

IN THE MATTER OF THE ESTATE OF JOSE MA. CEBALLOS, DECEASED. ANGEL ORTIZ, APPELLANT.

G.R. No. 4190. December 17, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an appeal from two orders of the Court of First Instance of Albay, both dated April 8, 1907, in the matter of the testamentary estate of Don Jose Maria Ceballos, deceased.

After the dissolution of the partnership of Sanchez-Ceballos, the heirs of Sanchez were awarded the haciendas of Bonga and Basag in Ligao, in the Province of Albay, and the heirs of Ceballos the haciendas of La Trinidad and Pilar in Sorsogon. Donia Matilde Aramburu, as widow of the deceased partner, Don Jose Maria Ceballos y Munoz de Bustillo, had an interest in the property assigned to his estate, which was sold by the deputy sheriff of Albay under an execution issued on a judgment against her in favor of Don Angel Ortiz and bought in by him. The sheriff's certificate purported to convey not only the real estate but all the shares, action, or interest of any kind which Donia Matilde might have in any of the goods or actions forming part of the estate of her deceased husband, including usufructuary and conjugal rights. The purchaser claims that by virtue of this sale he is entitled not only to appear as the owner of this property in the accounting and in other proceedings relating to the estate, but also to exclude the widow from further participation therein. She had appealed from the order confirming the partition and the first order of April 8, 1907, made by Judge Gilbert, denied a motion of Don Angel Ortiz that her appeal be disallowed; that she be declared to have no interest in the pending proceedings, and that Don Angel Ortiz be adjudged subrogated to all her rights in the estate.

The second order of the same date permitted the appeal of Doña Matilde.

The appellant assigned three errors corresponding with the prayer of his motion:

First. That the judge erred in allowing the appeal of the widow from the order of partition, but it appears in the case that that appeal has since been abandoned and in concluding their presentation of this point the appellant's counsel say:

"Now, however, the question referring to this appeal allowed Doña Matilde has lost its importance. Inasmuch as she has not perfected it, has abandoned it, and the court dismissed it in the February term, there remains the question of law involved requiring a determination by the Supreme Court in order that it may serve as a guide in similar cases."

It is a rule of almost universal application that courts in the matter of the estate of Ceballos, of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases.

Second. That the judge erred in not declaring that Donia Matilde Aramburu had no further interest in the estate.

Passing over the obvious doubts as to the regularity of the sheriff's sale and the procedure thereat, it is plain that in

the real estate at least the widow retained a right of redemption from the execution sale which gave her a standing in the estate proceedings. She was entitled to remain in any possession which she may have had of the real estate sold, for the statutory term of twelve months, and she might at any time defeat the sale by a proper redemption within that period. (Sees. 463 and 464, Code of Civil Procedure; *De la Rosa vs. Santos*, 10 Phil. Rep., 148.) Moreover, even before the Code of Civil Procedure the creditor was not clothed with such rights of his debtor as were inherent in the person (art. 1111, Civil Code), and in this case her strictly personal rights would have alone entitled her to a representation in the estate proceedings.

Third. That the court erred in not declaring the purchaser subrogated to the rights of Doña Matilde Aramburu in the estate.

Even if it were proper in proceedings for the settlement of an estate to make such a declaration in favor of a third person, the existence of the right of redemption heretofore noticed would suffice to prevent an entire subrogation.

In none of the respects alleged did the Court of First Instance commit error and its order of April 8, denying the motion of Don Angel Ortiz is hereby affirmed, and his appeal therefrom is dismissed, with the costs of this instance. So ordered.

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

Carson, J., did not sit in this case.

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