her son D. Leonardo Osorio, for the same reasons stated in the document of February 28, 1914, all interest or participation in said shipping business of Ynchausti & Co., which was adjudicated to her in the division of the estate of D. Antonio Osorio, which division was approved by the Court of First Instance of Cavite on May 10, 1915.

After the death of D. Antonio Osorio and before the distribution of the estate, Ynchausti & Co. purchased the steamer Governor Forbes and recognized the heirs of D. Antonio Osorio as having an interest to the extent of one third in the ownership and business of said steamer. It was agreed upon by all the interested parties that the share

of Da. Petrona Reyes, widow of Osorio, in the vessel Governor Forbes, at the time of the incorporation of "The Ynchausti Steamship Co." was P61,000, equivalent to 610 shares of stock of said corporation. Said sum was deposited with the Steamship Co. until the final settlement of the question that had arisen between the heirs of Da. Petrona Reyes as to the ownership thereof for, while the plaintiff alleges that, by virtue of the donation made in his favor by Da. Petrona Reyes, he is the owner of said shares and of their value which is P61,000; the defendant on the other hand contends that said shares are not included in the donation in question and belong to the heirs of Da. Petrona Reyes. Such are the facts which gave rise to this litigation.

The trial court rendered judgment in the case, declaring that the 610 shares of stock in dispute and their dividends belong to the plaintiff, and ordered the defendant Da. Tomasa Osorio, administratrix of the estate of Da. Petrona Reyes, to exclude them from the inventory and her accounts, and the other defendant "The Ynchausti Steamship Co." to inscribe them in the name of the plaintiff D. Leonardo Osorio, delivering to him the dividends corresponding thereto, and denied the counterclaim for the sum of P45,000, on the ground that said sum represents the dividends corresponding to the P94,000 adjudicated to Da. Petrona Reyes, in the partition of the estate of D. Antonio Osorio, and donated by her to the defendant in the counter claim.

The case having been appealed to this court, counsel for the defendant and appellant, in summing up their arguments in support of the errors assigned in their brief, maintain the two following propositions:

- "1. The donation made by Da. Petrona Reyes in favor of the plaintiff was of no value and effect; and
- "2. That, supposing said donation valid, the 610 shares of stock, the value of which is P61,000, cannot be considered as included among them."

The document of donation dated February 28, 1914, at tacked by the appellant, is as follows:

"Know all men by these presents: That I, Petrona Reyes, of age, widow of D. Antonio Osorio and resident of the Province of Cavite, Philippine Islands, being in possession of all my senses, freely and voluntarily state:

"1. That my husband, the deceased D. Antonio Osorio, was a shareholder to the extent of one-third in the joint account association 'Ynchausti & Co.' of this place, which is engaged in the business of buying vessels and in the exploitation of six steam vessels acquired from the Compania Maritima, the articles of association of said joint account association having been executed in the city of Manila on July 3, 1906, before the notary public D. Florencio Gonzales Diez.

"2. That upon the death of my husband D. Antonio Osorio and upon the partition of his estate, there was adjudicated to me as conjugal property, one-half of said one-third part in the business referred to, the other half thereof going to our four surviving children, such being the present condition of our interest in said company.

"3. That in consideration of the continuous services and attention received by me from my son D. Leonardo Osorio, of age, married and a resident of Cavite also, and because of the affection he has always shown and still shows me, as well as because of the number of children that he has, I make a free and express donation to my said son D. Leonardo Osorio of all my interest and participation in said company 'Ynchausti and Co.' which is neither transferred nor burdened in any manner whatever.

"4. I also declare that the present donation does not in any way prejudice the right which may accrue to my other children with respect to inheriting my property and that therefore I can effect this donation, with all liberty, as I reserve for myself what is sufficient for me to live on in the manner which corresponds to my social position and needs.

"5. In turn, I, Leonardo Osorio, of age, married and a resident of the Province of Cavite, state my conformity and acceptance of said donation which my dear mother makes to me, for which I am greatly thankful to her.

"In witness whereof we sign the present document in triplicate at Manila, Philippine Islands, this twenty-eighth day of February, nineteen hundred and fourteen.

(Sgd.)

"PETRONA REYES.

"LEONARDO OSORIO.

"Signed in the presence of:

(Sgd.)

"EUSEBIO ALBA.

"SALVADOR BARRIOS.

"Acknowledged before the notary public D. Florencio Gonzales Diez on February 28, 1914."

The document rectifying and ratifying the preceding is literally as follows:

"Know all men by these presents: That I, Petrona Re yes, of age, widow of D. Antonio Osorio and resident of the Province of Cavite, Philippine Islands, being in the full possession of my senses, freely and voluntarily declare:

"1. That on February 28, 1914, before the notary public of Manila, D. Florencio Gonzales Diez, I executed a document of donation in favor of my son D. Leonardo Osorio, of one-half of the one-third part which my deceased husband had in certain shipping business of the association 'Ynchausti & Co.'

"2. That in said document I stated, through error, that said half of one-third part of the business referred to was adjudicated to me as my part of the conjugal property in the partition of the properties left by my deceased husband, when the truth was that said partition had not yet been put in proper form or finished.

"3. That in order to correct said error, I so state, declaring however in any event that I make said donation subsisting in the sense that I cede and donate to my said son D. Leonardo Osorio, in consideration of the same causes mentioned in said document of February 28, 1914, all interest or share in said shipping business of Ynchausti & Co. which was adjudicated to me in the partition of the estate of my deceased husband, and approved by the Court of First Instance of Cavite, on May 10, 1915.

"In witness whereof I sign the present document in triplicate at Cavite on July 3, 1915.

(Sgd. by):

"Signed in the presence of:

"PETRONA REYES.

(Sgd.) "CARLOS LEDESMA.

"ISAURO GABALDON."

In support of the first proposition, the appellant invokes as the legal provision violated, article 635 of the Civil Code, which says:

"A donation can not include future property.

"By future property is understood that of which the donor can not dispose at the time of making the donation." Commenting on article 635 of the Civil Code, Manresa says, among other things:

"To close these fundamental ideas which the spirit of articles 634 and 635 develops we must fix our attention to the definition which the Code gives of future properties. They are those of which the donor cannot dispose at the time of making the donation. This definition in reality includes all properties which belong to others at the time of the donation, although they may or may not later belong to the donor, thus connecting two ideas which, although lacking apparently in relation, are merged in reality in the subject which we examine and which gives assurance to their application. Article 635 refers to the properties of third persons but it may be said that it does so in relation to a time to come; there can be properties which may later belong to the donor; but these properties cannot be donated, because they are not at present his properties, because he cannot dispose of them at the moment of making the donation. The usufructuary for life or for a determined number of years of a vineyard may donate said usufruct to the whole extent that it belongs to him, but never the property itself. The bare owner of said vineyard may donate his right of course; but he may also donate the usufruct which corresponds to the time that it will go back to him, because the case refers to a vested right of which he may dispose at the time of the donation."

It is alleged that the donation made by Da. Petrona Reyes is void because she donated on February 28, 1914, a future property, such as the share in the business of the deceased Osorio, which was adjudicated to her on May 10, 1915, and because in 1914 she did not have the right to all or part of the share which her deceased husband had in the shipping business of Ynchausti & Co.

Carefully examining said article 635 of the Civil Code, in relation to the worthy opinion of the commentator Manresa, we believe that the future properties, the donation of which is prohibited by said article, are those belonging to others, which, as such, cannot be the object of disposal by the donor; but the properties of an existing inheritance, as those of the case at bar, cannot be considered as another's property with relation to the heirs who through a fiction of law continue the personality of the owner. Nor do they have the character of future property because the predecessor in interest having, according to the evidence, died before 1912, his heirs acquired a right to succeed him from the moment of his death, because of the principle announced in article 657 and applied by article 661 of the Civil Code, according to which the heirs succeed the deceased by the mere fact of his death. More or less time may elapse before the heirs enter into the possession of the hereditary property, but this is not an obstacle, for the acquisition of said property retroacts in any event to the moment of death, according to article 989 of the Civil Code. The right is acquired although subject to the adjudication of the corresponding hereditary portion.

Furthermore the Civil Code does not prohibit absolutely that future inheritance should be the object of agreement, for there are certain cases (arts. 177, 827, 831, and 1331) in which agreements may be made as to them, besides that indicated in article 1271, and it may be deduced that an inheritance already existing, which is no longer future from the moment of death of the predecessor, may legally be the object of contract. A donation being of a contractual nature, inasmuch as for its efficacy the concurrence of two wills is required, that of the donor and the donee, we believe that that which may be the object of contract may also be the object of a donation. *Ubi eadem est ratio, ibi est eadem legis disposition* We conclude that the donor Da. Petrona Reyes, on February 28, 1914, had a vested right to a certain part of the inheritance of her husband D. Antonio Osorio, who died in 1912, and could legally dispose of her right through an act of liberality, as she had done.

With respect to the point that Da. Petrona Reyes did not have in 1914 any right to all or part of the share of her deceased husband in the shipping business of Ynchausti and Co., it must be observed that in the project of partition of the property of D. Antonio Osorio the following appears:

"The widow of the testator, Maria Petrona Reyes, her children Feliza, Tomasa, and Leonardo and her grand daughter Soledad Encarnacion Osorio y San Agustin are at present all living and are the only heirs of the deceased.

"The testator declares that all property left by him was acquired during his marriage with Petrona Reyes.

"The testator institutes as his only and universal heirs his said children and granddaughter, designates the parts which each of them must receive as legitime, betterment, and legacy, leaves to the disposition of his widow an amount equivalent to that set aside by him in payment of one-half part of the conjugal property and orders that the remainder should be equally distributed among his heirs."

We do not have before us the will of D. Antonio Osorio but supposing that he had left no property but the share which he had in the shipping business of Ynchausti & Co., can it be denied that the donor by law had the right to half of said share as her part of the conjugal property? Clearly not. The defendant in her answer says:

"That Da. Maria Petrona Reyes did not donate to the plaintiff more than her share in the shipping business of the firm Ynchausti & Co. which was adjudicated to her in the partition of the property of D. Antonio Osorio and that said share amounts to P94,000."

This admission of the defendant is conclusive, and makes it unnecessary for us to enter into another discussion in order to deduce that Da. Petrona Reyes had in 1914 a right to a certain part of the interest of the deceased Osorio in the shipping business of the firm Ynchausti & Co., and could donate it, as she did, to her son D. Leonardo Osorio.

The allegation that the document of July 3, 1915, is void, because it does not show the acceptance of the donee, is of no importance, because of the conclusion we have reached in discussing the document of donation of February 28, 1914. In the second document, the donor only tried to correct what she believed to be an error in the first, wherein it is stated that in the partition of the property of her husband there was adjudicated to her the part of the interest in the shipping business of Ynchausti & Co. which she donated to her son Leonardo, when in fact said partition was yet pending. After its approval by the Court of First Instance of Cavite, the donor executed the document of 1915, ratifying and correcting the document of donation. She did not make a new donation. She executed a personal act which did not require the concurrence of the donee. It is the duty of the donee, in order that the donation may produce legal effects, to accept the donation and notify the donor thereof. The acceptance is necessary because nobody is obliged to receive a benefit against his will. And all this was complied with in the document of 1914. The wills of the donor and of the donee having concurred, the donation, as a mode of transferring ownership, becomes perfect, according to article 623 of the Civil Code.

We will now pass to the second proposition of the appellant, that is, that the 610 shares, which are the subject-matter of the suit, cannot be considered as included in the donation made by Da. Petrona Reyes in favor of the plaintiff, supposing that said donation was valid. The reasons alleged by the appellant are: (1) That the steam vessel Governor Forbes was purchased after the death of D. Antonio Osorio, with money borrowed and furnished by the heirs individually and not by the estate, and (2) that the plaintiff appellee has recognized that the capital used in the steamer Forbes is distinct from the money used in the purchase of other vessels in which the deceased Osorio had an interest. The question whether the steamer Governor Forbes was or was not purchased with money furnished by Ynchausti and the heirs of Osorio, independently of that former partnership in which the deceased Osorio had an interest, is one of fact and must be resolved in view of the evidence adduced at the trial.

D. Julio Gonzales, secretary and accountant of the firm Ynchausti, witness for the defendant, states that the Forbes was purchased with money which the shipping business of Ynchausti & Co. had. The appellant herself admits that this vessel took part in the general shipping business of Ynchausti & Co. for no new partnership was constituted for the purchase thereof, and, after its acquisition the Ynchausti firm accounted to the estate of D. Antonio Osorio for the profits obtained and the dividends to be distributed and no separate account was made of the earnings of the vessel, but only a general account, including the profits obtained in the shipping business, in which the Governor Forbes was but one of several vessels. D. Joaquin Elizalde, manager of the firm Ynchausti & Co., by agreement of the parties and with the approval of the court, made a deposition before the notary public D. Florencio Gonzales Diez, stating that when the steamer Forbes was acquired in 1912, the Ynchausti firm did not bring in any new capital, but obtained money for its purchase by mortgaging the vessel itself and other vessels of the company; and that the heirs of D. Antonio Osorio did not bring in any new capital for the purchase of the vessel, but signed jointly with Ynchausti & Co. with the others, except Da. Soledad Osorio, the guaranty which the bank required.

In our opinion the evidence shows conclusively that the vessel Governor Forbes forms part of the shipping business of Ynchausti & Co. in which D. Antonio Osorio and his estate had an interest. It is no argument against this conclusion that the heirs of Osorio signed with Ynchausti & Co. the guaranty required by the bank where the money used in the purchase of the Forbes was taken: (1) Because the guaranty is for the purpose only of securing the payment of the amount indebted and not for excluding the estate of Osorio from the result of that banking operation; (2) because, besides said guaranty, the other vessels of the joint account association of Osorio and Ynchausti & Co. were mortgaged; (3) because no new partnership was formed between Ynchausti & Co. and the heirs of Osorio for the purchase of the vessel Forbes; and (4) because, when Ynchausti & Co. agreed with the heirs of Osorio in that his share in the steamer Forbes was P108,333.33, this sum was distributed among said heirs, including Da. Soledad Osorio who did not sign the guaranty, there accruing to each P11,833.33 and to the widow Da. Petrona Reyes P61,000, which is the object of this suit. All of the above shows that the estate of Osorio had a one-third part of the steamer Forbes represented by the capital which was distributed among the heirs, there accruing to the widow, by agreement of the interested parties, the sum of P61,000. And this sum being part of the one-half of one-third of the shipping business of Ynchausti & Co., which one-half part accrued to the widow in the distribution of the properties of Osorio; and the widow Da. Petrona Reyes having disposed of this half, donating it to her son D. Leonardo Osorio, it clearly results, in our opinion, that the sum of P61,000, or the corresponding shares of the new corporation "The Ynchausti Steamship Co." are included in said donation, and therefore belong to the plaintiff-appellee.

The other reason alleged by the appellant in support of her contention is that the plaintiff has recognized in his letter addressed to the defendant corporation, and inserted in the answer presented by the latter, that the Forbes was acquired with money different from that of the joint account association heretofore mentioned. We have carefully read the letter in question and what appears is that said plaintiff agreed that the P61,000 should be deposited with Ynchausti & Co., as trustee, to be distributed with its accumulated dividends, when the question between the heirs of Da. Petrona Reyes had already been terminated, that is to say, according to the result of the present suit. There is nothing in said letter which indicates how the Governor Forbes was acquired.

With respect to the counterclaim of P45,609.91, we are of the opinion that the evidence justifies the conclusion of the trial court that they are the profits or dividends accruing to the P94,000, which were adjudicated to the widow Da. Petrona Reyes in the distribution of the estate of the deceased Osorio and which were donated by her to the plaintiff, and as such profits they belong to the latter, upon the principle of law that ownership of property gives right by accession to all that it produces, or is united or incorporated thereto, naturally or artificially. (Art. 353 of the Civil Code.)

In view of what has been said, the judgment appealed from should be, as it is hereby, affirmed, with costs against the appellant. So ordered.

Maya, C. J., Araullo, Street, and Malcolm, JJ., concur.

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