

JOSE EMPEMANO ET AL., PLAINTIFFS AND APPELLANTS, VS. GREGORIO CABUNIAG ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 45097. December 01, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

Plaintiffs took this appeal from the decision of the lower court in civil case No. 3762 of the Court of First Instance of Tayabas, which absolved defendants from the complaint filed therein whereby the former sought to have declared null and void the judgment rendered by the justice of the peace court of Candelaria, Tayabas, on June 12, 1933 in Civil case No. 883; the order thereafter issued by said court for the execution of the aforesaid judgment; and the sale at public auction of the five parcels of land belonging to plaintiff by the sheriff of the Province of Laguna on September 18, 1938 for the purpose of paying with the proceeds of the sale the amount of said judgment which was for P195, plus interest and costs, including the penalty of P50 for attorney's fees. Appellants assigned the following as errors committed by the lower court:

"1. In holding that all the defendants surnamed Empemano in civil case No. 383 of the justice of the peace court of Candelaria, Tayabas, who are all minors, were duly served with summons as required by law;

"2. In holding that all of said defendants were duly represented at the trial in the justice of the peace court."

The facts which may be gathered from the decision appealed from are briefly as follows: Plaintiff Asuncion Beredo is the widow of Patricio Empemano and the other plaintiffs are their minor children. Patricio Empemano, in life, became indebted to the defendant Gregorio Cabuniag in the amount of P195 for the consideration stated in the document executed in Tagalog on April 30, 1931, which, translated into English, says:

"I received from Mr. Gregorio Cabuniag, the sum of One Hundred and Ninety-five Pesos (P195) Philippine Currency, which I will pay with my own coprax every period of kilning before the 31st of December, 1931, and failure on my part to comply will make me liable to the said Mr. Gregorio Cabuniag, for damages, attorney's fees, and costs of suit, if resort to the court will be had.

"Candelaria, Tayabas, April 30, 1931

(Sgd.) "PATRICIO EMPEMANO

"P195.500"

Patricio Empemano not having paid the account aforementioned before his death, Gregorio Cabuniag, his creditor, attempted to collect the same from the defendants in said case No. 383 of the justice of the peace court of Candelaria, Tayabas, who are the plaintiffs and appellants in this case. Although the question that defendants were not duly served with copies of the complaint was raised in that case, the justice of the peace court proceeded to take cognizance of the same, declaring all the defendants in default and sentencing them to pay plaintiff the sum of P305.

In order to acquire jurisdiction over the persons of the defendants surnamed Empemano, the justice of the peace court appointed Asuncion Beredo as guardian ad litem of the other five defendants because it knew that, with her exception, all were minors. It is a fact, however, that she never accepted the appointment. On the contrary, it appears in the return made by the sheriff that when he tried to deliver to her a copy of the summons together with copies of the complaint for each and every one of her codefendants, she refused to receive the same, saying that she would have to consult first a person who might be able to inform her.

It is true that the law (section 396 of Act No. 190) allows, in the cases in which a minor is defendant, the service of summons upon him by the sheriff through delivery by the latter of the corresponding copies of the summons to the minor himself, to his father, or his mother, or his tutor, if he has one, and if not, to the person under whose care said minor lives, whenever the latter is thirteen years of age or older. Nevertheless, in order that a minor may have capacity to sue or be sued, it is necessary that he be assisted by a guardian ad litem or a tutor who may properly and adequately protect and defend his rights. This, however, is not the case before us for while it is true that the person named by the justice of the peace as guardian ad litem of the defendants surnamed Empemano in the said case was their own mother, she, however, does not have the requisite preparation or knowledge to protect and defend their interests and rights. Moreover, not having accepted the office to which she was named, the fact that the sheriff may have delivered to her the copies of the complaint for each of the defendants is of no importance. But this is not all. The most serious error committed by the lower court in affirming the decision of the justice of the peace court of Candelaria, Tayabas, was when it sanctioned a procedure not allowed by law, namely, the bringing of an action in the latter court for the recovery of a debt of a deceased person against his widow and minor children. The law provides that money claims against a deceased person should be presented in the intestate or testate proceedings of such person, whichever may have been commenced (sections 642, 685 to 690, and 695 of Act No. 190).

In view of the foregoing, the decision appealed from is reversed and the summons issued by the justice of the peace court of Candelaria, Tayabas to the appellants in case No. 883 of said court; the judgment rendered against the latter in that case; the writ of execution issued therein; and the sale made by the sheriff by virtue of said judgment and writ of execution are hereby declared null and void, with costs against the appellees. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Laurel, JJ., concur.

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