

SOCORRO SEPULVEDA LAWAS, PETITIONER, VS. COURT OF APPEALS, HON. BERNARDO LL. SALAS,

G.R. No. L-45809. December 12, 1986

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal by certiorari under Rule 45 of the Revised Rules of Court from the decision of the Court of Appeals which dismissed the petition for certiorari under Rule 65 of said Rules against respondent Judge Bernardo LL. Salas of the Court of First Instance of Cebu.

The antecedent facts are briefly as follows:

Private respondent Pacifico Pelaez filed a Complaint on December 6, 1972 against petitioner's father, Pedro Sepulveda, for ownership and partition of certain parcels of land. Defendant Pedro Sepulveda filed his Answer dated December 31, 1972 resisting the claim and raising the special defenses of laches, prescription and failure to ventilate in a previous special proceeding. During the presentation of evidence for the plaintiff, the defendant died on March 25, 1975. On May 21, 1975, counsels for the deceased defendant filed a notice of death wherein were enumerated the thirteen children and surviving spouse of the deceased.

On May 5, 1975, petitioner filed a petition for letters of administration and she was appointed judicial administratrix of the estate of her late father in July, 1976.

At the hearing of the case on November 27, 1975, Attys. Domingo Antigua and Serafin Branzuela, former counsels for the deceased defendant, manifested in open court that with the death of their client, their contract with him was also terminated and none of the thirteen children nor the surviving spouse had renewed the contract, but instead they had engaged the services of other lawyers in the intestate proceedings.

Notwithstanding the manifestation of the former counsels of the deceased defendant, the respondent trial judge set the case for hearing on January 13, 1976 and sent the notice of hearing to said counsels.

On January 13, 1976, the respondent trial judge issued three orders. The first order substituted the heirs of the deceased defendant, namely, his thirteen children and surviving spouse, as defendants; the second order authorized Atty. Teodoro Almase, counsel for the plaintiff, to present his evidence in the absence of Attys. Antigua and Branzuela; and the third order treated the case submitted for decision, after the plaintiff had presented his evidence and rested his case, and directed that said counsels and the fourteen heirs of the deceased defendant be furnished copies thereof.

On January 28, 1976, the respondent trial judge rendered a decision against the heirs of the deceased defendant.

On February 19, 1976, ten of the children of the deceased defendant, who apparently did not know that a decision had already been rendered, filed an Answer in substitution of the deceased defendant through their counsel, Atty. Jesus Yray. This was denied admission by the respondent trial judge for being already moot and academic

because of the earlier decision.

On March 9, 1976, the widow and two other children of the deceased defendant, through their counsel Atty. Delfin Quijano, filed a motion for substitution and for reconsideration of the decision dated January 28, 1976. On April 7, 1976, the respondent trial judge issued an order setting aside his decision and setting the case in the calendar for cross-examination of the plaintiff, Pacifico Pelaez, with a proviso that said order was applicable only to the three heirs who had filed the motion. On July 14, 1976, the respondent trial judge lifted the order setting aside his decision, despite the verbal petition for postponement of the hearing made by one of the three heirs on the ground of the absence of their counsel.

On July 9, 1976, petitioner, who had been appointed judicial administratrix of the estate of the deceased defendant and who was one of the heirs who had filed an Answer on February 19, 1976, filed a motion to intervene and/or substitute the deceased defendant. On August 25, 1976, the respondent trial judge denied the motion for the reason that the decision had already become final.

Petitioner then filed a special civil action of certiorari with the Court of Appeals to annul the proceedings in the respondent trial court. However, the Court of Appeals dismissed the petition for certiorari. Hence, the present appeal.

The appeal is meritorious.

Section 16 of Rule 3 provides as follows:

"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."

The former counsels for the deceased defendant, Pedro Sepulveda, complied with this rule by filing a notice of death on May 21, 1975. They also correctly manifested in open court at the hearing of the case on November 27, 1975, that with the death of their client their contract with him was also terminated and none of the heirs of the deceased had renewed the contract, and the heirs had instead engaged the services of other lawyers in the intestate proceedings.

Both the respondent trial judge and the Court of Appeals erred in considering the former counsels of the deceased defendant as counsels for the heirs of the deceased. The statement in the decision of the Court of Appeals that "the appearance of the lawyers of their deceased father in court on January 13, 1976 (Annex K) carries the presumption that they were authorized by the heirs of the deceased defendant" is erroneous. As this Court held in *People vs. Florendo* (77 Phil. 16), "the attorneys for the offended party ceased to be the attorneys for the deceased upon the death of the latter, the principal." Moreover, such a presumption was not warranted in view of the manifestation of said lawyers in open court on November 27, 1975 that they were not re-presenting the heirs of the deceased defendant.

Consequently, when on the same date, November 27, 1975, the respondent trial judge issued an order setting the continuation of the trial of the case on January 13, 1976, with notices sent to Atty. Almase for the plaintiff and Attys. Antigua and Branzuela for the deceased defendant, he acted with grave abuse of discretion amounting to excess of jurisdiction.

It was only at the hearing on January 13, 1976 that the respondent trial judge issued an order substituting the deceased defendant with his fourteen heirs. This was followed with an order authorizing counsel for the plaintiff to present his evidence in the absence of Attys. Antigua and Branzuela, and lastly, an order treating the case as

submitted for decision.

In the order of the respondent trial judge dated November 10, 1976, denying petitioner's motion for reconsideration of the order denying her motion for intervention (Annex 1 of the Comment), mention was made of the delayed arrival of Atty. Antigua and Branzuela at the hearing on January 13, 1976 and of their being allowed to cross-examine the plaintiff himself.

The refusal of said former counsels of the deceased defendant to cross-examine the plaintiff was justified --

"x x x in view of the intervening event of appellant's death and the interposition of the equally established principle that the relationship of attorney and client is terminated by the death of the client, as acknowledged by respondent court itself as well as respondents. In the absence of a retainer from the heirs or authorized representatives of his deceased client, the attorney would have no further power or authority to appear or take any further action in the case, save to inform the court of the client's death and take the necessary steps to safeguard the decedent's rights in the case." (Vda. de Haberer vs. Court of Appeals, May 26, 1981, 104 SCRA 534, 540)

Moreover, as above stated, petitioner had as early as May 5, 1975 filed a petition for letters of administration, and the same was granted in July, 1975.

Section 17 of Rule 3 provides as follows:

"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."

As this Court has held:

"x x x Under the Rule, it is the court that is called upon, after notice of a party's death and the claim is not thereby extinguished, to order upon proper notice the legal representative of the deceased to appear within a period of 30 days or such time as it may grant. Since no administrator of the estate of the deceased appellant had yet been appointed as the same was still pending determination in the Court of First Instance of Quezon City, the motion of the deceased's counsel for the suspension of the running of the period within which to file appellant's brief was well-taken. More, under the Rule, it should have set a period for the substitution of the deceased party with her legal representative or heirs, failing which, the court is called upon to order the opposing party to procure the appointment of a legal representative of the deceased at the cost of the deceased's estate, and such representative shall then 'immediately appear for and on behalf of the interest of the deceased.'

"Respondent court gravely erred in not following the Rule and requiring the appearance of the legal representative of the deceased and instead dismissing the appeal of the deceased who yet had to be substituted in the pending appeal. Thus, it has been held that when a party dies in an action that survives and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no such substitution has ever been effected, the trial held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding. (Ordoveza vs. Raymundo, 63 Phil. 275 [1936]; Obut vs. Court of Appeals, et al., 70 SCRA 546]" (Vda. de Haberer vs. Court of Appeals, supra, p. 541)

Under the said Rule, priority is given to the legal representative of the deceased, that is, the executor or administrator of his estate. It is only in cases of unreasonable delay in the appointment of an executor or administrator, or in cases where the heirs resort to an extrajudicial settlement of the estate, that the court may adopt the alternative of allowing the heirs of the deceased to be substituted for the deceased.

In the case at bar, in view of the pendency of Special Proceeding No. 37-SF, Intestate Estate of Pedro Sepulveda, and the pending application of petitioner to be appointed judicial administratrix of the estate, the respondent trial judge should have awaited the appointment of petitioner and granted her motion to substitute the deceased defendant.

While the lower courts correctly held that the death of Pedro Sepulveda did not obliterate his verified Answer to the Complaint filed by private respondent and that the Answer filed by the ten heirs and the Answer filed by the Administratrix were both unnecessary, the said heirs or the administratrix could, with leave of court, file an Amended Answer.

In view of the foregoing, the Court rules that the proceedings conducted by the respondent trial judge after the death of the deceased defendant are null and void.

WHEREFORE, the decision of the Court of Appeals is reversed; the petition for certiorari is granted; petitioner is ordered substituted for the deceased defendant, Pedro Sepulveda; and the proceedings conducted by the respondent trial judge after the death of the deceased defendant, including the decision rendered by him on January 28, 1976, are set aside; with costs against private respondent.

SO ORDERED.

Fernan, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

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