

THE BANK OF THE PHILIPPINE ISLANDS, ADMINISTRATOR OF THE ESTATE OF THE LATE ADOLPHE OSCAR SCHUETZE, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE...

G. R. No. 34583. October 22, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The Bank of the Philippine Islands, as administrator of the estate of the deceased Adolphe Oscar Schuetze, has appealed to this court from the judgment of the Court of First Instance of Manila absolving the defendant Juan Posadas, jr., Collector of Internal Revenue, from the complaint filed against him by said plaintiff bank, and dismissing the complaint with costs.

The appellant has assigned the following alleged errors as committed by the trial court in its judgment, to wit:

- The lower court erred in holding that the testimony of Mrs. Schuetze was inefficient to establish the domicile of her husband.
- The lower court erred in holding that under section 1536 of the Administrative Code the tax imposed by the defendant is lawful and valid.
- The lower court erred in not holding that one-half of the proceeds of the policy in question is community property and that therefore no inheritance tax can be levied, at least on one-half (1/2) of the said proceeds.
- The lower court erred in not declaring that it would be unconstitutional to impose an inheritance tax upon the insurance policy here in question as it would be a taking of property without due process of law."

The present complaint seeks to recover from the defendant Juan Posadas, jr., Collector of Internal Revenue, the amount of P1,209 paid by the plaintiff under protest, in its capacity of administrator of the estate of the late Adolphe Oscar Schuetze, as inheritance tax upon the sum of P20,150, which is the amount of an insurance policy on the deceased's life, wherein his own estate was named the beneficiary.

At the hearing, in addition to documentary and parol evidence, both parties submitted the following agreed statement of facts to the court for consideration:

"It is hereby stipulated and agreed by and between the parties in the above-entitled action through their respective undersigned attorneys:

- That the plaintiff, Rosario Gelano Vda. de Schuetze, widow of the late Adolphe Oscar Schuetze, is of legal age, a native of Manila, Philippine Islands, and is and was at all times hereinafter mentioned a resident of Germany, and at the time of the death of her husband, the late Adolphe Oscar Schuetze, she was actually residing and living in Germany;
- That the Bank of the Philippine Islands, is and was at all times hereinafter mentioned a banking institution

duly organized and existing under and by virtue of the laws of the Philippine Islands;

- That on or about August 23, 1928, the herein plaintiff before notary public Salvador Zaragoza, drew a general power appointing the above-mentioned Bank of the Philippine Islands as her attorney-in-fact, and among the powers conferred to said attorney-in-fact was the power to represent her in all legal actions instituted by or against her;

- That the defendant, of legal age, is and at all times hereinafter mentioned the duly appointed Collector of Internal Revenue with offices at Manila, Philippine Islands;

- That the deceased Adolphe Oscar Schuetze came to the Philippine Islands for the first time on March 31, 1890, and worked in the several German firms as a mere employee and that from the year 1903 until the year 1918 he was partner in the business of Alfredo Roensch;

- That from 1903 to 1922 the said Adolphe Oscar Schuetze was in the habit of making various trips to Europe;

- That on December 3, 1927, the late Adolphe Oscar Schuetze coming from Java, and with the intention of going to Bremen, landed in the Philippine Islands where he met his death on February 2, 1928;

- That on March 31, 1926, the said Adolphe Oscar Schuetze, while in Germany, executed a will, in accordance with its laws, wherein plaintiff was named his universal heir;

- That the Bank of the Philippine Islands by order of the Court of First Instance of Manila under date of May 24, 1928, was appointed administrator of the estate of the deceased Adolphe Oscar Schuetze;

- That, according to the testamentary proceedings instituted in the Court of First Instance of Manila, civil case No. 33089, the deceased at the time of his death was possessed of not only real property situated in the Philippine Islands, but also personal property consisting of shares of stock in nineteen (19) domestic corporations;

- That the fair market value of all the property in the Philippine Islands left by the deceased at the time of his death in accordance with the inventory submitted to the Court of First Instance of Manila, civil case No. 33089, was P217,560.38;

- That the Bank of the Philippine Islands, as administrator of the estate of the deceased rendered its final account on June 19, 1929, and that said estate was closed on July 16, 1929;

- That among the personal property of the deceased was found life-insurance policy No. 194538 issued at Manila, Philippine Islands, on January 14, 1913, for the sum of \$10,000 by the Sun Life Assurance Company of Canada, Manila Branch, a foreign corporation duly organized and existing under and by virtue of the laws of Canada, and duly authorized to transact business in the Philippine Islands ;

- That in the insurance policy the estate of the said Adolphe Oscar Schuetze was named the beneficiary without any qualification whatsoever;

- That for five consecutive years, the deceased Adolphe Oscar Schuetze paid the premiums of said policy to the Sun Life Assurance Company of Canada, Manila branch;

- That on or about the year 1918, the Sun Life Assurance Company of Canada, Manila branch, transferred said policy to the Sun Life Assurance Company of Canada, London branch;

- That due to said transfer the said Adolphe Oscar Schuetze from 1918 to the time of his death paid the premiums of said policy to the Sun Life Assurance Company of Canada, London Branch;

- That the sole and only heir of the deceased Adolphe Oscar Schuetze is his widow, the plaintiff herein;

- That at the time of the death of the deceased and at all times thereafter including the date when the said insurance policy was paid, the insurance policy was not in the hands or possession of the Manila office of the Sun Life Assurance Company of Canada, nor in the possession of the herein plaintiff, nor in the possession of her attorney- in-fact the Bank of the Philippine Islands, but the same was in the hands of the Head Office of the Sun Life Assurance Company of Canada, at Montreal, Canada;
- That on July 13, 1928, the Bank of the Philippine Islands as administrator of the decedent's estate received from the Sun Life Assurance Company of Canada, Manila branch, the sum of P20,150 representing the proceeds of the insurance policy, as shown in the statement of income and expenses of the estate of the deceased submitted on June 18, 1929, by the administrator to the Court of First Instance of Manila, civil case No. 33089;
- That the Bank of the Philippine Islands delivered to the plaintiff herein the said sum of P20,150;
- That the herein defendant on or about July 6, 1929, imposed an inheritance tax upon the transmission of the proceeds of the policy in question in the sum of P20,150 from the estate of the late Adolphe Oscar Schuetze to the sole heir of the deceased, or the plaintiff herein, which inheritance tax amounted to the sum of P1,209;
- That the Bank of the Philippine Islands as administrator of the decedent's estate and as attorney-in-fact of the herein plaintiff, having been demanded by the herein defendant to pay inheritance tax amounting to the sum of P1,209, paid to the defendant under protest the above-mentioned sum;
- That notwithstanding the various demands made by plaintiff to the defendant, said defendant has refused and refuses to refund to plaintiff the above mentioned sum of P1,209;
- That plaintiff reserves the right to adduce evidence as regards the domicile of the deceased, and so the defendant, the right to present rebuttal evidence;
- That both plaintiff and defendant submit this stipulation of facts without prejudice to their right to introduce such evidence, on points not covered by the agreement, which they may deem proper and necessary to support their respective contentions."

Inasmuch as one of the questions raised in the appeal is whether an insurance policy on said Adolphe Oscar Schuetze's life was, by reason of its ownership, subject to the inheritance tax, it would be well to decide first whether the amount thereof is paraphernal or community property.

According to the foregoing agreed statement of facts, the estate of Adolphe Oscar Schuetze is the sole beneficiary named in the life-insurance policy for \$10,000, issued by the Sun Life Assurance Company of Canada on January 14, 1913. During the following five years the insured paid the premiums at the Manila branch of the company, and in 1918 the policy was transferred to the London branch. The record shows that the deceased Adolphe Oscar Schuetze married the plaintiff-appellant Rosario Gelano on January 16, 1914.

With the exception of the premium for the first year covering the period from January 14, 1913 to January 14, 1914, all the money used for paying the premiums, i. e., from the second year, or January 16, 1914, or when the deceased Adolphe Oscar Schuetze married the plaintiff- appellant Rosario Gelano, until his death on February 2, 1929, is conjugal property inasmuch as it does not appear to have exclusively belonged to him or to his wife (art. 1407, Civil Code). As the sum of P20,150 here in controversy is a product of such premium it must also be deemed community property, because it was acquired for a valuable consideration, during said Adolphe Oscar Schuetze's marriage with Rosario Gelano at the expense of the common fund (art. 1401, No. 1, Civil Code), except for the small part corresponding to the first premium paid with the deceased's own money.

In his Commentaries on the Civil Code, volume 9, page 589, second edition, Manresa treats of life insurance in the following terms, to wit:

"The amount of the policy represents the premiums to be paid, and the right to it arises the moment the contract is perfected, for at that moment the power of disposing of it may be exercised, and if death occurs payment may be demanded. It is therefore something acquired for a valuable consideration during the marriage, though the period of its fulfillment, depend upon the death of one of the spouses, which terminates the partnership. So considered, the question may be said to be decided by articles 1396 and 1401: if the premiums are paid with the exclusive property of husband or wife, the policy belongs to the owner; if with conjugal property, or if the money cannot be proved as coming from one or the other of the spouses, the policy is community property."

The Supreme Court of Texas, United States, in the case of *Martin vs. Moran* (11 Tex. Civ. A., 509) laid down the following doctrine:

"COMMUNITY PROPERTY—LIFE INSURANCE POLICY.—A husband took out an endowment life insurance policy on his life, payable 'as directed by will.' He paid the premiums thereon out of community funds, and by his will made the proceeds of the policy payable to his own estate. Held, that the proceeds were community estate, one-half of which belonged to the wife."

In *In re Stan's Estate*, Myr. Prob. (Cal.), 5, the Supreme Court of California laid down the following doctrine:

"A testator, after marriage, took out an insurance policy, on which he paid the premiums from his salary. Held that the insurance money was community property, to one-half of which, the wife was entitled as survivor."

In *In re Webb's Estate*, Myr. Prob. (Cal.), 93, the same court laid down the following doctrine:

"A decedent paid the first third of the amount of the premiums on his life-insurance policy out of his earnings before marriage, and the remainder from his earnings received after marriage. Held, that one-third of the policy belonged to his separate estate, and the remainder to the community property."

Thus both according to our Civil Code and to the ruling of those North American States where the Spanish Civil Code once governed, the proceeds of a life-insurance policy whereon the premiums were paid with conjugal money, belong to the conjugal partnership.

The appellee alleges that it is a fundamental principle that a life-insurance policy belongs exclusively to the beneficiary upon the death of the person insured, and that in the present case, as the late Adolphe Oscar Schuetze named his own estate as the sole beneficiary of the insurance on his life, upon his death the latter became the sole owner of the proceeds, which therefore became subject to the inheritance tax, citing *Del Val vs. Del Val* (29 Phil, 534), where the doctrine was laid down that an heir appointed beneficiary to a life-insurance policy taken out by the deceased, becomes the absolute owner of the proceeds of such policy upon the death of the insured.

The estate of a deceased person cannot be placed on the same footing as an individual heir. The proceeds of a life-insurance policy payable to the estate of the insured passed to the executor or administrator of such estate, and forms part of its assets (37 Corpus Juris, 565, sec. 322) ; whereas the proceeds of a life-insurance policy payable to an heir of the insured as beneficiary belongs exclusively to said heir and does not form part of the deceased's estate subject to administration. (*Del Val vs. Del Val*, supra; 37 Corpus Juris, 566, sec. 323, and articles 419 and 428 of the Code of Commerce.)

Just as an individual beneficiary of a life-insurance policy taken out by a married person becomes the exclusive owner of the proceeds upon the death of the insured even if the premiums were paid by the conjugal partnership, so, it is argued, where the beneficiary named is the estate of the deceased whose life is insured, the proceeds of the policy become a part of said estate upon the death of the insured even if the premiums have been paid with conjugal funds.

In a conjugal partnership the husband is the manager, empowered to alienate the partnership property without the

wife's consent (art. 1413, Civil Code), a third person, therefore, named beneficiary in a life-insurance policy becomes the absolute owner of its proceeds upon the death of the insured even if the premiums should have been paid with money belonging to the community property. When a married man has his life insured and names his own estate after death, beneficiary, he makes no alienation of the proceeds of conjugal funds to a third person, but appropriates them himself, adding them to the assets of his estate, in contravention of the provisions of article 1401, paragraph 1, of the Civil Code cited above, which provides that "To the conjugal partnership belongs: (1) Property acquired for a valuable consideration during the marriage at the expense of the common fund, whether the acquisition is made for the partnership or for one of the spouses only." Furthermore, such appropriation is a fraud practised upon the wife, which cannot be allowed to prejudice her, according to article 1413, paragraph 2, of said Code. Although the husband is the manager of the conjugal partnership, he cannot of his own free will convert the partnership property into his own exclusive property.

As all the premiums on the life-insurance policy taken out by the late Adolphe Oscar Schuetze, were paid out of the conjugal funds, with the exception of the first, the proceeds of the policy, excluding the proportional part corresponding to the first premium, constitute community property, notwithstanding the fact that the policy was made payable to the deceased's estate, so that one-half of said proceeds belongs to the estate, and the other half to the deceased's widow, the plaintiff-appellant Rosario Gelano Vda. de Schuetze.

The second point to decide in this appeal is whether the Collector of Internal Revenue has authority, under the law, to collect the inheritance tax upon one-half of the life-insurance policy taken out by the late Adolphe Oscar Schuetze, which belongs to him and is made payable to his estate.

According to the agreed statement of facts mentioned above, the plaintiff-appellant, the Bank of the Philippine Islands, was appointed administrator of the late Adolphe Oscar Schuetze's testamentary estate by an order dated March 24, 1928, entered by the Court of First Instance of Manila. On July 13, 1928, the Sun Life Assurance Company of Canada, whose main office is in Montreal, Canada, paid Rosario Gelano Vda. de Schuetze upon her arrival at Manila, the sum of P20,150, which was the amount of the insurance policy on the life of said deceased, payable to the latter's estate. On the same date Rosario Gelano Vda. de Schuetze delivered the money to said Bank of the Philippine Islands, as administrator of the deceased's estate, which entered it in the inventory of the testamentary estate, and then returned the money to said widow.

Section 1536 of the Administrative Code, as amended by section 10 of Act No. 2835 and section 1 of Act No. 3031, contains the following relevant provision:

"SEC. 1536. Conditions and rate of taxation. —Every transmission by virtue of inheritance, devise, bequest, gift mortis causa or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; of any shares, obligations, or bonds issued by any corporation or sociedad anonima organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership, business or industry established in the Philippine Islands or of any personal property located in the Philippine Islands shall be subject to the following tax:

Inasmuch as the proceeds of the insurance policy on the life of the late Adolphe Oscar Schuetze were paid to the Bank of the Philippine Islands, as administrator of the deceased's estate, for management and partition, and as such proceeds were turned over to the sole and universal testamentary heiress Rosario Gelano Vda. de Schuetze, the plaintiff-appellant, here in Manila, the situs of said proceeds is the Philippine Islands.

In his work "The Law of Taxation," Cooley enunciates the general rule governing the levying of taxes upon tangible personal property, in the following words:

"GENERAL RULE.—The situs of tangible personal property, for purposes of taxation may be where the owner is domiciled but is not necessarily so. Unlike intangible personal property, it may acquire a taxable situs in a state other than the one where the owner is domiciled, merely because it is located there. Its taxable situs is where it is more or less permanently located, regardless of the domicile of the owner. It is well settled that the state where it is more or less permanently located has the power to tax it although the owner resides out of the state, regardless of whether it has been taxed for the same period at the domicile of the owner, provided there is statutory authority for taxing such property. It is equally well settled that the state where the owner is domiciled has no power to tax it where the property has acquired an actual situs in another state by reason of its more or less permanent location in that state. * * *" (2 Cooley, The Law of Taxation, 4th ed., p. 975, par. 451.)

With reference to the meaning of the words "permanent" and "in transit" he has the following to say:

"PERMANENCY OF LOCATION; PROPERTY IN TRANSIT.—In order to acquire a situs in a state or taxing district so as to be taxable in the state or district regardless of the domicile of the owner and not taxable in another state or district at the domicile of the owner, tangible personal property must be more or less permanently located in the state or district. In other words, the situs of tangible personal property is where it is more or less permanently located rather than where it is merely in transit or temporarily and for no considerable length of time. If tangible personal property is more or less permanently located in a state other than the one where the owner is domiciled, it is not taxable in the latter state but is taxable in the state where it is located. If tangible personal property belonging to one domiciled in one state is in another state merely in transit or for a short time, it is taxable in the former state, and is not taxable in the state where it is for the time being. * * *.

"Property merely in transit through a state ordinarily is not taxable there. Transit begins when an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage. Transit ends when the goods arrive at their destination. But intermediate these points questions may arise as to when a temporary stop in transit is such as to make the property taxable at the place of stoppage. Whether the property is taxable in such a case usually depends on the length of time and the purpose of the interruption of transit, * * *.

"* * * It has been held that property of a construction company, used in construction of a railroad, acquires a situs at the place where used for an indefinite period. So tangible personal property in the state for the purpose of undergoing a partial finishing process is not to be regarded as in the course of transit nor as in the state for a mere temporary purpose." (2 Cooley, The Law of Taxation, 4th ed., pp. 982, 983 and 988, par. 452.)

If the proceeds of the life-insurance policy taken out by the late Adolphe Oscar Schuetze and made payable to his estate, were delivered to the Bank of the Philippine Islands for administration and distribution, they were not in transit but were more or less permanently located in the Philippine Islands, according to the foregoing rules. If this be so, half of the proceeds which is community property, belongs to the estate of the deceased and is subject to the inheritance tax, in accordance with the legal provision quoted above, irrespective of whether or not the late Adolphe Oscar Schuetze was domiciled in the Philippine Islands at the time of his death.

By virtue of the foregoing, we are of opinion and so hold: (1) That the proceeds of a life-insurance policy payable to the insured's estate, on which the premiums were paid by the conjugal partnership, constitute community property, and belong one-half to the husband and the other half to the wife, exclusively; (2) that if the premiums were paid partly with paraphernal and partly conjugal funds, the proceeds are likewise in like proportion paraphernal in part and conjugal in part; and (3) that the proceeds of a life-insurance policy payable to the insured's estate as the beneficiary, if delivered to the testamentary administrator of the former as part of the assets of said estate under probate administration, are subject to the inheritance tax according to the law on the matter, if they belong to the assured exclusively, and it is immaterial that the insured was domiciled in these Islands or

outside. Wherefore, the judgment appealed from is reversed, and the defendant is ordered to return to the plaintiff the one-half of the tax collected upon the amount of P20,150, being the proceeds of the insurance policy on the life of the late Adolphe Oscar Schuetze, after deducting the proportional part corresponding to the first premium, without special pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, and Ostrcmd, JJ., concur.

DISSENTING

IMPERIAL, J., with whom concurs ROMUALDEZ, J., :

I cannot concur with the majority in holding that one-half of the insurance policy on the life of the late Adolphe Oscar Schuetze, excepting the proportional part corresponding to the first year's premium is community property belonging to the deceased's widow, named Rosario Gelano, and as such is not subject to the inheritance tax.

There is no question in regard to the facts: It is admitted that Schuetze insured himself in the Sun Life Insurance Company of Canada in Manila, and that the policy was issued on January 14, 1913, payable to his estate after death. He died in Manila on February 2, 1928, leaving his widow as his sole testamentary heiress. The appellant, the Bank of the Philippine Islands, as administrator of the late Schuetze's testamentary estate, received from the insurer the amount of this policy, or the net sum of P20,150.

It is an established and generally recognized principle that in a life-insurance policy where the insured has named a beneficiary, the proceeds belong to said beneficiary, and to him alone. "Vested Interest of Beneficiary.—In practically every jurisdiction it is the rule that in an ordinary life insurance policy made payable to a beneficiary, and which does not authorize a change of beneficiary, the named beneficiary has an absolute, vested interest in the policy from the date of its issuance, delivery and acceptance, and this is true of a policy payable to the children of the insured equally, without naming them, or their executors, administrators or assigns." (14 R. C. L., 1376.) (Del Val vs. Del Val, 29 Phil., 534 et seq.; Gercio vs. Sun Life Assurance Co, of Canada, 48 Phil., 53 et seq.) When in a life-insurance policy the insured's estate is named beneficiary, the proceeds must be delivered not to the decedent's heirs, but to his administrator or legal representative. "Policy Payable to Insured, His Estate, or Legal Representatives. * * * Ordinarily the proceeds of a life insurance policy are payable to the executor or administrator of insured as assets of his estate where by the terms of the policy the proceeds are payable to insured, his estate, his legal representatives, his executors or administrators, his 'executors, administrators, or assigns/ or even his 'heirs, executors, administrators, or assigns.' * * *" (37 C. J., 565.) "Personal Representatives or Legal Representatives.—While there is some authority to the effect that legal representatives' means the persons entitled to the estate of the insured, and not his executor or administrator, the better view is that ordinarily the proceeds of such a policy pass to his executor or administrator." (14 R. C. L., 1372.)

If the foregoing are the principles which should govern life-insurance policies with reference to beneficiaries and the right to the proceeds of such policies, it is evident that Schuetze's estate, and not his widow or the conjugal partnership, is entitled to the proceeds of said policy exclusively, and may receive them from the insurer. The parties must have so understood it when the insurer delivered the net amount of the policy to the Bank of the Philippine Islands, as judicial administrator of the insured.

It is stated in the majority opinion that the money with which the premiums were paid during the marriage of the Schuetzes is presumed to have been taken from the conjugal funds, according to article 1407 of the Civil Code, which provides that "All the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife." This is the very argument which led to the settlement of the point of law raised. The provisions of the Civil Code on conjugal property have been improperly applied

without considering that a life-insurance contract is a peculiar contract governed by special laws, such as Act No. 2427 with its amendments, and the Code of Commerce, which is still in force. In *Del Val*, supra, it was already held:

"We cannot agree with these contentions. The contract of life insurance is a special contract and the destination of the proceeds thereof is determined by special laws which deal exclusively with that subject. The Civil Code has no provisions which relate directly and specifically to life-insurance contracts or to the destination of life insurance proceeds. That subject is regulated exclusively by the Code of Commerce which provides for the terms of the contract, the relations of the parties and the destination of the proceeds of the policy.

The main point to be decided was not whether the premiums were paid out of conjugal or personal funds of one of the spouses, but whether or not the proceeds of the policy became assets of the insured's estate. If it be admitted that the estate is the sole owner of the aforesaid proceeds, which cannot be denied, inasmuch as the policy itself names the estate as the beneficiary, it is beside the point to discuss the nature and origin of the amounts used to pay the premiums, as the title to the proceeds of the policy is vested in the insured's estate, and any right the widow might have should be vindicated in another action. In such a case she might be entitled to reimbursement of her share in the conjugal funds, but not in the present case, for she has been instituted the sole testamentary heiress.

From the foregoing, it follows that as the proceeds of the policy belong to Schuetze's estate, and inasmuch as the inheritance tax is levied upon the transmission of a deceased person's estate upon, or, on the occasion of his death, it is clear that the whole proceeds, and not one-half thereof, are subject to such tax.

In my opinion the judgment appealed from should have been affirmed in its entirety.

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