

**EULALIO GARCIA, JUDGE OF FIRST INSTANCE OF CAMARINES SUR,
AND MERCEDES CALDEEA DE SABINO, PETITIONERS, VS.
SINFOROSA C. DAVID, MARCIANA C. VILLAMORA, ENCARNACION C.
ENOJADO, CRI...**

G.R. No. 45454. April 12, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

On April 1, 1936, Mercedes Caldera de Sabino commenced in the Court of First Instance of Camarines Sur a personal action (civil case No. 6277) against Candida Espinosa for the recovery of the value of a certain promissory note which was signed and delivered by one Isaac Villamora in behalf of the defendant. The defendant entered a general denial on April 18, 1936, alleging as special defenses that she did not authorize Isaac Villamora to sign for her and that the instrument sued upon was fraudulent.

Subsequently, on July 22, 1936, the respondents, Sinforosa David, Marciana C. Villamora, Encarnacion Enojado, Crisanto Castro and Alfredo Castro tiled a motion praying that they be allowed to intervene because "they are the children and only heirs of the deceased Mariano Castro, husband of the defendant, and that on the date of the execution of the note, defendant was already legally married to said Mariano Castro." The plaintiff filed an objection to the motion for intervention on the ground that the respondents are neither proper nor necessary parties, nor do they have any legal interest in the subject matter of the litigation. On August 6, 1936, after hearing, the court denied the motion to intervene. A motion for reconsideration was filed but was denied.

On September 8, 1936, the herein respondents filed a petition in the Court of Appeals praying that a peremptory order be granted, commanding the petitioner judge to allow the intervention. The petitioners filed their answers, and on January 20, 1937, the Court of Appeals granted the writ of mandamus. This is now a petition for certiorari to review the decision of the said Court of Appeals granting the writ.

The petitioners submit the following assignments of errors:

(1)

That the Court of Appeals erred in holding that the surviving heirs of the deceased husband of Candida Espinosa have an interest in the promissory note which is the subject matter of the suit filed against the said Candida Espinosa by Mercedes Caldera de Sabino;

(2)

That the Court of Appeals erred in declaring that the petitioner judge abused his discretion in not allowing intervention;

(3)

That the Court of Appeals erred in declaring that the herein respondents are entitled to intervene in civil case

No. 6277 and in commanding the petitioner judge to permit said intervention.

The main subject of the present inquiry is the determination of whether the respondents as heirs of the deceased husband of the defendant have a legal interest in the suit brought against Candida Espinosa on the promissory note. If they have, then the order of the petitioner judge is erroneous, and intervention should be allowed. Otherwise, they do not have the right to intervene, and the order of the court below disallowing their motion should be sustained.

Intervention is a proceeding in a suit or action by which third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceedings. (33 C. J., 477.) Fundamentally, therefore, intervention is never an independent action, but is ancillary and supplemental to the existing litigation. Its purpose is not to obstruct nor unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interest. The law on intervention in this jurisdiction is found in section 121 of the Code of Civil Procedure, which is a verbatim copy of section 387 of the Code of Civil Procedure of the State of California. It provides:

"A person may, at any period of a trial, upon motion, be permitted by the court to intervene in an action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted to join the plaintiff in claiming what is sought by the claimant, or to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both the plaintiff and defendant. Such intervention, if permitted by the court, shall be made by complaint in regular form, filed in court, and may be answered or demurred to as if it were an original complaint. Notice of motion for such intervention shall be given to all parties to the action, and notice may be given by publication, in accordance with the provisions of this Code relating to publication, in cases where other notice is impracticable."

A cursory examination of the above provision will show three important elements: (1) That only a person having a legal interest in the subject matter of the litigation or in the success of either of the parties or an interest against both, may intervene; (2) that therefore a mere intruder or stranger who has no legal interest and whose presence would only make the proceeding complicated, expensive and interminable may not be allowed to intervene; (3) that the permissive tenor of the legal provision evinces the intention of the lawmaker to give to the judge, considering a motion for intervention, the full measure of discretion in permitting or disallowing said motion.

Could it be said that the heirs of the deceased husband have such a right as would entitle them under the law to intervene? Do they have a legal interest in the subject matter of the litigation? Do they have a legal interest in the success of either of the parties? Or do they have an interest against both parties?

It is apparent that the heirs have no legal interest against both parties, plaintiff and defendant. Neither, in the success of either of them for as a matter of fact, they desire to frustrate the present claim on the promissory note, without necessarily implying their approbation of the defendant's stand. Consequently, if they could be allowed to intervene, it must be on the ground that they have a legal interest in the subject matter of the litigation.

It is claimed that the respondents have an interest in the property of the spouses in so far as they are the heirs of the deceased husband, from which they take the inference that "said heirs have likewise an interest in the subject matter of the litigation." (Page 15 of Printed Record.) But this is not sufficient legal interest under section 121 of

the Code of Civil Procedure. What is contemplated is an interest which is actual and material, direct and immediate, and not simply contingent or expectant. So it has been held "that the interest which entitles a person to intervene in a suit between other parties must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." (Smith vs. Gale, 144 U. S., 509; 12 S. Ct, 674; 36 U. S. [Law. ed.], 521; Horn vs. Volcano Water Co., 13 Cal, 62; 73 Am. Dec, 569; Wood vs. Denver City Water Works Co., 20 Colo., 253; 38 Pac, 239; 46 A. S. R., 288; Brown vs. Saul, 4 Mart. U. S. [La.], 434; 16 Am. Dec, 175; Dennis vs. Spencer, 51 Minn., 259; 53 N. W., 631; 38 A. S. R., 499.) Otherwise, if parties not having a direct interest in the subject matter of the action could be allowed to intervene, proceedings would become unnecessarily complicated, expensive and interminable. (Gregory vs. Pike, 67 Fed., 837, 845; 15 C. C. A., 33; See also Clarke vs. Eureka County Bank, 116 Fed., 534.) This is not the policy of the law.

It cannot be denied that the right of the respondents proceeds from the fact of heirship, and that therefore, their interest in the property of the deceased is, if not conjectural, contingent and expectant. They can point to no particular mass of property, nor segregate any as their own before the liquidation of the estate is completed. This is due to the legal principle that "the rights to the succession of a person are transmitted from the moment of death." (Art. 657, Civil Code.)

"The interest of the wife in the community property, and in case of her death, of her heirs, is an interest inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement; the interest of the heirs, like that of the wife herself, is limited to "the net remainder (remanente liquido) resulting from the liquidation of the affairs of the partnership after the dissolution." (Nable Jose vs. Nable Jose, 41 Phil., 713.)

"The existence of the right to inherit on the part of heirs is subject to the contingency of their own demise, the vicissitudes of fortune, and the free and variable will of the testators." (Mijares vs. Nery, 3 Phil., 195.)

Reference is made to article 55 of the Civil Marriage Law of June 18, 1870, which provides:

"Art. 55. Solamente el marido y sus herederos podran reclamar la nulidad de los actos otorgados por la mujer sin licencia o autorizacion competente."

Thereunder, the husband or heirs have the right to impugn the validity of the transactions of the wife only when they are sought to be made answerable or when their right or property would be affected thereby. In civil case No. 6277, the original action commenced in the Court of First Instance of Camarines Sur, was brought against Candida Espinosa Viuda de Castro, and not against the property or rights of the deceased and his heirs. As such personal action, it is only the defendant widow, and her estate which is sought to be. made liable. The rights of the respondents, if any, will not be affected by any adjudication of the court against the defendant. Articles 61, 62 and 65 of the Civil Code which are invoked by counsel for the respondents on page 12 of his brief have never been in force in this jurisdiction.

Articles 42 to 107 of the Civil Code have never been enforced in the Philippines inasmuch as their application here was suspended by a decree of the Spanish Governor-General under date of December 29, 1889, issued in pursuance to telegraphic instructions from Madrid. That decree was published in the Official Gazette on the 31st day of the same month and year, that is, twenty-four days after the Civil Code had been in operation. Upon the acquisition of the Philippines by the United States, the law on marriage in force in the islands were articles 44 to 78 of the Law of Civil Marriage of 1870, otherwise known as the Spanish Marriage Law, which was extended to the Philippines by a royal decree of April 13, 1883. (Benedicto vs. De la Itama, 3 Phil., 34; Ibanez vs. Ortiz, 5 Phil., 325; Ebreo vs. Sichon, 4 Phil., 704; Del Prado vs. De la Fuente, 28 Phil., 23; Goitia vs. Campos Rueda, 35

Phil., 252.)

The judge of the Court of First Instance of Camarines Sur acted properly and within the limits of his authority in denying the intervention by the respondents. It follows that the writ prayed for should be granted, the decision of the Court of Appeals should be, as it is hereby, reversed, and the case remanded to the Court of First instance of Camarines Sur with instruction to proceed with the trial of the case in accordance with law and this decision. Without pronouncement regarding costs. So ordered.

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

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