

GEORGE R. SAUL, CLAIMANT AND APPELLEE, VS. MAGDALENA HICETA, WIDOW OF ESCAY, ADMINISTRATRIX AND APPELLANT.

G.R. No. 29044. October 02, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

On September 5, 1922, Emilio Escay purchased carabao, bovine cattle, farming implements, bamboo, coconuts and coffee plants from George Ramos Saul obligating himself to pay by installments, as appears from the instrument transcribed on pages 4-9 of the record on appeal.

Emilio Escay died without having fully paid said purchase price, and when an administration proceeding was instituted for the settlement of his estate, George Ramos Saul presented his claim to the proper committee on claims, with the result that on June 4, 1925 said committee submitted a report favorable to the creditor in the sum of P12,000 to the proper court.

An agreement was thereupon entered into between the said administratrix of the estate and the creditor Saul, by virtue of which said administratrix acknowledged the remaining debt of P11,000 in favor of Saul, and promised to pay P2,000 annually with 12 per cent yearly interest, securing such payment with a mortgage on some real estate belonging to the deceased. This agreement was approved by the court on November 11, 1925.

In July 1926, the creditor Saul sued said administratrix in the Court of First Instance of Iloilo (civil case No. 6518), demanding payment of P11,000 plus the interest thereon, which was already demandable in full, pursuant to the agreement referred to, in view of said administratrix' default in the payment of the first two agreed installments.

On August 31, 1926, the Court of First Instance of Iloilo rendered judgment by default against the defendant in said civil case No. 6518, ordering her to pay to the plaintiff P10,400 plus interest thereon at the rate of 12 per cent per annum computed from June 30, 1925; and the sum of P70.20 as interest at the same rate on the P600 paid on account of the debt, said interest being computed from June 30, 1925 to June 9, 1926. This judgment also ordered the defendant to pay plaintiff the sum of P2,600 for attorney's fees, plus the costs.

At first this judgment of the court of Iloilo was not accepted by the court of Occidental Negros as binding upon Emilio Escay's estate, but upon finally reconsidering the case on petition of the creditor, after several pleadings had been presented by both parties, on September 8, 1927, the Court of First Instance of Occidental Negros issued an order directing the defendant administratrix to pay to plaintiff the sum of the said judgment rendered by the Court of First Instance of Iloilo.

This is the order from which an appeal was taken to this court. For a better understanding of the questions raised in this appeal, we copy below a portion of said order:

"This motion, in effect, is a petition for the reconsideration of the resolutions passed by the court on other motions presented by the said Saul, denying his petition, because the court, having taken into consideration

only the letter of the judgment rendered by the Hon. Fernando Salas, Judge of the second branch of the Court of First Instance of Iloilo, held that said judgment was rendered against Magdalena H. Escay, and not against Magdalena H. Escay as administratrix of the estate of Emilio Escay.

"Now counsel for the movant attaches to his motion the exhibits presented in civil case No. 6518, as well as a copy of the order issued by the Hon. Fernando Salas, Judge, ordering the issuance of a new execution, identical with the former against the estate of the deceased Emilio Escay. In a certain part of said order it was said:

" 'Whereas the court finds said motion to be well grounded, inasmuch as all the proceedings in the case as well as the documents adduced at the trial sufficiently show that the liability arising out of the decision rendered in this case is against Emilio Escay's estate and not against the widow of said decedent, personally, but in any case as administratrix of said estate,' and, on the other hand, it having been stated by attorney Hill in a pleading confirming his statements made in open court on the day of the hearing of his motion, that the debt sought to be collected in civil case No. 6518 of the Court of First Instance of Iloilo is the same sum approved by the committee on claims and appraisal of this estate, and that the payment of the sum appearing in the judgment rendered in said case No. 6518, would in fact cancel the debt of P12,000 approved by the committee on claims and appraisal of this estate;

"The court being satisfied, in view of all the evidence introduced and of the statements made by attorney Hill in his last memorandum filed in compliance with an oral order of the court, that what the movant sought to collect in case No. 6518 of the Court of First Instance of Iloilo is really a debt of the estate;

"The court reconsiders its former orders and directs the administratrix to pay the claimant George Ramos Saul the total sum of the execution of the judgment rendered in civil case No. 6518 of the Court of First Instance of Iloilo, entitled George Ramos Saul vs. Magdalena H. Escay, as administratrix of the estate of the deceased Emilio Escay.

"Considering that, according to the last account presented by the administratrix, she has not at present sufficient funds to make payment, said administratrix is hereby granted a period of sixty days, within which to take the necessary steps to obtain sufficient funds from the estate and to make this payment"

The appellant assigns four errors as committed by the trial court in the order in questions, to wit:

- In giving credit and validity to the order of the Court of First Instance of Iloilo dated June 14, 1927, issued in the said civil case;
- In not finding that the judgment rendered in said civil case was "a personal action against Magdalena H. Vda. de Escay."
- In not holding that the claimant Saul is estopped on account of having led the appellant, the Philippine National Bank, the Court of First Instance of Iloilo, and the trial court to believe that the civil case referred to was a personal action against the debtor for the five promissory notes copied in the bill of exceptions.
- In not taking into account the opposition filed by the guardian ad litem of the minor children of the deceased Emilio Escay, in issuing its orders of September 8 and October 31, 1927.

The appellant contends that the order of the court of Iloilo of June 14, 1927 deciding a motion filed by the plaintiff herein by declaring that the liability of the defendant in said civil case No. 6518 was against the estate of the deceased Emilio Escay and not his widow, personally, is invalid. We do not think so. That order neither modified nor broadened the judgment rendered in said case; it only construed it correctly in accordance with the facts found in the record.

As to the second assignment of error, said judgment of the Court of First Instance of Iloilo was duly understood in

the order appealed from. Said judgment decided a complaint filed against the defendant herein, not personally, but as administratrix of the estate of her deceased husband Emilio Escay, as clearly alleged in the complaint presented in said case.

For the reasons given, there is no such estoppel as the appellant invokes against the appellee, nor do we find any error in the last assignment of error.

The order appealed from is hereby affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

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