

MARTIN CARREON, AS ADMINISTRATOR OF THE ESTATE OF ACOP BANGUILAN, AND CHANAL (ALIAS DANAL), PLAINTIFFS AND APPELLANTS, VS. SIOCO CARIÑO, DEFENDANT AND APPELLEE.

G.R. No. 28271. November 02, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a decision of the Court of First Instance of the subprovince of Benguet, dismissing an action brought by the plaintiffs to recover the sum of P4,800 and other personal property pertaining to the estate of the deceased Igorrote, Acop Banguilan.

It is alleged in the complaint that the plaintiff Martin Carreon is the administrator of the estate of Acop Banguilan; that the plaintiff Chanal (alias Danal) is the surviving spouse of the deceased; that on or about October or November, 1921, about one year after the death of Acop Banguilan and before letters of administration were issued, the defendant, Sioco Cariño, took away from Ghanal the sum of P4,800, and some title documents, all belonging to the conjugal property of Acop and Chanal, on the condition that he, the defendant, would return it to Chanal after a "cañao" or feast over said money had been celebrated; that the defendant obtained possession of the property under the pretext that he, being an influential man in the community, could keep the property safely from the danger of robbers; that in spite of repeated demands, the defendant continues to retain the property illegally; and that as a result of the illegal detention of the aforesaid sum of P4,800, the plaintiffs have suffered damages in the amount P4,800.

The defendant, in his answer, denies generally and specifically each and every allegation of the complaint, and as a special defense alleges (1) that any action which the plaintiff might have had against the defendant has already prescribed under the laws of the Philippine Islands, and (2) that this action has been illegally and improperly brought, inasmuch as it contravenes a final order made by the Court of First Instance of Benguet in civil case No. 247, entitled "E. Speth et al., plaintiffs, vs. Sioco Cariño, defendant."

Upon a careful examination of the record, we are of the opinion that the judgment of the court below must be reversed. It is obvious that the defendant's special defense of prescription has not been established. The money claimed by the plaintiff, whether conjugal property or not, pertains to the estate of Acop Banguilan until a distribution of the estate has been made, and assuming that the defendant took possession of said money, he can only be regarded as an administrator de son tort, holding the property in trust for the heirs, and in favor of whom the statute of limitation consequently did not run, at least not until after an administrator was legally appointed. It may be noted that an administrator of the estate in question was not appointed until 1923. No evidence whatever has been introduced in support of the defendant's second special defense, and the determination of the case, therefore, reduces itself to a question of the credibility of the witnesses who testified to the delivery of the money to the defendant.

The record shows that Acop Banguilan had his home in Batdi, an isolated place situated at a distance of about 14

kilometers from the City of Baguio. He married twice, and the defendant's wife, Guilata Acop, is a daughter of the first marriage, her mother's name being Anguing Pirang. The plaintiff Chanal was Acop's second wife with whom he had several children, among them Sixto and Biring Acop. Acop Banguilan died on July 13, 1920, leaving a considerable estate, consisting of cattle, real estate, and money.

Chanal is an ignorant woman, and it is not disputed that she had no property at the time of her marriage to Acop. At the trial of the case she testified that in October or November, 1921, after the death of Acop, the defendant came to her house at Batdi, accompanied by his wife, Guilata, and her son-in-law, Manuel Caoili, and induced her to turn over to him the money left by Acop, representing to her that it was publicly known that Acop was rich and that Chanal, being a woman and alone, would be an easy prey to robbers and might even be killed; that she gave the defendant P4,000 in currency and P800 in coin, but told him that he must return it all within a month; that the defendant promised that he would do so when the danger of robbery ceased and that he then would celebrate a *cañao* (feast) over the death of Acop; that Manuel Caoili counted the coin and put it in a *Hour* sack, while the defendant and his wife counted the currency, after which the defendant wrapped it up and took it away to an automobile which was waiting for them; that when the defendant did not return the money as he had promised, she told her son Sixto to make demand therefor; that Sixto thereupon went to the defendant's house and asked for the money but did not get it, the defendant telling him that he would personally bring it back to Acop's house; that later on the defendant celebrated the *cañao* at Acop's house, to which he invited many people and that he, at said *cañao*, announced publicly that he would not give Chanal as much as one centavo because she was poor when she married Acop; that she, Chanal, stated to the defendant that the money was earned during her marriage with Acop, to which the defendant answered that that could not be true; and that he also said that, in any event, she could do nothing to him because he was a chief and influential with the government; that upon hearing this she cried and was contemplating suicide because her children would be deprived of their inheritance.

Chanal's daughter Biring corroborated her mother's testimony and stated that she was with her mother when Guilata Acop, Sioco Cariño, and Manuel Caoili came to their house and took away the 4,800 pesos. Several other witnesses also testified that they were present at the *cañao* when the defendant stated that he would not return the money to Chanal.

Guilata Acop, the principal witness for the defendant, testified that her mother, Anguing Pirang, died sometime in 1898 or 1899; that when her mother died she left in the possession of Acop Banguilan the sum of P6,000, of which sum P1,000 was given to her mother by the latter's father and that the rest of the money was the earnings of her mother and father. She further testified that before his death, her father had been sick a long time; that he stayed for about two weeks in her house, during which time and in the presence of Chanal and others, she asked her father what had become of the money left by her mother, to which he answered that it was under the care of Chanal; that Chanal admitted that she kept the money in Batdi; that she, the witness, went only once to the house of her father in Batdi after his death and that that was on the occasion when the *cañao* was celebrated; that on the day after the *cañao* she had a conversation with Chanal about the money left by Anguing Pirang; that one Laruan asked Chanal about the money kept by her and that she said that Acop had been lying and that there was no money; that after some quarreling with Chanal, the witness went to Bagnio in an automobile which had been parked about two kilometers from Acop's house; and that she did not see any one take any money from Chanal at any time after the death of Acop.

The defendant introduced a large number of other witnesses, but the testimony of most of them relate to charges against Chanal and her son Sixto for alleged embezzlement of money and selling of cattle pertaining to the estate, and it may be noted that the witnesses who testified to the essential points in the case are near relations of Guilata and the defendant and are personally interested in the controversy.

The principal witnesses for the plaintiff are apparently ignorant and merely semi-civilized; the translation of their testimony from their dialect into English undoubtedly presented difficulties; and some of their statements are somewhat confused and not entirely in accordance with the established facts. As a consequence thereof the court below may have formed an unfavorable opinion as to their veracity, but in the light of the circumstances of the case, we are convinced that they, in the main, told the truth in regard to the taking of the money and the occurrences at the cañao. The statement of Chanal, especially, rings true and brings out details which she is not likely to have invented.

The record shows that the defendant is an intelligent and prosperous man of considerable influence in his community, and there are indications in the record that he is of a rather grasping disposition. He is not a stranger to the courts, and his testimony shows that he is not ignorant of their functions. His wife, Guilata, is one of the heirs of Acop Banguilan, and her testimony indicates that she considers Chanal as an interloper who originally was only a concubine of Acop and of an inferior class; that she, Chanal, had brought no property to the estate and had no rights in the inheritance. It also appears that it was known to the defendant that the deceased Acop Banguilan left a considerable sum of money in the possession of Chanal. In these circumstances, it seems highly improbable that the defendant for the period of three years would have refrained from resorting to the courts if he had not obtained possession of the money. We therefore accept the plaintiffs' version of what had taken place.

Relying on the provisions of section 711 of the Code of Civil Procedure, the plaintiffs demand a recovery of double the amount of the money taken by the defendant, but under the doctrine laid down in the case of *Ingersoll vs. Chui-Tian Lay* (11 Phil., 564), we seriously doubt that said section is applicable to the present case.

The appealed judgment is reversed and it is hereby ordered that the estate of the deceased Acop Banguilan have and recover from the defendant, Sioco Cariño, the sum of P4,800 with interest at the rate of 6 per cent per annum from January 11, 1927, the date of the filing of the complaint. No costs will be allowed. So ordered.

Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

AVANCEÑA, C. J.:

This is an action of specific performance of an unwritten contract, to compel the defendant to pay back the sum of P4,800, having bound himself to do so one month after receiving it. For this case the statute of limitations (sec. 43, Code of Civil Procedure) fixes the period of six years. And as this is a matter of deposit, prescription does not begin unless the bailee disown the deposit. The proper question before us, then, is: When did the defendant disown the deposit? He did so, according to the plaintiff's own evidence, when during the cañao on occasion of Acop Banguilan's death, the defendant announced to all those present at the feast, including: Chanal and her children, that he would not return the money.

According: to the evidence of the defendant, the cañao or feast on the occasion of Acop Banguilan's death took place four months after said death, and according to Fernando Acusalan, the plaintiff's witness in rebuttal, five months after. If the defendant made this announcement at the cañao or feast, he must have received the money before that feast, or a little after Acop's death, and not in October or November of 1921, fully a year and a half afterwards. Thus, the weight of the evidence shows that the defendant announced his refusal to return the money four months after Acop's death, or, at most, five months after, according to the plaintiff's own witness, Aeusalan, that is, in the month of November, 1920. From that time until this action was brought, in January 11, 1927, the period of six years fixed by the statute of limitations has elapsed. The only thing required, and that only impliedly,

in order that prescription may begin, is that there be a person capable of bringing the prescribing action. In the case at bar, the administrator of the intestacy of Acop Banguilan was not the only person who could bring the action to recover of the defendant the amount in question. Chanal herself could, bring it, for, by her own statement, she was one of the interested parties. Furthermore, the defendant received the money from her on deposit, and she could therefore recover it from the time he disavowed the deposit, without being hindered by the circumstance that she was not the sole owner or the absolute owner, since the defendant, as a bailee, could not require her to prove that she owned the thing deposited (art. 1771, Civil Code).

In my opinion, the action now before us has already prescribed, and the judgment appealed from should be affirmed. Judgment reversed.

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