

ORIA HERMANOS Y COMPAÑIA EN LIQUIDACION, PLAINTIFF AND APPELLEE, VS. GUTIERREZ HERMANOS, DEFENDANT AND APPELLANT.*G.R. No. 28613. October 05, 1928*

Ponente: STREET, J.

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This action was instituted on April 29, 1927, in the Court of First Instance of Manila by Oria Hermanos & Co., of Laoang, Samar, a regular mercantile partnership in liquidation, for the purpose of annulling certain judgments long ago rendered against it in favor of the defendant herein, Gutierrez Hermanos, likewise a general mercantile partnership, of the City of Manila, and for the purpose of recovering damages alleged to have resulted to the plaintiff from the wrongful prosecution of said litigation against the plaintiff.

Upon hearing the cause the trial court gave judgment in favor of the plaintiff, declaring of no legal effect the judgments which were the subject of attack as well as all orders and proceedings that had been had in compliance therewith; also ordering the defendant, Gutierrez Hermanos, to return to Oria Hermanos & Co. certain properties which had been attached by Gutierrez Hermanos in the course of the same litigation, or the value thereof in the amount of P274,000, with legal interest from August 26, 1916, and requiring Gutierrez Hermanos to deliver to Oria Hermanos & Co. the further sum of P13,333.33, with legal interest from December 29, 1911, until paid, and with the costs of the litigation. From this order the defendant, Gutierrez Hermanos, appealed.

It appears that on August 12, 1909, Gutierrez Hermanos instituted an action in the Court of First Instance of Manila (case No. 7289), for the purpose of recovering from Oria Hermanos & Co. the sum of P147,204.28, alleged to be owing by that entity to the plaintiff as a balance upon current account. On April 24, 1912, judgment was rendered by the lower court in the same case against Oria Hermanos & Co. and in favor of Gutierrez Hermanos for the sum of P147,204.28, with interest at 3 per centum per annum from June 30, 1909, but requiring Gutierrez Hermanos to render an accounting and to deduct from said amount such credits as might result in favor of Oria Hermanos & Co. from said accounting. This judgment was affirmed by the Supreme Court on March 30, 1915 (R. G. No. 8346),^[1] and the cause was remanded for the accounting. The proceedings incident to the accounting in the lower court were drawn out over several months when it was finally found by the referee (and afterwards confined by the trial court), that Oria Hermanos & Co. were entitled to a credit of something like P37,000. Upon deduction of this amount from the adjudicated claim in favor of Gutierrez Hermanos, it appeared that the latter firm was creditor of the former to the extent of P110,459.79; and accordingly, on August 16, 1916, the Court of First Instance gave judgment in favor of Gutierrez Hermanos and against Oria Hermanos & Co. for said amount with interest at the rate of 8 per centum per annum. Upon appeal to the Supreme Court, the judgment thus rendered in favor of Gutierrez Hermanos was affirmed on January 4, 1919 (R. G. No. 12266),^[2] thus ending, as was supposed, litigation that had been begun ten years before.

An incident of this long legal struggle, which now requires mention, is that nearly a year after the litigation had

been first begun, or on June 1, 1910, Tomas Oria y Balbas, on his own behalf and in behalf of his partners, members of the firm of Oria Hermanos & Co., sold to his son, Manuel Oria y Gonzalez, all the properties of Oria Hermanos & Co. for the purported sum of P274,000. This sale was at once attacked by Gutierrez Hermanos as having been made in fraud of creditors, and the property thus conveyed to Manuel Oria y Gonzalez was attached. The contention of Gutierrez Hermanos in this matter finally prevailed, and the sale referred to was declared void (Oria vs. McMicking, 21 Phil., 243). As a consequence of the termination of the litigation in the Court of First Instance favorably to Gutierrez Hermanos, an execution was issued upon the principal judgment pending the appeal; and the property of Oria Hermanos & Co., which had been attached, was sold under execution by the sheriff of the Province of Samar on November 10, 1916. At this sale the property of the debtor was bought in by the judgment creditor, Gutierrez Hermanos, for a total value of about P36,436.

Another fact which now needs to be drawn into the light of day from the archives of the past is that after the property which had been transferred fraudulently to Manuel Oria y Gonzalez was seized under attachment at the instance of Gutierrez Hermanos, this firm collected from a French insurance company the sum of P13,333.33, as the face value of a policy of insurance upon the launch Comillas, belonging to Oria Hermanos & Co.

As a result of the attachment above referred to the firm of Oria Hermanos & Co. was stripped of its available assets even before judgment was rendered in the Supreme Court on January 4, 1919, affirming the earlier judgment of the Court of First Instance; and the final judgment remained, as it remains until this day, unsatisfied of record. Accordingly, when the five-year period allowed by law for the issuance of execution on the judgment was about to expire, Gutierrez Hermanos caused an action to be instituted to revive the judgment pursuant to section 447 of the Code of Civil Procedure; and on June 17, 1924, the Court of First Instance of Manila rendered judgment reviving and making effective the old judgment rendered in civil case No. 7289. Under the revived judgment Oria Hermanos & Co. was adjudged to pay to Gutierrez Hermanos the sum of P131,665.34, with legal interest thereon from November 10, 1916. About three years after this judgment of revival had been entered the action now before us was begun.

Under the decision which we are now called upon to review, the firm of Gutierrez Hermanos, which with good reason had long considered itself to be the creditor of Oria Hermanos & Co. in a large amount, and had been repeatedly declared to be such by the courts, is now converted into a debtor to its adversary in the amount of about half a million pesos. The occasion of this extraordinary eruption, dislocating adjudicated rights and carrying potential destruction in its wake, is found in the view which the trial court took of the legal effects of an incident now to be explained, dating back to the year 1911. In this connection it appears that, after litigation had been begun in the year 1909 by Gutierrez Hermanos to recover the balance due them in current account from Oria Hermanos & Co., the claim against said firm was considered by the manager of Gutierrez Hermanos to be of doubtful collection or of slow payment; and in order to retire said asset from active capital of the firm, it was determined to carry the item to a special account entitled "Accounts Receivable in Liquidation." Moreover, in effecting this transfer, it was made to appear that the claim pertained to the several members of the firm in the proportion of their respective shares in the capital of the firm. This transfer was effected on December 29, 1911, by entry No. 1654, entered on the Journal of Gutierrez Hermanos (Exhibit A). As this entry is of vital importance in this case and the sole basis of the decision now under consideration, it is here reproduced in full:

"December 29, 1911

"SUNDRIES TO SUNDRIES

"For the following accounts which are separated from our assets either because of the doubtful collection of some of them in their entirety, or because of the slow payment of the others, which accounts become the private property of our partners Messrs. Miguel and Placido Gutierrez, Mr. Daniel Perez and Mr. Leopoldo

Criado and Mrs. Ramona Gutierrez de Celis in the proportionate amount that pertains to each of them, upon the condition that the firm shall take charge of the collection of said debts and turn over to each of them such part thereof as may be collected, and to that end said accounts are carried to a book which shall be entitled 'Accounts Receivable in Liquidation' as follows:

PLACIDO GUTIERREZ CAPITAL ACCOUNT—

For 40% of P133,827.27 belonging to him of the account of Oria Hermanos y Compañia

P53,530.91

MIGUEL GUTIERREZ CAPITAL ACCOUNT—

For 40% of P133,827.27 pertaining to him of the account of Oria Hermanos y Compañia

53,530.91

DANIEL PEREZ CAPITAL ACCOUNT—

For 10% of P133,827.27, pertaining to him of the account of Oria Hermanos y Compañia

13,282.72

LEOPOLDO CRIADO CAPITAL ACCOUNT—

For 10% of P133,827.27 pertaining to him of the account of Oria Hermanos y Compañia

P13,282.72

ORIA HERMANOS Y CIA.—

For the distribution that is made of this balance among the capital accounts, which balance is carried to the special book entitled 'Accounts Receivable in Liquidation'

133,827.27"

Upon this document the plaintiff plants a series of propositions to the effect: First, that this entry No. 1654, on the books of Gutierrez Hermanos, transferring the claim against Oria Hermanos & Co. to "Accounts Receivable in

Liquidation," had the effect of an assignment by which Gutierrez Hermanos alienated its rights against Oria Hermanos & Co.; secondly, that after the date of said assignment Gutierrez Hermanos had no right to prosecute the action which it had instituted on the claim; thirdly, that the concealment of this assignment and continued prosecution of the claim by Gutierrez Hermanos was a fraud on Oria Hermanos & Co. and on the court; fourthly, that this fraud authorizes the court in this action to annul the final judgment which was affirmed by the Supreme Court on January 4, 1919, and all proceedings emanating from or dependent on said judgment; fifthly, that the judgment of revival entered in the Court of First Instance of June 17, 1924, was no obstacle to the annulment of the prior judgments; and sixthly, that, as a consequence of such annulment, Oria Hermanos & Co., the defendant in said litigation and the plaintiff herein, is entitled to restitution of the property which had been taken from it under the attachment in 1916, or in default thereof, its value in the amount of P274,000, the same being the value ascribed to it in the sale of 1910 by Oria Hermanos & Co. to Manuel Oria y Gonzalez—a transfer which was held by this court to have been fraudulent and fictitious.

In the interest of justice and the integrity of judicial proceedings, we are constrained to record the fact that we can accept none of these propositions and much less the conclusion derived therefrom. The artificiality of the line of reasoning indicated must be manifest to anyone; and but for the success that attended the effort in the Court of First Instance, one would have supposed that this attempt to subvert, with material so tenuous, the solemn adjudications of more than twelve years was visionary in the extreme. In section 503 of our Code of Civil Procedure it is declared that even the Supreme Court shall not reverse a judgment on appeal on formal or technical grounds. Much more must this idea be effective in dealing with litigation that has passed into the finality of judgment.

It should be borne in mind that the members of a partnership are the ultimate owners of its assets; and the circumstance that under entry No. 1654 the rights of the members of the firm of Gutierrez Hermanos were severed and their shares in the claim assigned to them, in the proportion of their respective interests in the firm, did not concern Oria Hermanos & Co. in the least. Moreover, it will be observed, in conformity with the entry itself, that Gutierrez Hermanos assumed charge of the collection of the claim, which shows that it was intended for the firm to continue the conduct of the litigation in its own name—a reservation in no sense unlawful. Taking the entry as a whole, it should be interpreted to mean that as the claim should be collected, the proceeds would be divided among the partners in proper proportions. The idea that any fraud was intended or committed by Gutierrez Hermanos in making entry No. 1654 or in continuing thereafter to prosecute the claim in the firm name against Oria Hermanos & Co. is preposterous. If there was a fraud, who has been hurt? Certainly not the debtor Oria Hermanos & Co., the plaintiff in this case.

Upon stripping the case of its embellishments, the plaintiff's contention in the end comes to this, that, under section 114 of our Code of Civil Procedure, litigation should be conducted in the name of the real party in interest. This means of course that where an assignable right has been transferred before action brought, the proceeding ought to be instituted in the name of the assignee; and where an assignment is effected pendente lite, it is proper to have the assignee substituted for the original plaintiff. If such substitution should not be effected and the transfer of the right of action should not be brought to the attention of the court, the original plaintiff, if successful in the litigation, would hold the fruits of the action as a sort of trustee for the use and benefit of his assignee. But it would be surprising doctrine to hold that where the assignee has assented to the continued prosecution of the action by the original plaintiff, the defendant can nullify the judgment, after litigation has been concluded, on the ground that the interest in litigation had been transferred. When this feat is attempted, the defendant can be properly met by the proposition that if any irregularity was committed in the prosecution of the case, it was, as to him, error without injury. Certainly it cannot be contended that the transfer of a right of action pendente lite affects the jurisdiction of the court.

But regardless of these considerations, we are of the opinion that entry No. 1654 ought not to be considered as an assignment for the purpose of requiring the several partners in the firm of Gutierrez Hermanos to be substituted in the record as plaintiffs. We think it clear that the firm entity had precisely the same faculty to represent the partners after that entry was made, as before.

The judgment appealed from must be reversed, and it is so ordered, with costs against the appellee.

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

[1] 30 Phil., 491.

[2] 39 Phil., 92.

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