

CARLOS PABIA SY CHUNG-QUIONG, PLAINTIFF AND APPELLEE, VS. FELIPA SY-TIONG TAY CUANSI ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3770. February 17, 1908

Ponente: CARSON, J.

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CARSON, J.:

This is an action to recover the value of legal services which plaintiff alleges he rendered in the years 1901 and 1902 to Sy-Giang, executor of the estate of Joaquin Martinez Sy-Tiong Tay, deceased.

The trial court made the following finding of facts :

"From the evidence presented at the trial I am constrained to find that Sy-Giang was operating as executor appointed under the will of said deceased during 1901 and 1902, and that he was not finally relieved as such executor until the latter part of the year 1904.

"I also find that the plaintiff performed services for said Sy-Giang during the year 1901 and up to November, 1902.

"It does not appear that such services were greatly needed by the executor, or that the estate would have suffered if the services had not been rendered.

"The plaintiff is very indefinite in his testimony as to just what constituted the services, and only declares that he was first employed and that subsequently to that time and up to November 1, 1902, he was frequently consulted by Sy-Giang as executor of the estate in relation to matters pertaining to the estate and in the interest of the estate.

"Another witness presented in behalf of the plaintiff, who was an employee in the office of the plaintiff at the time that these consultations appear to have been had, declares that sometimes they were as often as two or three times a week, sometimes from two to four times a month, and that both the said Sy-Giang and his confidential clerk frequently used to go to the office for purposes of consultation with the plaintiff.

"Being of the opinion that I am, that services were performed by the plaintiff at the request of Sy-Giang, and that he at that time was acting as executor of the estate, though there had been an alleged partition of the estate and some of it had been delivered to the heirs, yet a great part of the estate remained in his hands, and it was operated by him in the interest of the legal heirs, there is only to determine the reasonable value of the services performed.

"It is very difficult to arrive at a determination as to the amount of the services performed which were necessary to the estate, or their reasonable value, from the indefiniteness of the evidence presented, but taking the evidence of the plaintiff's witnesses as to the number of consultations had, and the testimony of other witnesses as to their apparent importance to the estate, and the value of the advice given by the plaintiff to the executor, I find the number of consultations, averaging them from the statements of the witnesses, to be one hundred and eighteen during the whole period for which the claim is made, and that the reasonable value for

each consultation is the sum of if; \$10, United States currency, or P20, and that the total value of the services performed by the plaintiff for (lie executor of the estate of Joaquin Martinez Sy-Tiong Tay, Sy-Giang, is the sum of P2,360.

"The average of consultations I arrived at by taking the whole number of consultations held, as appearing from the evidence, and charging two-thirds of such consultations to those had by the plaintiff with Sy-Giang in behalf of the administration of the estate, and the other one-third to Sy-Giang personally, as it appears from the evidence that some consultations were had in his behalf personally.

"I further find that these services were performed in behalf of the estate of the above-named deceased, Joaquin Martinez Sy-Tiong Tay, and that if it had been paid by the administrator and presented in his accounts, they would have been allowed as a fair charge against the estate in its administration."

Upon this finding judgment was entered in favor of the plaintiff and against the administrator of the estate of Joaquin Martinez Sy-Tiong Tay, deceased, for the sum of P2,360, and for the costs of the action.

We are of opinion, however, that the record fails to affirmatively establish the allegations of the plaintiff, that the alleged services were rendered to Sy-Giang, as executor of the estate of Joaquin Martinez Sy-Tiong Tay, deceased, or that the charges for such services are a proper charge against the estate. We think that the weight of the evidence tends to establish the fact that some time in the year 1895 there was a de facto partition of the estate of the deceased, Sy-Tiong Tay, and that at that time the estate was delivered to the heirs, though a part thereof continued in the hands of Sy-Giang, not, however, as executor, but as the agent of the heirs.

It is true that in 1905 this partition was set aside in the case of Carlos Pabia Sy Chung-Quiong vs. Felipa Sy-Tiong Tay, but we think that the weight of the evidence tends to establish that in the interim, and certainly in the years 1901 and 1902, when it is alleged that plaintiff rendered the services for which he brought this action, Sy-Giang, while he may have been executor, was not acting as such, so that whatever services were rendered him by the plaintiff were rendered him not in the performance of his duties as executor but in the performance of his duties as agent for the heirs and others who jointly owned, or alleged ownership in, certain property in his hands as agent and manager.

We are all agreed that the plaintiff has failed to establish the fact that he rendered any services to Sy-Giang as executor, and of course the estate is not chargeable with the value of any services he may have rendered Sy-Giang acting for himself or in any other capacity.

The judgment of the trial court should be, and is hereby, reversed, and judgment will be entered in favor of the defendant for the costs of the proceedings in first instance. No costs will be allowed on appeal. So ordered.

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

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