

INTESTATE ESTATE OF FRANCISCA DE VERA, DECEASED. TOMAS C. REYES, CREDITOR AND APPELLANT, VS. JOSE GONZALEZ AND MARIA GONZALEZ, HEIRS AND APPELLEES.

G.R. No. 22905. January 28, 1925

Ponente: STATEMENT April 2, 1924, the defendants, as heirs of Francisca de Vera, deceased, filed the following verified petition in the Court of First Instance of Bulacan: "Come now the heirs Jose Gonzalez and Maria Gonzalez and, through their undersigned attorney, respectfully show: "1. That by an order dated October 5, 1923, this Honorable Court approved the report of the commissioners on appraisal and claims whereby, among other things, the claim of Tomas C. Reyes against the intestate estate of Francisca de Vera is admitted for the total sum of P8,901.78. "2. That thereafter, to wit, on the 19th day of March, 1924, another order was issued by this Honorable Court stating the manner in which payment of said claim should be paid. "3. That the first order, as well as the second, abovementioned, was issued without opposition by any of the parties, in view of the fact that an understanding existed at least on the part of the heirs lose Gonzalez and Maria Gonzalez, that the aforesaid claim was true, and not, as it is, fictitious and fraudulent. "4. That it was only last Thursday, March 27, 1924, that the petitioners discovered the aforesaid credit to be fraudulent and fictitious, and since then they have endeavored to find proof confirming the discovery. "5. That from this discovery it appears as a matter of fact that the alleged claim for P8,901.78 of Tomas C. Reyes against the intestate estate is completely fictitious and fraudulent, and that the three documents of credit, appearing in the record, on pages 159, 160 and 161, presented by Tomas C. Reyes as evidence of his claim, are false and falsified documents, and that they are done only in February, 1922, that is to say, several months after the death of Francisca de Vera, and the latter could not, therefore, have taken part in the execution of said documents. "6. That said three documents of credit, even if they purport to bear the thumbmark of Francisca de Vera, in fact the thumbmark placed in the three documents is that of a third person, to wit, her granddaughter, Andrea Geraldez, daughter of the other heir, Simeona de Mendoza, according to what was discovered by the petitioners afterwards, as may be seen from the enclosed documents which are made a part of this petition. "7. That notwithstanding the fact that they have endeavored to find evidence against the claim presented by Tomas C. Reyes, which claim has already aroused suspicion, in view of the fact that the deceased Francisca de Vera, on account of her manner of her living and her saving habit, was unable to spend P8,000 in so short a time, this discovery could not have been made by the petitioners before this time, and it happened only on account of the disclosure made by an eyewitness to the deceit, who cannot permit that the heirs Jose Gonzalez and Maria Gonzalez be unjustly deprived of a great portion of their inheritance. "8. That if the orders of this Honorable Court dated October 5, 1923, and March 19, 1924, above-mentioned, are complied with, Tomas C. Reyes and his associates would be satisfied to see the success of their fraudulent machination. "9. That in the interest of justice and equity, the two orders referred to should be set aside, and the petitioners Jose Gonzalez and Maria Gonzalez permitted to impugn the claim of Tomas C. Reyes, to oppose the same and appeal from the report of the commissioners on appraisal and claims, and go through all other legal proceedings, to test the claim of Tomas C. Reyes, and the judicial administrator be ordered to appeal from the decision of the commissioners on appraisal and claims. "10. That 25 days have elapsed since the report of the commissioners on appraisal and claims was presented, and neither the judicial administrator nor the petitioners herein can now appeal in accordance with section 775 of the Code of Civil Procedure, in relation with sections 773, 774, 776 and 777 of the same Code. "11. That six months have not yet expired since the issuance of the order of this Honorable Court dated October 5, 1923, approving the report of the commissioners on appraisal and claims. "12. That in presenting this petition, the petitioners invoke the provisions of section 113 of the Code of Civil Procedure, which are applicable to the instant case. * * * "For all of the foregoing, it is respectfully prayed that the orders dated October 5, 1923, approving the report of the commissioners on appraisal and claims, and March 19, 1924, be set aside; that the

judicial administrator be ordered to appeal from said report of the commissioners on appraisal and claims, insofar as it refers to the alleged claim of Tomas C. Reyes; that the petitioners be permitted to appeal from the same report, and that, for the time being, all proceeding in this intestate estate, having reference to the payment of the said claim, be suspended, on the ground of being fraudulent." Based upon the petition the court made the following order: "Considering the petition dated April 2, 1924, presented by counsel for the heirs Jose Gonzalez and Maria Gonzalez, to set aside the orders dated October 5, 1923, and March 19, 1924, rendered in this case, whereby the report of the commissioners on appraisal and claims is approved and the claim of Tomas C. Reyes is admitted against this estate, and that the judicial administrator be ordered to appeal from the report of the commissioners insofar as it refers to the aforesaid claim of Tomas C. Reyes and that the heirs be permitted to appeal from the report referred to, suspending in the meantime all proceeding in this case relative to the payment of said claim, for being fraudulent. It appearing from, the sworn allegations stated in the aforesaid petition of the heirs Jose Gonzalez and Maria Gonzalez that if they did not object to the claim of Tomas C. Reyes or oppose to the approval of the report of the commissioners on appraisal, it was because they did not know that it was fraudulent, nor could they have discovered until the present time, notwithstanding the efforts they displayed, that said claim was and is fraudulent; and finding that the instant case is within those specified by section 113 of the Code of Civil Procedure, and that, therefore, sufficient grounds exist to allow what is prayed for; "The orders mentioned dated October 5, 1923, and March 19, 1924, are hereby set aside, insofar as they approved the report of the commissioners on appraisal and admitted the claim of Tomas C. Reyes against the estate; and the administrator and the heirs Jose Gonzalez and Maria Gonzalez are authorized to appeal from said report to this court." The plaintiff appeals, assigning the following errors: "The trial court erred in setting aside the order of October 5, 1923. "The trial court erred in setting aside the order of March 19, 1924. "The trial court erred in authorizing the appeal from the report of the committee on claims." JOHNS, J.

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STATEMENT

April 2, 1924, the defendants, as heirs of Francisca de Vera, deceased, filed the following verified petition in the Court of First Instance of Bulacan:

"Come now the heirs Jose Gonzalez and Maria Gonzalez and, through their undersigned attorney, respectfully show:

"1. That by an order dated October 5, 1923, this Honorable Court approved the report of the commissioners on appraisal and claims whereby, among other things, the claim of Tomas C. Reyes against the intestate estate of Francisca de Vera is admitted for the total sum of P8,901.78.

"2. That thereafter, to wit, on the 19th day of March, 1924, another order was issued by this Honorable Court stating the manner in which payment of said claim should be paid.

"3. That the first order, as well as the second, abovementioned, was issued without opposition by any of the parties, in view of the fact that an understanding existed at least on the part of the heirs lose Gonzalez and Maria Gonzalez, that the aforesaid claim was true, and not, as it is, fictitious and fraudulent.

"4. That it was only last Thursday, March 27, 1924, that the petitioners discovered the aforesaid credit to be fraudulent and fictitious, and since then they have endeavored to find proof confirming the discovery.

"5. That from this discovery it appears as a matter of fact that the alleged claim for P8,901,78 of Tomas C. Reyes against the intestate estate is completely fictitious and fraudulent, and that the three documents of credit, appearing in the record, on pages 159, 160 and 161, presented by Tomas C. Reyes as evidence of his claim, are false and falsified documents, and that they are done only in February, 1922, that is to say, several months after the death of Francisca de Vera, and the latter could not, therefore, have taken part in the execution of said

documents.

"6. That said three documents of credit, even if they purport to bear the thumbmark of Francisca de Vera, in fact the thumbmark placed in the three documents is that of a third person, to wit, her granddaughter, Andrea Geraldez, daughter of the other heir, Simeona de Mendoza, according to what was discovered by the petitioners afterwards, as may be seen from the enclosed documents which are made a part of this petition.

"7. That notwithstanding the fact that they have endeavored to find evidence against the claim presented by Tomas C. Reyes, which claim has already aroused suspicion, in view of the fact that the deceased Francisca de Vera, on account of her manner of her living and her saving habit, was unable to spend P8,000 in so short a time, this discovery could not have been made by the petitioners before this time, and it happened only on account of the disclosure made by an eyewitness to the deceit, who cannot permit that the heirs Jose Gonzalez and Maria Gonzalez be unjustly deprived of a great portion of their inheritance.

"8. That if the orders of this Honorable Court dated October 5, 1923, and March 19, 1924, above-mentioned, are complied with, Tomas C. Reyes and his associates would be satisfied to see the success of their fraudulent machination.

"9. That in the interest of justice and equity, the two orders referred to should be set aside, and the petitioners Jose Gonzalez and Maria Gonzalez permitted to impugn the claim of Tomas C. Reyes, to oppose the same and appeal from the report of the commissioners on appraisal and claims, and go through all other legal proceedings, to test the claim of Tomas C. Reyes, and the judicial administrator be ordered to appeal from the decision of the commissioners on appraisal and claims.

"10. That 25 days have elapsed since the report of the commissioners on appraisal and claims was presented, and neither the judicial administrator nor the petitioners herein can now appeal in accordance with section 775 of the Code of Civil Procedure, in relation with sections 773, 774, 776 and 777 of the same Code.

"11. That six months have not yet expired since the issuance of the order of this Honorable Court dated October 5, 1923, approving the report of the commissioners on appraisal and claims.

"12. That in presenting this petition, the petitioners invoke the provisions of section 113 of the Code of Civil Procedure, which are applicable to the instant case. * * *

"For all of the foregoing, it is respectfully prayed that the orders dated October 5, 1923, approving the report of the commissioners on appraisal and claims, and March 19, 1924, be set aside; that the judicial administrator be ordered to appeal from said report of the commissioners on appraisal and claims, insofar as it refers to the alleged claim of Tomas C. Reyes; that the petitioners be permitted to appeal from the same report, and that, for the time being, all proceeding in this intestate estate, having reference to the payment of the said claim, be suspended, on the ground of being fraudulent."

Based upon the petition the court made the following order:

"Considering the petition dated April 2, 1924, presented by counsel for the heirs Jose Gonzalez and Maria Gonzalez, to set aside the orders dated October 5, 1923, and March 19, 1924, rendered in this case, whereby the report of the commissioners on appraisal and claims is approved and the claim of Tomas C. Reyes is admitted against this estate, and that the judicial administrator be ordered to appeal from the report of the commissioners insofar as it refers to the aforesaid claim of Tomas C. Reyes and that the heirs be permitted to appeal from the report referred to, suspending in the meantime all proceeding in this case relative to the payment of said claim, for being fraudulent. It appearing from, the sworn allegations stated in the aforesaid petition of the heirs Jose Gonzalez and Maria Gonzalez that if they did not object to the claim of Tomas C. Reyes or oppose to the approval of the report of the commissioners on appraisal, it was because they did not know that it was fraudulent, nor could they have discovered until the present time, notwithstanding the efforts they displayed, that said claim was and is fraudulent; and finding that the instant case is within those specified

by section 113 of the Code of Civil Procedure, and that, therefore, sufficient grounds exist to allow what is prayed for;

"The orders mentioned dated October 5, 1923, and March 19, 1924, are hereby set aside, insofar as they approved the report of the commissioners on appraisal and admitted the claim of Tomas C. Reyes against the estate; and the administrator and the heirs Jose Gonzalez and Maria Gonzalez are authorized to appeal from said report to this court."

The plaintiff appeals, assigning the following errors:

"The trial court erred in setting aside the order of October 5, 1923.

"The trial court erred in setting aside the order of March 19, 1924.

"The trial court erred in authorizing the appeal from the report of the committee on claims."

JOHNS, J.:

There is no dispute about any material fact. The only question presented is whether the petition of the heirs states facts sufficient to entitle them to relief from the order of the court of October 5, 1923, approving the claim in question.

It is conceded that the time has expired for an appeal under sections 773, 774, 775, 776 and 777 of the Code of Civil Procedure. It is contended that the facts alleged bring the case under section 113 of that Code of Civil Procedure, as follows:

"Relief from Effect of Judgments and Orders.—Upon such terms as may be just the court may relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect: Provided, That application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken."

This section was construed by this court in *Re Estate of Johnson* (39 Phil., 156), in which, on page 164, the opinion says:

"The use of the word 'judgment, order or other proceeding' in this section indicates an intention on the part of the Legislature to give a wide latitude to the remedy here provided, and in our opinion its operation is not to be restricted to judgments or orders entered in ordinary contentious litigation where a plaintiff impleads a defendant and brings him into court by personal service of process. In other words the utility of the provision is not limited to actions proper but extends to all sorts of judicial proceedings."

The facts alleged are clearly sufficient to entitle the heirs to relief under that section. The petition shows upon its face that the heirs acted in good faith. That in truth and in fact at the time the claim was allowed, they thought and believed that it was a just claim, and, for such reason, did not oppose its allowance. When it later developed that the claim was false, fraudulent and fictitious, they immediately filed the petition here in question, which was done a little less than five months after the claim was allowed.

The action of the trial court in setting aside its order of October 5, 1923, is fully sustained by the facts alleged in the petition.

In *Gotamco vs. Chan Seng and Razon* (46 Phil., 542), this court held:

"3. WHEN CLAIM ALLOWED BY PROBATE COMMISSIONERS MAY BE ATTACKED IN ORIGINAL PROCEEDING.—In such a case the allowance of an alleged claim by the probate commissioners acting without jurisdiction is not conclusive under sections 773, 774 and 775 of the Code of Civil Procedure, and such

allowance of a claim may be attacked for want of jurisdiction, fraud, or mistake in an original proceeding commenced within a reasonable time after the time for appeal has expired."

For the purpose of this opinion, this court must assume that the facts alleged in the petition are true. Assuming them to be true, the petition states facts sufficient to entitle the heirs to relief even upon the ground of fraud.

The order of the lower court, setting aside its order of October 5, is sustained, and the case is remanded, with leave to the plaintiff to file an answer to the petition, and to have the case tried by the court on its merits. The appellees to have and recover costs on this appeal. So ordered.

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

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