INTESTADO DE DON VALENTIN DESCALS, PLAINTIFF AND APPELLANT VS., ADMINISTRADOR DE RENTAS INTERNAS, DEFENDANT AND APPELLEE.

G.R. No. L-7253. March 26, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The facts in this case are not disputed. Valentin Descals, an American citizen, died on September' 17, 1948, in the City of Manila where he was a resident. He left as .heirs his brothers Antonio and Ricardo and a sister Angeles, all surnanied Descals. About two years before his death he and his brother Ricardo jointly bought a piece of real estate property situated in the city of Barcelona, Spain. In the course of the administration of said property in Spain, the two brothers had differences, particularly about the repair and remodeling of the same, and to settle said differences, they agreed that Valentin become the owner pit the entire property by buying his brother Ricardo's interest in it. After an accounting, said interest of Ricardo was valued at P46.000 and Valentin acknowledged the said sum as a debt by means of a promissory note dated November 1, 1946.

After the death of Valentin, proceedings were initiated in the City of Manila for the administration of his estate. The administrator did not include in his inventory that property in Spain. According to his accounts the gross value of the estate was, P64,000 but after the payment of the expenses, this was rendered to around P44,000. Ricardo filed before the probate court a claim for P46.000 with interest based on the promissory; note executed by his brother in. 1946. Said claim was approved. The administrator paid about P80.000 on account of this claim with interest leaving a balance of about P26,000. The "balance in favor of Ricardo was later reduced to about P4.000 after the administrator had delivered to him certain shares of stock and cash belonging to the estate. On the basis of this accounting and report of the administrator, there, apparently, was no. property left in the estate subject to estate and inheritance tax.

The Collector of 'Internal Revenue, however, assessed the estate for purposes of taxation without deducting the claim filed by Ricardo despite its approval by the probate court and fixed and demanded the payment of P701.53 by way of estate tax and P2,144.10 as inheritance tax, a total of P2,845.63. The administrator paid this amount under protest and later brought the present action in the Court of First Instance of Manila to get its refund. After hearing, the lower court dismissed the complaint with costs. The administrator appealed to the Court.of Appeals, which court later indorsed the appeal to us as involving only questions of law.

For purposes of reference we are reproducing sections 88 and 89 of the National internal Revenue Code, to wit:

> "Sec. 88. Gross estate.—The value of the gross of the decedent shall be determined by including the value the time of his death of all property, real or personal, tangible, intangible, wherever situated except real property situated outside Philippines. (Italics ours.)
>
> "Sec. ,89. Net estate.—For the purpose of the taxes imposed in this Chapter, the value of the net estate shall be determined:

(a) In the case of a citizen or resident of the Philippines, by deducting from the value of the gross estate—

(1) Expenses, losses, indebtedness and taxes: Such amounts—

(A) For funeral expenses which shall, in no case, exceed five percentum of the gross estate;

(B) For judicial expenses of the testamentary or intestate proceedings:

(C) For claims against the estate;

(D) For claims of the deceased against insolvent persons where the value of decendent's interest therein is included value of the gross estate; and

(E) For unpaid mortgages upon or .any indebtedness respect to, property where the value of decedent's interest the undiminished by such mortgage or indebtedness, is included in the value of the gross estate." (Italics ours.)

It will be seen that under section 88, real property situated outside the Philippines is not included in the value of the gross estate of a deceased resident. Not being included as part of the estate, it cannot be subject to taxation such as estate tax and inheritance tax. Because of this, section 89 (e) provides that for the purpose of the taxes imposed under, that chapter of the Tax Code, in the determination of the value of the net estate, in order that indebtedness in respect to property pay be allowed to be deducted from the value of the gross estate, the value of decedent's interest in said property, undiminished by said indebtedness must be included in the value of the gross estate. Where however, in the determination of the gross estate the law (section 88) does not permit the inclusion of property outside of the Philippines, then it is but just and reasonable that the indebtedness incurred by the decedent by reason of said property or in the acquisition thereof should also not be discounted from the gross estate for purpose of taxation. This is also the rule and practice in the United States where in the determination of the gross and net estate of a decedent, properties outside the jurisdiction, and indebtedness incurred in respect to or by reason of said property, are not considered, being regarded as impossible items.

'Inasmuch as real property situated outside of the United States does not form a part of the gross estate, no deduction may be taken of any mortgage thereon or any indebtedness in respect thereof." (Reg. Sec. 81,38. (Vol. 2, Rabkin and Johnson, Federal lncome, Gift and Estate Taxation, 1954 ed., Sec. 63.03(10), p. 6319) "'. . .now the deduction is allowed only in case tile mortgaged property was included in the gross estate;... (Rodick vs. Helvering, 87 Fed. (2d) 328, 331 [1937].)

". . . among the deductions allowed were 'unpaid mortgages', an impossible item unless the whole value of the mortgaged property is to be included in the gross estate under section 402(a), 40 Stat. 1097, as an interest subject to the payment of charges against his estate.' (City Bank Farmers' Trust Co. vs. Bowers, 68 Fed. (2d) 909, 913 [1934].)"

We deem it unnecessary to discuss the other points raised in this appeal.

Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs in both Instances.

Parás, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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