

MAURICIO AGAD, PLAINTIFF-APPELLANT VS. SEVERINO MABATO & MABATO & AGAD COMPANY, DEFENDANTS-APPELLEES.

G.R. No. L-24193. June 28, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

In this appeal, taken by plaintiff Mauricio Agad, from an order of dismissal of the Court of First Instance of Davao, we are called upon to determine the applicability of Article 1773 of our Civil Code to the contract of partnership on which the complaint herein is based.

Alleging that he and defendant Severino Mabato are - pursuant to a public instrument dated August 29, 1952, copy of which is attached to the complaint as Annex "A" - partners in a fishpond business, to the capital of which Agad contributed P1,000, with the right to receive 50% of the profits; that from 1952 up to and including 1956, Mabato who handled the partnership funds, had yearly rendered accounts of the operations of the partnership; and that, despite repeated demands, Mabato had failed and refused to render accounts for the years 1957 to 1963, Agad prayed in his complaint against Mabato and Mabato & Agad Company, filed on June 9, 1964, that judgment be rendered sentencing Mabato to pay him (Agad) the sum of P14,000, as his share in the profits of the partnership for the period from 1957 to 1963, in addition to P1,000 as attorney's fees, and ordering the dissolution of the partnership, as well as the winding up of its affairs by a receiver to be appointed therefor.

In his answer, Mabato admitted the formal allegations of the complaint and denied the existence of said partnership, upon the ground that the contract therefor had not been perfected, despite the execution of Annex "A", because Agad had allegedly failed to give his P1,000 contribution to the partnership capital. Mabato prayed, there-fore, that the complaint be dismissed; that Annex "A" be declared void ab initio; and that Agad be sentenced to pay actual, moral and exemplary damages, as well as attorney's fees.

Subsequently, Mabato filed a motion to dismiss, upon the ground that the complaint states no cause of action and that the lower court had no jurisdiction over the subject matter of the case, because it involves principally the determination of rights over public lands. After due hearing, the court issued the order appealed from, granting the motion to dismiss the complaint for failure to state a cause of action. This conclusion was predicated upon the theory that the con-tract of partnership, Annex "A", is null and void, pursuant to Art. 1773 of our Civil Code, because an inventory of the fishpond referred in said instrument had not been attached thereto. A reconsideration of this order having been denied, Agad brought the matter to us for review by record on appeal.

Articles 1771 and 1773 of said Code provide:

"Art. 1771. A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.

"Art. 1773. A contract of partnership is void, whenever immovable property is contributed thereto, if inventory of said property is not made, signed by the parties, and attached to the Public instrument."

The issue before us hinges on whether or not "immovable property or real rights" have been contributed to the partnership under consideration. Mabato alleged and the lower court held that the answer should be in the affirmative, because "it is really inconceivable how a partnership engaged in the fishpond business could exist without said fishpond property (being) contributed to the partnership." It should be noted, however, that, as stated in Annex "A" the partnership was established "to operate a fishpond", not to "engage in a fishpond business". Moreover, none of the partners contributed either a fishpond or a real right to any fishpond. Their contributions were limited to the sum of P1,000 each. Indeed, Paragraph 4 of the Annex "A" provides:

"That the capital of the said partnership is Two Thousand (P2,000.00) Pesos Philippine Currency, of which One Thousand (P1,000.00) pesos has been contributed by Severino Mabato and One Thousand (P1,000.00) Pesos has been contributed by Mauricio Agad.

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The operation of the fishpond mentioned in Annex "A" was the purpose of the partnership. Neither said fishpond nor a real right thereto was contributed to the partnership or became part of the capital thereof, even if a fishpond or a real right thereto could become part of its assets.

WHEREFORE, we find that said Article 1773 of the Civil Code is not in point and that, the order appealed from should be, as it is hereby set aside and the case remanded to the lower court for further proceedings, with the costs of this instance against defendant-appellee, Severino Mabato.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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