

SOTERO P. FERMIN ET AL., PLAINTIFFS AND APPELLEES, VS. LEON PASE CARLOS ET AL., DEFENDANTS. LEON PASE CARLOS, APPELLANT.

G.R. No. 24125. December 05, 1925

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an action for the recovery of P12,468 with legal interest thereon from the filing of the complaint, which amount the plaintiffs alleged having paid to the defendants, Leon Pase Carlos and Praxedes Soriano, as price in advance of 2,078 cavans of palay.

The defendants filed a general denial with a counterclaim and the case was tried by the Honorable Anacleto Diaz, judge, who, on January 24, 1922, rendered judgment sentencing the defendants to return to the plaintiffs the sum claimed of P12,468, with legal interest thereon from the filing of the complaint.

Said judgment was appealed to this court, the appeal having been docketed as No. 19991;[1] but upon motion of the appellants, the record was ordered remanded to the court below with instruction to hold a new trial, due to the fact that the transcript of the stenographic notes taken during the first hearing was not forwarded to this court on account of the official stenographer who took said notes having died.

When this case was called for hearing in September, 1924, the defendant Leon Pase Carlos filed a motion praying for the dismissal of the case on the ground that the other defendant, Praxedes Soriano, had died in Jaen on the 16th day of June, 1924, and that as she had not left a will nor appointed an administrator of her estate, said estate must be held under administration and a committee appointed to which the claim which is the subject-matter of the complaint might be presented.

By an order of September 3, 1924, the lower court overruled the motion of the defendant Leon Pase Carlos and authorized the plaintiffs to amend the complaint, directing their action against Leon Pase Carlos, as administrator of the conjugal partnership between him and his deceased wife.

The complaint having been amended as indicated in the aforesaid order of August 3, 1924, the defendant filed an amended answer, denying the allegations contained in the complaint, and maintaining as special defense that the facts alleged in the complaint did not constitute sufficient cause of action against the defendant; that the trial to be held by virtue of said amended complaint would not constitute due process of law to compel the estate of the deceased Praxedes Soriano to pay the amount claimed without hearing her children and other persons interested in said estate; that the trial court had no jurisdiction to entertain this action and render judgment on the subject-matter of the amended complaint.

After the introduction of evidence, the trial court rendered judgment sentencing the defendant Leon Pase Carlos, in his capacity as administrator of the conjugal partnership between him and his deceased wife, Praxedes Soriano, to pay or return to the plaintiffs, Sotero P. Fermin and Margarita E. Fermin, the sum of P12,468 with legal interest

thereon from the date of the filing of the complaint (November 10, 1920) until full payment. From this judgment the defendant appealed.

The appellant alleges that the trial court erred in not dismissing this case under Act No. 3176.

This Act, which was enacted by the Legislature on November 24, 1924, provides, in its section 1, amending section 685 of Act No. 190, that:

"Sec. 685. When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof shall be paid, in the testamentary or intestate proceedings of the deceased spouse, in accordance with the provisions of this Code relative to the administration and liquidation of the estates of deceased persons, or in an ordinary liquidation and partition proceeding, unless the parties, being all of age and legally capacitated, avail themselves of the right granted to them by this Code of proceeding to an extrajudicial partition and liquidation of said property."

We find that the trial court did right in not applying this Act to the instant case, taking into account that its enactment was subsequent, not only to the birth of the cause of action, but also to the filing of the amended complaint and the death of the wife of the defendant. Said Act having no retroactive effect, its provisions cannot be applied to the instant case which must be disposed of in accordance with articles 1418 and 1421 of the Civil Code as was held by this court in the case of *Nable Jose vs. Nable Jose* (41 Phil., 713), and in *Manuel and Laxamana vs. Losano* (41 Phil., 855).

In the first of said cases this court said: "It has been definitely settled in this jurisdiction (*Alfonso vs. Natividad*, 6 Phil., 240; *Enriquez vs. Victoria*, 10 Phil., 10; In the matter of the estate of *Amancio*, 13 Phil., 297; and *Rojas vs. Singson Tongson*, 17 Phil., 476) that when a conjugal partnership is dissolved by the death of the wife, the surviving husband, and not the judicial administrator appointed in the proceedings for the settlement of the wife's estate, is entitled to the possession of the property of the conjugal partnership until he has liquidated its affairs; that the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated; and that the liquidation of the affairs of the partnership is to be conducted by him, as administrator in accordance with the provisions of articles 1418 to 1426 of the Civil Code."

It was likewise held in the case of *Nable Jose vs. Nable Jose*, supra, that "the duty to pay the debts and Obligations of the partnership imposed on the surviving husband in article 1423 of the Code carries with it by necessary implication the right to realize the funds necessary to that end from the property charged with the debts; and the husband, as liquidator, is empowered in the exercise of his uncontrolled discretion to provide for the payment of the debts from the partnership property in such manner as he may see fit."

And it was also said that "since the surviving husband is personally liable for the debts, he may pay all or any part of them from his personal funds, and reimburse himself from the partnership property."

In *Manuel and Laxamana vs. Losano*, supra, the doctrine laid down in *Nable Jose vs. Nable Jose*, supra, about the powers and duties of the surviving husband with regard to the payment of the debts of the conjugal partnership was confirmed and there this court held: "The interest of the wife, and in case of her death, of the heirs, prior to the liquidation of the community property of herself and her husband, is an interest inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of the heirs like that of the wife herself is limited to the net remainder (remanente liquido) resulting from the liquidation of the affairs of the partnership after dissolution of the partnership; and until a liquidation has been had, it is impossible to say whether or not there will be a net remainder to be divided between the interested parties. Until the existence of a net remainder has been determined as a result of the liquidation, they can assert no claim of right or title in or to

the community property, which is placed in the exclusive possession and control of the husband as administrator."

From the doctrine above set forth, it may be seen that, as this is a case for the recovery of a debt of the conjugal partnership, sections 689 and 700 of the Code of Civil Procedure invoked by the appellant have no application.

The allegation of the appellant that the trial court had no jurisdiction to decide this case on account of the fact that the children of the deceased Praxedes Soriano were not included as party defendant, has no merit. As was held in the above cited two cases of Nable Jose vs. Nable Jose, and Manuel and Laxamana vs. Losano, *supra*, the right of the heirs of the deceased spouse, as regards the estate of the conjugal partnership, is a mere expectancy which does not constitute either a legal or equitable property and so long as it is not determined whether there exists a net remainder resulting from the liquidation, the heirs cannot claim any right or share in said property, which remains under the exclusive possession and management of the husband as administrator. And it being, on the other hand, the duty of the surviving husband to pay the debts of the conjugal partnership, it is clear that the heirs of the deceased Praxedes Soriano are not a necessary party, nor do they have any right to intervene in this action, wherein it is sought to recover a debt of the said conjugal partnership.

As to the counterclaim of the defendants mentioned in the brief of the appellant, it must be noted that while in the answer of the defendants dated December 21, 1920, it was alleged as a counterclaim that they had delivered 721 cavans and 36 kilos of palay to the plaintiffs; yet in the amended answer there appears no such allegation. At any rate, the trial judge, after carefully considering the evidence presented by the parties, arrived at the conclusion that the said 721 cavans and 36 kilos of palay had already been included in a liquidation had between the parties, and that the preponderance of the evidence shows that the defendant and his deceased wife, Praxedes Soriano, had in fact received from the plaintiff the sum claimed in the complaint, as the price in advance of 2,078 cavans of palay which the defendants had agreed to deliver to the plaintiffs, but have not done so until now. We do not have the opportunity to examine all the evidence introduced at the trial, because the several exhibits mentioned by the trial judge, who decided this case, were not attached to the record; but accepting the facts as set forth in the judgment appealed from, we are of the opinion that they support the findings made by the trial judge.

Wherefore, the judgment appealed from must be, as is hereby, affirmed, with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1]Fermin and Fermin vs. Pase Carlos and Soriano; promulgated by resolution, January 23, 1923, not reported.

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