

MAXIMILIANO SANCHO, PLAINTIFF AND APPELLANT, VS. SEVERIANO LIZARRAGA, DEFENDANT AND APPELLEE.

G. R. No. 33580. February 06, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The plaintiff brought an action for the rescission of a partnership contract between himself and the defendant, entered into on October 15, 1920, the reimbursement by the latter of his 50,000 peso investment therein, with interest at 12 per cent per annum from October 15, 1920, with costs, and any other just and equitable remedy against said defendant.

The defendant denies generally and specifically all the allegations of the complaint which are incompatible with his special defenses, cross-complaint and counterclaim, getting up the latter and asking for the dissolution of the partnership, and the payment to him as its manager and administrator of P500 monthly from October 15, 1920, until the final dissolution, with interest, one-half of said amount to be charged to the plaintiff. He also prays for any other just and equitable remedy.

The Court of First Instance of Manila, having heard the cause, and finding it duly proved that the defendant had not contributed all the capital he had bound himself to invest, and that the plaintiff had demanded that the defendant liquidate the partnership, declared it dissolved on account of the expiration of the period for which it was constituted, and ordered the defendant, as managing partner, to proceed without delay to liquidate it, submitting to the court the result of the liquidation together with the accounts and vouchers within the period of thirty days from receipt of notice of said judgment, without costs.

The plaintiff appealed from said decision making the following assignments of error:

- In holding that the plaintiff and appellant is not entitled to the rescission of the partnership contract, Exhibit A, and that article 1124 of the Civil Code is not applicable to the present case.
- In failing to order the defendant to return the sum of P50,000 to the plaintiff with interest from October 15, 1920, until fully paid.
- In denying the motion for a new trial."

In the brief filed by counsel for the appellee, a preliminary question is raised purporting to show that this appeal is premature and therefore will not lie. The point is based on the contention that inasmuch as the liquidation ordered by the trial court, and the consequent accounts, have not been made and submitted, the case cannot be deemed terminated in said court and its ruling is not yet appealable. In support of this contention counsel cites section 123 of the Code of Civil Procedure, and the decision of this court in the case of *Natividad vs. Villarica* (31 Phil., 172).

This contention is well founded. Until the accounts have been rendered as ordered by the trial court, and until they have been either approved or disapproved, the litigation involved in this action cannot be considered as completely decided; and, as it was held in said case of *Natividad vs. Villarica*, also with reference to an appeal

taken from a decision ordering the rendition of accounts following the dissolution of a partnership, the appeal in the instant case must be deemed premature.

But even going into the merits of the case, the affirmation of the judgment appealed from is inevitable. In view of the lower court's findings referred to above, which we cannot revise because the parol evidence has not been forwarded to this court, articles 1681 and 1682 of the Civil Code have been properly applied. Owing to the defendant's failure to pay to the partnership the whole amount which he bound himself to pay, he became indebted to it for the remainder, with interest and any damages occasioned thereby, but the plaintiff did not thereby acquire the right to demand rescission of the partnership contract according to article 1124 of the Code. This article cannot be applied to the case in question, because it refers to the resolution of obligations in general, whereas articles 1681 and 1682 specifically refer to the contract of partnership in particular. And it is a well known principle that special provisions prevail over general provisions.

By virtue of the foregoing, this appeal is hereby dismissed, leaving the decision appealed from in full force, without special pronouncement of costs. So ordered.

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

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