

SEBASTIAN ABIERA, ADMINISTRATOR OF THE ESTATE OF JUAN ABIERA, DECEASED, PLAINTIFF AND APPELLEE, VS. MIGUEL ORIN, DEFENDANT AND APPELLANT.

G.R. No. 3236. March 27, 1907

Ponente: MAPA, J.

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MAPA, J.:

There was no new trial asked for in this case and therefore this court can not review the proofs presented in the same. The judgment of the lower court was rendered in favor of the plaintiff, as special administrator of the estate of Juan Abiera, deceased, who died intestate, which judgment is in accord with the prayer of the complaint herein and orders the defendant to pay the sum of 1,000 pesos, as claimed in said complaint.

The court below states, among other things, in its judgment rendered herein, the following:

"Vicenta Cacao, Mariano Cacao, and Petra Cacao were brothers and sisters. Vicenta Cacao married Miguel Orin and after her said marriage left no descendants or ascendants, and Miguel Orin, Mariano Cacao, and Juan Abiera in 1898 entered into an agreement in writing covering the disposition of the properties and animals had and acquired during the marriage of Miguel Orin and Vicenta Cacao; Mariano Cacao and Juan Abiera as representatives of their children, who are the only heirs as well as the natural nephews of the deceased woman Cacao.

"Now, the plaintiff," continues the judgment, "has filed this complaint as special administrator of his deceased father, Juan Abiera, alleging that the defendant has not complied with said contract and agreement and prays the court to compel the compliance of the defendant therewith."

The tenor of this contract, according to the judgment referred to, is as follows:

"We, having knowledge and information of the inventory of the properties acquired during the married state and life of Miguel Orin and the said Vicenta Cacao, by our contract have agreed, that Miguel Orin, the widower, obligates himself to deliver to his brothers-in-law, as guardians and fathers of the heirs of Petra Cacao, the value of one thousand pesos to each of them. The period within which to comply with this contract is until August 15, next; this is the just amount of our inheritance."

From these statements of the judgment it is clearly seen that the deceased, Juan Abiera, entered into a contract, the compliance of which is prayed for in the complaint herein, not as a personal right, but in the name and representation of his children. There can be no doubt as to this. The contract deals with the matter of the extrajudicial partition of the estate left by Vicenta Cacao whose heirs were, according to the judgment, not Juan Abiera but his children. Abiera, therefore, had to act by force of law in the representation of these children in treating in such contract as to the manner in which the said estate was to be divided. It was for this reason, says the court below in emphatic terms, that Juan Abiera became a party to the said contract as the representative of his children. It was for this reason also that there is expressed in the same contract the fact that Miguel Orin obligated himself to pay over 1,000 pesos to Juan Abiera as guardian and father of the heirs of Petra Cacao. This Petra

Cacao was the deceased wife of Juan Abiera and the sister of Vicenta Cacao, whose estate is dealt with herein and which estate came to be inherited and participated in, through legitimate succession, by the children of Juan Abiera in representation of their mother, the said Petra Cacao.

Therefore, the true interested parties in the obligation contracted by the defendant herein, Miguel Orin, are the children of Juan Abiera, and not the latter, for the simple reason that the obligation was executed in their favor and not in favor of said Abiera. This being the fact, it is evident that the plaintiff in his office as administrator of the deceased Juan Abiera has no right to ask for the compliance with the said obligation. As such administrator he has only the right to institute such actions as correspond and pertain to the estate which he is administering, and no other action dealing with contracts and obligations contracted in favor of third persons, or others from whom he does not derive such right, can be brought as such administrator.

On the other hand it is not necessary, it being too trivial, to refer to the right of Juan Abiera to represent his children as father or guardian of the same, and that he has not transferred nor could he transfer to the administrator of his estate such right from the mere fact that he was such administrator. As has been stated, the said right attached to parental authority or guardianship was extinguished with the death of Abiera, together with the parental right or the said guardianship—this in fact and law. This was an exclusively personal right that could not survive the person who had such right.

Consequently by reason of the considerations expressed above the court below incurred error in taking into consideration the propriety of the complaint herein. This could not have been done legally, the plaintiff not having the right of action and was without such right of action in the suit brought by him, and this is the basis of the exception taken by the appellant and now before this court. It is true that this exception on this point was not brought forward in the Court of First Instance, but it is also true that the exception based on the lack of right of action can be submitted during any stage or state of the case, as provided in section 93[1] of the Code of Civil Procedure.

Wherefore the judgment appealed from is reversed and the complaint dismissed, without special mention as to the costs in both instances. After the expiration of twenty days from the notification of this decision let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

[1] I Pub. Laws, 393.

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