

DOROTEA MENDOZA VIUDA DE BONNEVIE ET AL., PLAINTIFFS AND APPELLANTS, VS. ANTONIA CECILIO VIUDA DE PARDO ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 39802. February 12, 1934*

Ponente: IMPERIAL, J.

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The plaintiffs herein, as heirs of the deceased Pedro Bonnevie y Orsetty, brought an action in the Court of First Instance of Manila for the recovery from the defendants of the sum of P18,000 with legal interest thereon, and the costs. In the complaint, said plaintiffs alleged that their deceased father was the creditor of Manuel Pardo y Ferrer, also deceased, in the sum in question, representing the former's share in the profits of the firm "Pardo y Cia." of which the said two deceased were copartners; that Manuel Pardo y Ferrer acknowledged said obligation but his sudden death prevented him from executing the document which he intended to sign; that later his heirs, the herein defendants, one of whom is the now deceased Manuel Pardo y Cecilio, acknowledged the aforesaid debt in a public instrument dated July 25, 1927, and voluntarily assumed the obligation to pay the same; that the condition imposed therein had been complied with and the obligation had likewise become due and demandable, and that notwithstanding such fact, the defendants refused to pay it in full. Lastly, it was alleged that all the defendants were of age.

After the filing of the complaint, the defendant Manuel Pardo y Cecilio died giving rise to the amendment of the complaint and the service of summons upon his executor, who appeared in court.

The aforesaid deceased defendant's executor, named Francisco Romero, filed a demurrer to the amended complaint on the ground that the court did not have jurisdiction over his person and the subject matter of the action, and that, furthermore, the plaintiffs lacked juridical personality to maintain the action brought by them. In an order dated March 4, 1933, the court sustained the demurrer in question under the theory that the plaintiffs' action did not lie inasmuch as they brought it as heirs of the deceased Pedro Bonnevie y Orsetty, which capacity they have not yet acquired, not having been declared as such in the corresponding special proceedings. The plaintiffs duly excepted and refused to file another amended complaint. Upon petition of said executor Romero, the court, on March 31, 1933, dismissed the complaint as to said executor, without costs. The plaintiffs again excepted and filed a motion for a new trial, which was denied. The order of dismissal and that sustaining the demurrer gave rise to this appeal.

The appellants assign the following alleged errors as committed in the appealed orders, to wit:

"I. The trial court erred in holding that the demurrer filed by the defendant-administrator 'is very well founded'.

"II. The trial court erred in dismissing this action and in denying the plaintiffs' motion for a new trial based on the ground that the judgment in question was contrary to law."

As above stated, the trial court sustained executor Romero's demurrer because in its opinion the plaintiffs, as

heirs, were not entitled to bring an action for the recovery of a sum of money, unless they were first declared as such heirs in the corresponding special proceedings. The first assignment of error is directed against this conclusion.

It is a doctrine already established in this jurisdiction that when the deceased creditor has left no pending obligations and his heirs are all of age, said heirs may bring an action for the payment of such credit without the necessity of instituting intestate or testamentary proceedings. In the case of *Bondad vs. Bondad* (34 Phil., 232), this court held: "When there are no debts outstanding against the estate, there is no occasion for the intervention of a judicial administrator. The principles set up by this Supreme Court reaffirmed. (*Ilustre vs. Alaras Frondosa*, 17 Phil., 321.)"

In the afore-cited *Ilustre* case, this court held:

"Under the provisions of the Civil Code (arts. 657 to 661), the rights to the succession of a person are transmitted from the moment of his death; in other words, the heirs succeeded immediately to all of the property of the deceased ancestor. The property belongs to the heirs at the moment of the death of the ancestor as completely as if the ancestor had executed and delivered to them a deed for the same before his death. In the absence of debts existing against the estate, the heirs may enter upon the administration of the said property immediately. If they desire to administer it jointly, they may do so. If they desire to partition it among themselves and can do this by mutual agreement, they also have that privilege. The Code of Procedure in Civil Actions provides how an estate may be divided by a petition for partition in case they can not mutually agree in the division. When there are no debts existing against the estate, there is certainly no occasion for the intervention of an administrator in the settlement and partition of the estate among the heirs. When the heirs are all of lawful age and there are no debts, there is no reason why the estate should be burdened with the costs and expenses of an administrator. The property belonging absolutely to the heirs, in the absence of existing debts against the estate, the administrator has no right to intervene in any way whatever in the division of the estate among the heirs. They are coowners of an undivided estate and the law offers them a remedy for the division of the same among themselves. There is nothing in the present case to show that the heirs requested the appointment of the administrator, or that they intervened in any way whatever in the present action. If there are any heirs of the estate who have not received their participation, they have their remedy by petition for partition of the said estate."

Following the afore-cited authorities, it is obvious that the plaintiffs-appellants, as such heirs, may bring the action. However, it is necessary to determine whether or not the same action lies against the deceased defendant's executor and whether or not the first assignment of error is tenable under the opinion lately adopted by the court.

It is another clear proposition that in this jurisdiction an action for the recovery of a sum of money due from the deceased during his lifetime, should be presented in the form of a claim to the committee appointed in the intestate or testamentary proceedings of said debtor and that every pending case against him should be discontinued in order to give place to such claim (sees. 119, 686, 700 and 703 of the Code of Civil Procedure). Hence, in its effect, the order sustaining the demurrer filed by the executor is not without support in law. The action brought by the plaintiffs against the executor does not lie because their claim should be presented to the committee appointed, or which may be appointed, in the testamentary proceedings of *Manuel Pardo y Cecilio*. Such procedure should be followed even when the obligation contracted by the defendants, upon assuming their deceased father's debt, were joint and several.

The first assignment of error is likewise unfounded inasmuch as the court finally abandoned the ground upon which its order was based, and dismissed the complaint as to the executor, perhaps on the ground hereinbefore stated. At all events, the amended complaint against the other defendants subsists, inasmuch as it has not been dismissed, and the appellants may proceed with their action if they so desire.

The last assignment of error hardly deserves further discussion in view of this court's opinion hereinbefore stated, that the plaintiffs-appellants must present their claim to the committee appointed in the testamentary proceedings of the codefendant Manuel Pardo y Cecilio. The trial court correctly denied the plaintiffs' motion for a new trial on the same ground.

Wherefore, the orders appealed from are hereby affirmed, with the costs of this instance against the appellants. So ordered.

Malcolm, Villa-Real, Hull, and Goddard, JJ., concur.

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