

QUINTIN DE BORJA, JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE DECEASED MARCELO DE BORJA, PLAINTIFF AND APPELLANT, VS. FRANCISCO DE BORJA, DEFENDANT AND APPELLANT.

G.R. No. 38479. November 20, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The plaintiff herein, in his capacity as judicial administrator of the estate of the deceased Marcelo de Borja, instituted this action in the Court of First Instance of Rizal, to recover from the defendant the sum of P61,376.56 which, according to the amended complaint, the said defendant owed the aforesaid deceased, for certain sums of money loaned to and collected by him from other persons with the obligation to render an accounting thereof to the said deceased.

In his amended answer, the defendant interposed various counterclaims for alleged sums of money owed him by the aforesaid deceased.

After the trial thereof and the presentation of voluminous evidence therein, the trial court reached the conclusion and held that, from his various causes of action, the plaintiff was entitled to recover the sum of P33,218.86 from the defendant, and that, by way of counterclaim, the said defendant, in turn, was entitled to collect the sum of P39,683 from the plaintiff, and rendered judgment in favor of the defendant in the sum of P6,464.14 with legal interest thereon from the date of the counterclaim, with the costs. Both parties appealed therefrom.

The trial court made a very careful analysis of the oral and documentary evidence presented therein, and from the preponderance thereof, inferred the findings of fact stated in its decision. We are convinced that, from the evidence presented, the liquidation made by the trial court is the nearest approach to its findings of fact, and for this reason we do not feel inclined to alter or modify it.

The plaintiff-appellant's contention that the counterclaims presented by the defendant have already prescribed, is untenable. The counterclaims in question are based on instruments in writing marked Exhibits 1 to 6. The period of prescription thereof is not six (6) years, as claimed, but ten (10) years, in accordance with the provisions of section 43 (1) of the Code of Civil Procedure.

Neither is the plaintiff entitled to the interest claimed by him upon the alleged sums loaned to and collected by the defendant from various persons for his deceased father. In all the aforementioned transactions, the defendant acted in his capacity as attorney-in-fact of his deceased father, and there being no evidence showing that he converted the money entrusted to him to his own use, he is not liable for interest thereon, in accordance with the provisions of article 1724 of the Civil Code.

The defendant-appellant's claim to the effect that he is entitled to collect the rents for the use of the earthen jar factory and the buildings thereof, is, likewise, unfounded. The trial court held that all there existed between the

parties was a mere gratuitous commodatum and that the most that the deceased bound himself to do was to pay the taxes on the properties in question. There is nothing in the records of the case to justify reversing the judgment rendered therein.

The judgment appealed from being, in our opinion, in accordance with the law and sufficiently supported by a preponderance of the evidence presented therein, it is hereby affirmed, without special pronouncement as to the costs of this instance. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Hull, JJ., concur.

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