

ALBERT F. KIEL, PLAINTIFF AND APPELLEE, VS. ESTATE OF P. S. SABERT, DEFENDANT AND APPELLANT.

G.R. No. 21639. September 25, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

This action relates to the legal right of Albert F. Kiel to secure from the estate of P. S. Sabert the sum of P20,000, on a claim first presented to the commissioners and disallowed, then on appeal to the Court of First Instance allowed, and ultimately the subject-matter of the appeal taken to this court.

A skeletonized statement of the case and the facts based on the complaint, the findings of the trial judge, and the record, may be made in the following manner:

In 1907, Albert F. Kiel along with William Milfeil commenced to work on certain public lands situated in the municipality of Parang, Province of Cotabato, known as Parang Plantation Company. Kiel subsequently took over the interest of Milfeil. In 1910, Kiel and P. S. Sabert entered into an agreement to develop the Parang Plantation Company. Sabert was to furnish the capital to run the plantation and Kiel was to manage it. They were to share and share alike in the property. It seems that this partnership was formed so that the land could be acquired in the name of Sabert, Kiel being a German citizen and not deemed eligible to acquire public lands in the Philippines.

By virtue of the agreement, from 1910 to 1917, Kiel worked upon and developed the plantation. During the World War, he was deported from the Philippines.

On August 16, 1919, five persons, including P. S. Sabert, organized the Nituan Plantation Company, with a subscribed capital of P40,000. On April 10, 1922, P. S. Sabert transferred all of his rights in two parcels of land situated in the municipality of Parang, Province of Cotabato, embraced within his homestead application No. 21045 and his purchase application No. 1048, in consideration of the sum of P1, to the Nituan Plantation Company.

In this same period, Kiel appears to have tried to secure a settlement from Sabert. At least in a letter dated June 6, 1918, Sabert wrote Kiel that he had offered "to sell all property that I have for P40,000 or take in a partner who is willing to develop the plantation, to take up the K. & S. debt no matter which way I will straiten out with you." But Sabert's death came before any amicable arrangement could be reached and before an action by Kiel against Sabert could be decided. So these proceedings against the estate of Sabert.

In this court, the defendant-appellant assigns the following errors:

"The lower court erred—

"(1) In finding this was an action to establish a resulting trust in land.

"(2) In finding a resulting trust in land could have been established in public lands in favor of plaintiff herein who was an alien subject at the same time said alleged resulting trust was created.

" (3) In finding a resulting trust in land had been established by the evidence in the case.

"(4) In admitting the testimony of the plaintiff herein.

"(5) In admitting the testimony of William Milfeil, John

C. Beyersdorfer, Frank R. Lasage, Oscar C. Butler and Stephen Jurika with reference to alleged statements and declarations of the deceased P. S. Sabert.

"(6) In finding any copartnership existed between plaintiff and the deceased Sabert.

"(7) In rendering judgment for the plaintiff herein."

Errors 1, 2, and 3, relating to resulting trusts.—These three errors discussing the same subject may be resolved together. In effect, as will soon appear, we reach the conclusion that both parties were in error in devoting so much time to the elaboration of these questions, and that a ruling on the same is not needed.

It is conceivable, that the facts in this case could have been so presented to the court by means of allegations in the complaint, as to disclose characteristics of a resulting trust. But the complaint as framed asks for a straight money judgment against an estate. In no part of the complaint did plaintiff allege any interest in land, claim any interest in land, or pretend to establish a resulting trust in land. That the plaintiff did not care to press such an action is demonstrated by the relation of the fact of alienage with the rule, that a trust will not be created when, for the purpose of evading the law prohibiting one from taking or holding real property, he takes a conveyance thereof in the name of a third person. (26 R. C. L., 1214- 1222; Leggett vs. Dubois [1835], 5 Paige, N. Y., 114; 28 Am. Dec, 413.)

The parties are wrong in assuming that the trial judge found that this was an action to establish a resulting trust in land. In reality, all that the trial judge did was to ground one point of his decision on an authority coming from the Supreme Court of California, which discussed the subject of resulting trusts.

Error 4, relating to the admission of testimony of the plaintiff herein.—Well taken.

The Code of Civil Procedure in section 383, No. 7, names as incompetent witnesses, parties to an action or proceeding against an executor or administrator of a deceased person upon a claim or demand against the estate of such deceased person, who "cannot testify as to any matter of fact occurring before the death of such deceased person." But the trial judge, misled somewhat by the decision of the Supreme Court of California in the case of Myers vs. Reinstein ([1885], 67 Cal., 89), permitted this testimony to go in, whereas if the decision had been read more carefully, it would have been noted that "the action was not on a claim or demand against the estate of Reinstein." Here this is exactly the situation which confronts us.

The case of Maxilom vs. Tabotabo ([1907], 9 Phil., 390), is squarely on all fours with the case at bar. It was there held that "A party to an action against an executor or administrator of a deceased person, upon a claim against the estate of the latter, is absolutely prohibited by law from giving testimony concerning such claim or demand as to anything that occurred before the death of the person against whose estate the action is prosecuted."

Error 5, relating to the testimony of five witnesses with reference to alleged statements and declarations of the deceased P. S. Sabert.—Not well taken.

By section 282 of the Code of Civil Procedure, the declaration, act, or omission of a deceased person having sufficient knowledge of the subject, against his pecuniary interest, is admissible as evidence to that extent against his successor in interest. By section 298, No. 4, of the same Code, evidence may be given upon a trial of the following facts: " * * * the act or declaration of a deceased person, done or made against his interests in respect to

his real property." (See *Leonardo vs. Santiago* [1907], 7 Phil., 401.) The testimony of these witnesses with reference to the acts or declarations of Sabert was, therefore, properly received for whatever they might be worth.

Error 6, relating to the existence of a copartnership between Kiel and Sabert,—Not well taken.

No partnership agreement in writing was entered into by Kiel and Sabert. The question consequently is whether or not the alleged verbal copartnership formed by Kiel and Sabert has been proved, if we eliminate the testimony of Kiel and only consider the relevant testimony of other witnesses. In performing this task, we are not unaware of the rule of partnership that the declarations of one partner, not made in the presence of his copartner, are not competent to prove the existence of a partnership between them as against such other partner, and that the existence of a partnership cannot be established by general reputation, rumor, or hearsay. (*Mechem on Partnership*, sec. 65; 20 R. C. L., sec. 53; *Owensboro Wagon Company vs. Bliss* [1901], 132 Ala., 253.)

The testimony of the plaintiff's witnesses, together with the documentary evidence, leaves the firm impression with us that Kiel and Sabert did enter into a partnership, said that they were to share equally. Applying the tests as to the existence of partnership, we feel that competent evidence exists establishing the partnership. Even more primary than any of the rules of partnership above announced, is the injunction to seek out the intention of the parties, as gathered from the facts and as ascertained from their language and conduct, and then to give this intention effect. (*Giles V6. Vette* [1924], 263 U. S., 553.)

Error 7, relating to the judgment rendered for the plaintiff.—Well taken in part.

The judgment handed down, it will be remembered, permitted the plaintiff to recover from the estate the full amount claimed, presumably on the assumption that Sabert having sold the property to the Nituan Plantation Company for P40,000, Kiel should have one-half of the same, or P20,000. There is, however, extant in the record absolutely no evidence as to the precise amount received by Sabert from the sale of this particular land. If it is true that Sabert sold all his land to the Nituan Plantation Company for P40,000, although this fact was not proven, what part of the P40,000 would correspond to the property which belonged to Kiel and Sabert under their partnership agreement? It impresses us further that Kiel under the facts has no standing in court to ask for any part of the land and in fact he does not do so; his only legal right is to ask for what is in effect an accounting with reference to its improvements and income as of 1917 when Sabert became the trustee of the estate on behalf of Kiel.

As we have already intimated, we do not think that Kiel is entitled to any share in the land itself, but we are of the opinion that he has clearly shown his right to one-half of the value of the improvements and personal property on the land as of the date upon which he left the plantation.

Such improvements and personal property include buildings, coconut palms, and other plantings, cattle and other animals, implements, fences, and other constructions, as well as outstanding collectible credits, if any, belonging to the partnership. The value of these improvements and of the personal property cannot be ascertained from the record and the case must therefore be remanded for further proceedings.

In resume, we disregard errors 1, 2, and 3, we find well taken, errors 4 and 7, and we find not well taken, errors 5 and 6.

The judgment appealed from is set aside and the record is returned to the lower court where the plaintiff, if he so desires, may proceed further to prove his claim against the estate of P. S. Sabert. Without costs. So ordered.

Johnson, Street, Avancem, Villamor, Ostrand, and Romualdez, JJ., concur.

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