

A. W. BEAM, A. W. BEAM, JR. AND EUGENIA BEAM, THE LATTER TWO ASSISTED BY THEIR GUARDIANS AD LITEM, JOHN W. HAUSSERMANN, PLAINTIFFS AND APPELLANTS, VS. A. L. YATCO, COLLECTOR OF ...

G.R. No. 48122. October 29, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

On July 17, 1937, plaintiffs filed a complaint praying that the amount of P343,298.72, paid by them as inheritance tax, be refunded to them as follows: P40,480 to A. W. Beam, P151,409.36 to A. W. Beam, Jr. and P151,409.36 to Eugenia Beam.

In March, 1938, the parties entered into a stipulation of facts from which the following can be gathered:

That on or before April 26, 1937, the Collector of Internal Revenue declared and assessed the following items of property of A. W. Beam and Lydia McKee Beam at the time of the death of the latter on October 18, 193M, at P8,100,544.91:

15,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 2, 15 and 25 issued to and in the name of Lydia McKee Beam;

88,163 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 11, 23 and 24 issued to and in the name of A. W. Beam;

500 shares of stock of Benguet Consolidated Mining Company, evidenced by Certificate No. 3342 issued to and in the name of A. W. Beam;

2,080 shares of stock of Balatoc I lining Company, evidenced by Certificates Nos. 600, 614 and 809 issued to and in the name of A. VI. Beam;

5,000 shares of stock of Beam Investment Company evidenced by Certificates Nos. 17 and 26 issued to and in the name of A. W. Beam, Junior;

Deposit of P2,933.18 in Manila Building and Loan Association in the name and to the credit of A. VI. Beam, Junior;

5,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 19 and 27 issued to and in the name of Eugenia Beam;

Deposit of P2,933.18 In Manila Building and Loan Association in the name and to the credit of Eugenia Beam.

One-half thereof, appraised at P4,050,272.46, was the estate of the deceased Lydia McKee Beam located in the Philippines and transmitted to plaintiffs and to Syrena McKee and Rose T. McKee by virtue of inheritance, devise,

or bequest, gifts mortis causa or advance in anticipation of inheritance, and the collector assessed and demanded inheritance taxes thereon as follows:

"HEIRS

SHAKE

TAX

A. W. Beam

P531,375.00

P40,480.00

A. W. Beam, Jr.....

1,749,448.73

151,409.36

Eugenia Beam

1,749,448.73

151,409.36

Syrena McKee

10,000.00

200.00

Hose T. McKee

10,000.00

200.00

On April 26, 1937, plaintiffs, together with Syrena McKee and Rose T. McKee, both sisters of Lydia lie— Kee Beam, paid respectively the amounts assessed and demanded by the collector, aggregating P343,698.72, under protest that was overruled by the collector on May 11, 1937.

A. W. Beam is of age but the other two plaintiffs are minors and are assisted by their guardian ad litem, John W. Haussermann.

On her death in the State of California on October 8, 1934, Lydia McKee Beam left a last will and testament which, after due and regular proceedings, was admitted to probate in the superior court of the State of California for the County of Alameda.

Lydia McKee Beam was the wife of A. W. Beam from their marriage in 1913 until her death, and the other two plaintiffs are the legitimate children of said marriage. Plaintiffs are, and since birth, have been, and Lydia McKee Beam was, throughout of her life, citizens of the United States of America. A. W. Beam was for many years,

beginning from year 1902, a resident domiciled in the Philippines.

On April 18, 1934, A. W. Beam, with his wife Lydia and daughter Eugenia, left the Philippines for California and arrived at San Francisco on May 9, 1934, and since such arrival neither said Lydia nor any of the plaintiffs have been in the Philippines, except A. W. Beam who was in the Philippines from December 20, 1936, to January 15, 1937.

At the time of the death of Lydia McKee Beam, she and plaintiffs owned separately and severally, according to plaintiffs, and jointly with Lydia McKee Beam and A. W. Beam, according to defendant, the following properties:

"LYDIA MGKEE BEAM: 15,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 2, 15 and 25 issued to and in the name of Lydia McKee Beam;

"A. W. BEAM: 88,163 shares of stock of . . Beam Investment Company, evidenced by Certificates Nos. 11, 23 and 24 issued to and in the name of A. W. Beam; 500 shares of stock of Benguet Consolidated Mining Company, evidenced by Certificate No. 3342 issued to and in the name of A. W. Beam; 2,080 shares of stock of Balatoc Mining Company, Nos. 600, 614 and 809 issued to and in the name of A. W. Beam;

"A. W. BEAM, JUNIOR: 5,000 shares of stock of Beam Investment Company, evidenced by Certificates Nos. 17 and 26 issued to and in the name of A. W. Beam, Junior; Deposit of P2,933.18 in Manila Building and Loan Association in the name and to the credit of A. W. Beam, Junior;

"EUGENIA BEAM: 5,000 shares of stock of Beam Investment Company, evidenced by Certificate Nos. 19 and 27 issued to and in the name of Eugenia Beam; Deposit of P 2,933.18 in Manila Building and Loan Association in the name and to the credit of Eugenia Beam."

The Beam Investment Company, the Balatoc Mining Company and the Manila Building and Loan Association are, and were at all times mentioned in the amended complaint, corporations organized and existing under the laws of the Philippines. The Benguet Consolidated Mining Company is, and was at all times mentioned in the amended complaint, a sociedad anonima organized and existing under the laws of the Philippines.

The above-listed properties were acquired in the Philippines during and within the period from the marriage of A. W. Beam to Lydia McKee Beam in 1913 to April 18, 1934. A. W. Beam has been, and was up to April 18, 1934, the Vice-President and Assistant General Manager of the Benguet Consolidated Mining Company and a member of the Board of Directors of said company and of the Balatoc Mining Company. He was also, and up to the present, is, the President of the Beam Investment Company.

Prior to his departure from the Philippines on April 18, 1934, with his wife and his daughter Eugenia, A. W. Beam filed an application for a tax clearance certificate with the Bureau of Internal Revenue.

On September 30, 1940, the lower court rendered decision dismissing the complaint with costs against the plaintiffs.

Plaintiffs appealed.

Appellants complain that the lower court dismissed the complaint on factual conclusions dealing with points not

at issue between the parties. They allege that the issue of fact, under the pleadings, was between the appellants' contention that A. W. Beam and deceased wife were residents and citizens of California on October 18, 1934, and appellee's contention that their Philippine residence and domicile extended to October 18, 1934, and sometime later, and there was no issue as to whether or not said A. W. Beam changed his residence and domicile in 1923 from the Philippines to California and, therefore, the lower court erred in finding that appellant became a resident and citizen of California in 1923.

Appellee alleges that it has been his original theory from the inception of the action that the plaintiffs were and continued to be California citizens and that they are not entitled to recover on the ground that according to California law the property acquired by A. VJ. Beam in one-half thereof belongs to the deceased and passed by succession to her heirs subject to the inheritance tax, and said theory is borne out by the following allegations of the amended answers filed on September 2, 1937;

"That under the Inheritance Tax Law, the defendant demanded and collected from the plaintiffs the sum of P3,698.72 alleged in the complaint, which had been assessed on the amount of P4,050,272.46, value of the estate of said Lydia McKee, located and having business situs in the Philippines, and transmitted to the plaintiffs by virtue of inheritance. (Pages 15, 16, record on appeal; italics added.)

"That the law of the State of California in effect at the time of the death of Lydia McKee Beam provided that, upon the death of a wife, one-half of the community property shall go to the surviving spouse, the other half "being subject to the testamentary disposition of the decedent, and that in the absence thereof, that half shall go to the surviving spouse by inheritance."

The last paragraph reproduces only the penultimate paragraph of the original answer dated October 11, 1937.

The allegations necessarily include by implication the allegation of California citizenship so that the California law may be invoked as the (personal) law (of the deceased) applicable to her personal property in the Philippines in accordance with Art. 10 of the Civil Code.

The finding of the lower court is fully supported by the testimonies of A. W. Bean and John W. Haussermann, wherein the first stated that in 1923 he bought a house in Oakland, California, and used it as a residence until December, 1930? when he built another in Piedmont, California, which he has used and occupied as a residence since then, and his children were in school in California and Mrs. Beam wanted to be with them and make a home for them, and it was his intention to live in California and from 1923 on, My family spent most of their time in California, where he hint self used to take long vacations, and that he never really intended to live permanently in the Philippines, while Haussermann testified that A. W. Beam left the Philippines somewhere along 1923 and 1924 when he established a home for his wife and children on Kenmore Avenue, Oakland, and he vent there frequently.

We are of opinion that, upon the pleadings and the evidence, the lower court did not err in finding that A. W. Beam and wife became residents and citizens of California in 1923.

On the other hand, appellee maintains that, because the burden of proof is on the plaintiffs to establish their right to recover, in view of the fact that they had failed to establish that right based on their alleged Utah citizenship, the dismissal of the complaint is fully justified, and the defendant is entitled to take advantage of the plaintiff's failure to present sufficient proof and of the evidence adduced by themselves.

Plaintiff pleaded Utah citizenship to invoke the laws of that state which, it is alleged, is to the effect that properties acquired by the spouses during marriage belong to them separately, and the Utah citizenship was thus put in issue in view of the general denial of appellee and his special defense predicated on the California law.

The evidence of the plaintiff on the Utah citizenship consists exclusively in the deposition of A. W. Beam wherein he states that he was born in Nevada in 1878; he lived with his parents in Nevada until 1883 and then in Utah until 1898, when he enlisted in the army; and that upon his discharge from the army in San Francisco in 1889 he returned to, and stayed in, Utah, until he came to the Philippines in 1902. As contended by appellee, the evidence does not sufficiently prove the Utah citizenship claimed by said appellant. There is no evidence that he ever returned to Utah, or has any interest in that state, or that he ever intended to return there.

Where plaintiffs themselves show a state of facts upon which they should not recover, whether defendant pleaded such fact as a defense or not, their claim should be dismissed. Evidence introduced without objection becomes property of the case and all the parties are amenable to any favorable or unfavorable effects resulting from the evidence.

Appellants complain that they were not given opportunity to present evidence regarding the fact found by the lower court that plaintiff A. W. Beam became in 1923 a resident and citizen of California has no merit, because plaintiffs had in fact the opportunity, and taken advantage of it, to present all the facts which, according to them, would entitle them to recover and they cannot complain of their failure to present more evidence than that appearing in the record. As a matter of fact, the evidence upon which the lower court concluded that A. W. Beam became resident and citizen of California in 1923, consists in the testimony of A. W. Beam himself and his witness John W. Haussermann.

Appellants contend that no evidence whatsoever has been adduced to prove the California law of community property and that the trial court should not have taken into consideration the provision of said law as quoted in the memorandum filed by the Solicitor General. Appellee, alleges that there is no dispute that California is a community property state, citing 31 C. J. 12 and the decision in *Osorio vs. Posadas* (56 Phil. 748 and 756). Appellants themselves assert that, in the absence of proof as to what the California law is, the presumption would militate against them, because when a foreign law is pleaded and no evidence has been presented as to said law it is presumed that the same is the law of the forum. (*Yam Ka Lim vs. Collector of Customs*, 30 Phil. 46; *Lim vs. Collector of Internal Revenue*, 36 Phil. 472; *Miciano vs. Briao*, 50 Phil. 867.)

Accordingly, the properties in question which have been acquired by A. W. Beam and wife during their marriage, should be considered as community property and upon the death of the wife, the one that belonged to her passed by succession to her heirs, in accordance with the provisions of Articles 1401, 1407 and 1426 of the Civil Code, and therefore is subject to the inheritance tax collected by appellee.

Appellants contended that A. W. Beam has not become a resident and citizen of California since 1923 and that the evidence points out that he changed his residence from the Philippines to California between the time he left Manila for Piedmont on April 18, 1934, and the time of his wife's death on October 18, 1934. Appellants point to the testimony of A. W. Beam that his departures before 1934 were without intention of permanently abandoning his home in the Philippines, while when he left on April 18, 1934 he had no intention of returning, for which reason he brought his car and all his household belongings with him, and to the testimonies of Robert B. Dell, John M. Haussermann, W. H. Taylor, W. H. Lawrence. These testimonies, all hearsay, except that of A. W. Beam himself, notwithstanding, cannot change the effect of A. W. Beam's testimony to the effect that in 1923 he bought a house in Oakland, California, used it as a residence until December 1930, when he built another house in Piedmont, California, which he used and occupied as a residence from that time to the present, and that his children were in school in California and Mrs. Beam wanted to be with them and make a home for them, and from 1923 on his family spent most of their time in California. He also testified that "he never really intended permanently to live in the Philippines all my life". Under the provisions of the fourteenth amendment to the Federal Constitution, "all persons born or naturalized in the United States are subject to the jurisdiction thereof,

are citizens of the United States and of the state wherein they reside".

A.W. Beam became citizen of California in 1923 when he established therein a permanent residence for him and Ms family.

"One's personal presence at the new domicile is not necessary when the intent to change has been manifested and carried out by sending his wife and family there." (19 C. J. 425.)

As correctly stated by appellee, even granting appellant's contention that the deceased became a resident of California only in 1934, she was a citizen of that state at the time of her death and her national law applicable to the case, in accordance with Article 10 of the Civil Code, is the law of California which, in the absence of contrary evidence, is to be presumed to be the same as the Philippine law.

The question raised by appellants regarding the situs of the properties in question, has no merit in view of the express provisions of Section 1536 of the Revised Administrative Code, specifying shares issued by any corporation or sociedad anonlma organized in the Philippines among properties subject to inheritance tax. The pronouncement of the lower court that the actual situs of the shares in question is in the Philippines is fully supported by the evidence as, according to the testimony of John If. Haussermann, the corresponding certificates of stock were in the Philippines before and after the death of Mrs. Beam, the owners were represented by proxy at the stockholders' meetings and their shares voted by their attorney in fact who had the power to collect dividends corresponding to the share.

The questions raised by appellants that are premised on the Utah citizenship of A. W. Beam and his deceased wife cannot be countenanced after we have concluded that the lower court declared correctly that they become California citizens since 1923.

The lower court's decision is affirmed with costs against appellants.

Paras, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

Judgment affirmed.

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