

SUILIONG & CO., AS LIQUIDATORS OF THE YEK TONG LIM FIRE, MARINE, AND INSURANCE CO., LTD., PLAINTIFFS AND APPELLEES, VS. SILVINA CHIO-TAYSAN, DEFENDANT.—FRANCISCA JOSE, INTERVENE...

G.R. No. 4777. November 11, 1908

Ponente: CARSON, J.

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CARSON, J.:

Avelina Caballero, deceased, owned during her lifetime a certain tract of land, which was duly inscribed in her name in the land registry of the city of Manila. On March 27, 1903, she borrowed from Francisca Jose, the intervener and appellant in this action, 1,000 pesos, Mexican currency, and turned over her title deeds to this tract of land to the lender as security for the loan, but no entry touching the transaction was noted in the land registry.

Avelina Caballero died on the 5th day of June, 1903, and thereafter Silvina Chio-Taysan, the defendant in this action, instituted in the Court of First Instance of Manila an action, known, under the system of civil procedure in existence prior to the adoption of the present code, as an "action for the declaration of heirship" and on the 5th day of August, 1903, the following order declaring her to be the only and exclusive heir of Avelina Caballero, deceased, was issued in that proceeding;

"[United States of America, Philippine Islands. In the Court of First Instance of Manila. Part III.]

"It having been proven by both documental and oral evidence introduced in the above-cited case, that the petitioner Silvina Chiotaysan y Caballero is the daughter of Jose Chiotaysan and Avelina Caballero, who died on the 29th of April, 1895, and on the 5th of June, 1903, respectively, without leaving any other descendant or having executed any will; and there being no objection whatever to the claim of the petitioner, it is hereby declared that the said Silvina Chiotaysan y Caballero is the legal heir abintestato of her deceased parents, the said Jose Chiotaysan and Avelina Caballero, in conformity with the provisions of the Civil Code now in force. Let a certificate of this decision be issued to the interested party and those who may here after apply for the same. So ordered.

"A. S. CROSSFIELD, Judge."

On March 9, 1904, the registrar of deeds of the city of Manila by virtue of this order entered the following inscription in the land registry whereby the said Silvina Chio-Taysan is made to appear as the owner of the land in question:

"Ninth inscription.—Urban property.—A parcel of land and a house of strong materials, tile roofed, built thereon, marked number eight, situated in Calle Lavezares of the district of Binondo, this city, the remaining description of which appears in the first inscription of this number.—It has no encumbrances.—Doña Avelina Caballero y Bugnot, of age, widow, of this vicinity, is the owner of this property under a title of repurchase, according to the preceding inscription. Said lady and her husband, Don Jose Chio-taysan, died on June 5, 1903, and April 29, 1895, respectively, and neither of them having executed a will, the corresponding intestate

proceedings were instituted, in which an order, was issued on August 5, 1903, by A. S. Crossfield, judge of the third sala of the Court of First Instance of this city, declaring their daughter, Silvina Chio-taysan y Caballero, their intestate heir. By virtue thereof, I inscribe, in favor of the said Silvina Chio-taysan y Caballero, the right she has acquired over the property of this number, under title by intestate inheritance. All the above appears from the previous records and from the copy of the above judicial order, issued by Don Salvador Chofre, assistant clerk of the Court of First Instance of this city, on August 5, 1903, which document was presented to this registry at 8.50 a. m. on the 25th day of February last, as per record No. 452, page 266, of the 7th volume of the Diario. And all the above being in accordance with the document above referred to, I sign these presents in Manila, on March 9, 1904—Fees: \$7.50, No. 7, Tariff of Fees.—Alberto Barretto."

On the 26th day of May, 1904, the said Silvina Chio-Taysan borrowed the sum of P2,500 from the Fire and Marine Insurance and Loan Co., of which the plaintiff is the lawfully appointed liquidator, and mortgaged the land in question as security for the repayment of the loan.

Thereafter the husband of Silvina Chio-Taysan instituted special proceedings under the provisions of the present Code of Civil Procedure, for the administration of the estate of Avelina Caballero, deceased, and on the 16th day of October, 1905, he was, in accordance with his petition, appointed administrator; and thereupon, submitted as such administrator, an inventory of the property of the estate, in which was included the land in question; and on the 28th of November, 1905, Francisca Jose, the intervener in this action, submitted her claim to the commissioner appointed in these proceedings, for the sum of 1,000 pesos, Mexican currency, loaned the deceased, as above set out, on the 28th day of March, 1904, which claim was duly approved on the 31st of August, 1906.

On the 10th day of October, 1906, the plaintiff in this action filed its complaint against the defendant, Silvina Chio-Taysan, praying for judgment for the amount loaned her as above set out, and the foreclosure of its mortgage upon the land. To this complaint the defendant, Silvina Chio-Taysan, filed her answer, admitting the facts alleged in the complaint and declining to interpose any objection to the prayer of the complaint; but on the 30th of October, 1907, Francisca Jose was permitted to intervene and file her separate "complaint in intervention" wherein she set out the facts touching the loan made by her to Avelina Caballero, deceased, and prayed that the court declare the mortgage executed by Silvina Chio-Taysan rescinded and of no effect; and further that it annul the inscription in the land registry of the title of Silvina Chio-Taysan to the land in question; and declare this land subject to her claim against the estate of Avelina Caballero, deceased.

The trial court entered judgment in favor of the plaintiff and against both the defendant and the intervener in conformity with the prayer of the complaint, and the intervener brings that judgment before this court for review upon her bill of exceptions duly signed and certified.

We do not think that the judgment of the trial court can be sustained in so far as it wholly denies relief to the intervener, Francisca Jose. The trial judge denied the relief prayed for by the intervener, on the ground that her intervention in this action was for the purpose of enforcing her alleged lien arising from her possession of the written title deeds to the land, and that, since she admitted that she had submitted her claim against the estate of Avelina Caballero, deceased, to the committee appointed in the administration proceedings, she must be taken to have abandoned whatever lien she may have held as security therefor, in accordance with the provisions of section 708 of the Code of Civil Procedure.

The prayer of her complaint in intervention, however, is merely for the rescission and annulment of the mortgage contract between the loan company and the defendant and of the inscription in the land registry of the title of the defendant, and a declaration that as a creditor of the estate she has a superior right to that of the plaintiff company in the proceeds of any sale of the land in question. She does not seek to enforce her claim and recover her debt in this proceeding, but merely to prevent the plaintiff from securing a judgment in this action which would take out of the estate property which she believes to be subject to her claim set up in the

administration proceedings. If her contentions are well founded, and if the estate of the deceased is subject to the payment of the debts of the deceased in such form that the heirs of the deceased could not alienate this land free of the claims of the creditors of the deceased against the land, for the payment of their claims against the deceased, the intervener is clearly entitled to at least so much of the relief she seeks in this action as will have the effect of preventing the sale of this land under the plaintiff's foreclosure proceedings, free of the claims of creditors of the deceased, because, if the plaintiffs in this action were permitted to foreclose their mortgage and to recover their debt from the sale of the land in question, it might well be that there would not be sufficient property in the estate to pay the amount of the claim of the intervener against the estate.

Had the transactions above set out taken place under the system of law in force in these Islands immediately prior to the 1st day of October, 1901, when the new Code of Civil Procedure went into effect, there would be no difficulty in determining the respective rights of the various parties to this action. Article 657 of the Civil Code provides that *Los derechos d la sucesion de una persona se transmiten desde el momento de su muerte.* (The rights to the succession of another are transmitted from the moment of his death); and article 661 provides that *Los herederos suceden al difunto por el hecho solo de su muerte en todos sus derechos y obligaciones.* (Heirs succeed the deceased by the mere fact of his death, in all his rights and obligations). Under these, and co-related provisions of the Civil Code, a sole and exclusive heir (as defined in article 660 of the Civil Code) became the owner of the property and was charged with the obligations of the deceased at the moment of his death, upon precisely the same terms and conditions as the property was held and as the obligations had been incurred by the deceased prior to his death, save only that when he accepted the inheritance, "with benefit of an inventory" he was not held liable for the debts and obligations of the deceased beyond the value of the property which came into his hands.

The property of the deceased, both real and personal, became the property of the heir by the mere fact of death of his predecessor in interest, and he could deal with it in precisely the same way in which the deceased could have dealt with it, subject only to the limitations which by law or by contract were imposed upon the deceased himself. He could alienate or mortgage it with the same freedom as could the deceased in his lifetime; the unsecured debts and other personal obligations of the deceased becoming the unsecured debts and personal obligations of the heir for which he was held personally responsible in precisely the same manner as the deceased, save only, as has been said before, where he availed himself of the privilege of taking the estate "with the benefit of an inventory," in which case the extent of his liability was limited to the value of the estate which came into his hands, though in other respects its character as a personal liability remained unchanged. Thus death created no new lien in favor of creditors upon the property of the deceased, which was not in existence at the time of his death; personal debts and obligations of the deceased becoming the personal debts and obligations of the heir, to whom the creditor was compelled to look for payment, with no new right in or to the property of the deceased, in the hands of the heir, which he did not have in or to such property in the hands of the deceased. (Title 3, Book 3 of the Civil Code.)

Spanish procedural law provided an action known as an action for the declaration of heirship (*declaracion de herederos*) whereby one claiming the status of heir could have his right thereto judicially declared, and this judicial declaration of heirship unless and until set aside or modified in a proper judicial proceeding, was evidence of the fact of heirship which the officials charged with the keeping of the public records, including the land registry, were bound to accept as a sufficient basis for the formal entry, in the name of the heir, of ownership of the property of the deceased.

It is evident therefore that, unless the provisions of Spanish procedural and substantive law, in force when the new Code of Civil Procedure went into effect, have been repealed or modified thereby, the defendant in this action, Silvina Chio-Taysan, who was judicially declared to be the sole and universal heir of Avelina Caballero, deceased, became, by the mere fact of the death of Caballero, the absolute owner of the tract of land in question, subject only to such liens thereon as may have existed prior thereto, the personal obligations of the deceased also

passing to her at the same time; that, upon proof of such judicial declaration of heirship, the register of deeds of the city of Manila properly entered Chio-Taysan in the land registry as the owner of this land by right of inheritance; and that the Loan Company, of which the plaintiffs are the duly appointed liquidators, was entitled to rely on the properly noted entries in the land registry and that the company's mortgage deed from Chio-Taysan, in whose name the land is registered, could not be affected by the unrecorded claim of indebtedness of the intervenee, who must look to the heir for the recovery of her debt.

But both the substantive and procedural law touching rights of succession and their enforcement, which were in force in these Islands when the new Code of Civil Procedure went into effect, have, to a greater or less degree, been repealed or modified by its enactment; and we are of opinion that, under the provisions of the new code, the heir is not as such personally responsible for the debts of the deceased, in whole or in part; and on the other hand, the property of the deceased comes to him charged with the debts of the deceased, so that he can not alienate or charge it free of such debts, until and unless they are extinguished either by payment, prescription, or satisfaction in one or other of the modes recognized by law.

It must be admitted that we can not point out the specific section of the new Code of Civil Procedure which in express terms repeals the old law and formally enacts the new doctrine of succession just laid down; but we think that an examination of the various provisions of that code touching the administration of the estates of deceased persons leaves no room for doubt that they do so by necessary implication.

The legislators who enact procedural law are predicated.

An examination more especially of sections 597, 644, 695, 727, 729, 731, 733, and 749 of the Code of Civil Procedure, read together with the remaining provisions for the administration of the estates of deceased persons, clearly indicates that the provisions of articles 660 and 661 of the Civil Code have been abrogated.

These provisions of the new code clearly demonstrate that the terms *heredero* and *legatario*, as defined in the Civil Code (art. 660), are not synonymous with the words "heir" and "legatee," as used in the new code; the word "heir" in the new code being technically applicable only to a relative taking property of an intestate by virtue of the laws of descent, devisee and legatee being reserved for all persons whether relatives or not, taking respectively real or personal property by virtue of a will; while *heredero* in the Civil Code was applicable not only to one who would be called an "heir," under the provisions of the new code, but also to one, whether relative or not, who took what might be called "a residuary estate under a will" (*el que sucede a titulo universal*).

It appears also from an examination of these provisions that the legislature has provided no machinery whereby an absolute right on the part of the heir to succeed by the mere fact of death to all the rights and property of the deceased may be enforced, without previous payment or provision for the payment of the debts; and on the other hand, it has provided machinery for the enforcement of the debts and other obligations of the deceased, not as debts or obligations of the heir, but as debts or obligations of the deceased, to the payment of which the property of the deceased may be subjected wherever it be found. Thus section 597 expressly provides that, in those cases where settlement of an intestate estate may be made without legal proceedings, either by a family council, as known under the Spanish law, or by an agreement in writing executed by all the heirs, the real estate of the deceased remains charged with liability to creditors of the deceased for two years after the settlement, "notwithstanding any transfers thereof that may have been made;" and we think the inference is clear that the legislator in this section recognizes and affirms the doctrine that, prior to the date of such settlement, the real estate at least was charged in like manner with the debts of the deceased. So it will be found that, where legal proceedings are had looking to the settlement of testate or intestate estates, provision is made for the recovery of claims against the deceased, not by proceedings directed against the heir, but by proceedings looking directly to

the subjection of the property of the deceased to the payment of such claims; the property both real and personal being, in express terms, made chargeable with the payment of these debts, the executor or administrator having the right to the possession of the real as well as the personal property, to the exclusion of the heirs, so long as may be necessary for that purpose (secs. 727 and 729).

For practical purposes it may well be said that in the eye of the law, where there is no remedy to enforce an alleged right when it is invaded, the existence of the right may safely be denied; and where the law furnishes a remedy whereby one may enforce a claim, that claim is a right recognized and established by the law. The new Code of Procedure furnishing no remedy whereby the provisions of article 661 of the Civil Code may be enforced, in so far as they impose upon the heredero (heir) the duty of assuming as a personal obligation all the debts of the deceased, at least to the extent of the value of the property received from the estate; or in so far as they give to the heredero the reciprocal right to receive the property of the deceased, without such property being specifically subjected to the payment of the debts of the deceased by the very fact of his decease, these provisions of article 661 may properly be held to have been abrogated; and the new code having provided a remedy whereby the property of the deceased may always be subjected to the payment of his debts in whatever hands it may be found, the right of a creditor to a lien upon the property of the deceased, for the payment of the debts of the deceased, created by the mere fact of his death, may be said to be recognized and created by the provisions of the new code. (*Pavia vs. Be la Rosa*, 8 Phil. Rep., 70.)

It is evident, therefore, that a judgment in an action for the declaration of heirship in favor of one or more heirs could not entitle such persons to be recognized as the owner or owners of the property of the deceased on the same terms as such property was held by the deceased, for it passes to the heir, under the new code, burdened with all the debts of the deceased, his death having created a lien thereon for the benefit of creditor; and indeed an examination of the proceedings prescribed in the new Code of Civil Procedure for the administration and distribution of the estates of deceased persons leaves no room for doubt that those proceedings are exclusive of all other judicial proceedings looking to that end, and supersede the judicial proceeding for the declaration of heirship, as recognized in the old procedure, at least so far as that proceeding served as a remedy whereby the right of specific persons to succeed to the rights and obligations of the deceased as his heirs might be judicially determined and enforced.

Examining the facts in the case at bar, in the light of the doctrine as to the law of succession as thus modified and amended by the new Code of Civil Procedure, which went into effect prior to the death of Avelina Caballero, it is evident that her death created a lien upon her property in favor of the intervener Francisca Jose, for the payment of the debt contracted by her during her lifetime, and that this lien ought to have and has priority to any lien created upon this property by the heir of the deceased; that the judicial declaration of heirship in favor of Silvina Chio-Taysan, could not and did not furnish a basis for an entry in the land registry of the name of Silvina Chio-Taysan as the absolute owner of the property of Avelina Caballero; that such entry, improperly made, could not and did not prejudice the lien of the intervener, Francisca Jose, for the debt due her by the deceased (Mortgage Law, art. 33); and that the mortgage of the property of the deceased by her heir, Silvina Chio-Taysan, was subject to the prior lien of the intervener, Francisca Jose, for the payment of her debt.

It is not necessary for us to consider the action of the court below in ordering the foreclosure of the mortgage, in so far as it affects the defendant Silvina Chio-Taysan who did not appeal; but we think that the intervener, who is seeking to subject the property of the deceased to the payment of her debt in the administration proceedings now pending, is clearly entitled to so much of the relief prayed for as will have the effect of preventing the application of the proceeds of the sale of this land under foreclosure proceedings to the payment of debts contracted by the heir until and unless it shall appear that the residue of the estate of the deceased is sufficient to satisfy her claim.

Such provision for the protection of her rights having been made, the other relief prayed for by her may properly be denied, since a provision subjecting the land in question to the payment of her claim against the estate of Avelina Caballero, deceased, fully and sufficiently protects her rights in the premises, and her rights having been secured, she has no proper interest in the rescission of the mortgage contract between plaintiff and defendant, or the cancellation of the inscription of the defendant's title as heir in the land registry.

The judgment of the trial court should, therefore, be modified in accordance with the foregoing principles, and the record will be returned to the trial court where judgment will be entered modifying the judgment, by providing that the proceeds of the sale of the land under the foreclosure proceedings will be deposited with the clerk of the court, where it will be retained until the amount of the debt due the intervener and unpaid in the course of the administration of the estate of Avelina Caballero shall have been ascertained, whereupon the said funds shall be applied: first, to extinguish the unpaid residue, if any, of the claim of the intervener; second, to pay the debt due the plaintiff in this action; and finally, the residue, if any, to be paid to the estate of the deceased; the intervener to have her costs in this action in both instances. So ordered.

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

Tracey, J., concurs in the result.

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