AGAPITA PABICO, PETITIONER, VS. DELFIN JARANILLA, JUDGE OF FIRST INSTANCE OF MANILA, AND HIDALGO, CUYUGAN & CO., RESPONDENTS.

G. R. No. 42059. July 31, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In civil case No. 40283 of the Court of First Instance of Manila, Hidalgo, Cuyugan & Co., plaintiff, vs. Rufino Pabico, defendant, for the recovery of a sum of money, judgment was rendered against the latter and! in favor of the former for the sum of P43,074 with interest thereon from January 1, 1931, until fully paid, with the costs. The defendant filed a motion for a new trial and after the denial thereof, duly presented his bill of exceptions which is still pending approval. On June 19, 1934, while the said bill of exceptions was still pending approval, counsel for the defendant filed a motion suggesting on the record the death of the defendant, which occurred on May 22d of the same year, and praying that, in accordance with law, the said case be dismissed without prejudice. After hearing, the court denied the petition.

One of the heirs of the deceased defendant instituted these mandamus proceedings to compel the respondent judge to dismiss the said case by reason of the death of the party in question.

The question involved herein is one of law and may be reduced to whether or not the action brought against the defendant should be abandoned and dismissed without prejudice to presenting the same in the form of a claim before the committee to be appointed in the testamentary or intestate proceedings of the deceased Rufino Pabico.

The law applicable to the case at bar may be found in the following provisions of the Code of Civil Procedure, which read as follows:

> "SEC. 119. Death of party.—In case a party to an action dies while the action is pending, the action shall not abate by reason thereof, but the court on motion may allow the action or proceeding to be continued by or against his executor, administrator, or other legal representative, and the judgment, if it be for the payment of costs and against the executor, administrator, or other legal representative, shall be that he pay in due course of administration: Provided, nevertheless, That if the action is for the recovery of money, debt, or damages against the deceased, it shall be discontinued, and the claim thereafter be prosecuted as provided in section six hundred and eighty-six."

> "SEC. 686. Committee to be sworn and may administer oaths.—The committee appointed to appraise the estate and to allow claims as hereinbefore provided, shall act under oath, and may administer oaths to parties and witnesses upon the trial of questions before them. They may try and decide upon claims, which by law survive against executors or administrators, except claims for the possession of or title to real estate; and may examine and allow claims at their present value, which are payable at a future day, although such claims are payable in specific articles; and they may set off demands in favor of the estate against demands against the estate, and determine the balance due either way."

> 'SEC. 699. Executor or administrator not to be sued.— When a committee is appointed as herein provided, no action or suit shall be commenced or prosecuted against the executor or administrator upon a claim against the estate to recover a debt due from the estate; but actions to recover the seizin and possession of real estate and personal chattels claimed by the estate may be commenced against him.
>
> "SEC. 700. Suits pending against the estate to be discontinued.—All actions commenced against the deceased persons, for the recovery of money, debt, or damages, and pending at the time the committee are appointed, shall be discontinued, and the property, if any, therein attached, shall be discharged from the attachment, and the claim embraced in such action may be presented to the committee, who shall allow the party prevailing the costs of such action to the time of its discontinuance."
>
> "SEC. 703. Certain actions survive.—Actions to recover the title or possession of real estate, buildings, or any interest therein, actions to recover damages for an injury to person or property, real or personal, and actions to recover the possession of specific articles of personal property, shall survive, and may be commenced and prosecuted by or against the executor or administrator; but all other actions commenced against the deceased before his death shall be discontinued, and the claims therein involved presented before the committee as herein provided."

The last section specifies what actions survive upon the death of a party in a case, and clearly prescribes that actions other than those enumerated therein should be discontinued and presented as claims to the committee appointed in accordance with section 686. An action for the recovery of money or for the collection of a debt, which is the subject matter of the action in said case is not among those specified by law, consequently, does not survive upon the death of the party and should be presented to the committee on claims.

The provisions of the Code of Civil Procedure contained in the above-quoted sections outline the procedure to be followed when a party dies and the action is for the recovery of a sum of money. They prescribe that the collection of debts to determine within the testamentary or intestate proceedings as a mere incident therein so that the whole matter may be fully terminated jointly with the settlement and distribution of the estate of the deceased. This court sees" no sufficient reason to justify a different course. The creditors would be better protected if they agreed with the heirs to the institution of a special proceeding for the purpose of enforcing their rights.

The provisions of sections 119 and 700 to the effect that pending actions for the collection of a debt should be discontinued upon the death of one of the parties, is mandatory in character and confer no discretion upon the court. For this reason mandamus lies when a court refuses to dismiss a pending case of such nature.

The contention that the above quoted sections are not applicable to this case because a judgment has already been rendered therein, is untenable. The action is still pending because the judgment rendered therein has been appealed from and the bill of exceptions is still pending approval. This case is entirely different from that in which the judgment has become final and executory.

Neither is the doctrine of merger applicable to this case. Such doctrine applies only to cases in which final judgment has already been obtained; and the reason is obvious inasmuch as the action in such cases is based not on the concept of creditor but on the judgment rendered in his favor.

The doctrine laid down in the cases of To Guioc-Co vs. Del Rosario (7 Phil., 126), and Azarraga vs. Cortes (9 Phil., 698), and invoked by the respondent, is not applicable to the case at bar because in the former, substitution was denied on the ground that the person who desired to be substituted for the deceased party was a special administratrix, while in the latter case the subject matter was a joint and several obligation contracted by several defendants and, naturally, the death of one of them was not sufficient to cause the total dismissal thereof.

In the light of the above quoted legal provisions, this court holds that the case should have been dismissed without

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prejudice to the plaintiff's right to present its claim before the committee to be appointed in the testamentary or intestate proceedings of the deceased Rufino Pabico.

As to the personality of the petitioner, this court is convinced that she, being one of the heirs of the deceased defendant, has a material and direct interest in these proceedings.

Wherefore, let the writ of mandamus applied for be issued so that the respondent judge, or whoever may act in his stead in the said case, will issue an order finally dismissing it without prejudice to the presentation by the plaintiff entity of its claim for the said credit before the committee on claims, with the costs against the respondent. So ordered.

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

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