

**JOSE JIMENEZ DE LA PESA AND MARIA INES JIMENEZ DE LA PENA,  
PLAINTIFFS AND APPELLEES, VS. MARINA YULO ET AL.,  
DEFENDANTS AND APPELLANTS.**

*G.R. No. 32638. November 14, 1930*

Ponente: ROMUALDEZ, J.

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**ROMUALDEZ, J.:**

The plaintiffs claim an unpaid credit against the deceased spouses Gregorio Yulo and Filomena Ortiz in the amount of P3,261.59, alleging that they have filed their claim with the committee of claims and appraisal appointed in the intestate proceedings of Gregorio Yulo, and that it was admitted by said committee and approved by the court; that although the intestate proceedings of Filomena Ortiz were instituted in 1913, the conjugal partnership between the two spouses has not yet been liquidated, and certain lots described in the complaint belong to said partnership ; that after Filomena Ortiz's death but during the lifetime of her husband, Gregorio Yulo, those lots were registered one-half in undivided ownership in the name of the latter, and the other half in the name of his six children, the defendants herein; that the balance mentioned above remains unsatisfied because as the intestate administrator of Gregorio Yulo alleges, he has not funds enough in his possession, and because the inventory value of the lands still unsold is not sufficient to meet the mortgage and ordinary obligations; that to be able to comply with the order of the court that the lots aforesaid be sold so as to satisfy the obligations of said estate, the administrator proposed that certain of the lots owned in common by the decedent Gregorio Yulo and by his six children, be turned over wholly and exclusively to said deceased's estate, and certain others to the children as heirs of their deceased mother; that the court approved the proposal providing that the property adjudicated to the children should remain subject to the payment of the obligations of said intestate estate; that subsequently, on petition of the administrator, that order was amended to read that the property adjudicated to the children should be theirs free of all liens and encumbrances; that all this was done without the knowledge or consent of the creditors nor of the plaintiffs; that up to that time the plaintiffs had not filed their claim because foreclosure proceedings on the mortgage executed by the deceased spouses in favor of the plaintiffs' predecessor in interest, were pending; that when the aforesaid property was divided into two equal parts pro indiviso, one in favor of Gregorio Yulo and the other in favor of his children, and not of their deceased mother's estate, the mortgage credit, of which the present claim is an unpaid balance, already existed, and the defendants were aware that such adjudication was based upon the proposition that the property thus divided was conjugal property, and that they, the defendants, were heirs of their deceased mother; that inasmuch as the conjugal partnership has not yet been dissolved, and the present claim is an obligation against it, all the estate of said spouses answers for the claim, which is a lawful lien upon it that the approval of the aforementioned barter would defraud the creditors, especially the plaintiffs, who were not notified and did not consent to it; that the property adjudicated to the defendants in that barter was really a part of the conjugal property; that according to the administrator's report, the estate of Gregorio Yulo is insolvent, for which reason the plaintiffs will be unable to collect their credit unless it is enforced as a lawful lien on the said property adjudicated to the defendants individually. And plaintiffs pray for judgment: (a) That the order dated August 7, 1926, as well as that dated September 1, 1926, amending the former,

given in proceeding No. 1322 entitled Estate of Gregorio Yulo be annulled; (b) that the plaintiffs' claim of three thousand two hundred sixty-one pesos and fifty-nine centavos (P3,261.59), with legal interest from August 8, 1926, constitutes a lawful lien on lots Nos. 361, 578, 924, 427, 852, 16, 86, 625, 626, 8710, 233 of the cadastre of Iloilo, 1167, 1169, 1170, 3245, P365 of the cadastre of Jaro, 3759, 3494 of the cadastre of La Paz, the two parcels of land situated in the municipality of Jaro, Province of Iloilo, described above, the eight parcels of land situated in the municipality of Buenavista, Province of Iloilo, described above, and the eight parcels of land situated in the municipality of Jordan, Province of Iloilo, described above; (c) that if the aforesaid order of August 7, 1926, and the one amending it cannot be annulled, that the aforesaid claim of the plaintiffs be deemed a lawful lien on lots Nos. 16, 86, 625, 626, 87, 233 of the cadastre of Iloilo, 3759, 3494 of the cadastre of La Paz, the six parcels of land situated in the municipality of Buenavista, Province of Iloilo, and the six parcels of land situated in the municipality of Jordan, Province of Iloilo, adjudicated to the children of Filomena Ortiz; and (d) the defendants be ordered to pay the plaintiffs jointly and severally the amount of three thousand two hundred sixty-one pesos and fifty-nine centavos (P3,261.59) and the costs, and that the sale of the aforementioned lands be ordered to satisfy the claim of the plaintiffs, granting to the plaintiffs such other relief as may be just and equitable.

The defendant Francisco Ortiz answered the complaint with a general denial.

The defendant administrator of the intestate estate of Gregorio Yulo answered that if the barter (permuta) referred to in the complaint was solicited and approved by the court, it was only done to comply with the urgent judicial orders, so as to be able to sell the property of the inheritance and to pay its obligations, the barter aforesaid being the adequate means to bring it about; that some of the property listed in the complaint has already been sold by proper deeds of conveyance to third persons with the approval of the court; that the acts of said administrator were all done in good faith and in pursuance of the just orders of the court. This defendant prays that the complaint be dismissed and that he be absolved therefrom with costs against the plaintiffs.

The defendants Marina Yulo and Jorge B. Vargas demurred on the ground that the complaint did not set forth facts sufficient to constitute a cause of action, and that the court had no jurisdiction over the subject matter of the action. After the plaintiffs had replied to this demurrer, and after due hearing, the court overruled it with the exception of said defendants.

The defendants Gloria Yulo and Jose Varela also demurred to the complaint on the ground that the court had no jurisdiction over the litigation; that the plaintiffs had no personality to bring the action; that there was another case pending between the same parties upon the same cause of action; that there was a defect of parties defendant in that the administrator of the estate of Filomena Ortiz was not included, and that the facts alleged in the complaint did not constitute a cause of action. The plaintiffs replied, and after due hearing, the court also overruled this demurrer, the defendants excepting.

Marina Yulo and Jorge B. Vargas answered the complaint with a general denial and a special defense to the effect that the court had no jurisdiction; that the plaintiffs did not file their claim in the intestate proceedings instituted upon the death of Filomena Ortiz but elected to foreclose the mortgage, and therefore they are now precluded from enforcing said claim against the property of the heirs of said Filomena Ortiz; that said property is duly registered in accordance with the Land Registration Law with a certificate, of title and without any lien or encumbrance in favor of the plaintiffs; that both the motion referred to in paragraph 9 of the complaint and the orders given by the court with regard to said petition were known to the attorneys of the plaintiffs at the time they were filed in the course of the proceedings or immediately thereafter; that notwithstanding said knowledge, the plaintiffs did not object to said motion nor ask for the reconsideration of said orders during the period prescribed by the law and regulations, for which reason said rulings became final and binding on the plaintiffs; that more than a year from the filing of the complaint in the instant case, Yap Tico & Co., alleging a claim against the

property of the heirs of Filomena Ortiz, deceased, filed a motion to enforce their claim, and of that as well as of the court's action thereon, the plaintiffs were fully aware, and still they failed to make any claim to said property, for which reason, in view of such abandonment, they lost their right to present such a claim, if they ever had it; and that the ruling of the court on the partition of the property between the estate of Gregorio Yulo on the one hand, and the heirs of Filomena Ortiz on the other, has long since been final. These defendants pray for the dismissal of the Action with costs against the plaintiffs.

The defendants Gloria Yulo and Jose Varela answered the complaint with a general denial and several special defenses to the effect that the orders which the plaintiffs seek to annul were, in view of the facts and circumstances of the case, justly rendered in said City of Iloilo where the attorneys of the plaintiffs reside, and no appeal having been taken from them, they became final and irrevocable; that in virtue thereof, third persons have acquired rights over a large part of the property dealt with in said orders, and to annul the latter now would be to trample upon the rights of said third persons; that the plaintiffs have not complied with section 708 of the Code of Civil Procedure in that, before filing their claim for P3,261.59 with the committee of claims and appraisal in the intestate proceedings of Gregorio Yulo, they did not obtain judgment for the unsecured portion of the credit after the mortgage was foreclosed, for which reason said committee of claims had no jurisdiction to take cognizance of and approve said claim; that there is a defect of parties in that not all the third parties who acquired property belonging to the estate of Gregorio Yulo in pursuance of the aforementioned orders of the court have been included; that the credit claimed by the plaintiffs was one exclusively against Gregorio Yulo, and not against the conjugal partnership with his wife; that in the course of the intestate proceedings of Gregorio Yulo there has been rendered an irrevocable ruling providing for the partition of the property of said deceased and his wife's children the defendants herein; that there is no judicial holding that said intestate estate is insolvent; that the property which the plaintiffs want brought to collation was adjudicated to the defendants under the Torrens system over four years ago, and the proper titles have been issued; that, in like manner, lots Nos. 460, 883, and 4255 of the cadastre of Iloilo described in the complaint in civil case No. 5631 have been registered; that far from objecting to such a determination of the share of Gregorio Yulo and that of his children in said property, the plaintiffs' predecessors in interest acquiesced in it causing it to appear in the adjudication of said lots that there was a mortgage executed in their favor by the spouses Gregorio Yulo and Filomena Ortiz, which acquiescence was confirmed in the action brought in civil case No. 5631; that if the plaintiffs' claim is a debt chargeable to the conjugal partnership, the same has already prescribed for the reason that the plaintiffs have not asked for the liquidation of said conjugal partnership dissolved on January 13, 1911, when Filomena Ortiz died. These defendants pray for the dismissal of the complaint with costs against the plaintiffs.

After hearing the case, the Court of First Instance of Iloilo rendered judgment, the dispositive part of which is as follows:

"For all the foregoing considerations, judgment is hereby entered:

"(a) Setting aside as null and void the orders dated August 7, 1926, Exhibit N, and September 1, 1926, Exhibit O, rendered in case No. 1322, entitled 'In re Estate of Gregorio Yulo;'

"(b) Holding that the claim of the plaintiffs in the amount of three thousand two hundred sixty-one pesos and fifty-nine centavos (P3,261.59), with legal interest from August 8, 1926, constitutes a lawful lien on lots Nos. 16, 86, 87, 1233, 625 and 626 of the cadastre of Iloilo, 3759 and 3494 of the cadastre of La Paz, the six parcels of land situated in the municipality of Buenavista, Province of Iloilo, and the six parcels situated in the municipality of Jordan, Province of Uoilo, all adjudicated to the children of Filomena Ortiz with her husband Gregorio Yulo and described in the order dated August 7, 1926, Exhibit N; and

"(c) Sentencing the defendants jointly and severally to pay the plaintiffs the amount of three thousand two

hundred sixty-one pesos and fifty-nine centavos (₱3,261.59), and the costs.

"In view of this decision, the plaintiffs are hereby ordered to take the proper steps to correct, or annul, the transfers that may have been issued in the respective cadastral proceedings in favor of the defendants in pursuance of the proceedings and orders of the court In re Gregorio Yulo, hereby declared null and void."

The defendants appealed from this judgment making several assignments of error.

The annulment made by the court below of the orders of August 7, 1926 (Exhibit N), and September 1, 1926 (Exhibit O), issued in the intestate proceedings of Gregorio Yulo, at the instance of the judicial administrator, is based on the contention that when the latter filed motion Exhibit N, which gave rise to such judicial orders, he was aware that there had been a decision rendered in favor of the predecessors in interest of the plaintiffs herein against the defendants in civil case No. 5631 (Exhibit D), and also that the selling price at the public auction of the mortgaged property in said civil case No. 5631 was not enough to satisfy that judgment, and, lastly, that the defendants had not yet paid the mortgage balance in that case.

It is contended that the administrator being aware of said facts, he was bound to give notice of his petition, Exhibit M, to the creditor Antonia Pena y Martinez, which he failed to do.

The court does not find that this reason is sufficient justification for annulling the previous orders. Since said creditor, Antonia Pena y Martinez, or her assigns, did not appear in the intestate proceedings of Gregorio Yulo where said motion was filed until then, the administrator was not in duty bound to notify this creditor of the petition; and, in the absence of fraud, which has neither been alleged nor proved, the lack of this notification does not vitiate that motion or the consequent orders of the court.

This creditor could have put in a timely appearance to object to this petition of the administrator's and thereby prevent the orders now complained of. And unless it be shown that such an appearance was made impossible by the administrator or some other interested party, the said orders must stand like any other judicial order legally issued.

Moreover, the orders referred to, Exhibits N and O, dated August 7, 1926, and September 1, 1926, were already final and irrevocable when the instant action was filed, having been neither excepted to nor appealed from in due time.

From this it follows that, as these orders are valid, they subsist fully, and the legal condition of the lands concerned as mentioned therein cannot now be altered. Consequently, the lots, which, by virtue of the barter approved in these orders, passed to the ownership of the defendants herein cannot now be deemed subject to a lien for the amount of ₱3,261.59 owed to the plaintiffs.

Although this property was originally Conjugal property of Gregorio Yulo and Filomena Ortiz, nevertheless, it was not included in the mortgage executed in favor of the plaintiffs' predecessors in interest, and even before the orders, Exhibits N and O, were issued, that property and the other involved in the barter had been recorded under the Land Registration Law as property of the defendants free from any encumbrance in favor of the plaintiffs or their predecessors in interest.

Having reached these conclusions, it is unnecessary to decide the other points of defense and error raised by the defendants, for what has so far been held is sufficient to definitely determine the rights of the parties.

Wherefore, the order appealed from is revoked, and the defendants are absolved from the complaint, without prejudice to such rights as the plaintiffs may have against them by virtue of the personal obligation arising from the judgments obtained against them on September 9, 1925, and November 20, 1926, in civil case No. 5631.

Without costs, so ordered,

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

Judgment reversed.

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