

A. L. VELILLA, ADMINISTRATOR OF THE ESTATE OF ARTHUR GRAYDON MOODY, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. 43314. December 19, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Manila in an action to recover from the defendant-appellee as Collector of Internal Revenue the sum of P77,018.39 as inheritance taxes and P13,001.41 as income taxes assessed against the estate of Arthur G. Moody, deceased.

The parties submitted to the court an agreed statement of facts as follows:

"I. That Arthur Graydon Moody died in Calcutta, India, on February 18, 1931.

"II. That Arthur Graydon Moody executed in the Philippine Islands a will, certified copy of which marked Exhibit AA is hereto attached and made a part hereof, by virtue of which will, he bequeathed all his property to his only sister, Ida M. Palmer, who then was and still is a citizen and resident of the State of New York, United States of America.

"III. That on February 24, 1931, a petition for appointment of special administrator of the estate of the deceased Arthur Graydon Moody was filed by W. Maxwell Thebaut with the Court of First Instance of Manila, the same being designated as case No. 39113 of said court. Copy of said petition marked Exhibit BB is hereto attached and made a part hereof.

"IV. That subsequently or on April 10, 1931, a petition was filed by Ida M. Palmer, asking for the probate of said will of the deceased Arthur Graydon Moody, and the same was, after hearing, duly probated by the court in a decree dated May 5, 1931.' Copies of the petition and of the decree marked Exhibits CC and DD, respectively, are hereto attached and made parts hereof.

"V. That on July 14, 1931, Ida M. Palmer was declared to be the sole and only heiress of the deceased Arthur Graydon Moody by virtue of an order issued by the court in said case No. 39113, copy of which marked Exhibit EE is hereto attached and made a part hereof; and that during the hearing for the declaration of heirs, Ida M. Palmer presented as evidence a letter dated February 28, 1925, and addressed to her by Arthur Graydon Moody, copy of which marked Exhibit FF is hereto attached and made a part hereof.

"VI. That the property left by the late Arthur Graydon Moody consisted principally of bonds and shares of stock of corporations organized under the laws of the Philippine Islands, bank deposits and other personal properties, as are more fully shown in the inventory of April 17, 1931, filed by the special administrator with the court in said case No. 39113, certified copy of which inventory marked Exhibit GG is hereto attached and made a part hereof. This stipulation does not, however, cover the respective values of said properties for the purpose of the inheritance tax.

"VII. That on July 22, 1931, the Bureau of Internal Revenue prepared for the estate of the late Arthur Graydon Moody an inheritance tax return, certified copy of which marked Exhibit HH is hereto attached and made a part hereof.

"VIII. That on September 9, 1931, an income tax return for the fractional period from January 1, 1931 to June 30, 1931, certified copy of which marked Exhibit II is hereto attached and made a part hereof, was also prepared by the Bureau of Internal Revenue for the estate of the said deceased Arthur Graydon Moody.

"IX. That on December 3, 1931, the committee on claims and appraisals filed with the court its report, certified copy of which marked Exhibit KK is hereto attached and made a part hereof.

"X. That on September 15, 1931, the Bureau of Internal Revenue addressed to the attorney for the administratrix Ida M. Palmer a letter, copy of which marked Exhibit Lt» is hereto attached and made a part hereof.

"XI That on October 15, 1931, the attorney for Ida M. Palmer answered the letter of the Collector of Internal Revenue referred to in the preceding paragraph. Said answer marked Exhibit MM is hereto attached and made a part hereof.

"XII. That on November 4, 1931, and in answer to the letter mentioned in the preceding paragraph, the Bureau of Internal Revenue addressed to the attorney for Ida M. Palmer another letter, copy of which marked Exhibit NN is hereto attached and made a part hereof.

"XIII. That on December 7, 1931, the attorney for Ida M. Palmer again replied in a letter, marked Exhibit OO, hereto attached and made a part hereof,

"XIV. That the estate of the late Arthur Graydon Moody paid under protest the sum of P50,000 on July 22, 1931, and the other sum of P40,019.75 on January 19, 1932, making a total of ^90,019.75, of which P77,018.39 covers the assessment for inheritance tax and the sum of P13,001.41 covers the assessment for income tax against said estate.

"XV. That on January 21, 1932, the Collector of Internal Revenue overruled the protest made by Ida M. Palmer through her attorney.

"XVI. The parties reserve their right to introduce additional evidence at the hearing of the present case.

"Manila, August 15, 1933."

In addition to the foregoing agreed statement of facts, both parties introduced oral and documentary evidence from which it appears that Arthur G. Moody, an American citizen, came to the Philippine Islands in 1902 or 1903 and engaged actively in business in these Islands up to the time of his death in Calcutta, India, on February 18, 1931. He had no business elsewhere and at the time of his death left an estate consisting principally of bonds and shares of stock of corporations organized under the laws of the Philippine Islands bank deposits and other intangibles and personal property valued by the commissioners of appraisal and claims at P609,767.58 and by the Collector of Internal Revenue for the purposes of inheritance tax at P653,657.47. All of said property at the time of his death was located and had its situs within the Philippine Islands. So far as this record shows, he left no property of any kind located anywhere else. In his will, Exhibit AA, executed without date in Manila in accordance with the formalities of the Philippine law, in which he bequeathed all his property to his sister, Ida M. Palmer, he stated:

"I, Arthur G. Moody, a citizen of the United States of America, residing in the Philippine Islands, hereby publish and declare the following as my last Will and Testament * * *.

The substance of the plaintiff's cause of action is stated in paragraph 7 of his complaint as follows:

" That there is no valid law or regulation of the Government of the Philippine Islands under or by virtue of which any inheritance tax may be levied, assessed or collected upon transfer, by death and succession, of intangible personal properties of a person not domiciled in the Philippine Islands, and the levy and collection by defendant of inheritance tax computed upon the value of said stocks, bonds, credits and other intangible properties as aforesaid constituted and constitutes the taking and deprivation of property without due process of law contrary to the Bill of Rights and organic law of the Philippine Islands."

Section 1536 of the Revised Administrative Code (as amended) provides as follows:

"Sec. 1536. Conditions and rate of taxation.—Every transmission by virtue of inheritance, devise, bequest, gift mortis causa or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; of any shares, obligations, or bonds issued by any corporation or sociedad anonima organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership, business or industry established in the Philippine Islands or of any personal property located in the Philippine Islands shall be subject to the following tax:"

* * * * *

It is alleged in the complaint that at the time of his death, Arthur G. Moody was a "non-resident of the Philippine Islands". The answer, besides the general denial, sets up as a special defense that "Arthur G. Moody, now deceased, was and prior to the date of his death, a resident in the City of Manila, Philippine Islands, where he was engaged actively in business."! Issue was thus joined on the question: Where was the legal domicile of Arthur G. Moody at the time of his death?

The Solicitor-General raises a preliminary objection to the consideration of any evidence that Moody's domicile was elsewhere than in Manila at the time of his death based on the proposition that as no such objection was made before the Collector of Internal Revenue as one of the grounds of the protest against the payment of the tax, this objection cannot be considered in a suit against the Collector to recover the taxes paid under protest. He relies upon the decision in the case of *W. C. Tucker vs. A. C. Alexander, Collector* (15 Fed. [2], 356). We call attention, however, to the fact that this decision was reversed in 275 U. S., 232; 72 Law. ed., 256, and the case remanded for trial on the merits on the ground that the requirement that the action shall be based upon the same grounds, and only such, as were presented in the protest had been waived by the collector. In the case before us no copy of the taxpayer's protest is included in the record and we have no means of knowing its contents. We think, therefore, the preliminary objection made on behalf of the appellee does not He.

We proceed, therefore, to the consideration of the question on the merits as to whether Arthur G. Moody was legally domiciled in the Philippine Islands on the day of his death. Moody was never married and there is no doubt that he had his legal domicile in the Philippine Islands from 1902 or 1903 forward during which time he accumulated a fortune from; his business in the Philippine Islands. He lived in the Elks' Club in Manila for many years and was living there up to the date he left Manila the latter part of February, 1928, under the following circumstances: He was afflicted with leprosy in an advanced stage and had been informed by Dr. Wade that he would be reported to the Philippine authorities for confinement in the Culion Leper Colony as required by the law. Distressed at the thought of being thus segregated and in violation of his promise to Dr. Wade that he would voluntarily go to Culion, he surreptitiously left the Islands the latter part of February, 1928, under cover of night, on a freighter, without ticket, passport or tax clearance certificate. The record does not show where Moody was during the remainder of the year 1928. He lived with a friend in Paris, France, during the months of March and April of the year 1929 where he was receiving treatment for leprosy at the Pasteur Institute./ The record does not show where Moody was in the interval between April, 1929, and November 26, 1930, on which latter date he wrote a letter, Exhibit B, to -Harry Wendt of Manila, offering to sell him his interest in the Camera Supply

Company, a Philippine corporation) in which Moody owned 599 out of 603 shares. In this letter, among other things, he states: "Certainly I'll never return there to live or enter business again." In this same letter he says:

"I wish to know as soon as possible now (as to the purchase) for I have very recently decided either to sell or put in a line of school or office supplies * * * before I go to the necessary investments in placing any side lines, I concluded to get your definite reply to this * * * I have given our New York buying agent a conditional order not to be executed until March and this will give you plenty of time * * * anything that kills a business is to have it peddled around as being for sale and this is what I wish to avoid." He wrote letters dated December 12, 1930, and January 3, 1931, along the -same line to When his Moody died of leprosy less than two months after these letters were written, there can be no doubt that he would have been immediately segregated in the Culion Leper Colony had he returned to the Philippine Islands. He was, therefore, a fugitive, not from justice, but from confinement in the Culion Leper Colony in accordance with the law of the Philippine Islands.'

There is no statement of Moody, oral or written, in the record that he had adopted a new domicile while he was absent from Manila. Though he was physically present for some months in Calcutta prior to the date of his death there, the appellant does not claim that Moody had a domicile there' although it was precisely from Calcutta that he wrote and cabled that he wished to sell his business in Manila and that he had no intention to live there again. Much less plausible, it seems to us, is the claim that he established a legal domicile in Paris in February, 1929. The record contains no writing whatever of Moody from Paris. There is no evidence as to where in Paris he had any fixed abode that he intended to be his permanent home. There is no evidence that he acquired any property in Paris or engaged in any settled business on his own account there. There is no evidence of any affirmative factors that prove the establishment of a legal domicile there. The negative evidence that he told Cooley that he did not intend to return to Manila does not prove that he had established a domicile in Paris. His short stay of three months in Paris is entirely consistent with the view that he was a transient in Paris for the purpose of receiving treatments at the Pasteur Institute. The evidence in the record indicates clearly that Moody's continued absence from his legal domicile in the Philippines was due to and reasonably accounted for by the same motive that caused his surreptitious departure, namely, to evade confinement in the Culion Leper Colony; for he doubtless knew that on his return he would be immediately confined, because his affliction became graver while he was absent than it was on the day of his precipitous departure and he could not conceal himself in the Philippines where he was well known, as he might do in foreign parts.

Our Civil Code (art. 40) defines the domicile of natural persons as "the place of their usual residence". The record before us leaves no doubt in our minds that the "usual residence" of this unfortunate man, whom appellant describes as a "fugitive" and "outcast", was in Manila where he had lived and toiled for more than a quarter of a century, rather than in any foreign country he visited during his wanderings up to the date of his death in Calcutta. To effect the abandonment of one's domicile, there must be a deliberate and provable choice of a new domicile, coupled with actual residence in the place chosen, with a declared or provable intent that it should be one's fixed and permanent place of abode, one's home. There is a complete dearth of evidence in the record that Moody ever established a new domicile in a foreign country.

The contention under the appellant's third assignment of error that the defendant collector illegally assessed an income tax of P13,001.41 against the Moody estate is, in our opinion, untenable. The grounds for this assessment, stated by the Collector of Internal Revenue in his letter, Exhibit NN, appear to us to be sound. That the amount of P259,986.69 was received by the estate of Moody as dividends declared out of surplus by the Camera Supply Company is clearly, established by the evidence. The appellant contends that this assessment involves triple taxation: First, because the corporation paid income tax on the same amount during the years it was accumulated as surplus; second, that an inheritance tax on the same amount was assessed against the estate, and third, the same amount is assessed as income of the estate. As to the first, it appears from the collector's assessment, Exhibit II,

that the collector allowed the estate a deduction of the normal income tax on said amount because it had already been paid at the source by the Camera Supply Company. The only income tax assessed against the estate was the additional tax or surtax that had not been paid by the Camera Supply Company for which the estate, having actually received the income, is clearly liable. As to the second alleged double taxation, it is clear that the inheritance tax and the additional income tax in question are entirely distinct. They are assessed under different statutes and we are not convinced by the appellant's argument that the estate which received these dividends should not be held liable for the payment of the income tax thereon because the operation was simply the conversion of the surplus of the corporation into the property of the individual stockholders. (Cf. *U. S. vs. Phellis*, 257 U. S., 171, and *Taft vs. Bowers*, 278 U. S., 460.) Section 4 of Act No. 2833 as amended, which is relied on by the appellant, plainly provides that the income from exempt property shall be included as income subject to tax.

Finding no merit in any of the assignments of error of the appellant, we affirm the judgment of the trial court, first, because the property in the estate of Arthur G. Moody at the time of his death was located and had its situs within the Philippine Islands and, second, because his legal domicile up to the time of his death was within the Philippine Islands.v Costs against the appellant.

Malcolm, Villa-Real, and Imperial, JJ., concur.

CONCURRING

GODDARD, J.,

I concur in the result. I think the evidence clearly establishes that Moody had permanently abandoned his residence in the Philippine Islands. But even so, his estate would be liable for the taxes which the plaintiff-appellant seeks to recover in this action. Section 1536 of the Revised Administrative Code makes no distinction between the estates of residents and of non-residents of the Philippine Islands. The case of *First National Bank of Boston vs. State of Maine* (284 U. S., 312; 76 Law. ed., 313), relied on by the appellant is not in point because in that case the estate of the deceased was actually taxed in both the state of his domicile, Massachusetts, and in the state where the shares of stock had their situs, namely, the State of Maine. But in the case before us there is no evidence whatever that the estate of Moody had been taxed anywhere but in the Philippines. (Cf. *Burnet, Commissioner, vs. Brooks*, 288 U. S., 378.)

Judgment affirmed.

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