

SINFOROSO PASCUAL, PLAINTIFF AND APPELLANT, VS. PONCIANO S. PASCUAL ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 48140. May 04, 1942*

Ponente: MORAN, J.

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On September 14, 1940, while the proceedings for the probate of the will of the deceased Eduarda de los Santos were pending in the Court of First Instance of Rizal, plaintiff Sinforoso Pascual, instituted in the Court of First Instance of Pampanga against Ponciano S. Pascual and others, an action for the annulment of a contract of sale of a fishpond situated in Lubao, Pampanga, supposedly executed without consideration by deceased in her lifetime in favor of the defendants. The complaint alleges that plaintiff and defendants are all residents of Malabon, Rizal, and are legitimate children of the testatrix, Eduarda de los Santos. Defendants filed a motion to dismiss, alleging want of cause of action, limitation of action, wrong venue and pendency of another action. The trial court granted the motion on the ground that the action should have been brought by the executor or administrator of the estate left by the deceased, and directed the Plaintiff to amend his Complaint within five days. Plaintiff filed an amended complaint, the amendment consisting in that "el denttndado Miguel S. Pascual ha sido nombrado por el Juzgado de Pnmera Intancia de Rizal albacea testamentario de los bienes de la finada Eduarda de los Santos, en el asunto de la testamentaria de dicha finada." The trial court, declaring that such amendment did not cure the insufficiency of the complaint, dismissed the action. It is from this order of dismissal that plaintiff interposed his appeal.

Under Rule 86, section 1, of the new Rules of Court actions for the recovery or protection of the property or rights of the deceased for causes which survive may be prosecuted or defended by his executor or administrator. Upon the commencement of the testate or intestate proceedings, the heirs have no standing in court in actions of the above character, except when the executor or administrator is unwilling or fails or refuses to act, in which event the heirs may act in his place (Pomeroy on Code Remedies, p. 158; 11 R. C. L., p. 262; 21 Am. Jur., 940.) Here, the fictitious sale is alleged to have been made to the defendants, one of them, Miguel S. Pascual, being the executor appointed by the probate court. Such executor naturally would not bring an action against himself for recovery of the fishpond. His refusal to act may, therefore, be implied. And this brings the case under the exception. It should be noted that in the complaint the prayer is that the fishpond be delivered not to the plaintiff but to the executor, thus indicating that the action is brought in behalf of the estate of the deceased.

Appellees contend that there is here a wrong venue. They argue that an action for the annulment of a contract of sale is a personal action which must be commenced at the place of residence of either the plaintiff or the defendant, at the election of the plaintiff (Rule 5, sec. 1, Rules of Court), and, in the instant case, both plaintiff and defendants are residents of Malabon, Rizal, but the action was commenced in the Court of First Instance of Pampanga. It appearing, however, that the sale is alleged to be fictitious, with absolutely no consideration, it should be regarded as a non-existent, not merely null, contract. (8 Manresa, Comenariarios al Codigo Civil Español, 2nd ed., pp. 766-770.) And there being no contract between the deceased and the defendants, there is in truth nothing to annul by action. The action brought cannot thus be for annulment of contract, but is one for recovery of

a fishpond, a real action that should be, as it has been, brought in Pampanga, where the property is located. (Rule 6, sec. 3, Rules of Court)

Appellees argue further that the action brought by the plaintiff is unnecessary, the question involved therein being one that may properly be raised and decided in the probate proceedings. The general rule is that questions as to title to property cannot be passed upon in testate or intestate proceedings. (*Bauermann vs. Casas*, 10 Phil., 886; *Devesa vs. Arbes*, 13 Phil., 273; *Guzman vs. Anog*, 37 Phil., 61; *Lunsod vs. Ortega*, 46 Phil., 664; *Adapon vs. Maralit*, 40 Off. Gai., 6th Sup., p. 84.) The court is, however, of the opinion and so holds that, when, as in the instant case, the parties interested are all heirs of the deceased claiming title under him, the question as to whether the transfer made by the latter to the former is or is not fictitious, may properly be brought by motion in the testate or intestate proceedings on or before the distribution of the estate among the heirs. This procedure is optional to the parties concerned who may choose to bring a separate action as a matter of convenience in the preparation or presentation of evidence, and accordingly, the action brought by the appellant is not improper.

Order is reversed, and the case is remanded to the trial court for further proceedings, with costs against the appellees.

Yulo, C.J., Ozaeta, Paras, and Bocobo, JJ., concur.

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