

**PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLANT, VS.
INDEPENDENT PLANTERS ASSOCIATION, INC., ANTONIO DIMAYUGA,
DELFIN FAJARDO, CEFERINO VALENCIA, MOISES CARANDANG,
LUCIANO CASTILL...**

G.R. No. L-28046. May 16, 1983

Ponente: PLANA, J.

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PLANA, J.:

Appeal by the Philippine National Bank (PNB) from the Order of the defunct Court of First Instance of Manila (Branch XX) in its Civil Case No. 46741 dismissing PNB's complaint against several solidary debtors for the collection of a sum of money on the ground that one of the defendants (Ceferino Valencia) died during the pendency of the case (i.e., after the plaintiff had presented its evidence) and therefore the complaint, being a money claim based on contract, should be prosecuted in the testate or or intestate proceeding for the settlement of the estate of the deceased defendant pursuant to Section 6 of Rule 86 of the Rules of Court which reads:

"SEC. 6. Solidary obligation of decedent.— Where the obligation of the decedent is solidary with another debtor, the claim shall be filed against the decedent as if he were the only debtor, without prejudice to the right of the estate to recover contribution from the other debtor. In a joint obligation of the decedent, the claim shall be confined to the portion belonging to him."

The appellant assails the order of dismissal, invoking its right of recourse against one, some or all of its solidary debtors under Article 1216 of the Civil Code-

"ART. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected."

The sole issue thus raised whether in an action for collection of a sum of money based on contract against all the solidary debtors, the death of one defendant deprives the court of jurisdiction to proceed with the case against the surviving defendants.

It is now settled that the quoted Article 1216 grants the creditor the substantive right to seek satisfaction of his credit from one, some or all of his solidary debtors, as he deems fit or convenient for the protection of his interests; and if, after instituting a collection suit based on contract against some or all of them and, during its pendency, one of the defendants dies, the court retains jurisdiction to continue the proceedings and decide the case in respect of the surviving defendants. Thus in *Manila Surety & Fidelity Co., Inc. vs. Villarama et al.*, 107 Phil. 891 at 897, this Court ruled:

"Construing Section 698 of the Code of Civil Procedure from whence the aforequoted provision (Sec. 6, Rule 86) was taken, this Court held that where two persons are bound in solidum for the same debt and one of them dies, the whole indebtedness can be proved against the estate of the latter, the decedent's liability being absolute and primary; and if the claim is not presented within the time provided by the rules, the sane will be

barred as against the estate. It is evident from the foregoing that Section 6 of Rule 87 (now Rule 86) provides the procedure should the creditor desire to go against the deceased debtor, but there is certainly nothing in the said provision making compliance with such procedure a condition precedent before an ordinary action against the surviving solidary debtors, should the creditor choose to demand payment from the latter, could be entertained to the extent that failure to observe the same would deprive the court jurisdiction to take cognizance of the action against the surviving debtors. Upon the other hand, the Civil Code expressly allows the creditor to proceed against any one of the solidary debtors or same or all of them simultaneously. There is, therefore, nothing improper in the creditor's filing of an action against the surviving solidary debtors alone, instead of instituting a proceeding for the settlement of the estate of the deceased debtor wherein his claim could be filed."

Similarly, in *PNB vs. Asuncion*, 80 SCRA 321 at 323-324, this Court, speaking thru Mr. Justice Makasiar, reiterated the doctrine.

"A cursory perusal of Section 6, Rule 86 of the Revised Rules of Court reveals that nothing therein prevents a creditor from proceeding against the surviving solidary debtors. Said provision merely sets up the procedure in enforcing collection in case a creditor chooses to pursue his claim against the estate of the deceased solidary debtor.

"It is crystal clear that Article 1216 of the New Civil Code is the applicable provision in this matter. Said provision gives the creditor the right to 'proceed against anyone of the solidary debtors or same or all of them simultaneously.' The choice is undoubtedly left to the solidary creditor to determine against whom he will enforce collection. In case of the death of one of the solidary debtors, he (the creditor) may, if he so chooses, proceed against the surviving solidary debtors without necessity of filing a claim in the estate of the deceased debtors. It is not mandatory for him to have the case dismissed against the surviving debtors and file its claim in the estate of the deceased solidary debtor...

"As correctly argued by petitioner, if Section 6, Rule 86 of the Revised Rules of Court were applied literally, Article 1216 of the New Civil Code would, in effect, be repealed since under the Rules of Court, petitioner has no choice but to proceed against the estate of Manuel Barredo only. Obviously, this provision diminishes the Bank's right under the New Civil Code to proceed against any one, some or all of the solidary debtors. Such a construction is not sanctioned by the principle, which is too well settled to require citation, that a substantive law cannot be amended by a procedural rule. Otherwise stated, Section 6, Rule 86 of the Revised Rules of Court cannot be made to prevail over Article 1216 of the New Civil Code, the former being merely procedural, while the latter, substantive."

WHEREFORE, the appealed order of dismissal of the court a quo in its Civil Case No. 46741 is hereby set aside in respect of the surviving defendants; and the case is remanded to the corresponding Regional Trial Court for further proceedings. No costs.

SO ORDERED.

Teehankee (Acting C.J.), Escolin, Vasquez and Gutierrez, Jr., JJ., concur.
Melencio-Herrera and Relova, JJ., on leave.

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