

DIONISIO DURLAO, IN HIS OWN BEHALF AND IN HIS CAPACITY AS ADMINISTRATOR OF THE TESTATE ESTATE OF THE LATE PEDRO ORIA; FAUSTA DURLAO, AMADO DURLAO, AND BENJAMIN DURLAO, PLAINTIFF...*G.R. No. L-27956. April 30, 1976*

Ponente: AQUINO, J.

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On February 28, 1962 the Court of First Instance of Pangasinan in Civil Case No. T-662 rendered a judgment ordering defendants Vicente Soliven, Pedro Oria, Santiago Laurencio, Marcelino Sumalbag and Juana Darang to pay solidarily Quality Plastic Products, Inc. the sum of P3,667.03 plus the legal rate of interest from November, 1958. The lower court directed that in case the defendants failed to pay the said amount before its decision became final, then Quality Plastic Products, Inc. "is hereby authorized to foreclose the bond, Exhibit A, in accordance with law, for the satisfaction of the judgment." (Under that bond the four sureties bound themselves to answer solidarily for the obligations of the principal, Vicente Soliven and certain real properties of the sureties were "given as security for" their undertaking).

Upon defendants' failure to pay the amount of the judgment and after the decision had become final, the lower court, on motion of Quality Plastic Products, Inc., ordered the "foreclosure" of the surety bond and the sale at public auction of the land of Pedro Oria which he had given as security under the bond. Oria's land, which was covered by Original Certificate of Title No. 28732 and has an area of nine and six-tenths hectares, was levied upon and sold by the sheriff at public auction on September 24, 1962. The sale was confirmed by the lower court in its order of November 20, 1962.

It turned out that Oria died on April 23, 1959 or long before June 13, 1960 when the action was filed. Oria's death was not known to Quality Plastic Products, Inc. Nor were the representatives of Quality Plastic Products, Inc. aware that in the same Tayug court Special Proceeding No. T-212, Testate Estate of the deceased Pedro Oria, was pending.

The summons and copies of the complaint for the five defendants in Civil Case No. T-662 had been personally served on June 24, 1960 by a deputy sheriff on Soliven, the principal in the bond, who acknowledged such service by signing on the back of the original summons in his behalf and again signing for his co-defendants.

On March 1, 1963 Dionisio, Fausta, Amado and Benjamin, all surnamed Dumlao and all testamentary heirs in Oria's duly probated will, sued Quality Plastic Products, Inc., also in the Tayug court for the annulment of the judgment against Oria and the execution against his land. (Dionisio Dumlao also sued in his capacity as administrator of Oria's testate estate).

The ground for annulment was lack of jurisdiction over the person of the deceased Oria (Civil Case No. T-873). It was only when Quality Plastic Products, Inc. received the summons in Civil Case No. T-873 that it learned that

Oria was already dead at the time the prior case, Civil Case No. T-662, was filed.

Quality Plastic Products, Inc. in its answer alleged that Oria's heirs were aware of the suit against Soliven and his sureties and that the said heirs were estopped to question the court's jurisdiction over Oria.

After hearing the lower court held that it acquired jurisdiction over Soliven and the other defendants in Civil Case No. T-662 by reason of their voluntary appearance. It reasoned out that Soliven acted in bad faith because he did not apprise the court that Oria was dead. It specifically ruled that "it had acquired jurisdiction over the person" of Oria and that the judgment was valid as to him. From that decision the plaintiffs appealed.

The four assignments of error of appellants Dumlao may be boiled down to the issue as to the validity of the lower court's judgment against the deceased Pedro Oria who, being already in the other world, was never served with summons.

There is no difficulty in resolving that issue. Since no jurisdiction was acquired over Oria, the judgment against him is a patent nullity (*Ang Lam vs. Rosillosa and Santiago*, 86 Phil. 447; *Asuncion vs. Nieto*, 4 Phil. 97; *Gorostiaga vs. Sarte*, 68 Phil. 4).

As far as Oria was concerned, the lower court's judgment against him in Civil Case No. T-662 is void for lack of jurisdiction over his person. He was not, and he could not have been, validly served with summons. He had no more civil personality. His juridical capacity, which is the fitness to be the subject of legal relations, was lost through death. (Arts. 37 and 42, Civil Code).

The lower court erred in ruling that since Soliven's counsel also appeared as counsel for Oria, there was a voluntary appearance which enabled the court to acquire jurisdiction over Oria, as contemplated in section 23, Rule 14 of the Revised Rules of Court. Soliven's counsel could not have validly appeared for a dead codefendant. Estoppel has no application to this case.

But from the fact that appellants Dumlao had to sue Quality Plastic Products, Inc. in order to annul the judgment against Oria, it does not follow that they are entitled to claim attorney's fees against that corporation. The parties herein agreed in their stipulation of facts that Quality Plastic Products, Inc. was unaware of Oria's death. Appellants Dumlao in effect conceded that the appellee acted in good faith in joining Oria as a codefendant.

WHEREFORE, the lower court' decision is reversed and set aside. Its judgment in Civil Case No. T-662 against Pedro Oria is declared void for lack of jurisdiction. The execution sale of Oria's land covered by OCT No. 28732 is also void. No costs.

SO ORDERED.

Fernando, Acting C.J., Barredo, (Acting Chairman), Antonio, and Concepcion, Jr., JJ., concur.

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