

JOSEFA FABIE, PLAINTIFF AND APPELLANT, VS. NGO BOO SOO, DEFENDANT, SANCHE INOCENCIO, OPPOSITOR AND APPELLEE.*G.R. No. L-2116. October 31, 1949*

Ponente: REYES, J.

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The main case is one for desalucio between Josefa Fabie and Ngo Boo Soo; but the controversy now before us is between Josefa Fabie and her former attorney, the case having been elevated here on appeal from an order for the payment of the latter's fees.

As a background to the case, it should be stated that, by the will of Rosario Fabie y Grey duly probated after her death, Josefa Fabie was made the usufructuary of the rents of two houses in the City of Manila, one on Sto. Cristo street and the other on Ongpin street, while the naked title to both was bequeathed to Juan Grey. The right of administration over the property having been disputed between the usufructuary and the holder of the bare title, the controversy was taken to court and the usufructuary, i. e., Josefa Fabie, won, final decision in the case having been rendered by this Court on December 12, 1945. Attorney for Josefa Fabie in that case is the present appellee, Sancho Inocencio.

After liberation, Josefa Fabie had differences with her tenant Ngo Boo Soo respecting the rent which the latter should pay for the house on Sto. Cristo street. The dispute was taken to court but ended in a compromise. However, it had for its aftermath the present controversy between Josefa Fabie and her former lawyer.

The compromise agreement permitted Ngo Boo Soo to continue occupying the rented premises at an increased rent and Josefa Fabie on her part to withdraw the rentals which Ngo Boo Soo was to deposit in court. Acting on this authority, Josefa Fabie filed a motion in the Court of First Instance of Manila to withdraw the rentals deposited by defendant. The motion was opposed by Sancho Inocencio, her former attorney, who claimed that upon the funds sought to be withdrawn he had a lien for a professional fee of P500. He later increased the claim to P1,256.25 with the addition of P756.25 as his share of the rentals by way of compensation for his professional services under an agreement in the form of a power of attorney signed by Josefa Fabie on September 6, 1944, which purportedly gave him 25 per cent of said rentals in perpetuity. Answering the opposition, the movant alleged that the power of attorney referred to did not express her true agreement, which was to compensate the attorney for services rendered during the pendency of the aforementioned case between her and Juan Grey, including services in other cases, "but not to grant him a life pension." The movant also alleged that the said power of attorney was invalid and illegal and had already been revoked by her letter of July 16, 1946, and that, under the agreement as intended by the parties, the attorney would only be entitled to the sum of P265.75, which movant was willing to pay. In a subsequent petition filed on August 30, 1946, the movant asked that the claim for unpaid attorney's fee be set for hearing, alleging that the sum claimed by the attorney under the power of attorney in question did not constitute a charging lien under Rule 127, Section 33, of the Rules of Court; that the reasonable value of the attorney's services did not justify the grant of a "life pension to the extent of 25 per cent of all the rentals;" and that, under the Rules, the claim for attorney's fee must be ascertained by the court upon

hearing in which the attorney must prove that the amount claimed is unpaid and that it is reasonable and just. Despite this petition, the lower court, without receiving evidence, rendered the following order:

"Due consideration first had of the respective contentions of the plaintiff and her former counsel, Attorney Sancho Inocencio, re the latter's claim and lien for attorney's fees in this case as well as those under the instrument signed by them on September 4, 1944, the Court believes and so holds that said counsel, taking into account the extent of the services rendered by him in the instant case as evidenced by its record, is entitled to the claim and lien for attorney's fees in this case in the amount of P500 in addition to the sum of P250 already, paid to him. The Court is also of the opinion that the claim of said counsel in the amount of P756.25, representing 25 per cent of the rentals collected by the plaintiff covered by the instrument above referred to, constitute a lien upon the funds now in question.

"Wherefore, the Clerk of this Court is hereby authorized and instructed to deliver to Attorney Sancho Inocencio the total amount deposited in this Court as rentals in payment of his claim and lien for attorney's fees above indicated."

A motion for reconsideration having been denied, the movant has brought the case here on appeal.

Without going into all the specifications of error, we think the appeal may be disposed of under the contention that the lower court erred "in declaring without any hearing or submission of evidence that Atty. Sancho Inocencio is a co-owner to the extent of 25 per cent of the rentals due Josefa Fabie as usufructuary of the two properties bequeathed to her by will."

The pleadings presented by the parties have put in issue not only the validity of the power of attorney on which the appellee's claim for professional services is founded but also the nature and extent of those services and the reasonable value thereof. Resolution of those issues clearly required evidence. But despite appellant's petition for a hearing, the lower court, without receiving any evidence, made a summary adjudication by handing down the order herein appealed from. This act of the lower court amounts to a denial of appellant's right to a due process of law and renders its order void.

We can not, however, subscribe to the contention that the appellee's claim for attorney's fee has to be ventilated in a separate action. The issues being sufficiently formulated in the pleadings already presented, there is no need for multiplying suits by requiring the filing of such separate action.

Wherefore, the order appealed from is hereby revoked and the case is ordered remanded to the court below for further proceedings, with costs against the appellee.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Tuason, Montemayor, and Torres, JJ., concur.

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