

AGAPITO HINLO, PLAINTIFF AND APPELLEE, VS. SATURNINA DE LEON, ADMINISTRATRIX OF THE ESTATE OF RUFINO TONGOY, DECEASED, ET AL., DEFENDANTS.—SATURNINA DE LEON, APPELLANT

G.R. No. 4860. January 07, 1911

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Esteban Hinlo and his wife Nicasia Jamandre owed Rufino Tongoy the sum of P2,300.30, and as security for their debt gave them a mortgage on a rural property of 30 hectares in area. Esteban Hinlo died on May 15, 1890, and Nicasia Jamandre on June 17, 1897. Prior to their death, no suit had been instituted for the recovery of the debt. These spouses at death left five children, named Agapito, Honorato, Perfecto, Guagerico, and Encarnacion, the eldest of whom, Agapito, at the time of his mother's death in 1897, was but 19 years 3 months and 1 day old. The said legitimate children of the aforementioned spouses Hinlo and Jamandre were in possession of the said mortgaged agricultural land, and when the payment of the debt was demanded of them, they did not pay it. On July 20, 1906, Rufino Tongoy sued them for payment and petitioned for the attachment and sale of the mortgaged property. This suit was filed in the Court of First Instance of Occidental Negros, and, as during the course of the hearing the plaintiff, Rufino Tongoy, died, the action was continued by his widow, Saturnina de Leon, as the judicial administratrix of the estate of the deceased. At the said hearing, from among those defendants only the girl Encarnacion, then under age, appeared, assisted by a curator ad litem, and the trial was continued in the absence and default of the other four, Agapito, Honorato, Perfecto, and Guagerico. On May 1, 1907, the court rendered judgment against the defendants, directing them to pay to Saturnina de Leon, as the administratrix of the estate of the deceased Rufino Tongoy, P2,300.30, with legal interest from the date of the filing of the complaint and the costs of the suit. On November 4, 1907, the sheriff sold the mortgaged property at public auction, and it was adjudicated to the plaintiff's lawyer, Jose Felix Martinez.

On November 6, 1907, some work animals, belonging to Agapito Hinlo and others of the defendants, that had been attached by Saturnina de Leon, were sold at auction by the sheriff. In the return of the sale it was stated that "the total amount of the said sale was P2,638 only for the 11 carabaos and 23 cows of all kinds as shown in the inventory." It was likewise stated in the return that, as the amount received from the sale exceeded that of the judgment, other animals that had been attached were not sold and were returned to Agapito Hinlo, and that the sheriff also delivered to the latter P33.93, as surplus over the amount collected on the judgment.

The foregoing facts are connected with the case decided under No. 168 of the docket.

The following facts are those alleged in the present suit, No. 326, the result of the complaint filed by Agapito Hinlo against Saturnina de Leon and the sheriff for the recovery of possession of the said animals which the latter two parties had attached and sold: (1) That notwithstanding the protest made and notice of intervention given by Agapito Hinlo to the sheriff, the latter proceeded with the attachment of the said animals, under bond given by

Saturnina de Leon; (2) that the attached animals were the personal and exclusive property of Agapito Hinlo, and not property left by his deceased parents, nor by the latter's heirs; (3) that on October 21, 1907, before the said animals were sold, Agapito Hinlo filed suit to have them declared to be his exclusive property and be restored to him, or should they be sold that he be paid their value as well as an indemnity for the resultant loss and damage, and the costs.

These facts of the complaint in this case having been established, the defendant sheriff did not appear to answer the complaint and was declared in default. The defendant Saturnina de Leon appeared and made a general denial, and as her special defense established the following facts: (1) that against the judgment in case No. 168, the then defendants, among them the present plaintiff, Agapito Hinlo, did not avail themselves of any of the legal remedies the law grants to those sentenced by default, and, consented to the judgment, which on this account became final; (2) that, after the judgment had become final, the sheriff attached and sold at public auction property that was subject to an execution of judgment; that Agapito Hinlo, by his acts and in writing, gave his consent and agreement to the auction sale of the property attached and sold as a result of that execution.

The plaintiff, Agapito Hinlo, presented as proof of his exclusive right in the animals claimed in this action of intervention the ownership titles which he possessed; and, after the production of oral and documentary evidence by both sides, the court rendered its judgment in which it made, among others, the following findings of facts:

"6. They also attached the carabaos and other cattle specified in the complaint in this case and which were the exclusive and private property of Agapito Hinlo, acquired subsequent to the death of his parents, as fully proven by the plaintiff's oral and documentary evidence.

"7. It was also proved that the only property which Agapito Hinlo's parents left at their death were the thirty hectares of land, and if they left any carabaos it was not sufficiently proven who took control of them, for when Agapito Hinlo's parents died all their children were minors, though it is probable that the animals died of old age or of the first epidemic of rinderpest that occurred in this province.

"8. It has likewise been proved that no partition whatever was made of the estate left by Esteban Hinlo and Nicasia Jamandre, and that Agapito Hinlo has not yet received any share whatever of the inheritance left by his parents; and it was not established by any evidence whatever that Agapito Hinlo and his brothers and sister had formally acquired their parents' estate.

"9. The attachment, of the private property of Agapito Hinlo, was therefore arbitrary, especially as notwithstanding the action of intervention brought, they sold at auction, (the required bond having been given by Saturnina de Leon as the legal administratrix of the estate of her deceased husband, Rufino Tongoy), eleven carabaos and twenty-three cows for the sum of P2,638, returning to Agapito Hinlo three carabaos and five head of cattle, on account of the amount obtained from the auction sale exceeding that ordered to be collected in the writ of execution, and an overplus of P33.93.

"The conclusion, then, is that the herein plaintiff, Agapito Hinlo, is the sole owner of the animals attached and sold, that they never belonged to his parents, and that it was not proved that he inherited anything whatever from the latter at their death."

The judgment was in plaintiff's favor, the court finding therein that the personal property claimed was the exclusive and private property of Agapito Hinlo, and sentencing, as a result of that finding, Saturnina de Leon, as the administratrix of the estate of the deceased Rufino Tongoy, to pay to Agapito Hinlo the sum of P2,119.26, besides the interest thereon at the rate of 6 per cent per annum since the property was attached, that is, since July 16, 1907, for loss and damage, such interest to run until the total reimbursement of the said sum should be made, and to pay the costs of the trial.

The defendant Saturnina de Leon appealed, and a bill of exceptions with right to a review of the evidence having been forwarded to this court, the following assignments of error were presented by the appellant:

The lower court erred:

- In admitting evidence on the point as to whether Agapito Hinlo did or did not inherit property from his deceased parents.
- In admitting evidence with respect to whether the parents of Agapito Hinlo did or did not leave property which the latter inherited.
- In finding in its last judgment, that the previous one rendered in case No. 168 was based on the sole testimony of Manuel Lopez.
- In holding that the judgment rendered by default against Agapito Hinlo in case No. 168 did not affect this one nor produce against him the effects of *res judicata*.

Other assignments of error are alleged which are omitted in this decision.

This case concerns a debt of the spouses Esteban Hinlo and Nicasia Jamandre, secured by a mortgage on a rural property.

Action was brought to recover this debt, the rural property mortgaged was attached and, in execution of judgment, sold at public auction, the complaint being filed against the children of the said spouses and against whom the trial proceeded by default.

But afterwards other property, not mortgaged, some work animals, was attached.

One of the children claimed these animals as exclusively his own and as property which should not have been included in that execution.

The hereditary succession of the debtors, Hinlo and Jamandre, was opened in 1890 and 1897, the dates when they each died.

All the children left by these spouses were then under age, the eldest of them, Agapito Hinlo, being 19 years old in 1897.

The hereditary succession having been opened in 1897, the date of the last death, that is, that of Nicasia Jamandre, the rights and obligations contained in the said succession can not be governed by other legislation than that then and now in force, the Civil Code.

In accordance with the principles of the Civil Code, legitimate children are the heirs of their parents, by operation of law. (Arts. 807, 931.)

But not because a person is an heir of another is he bound to pay the latter's debts; he is only bound to pay them if he accepts the inheritance; so that the acceptance of the inheritance is what renders the heir liable for the debts of his predecessor in interest. The acceptance is either pure and simple, or under benefit of inventory. (Art. 998.)

"Art. 1003. Through an acceptance, pure and simple, or without benefit of inventory, the heir shall be liable for all the charges on the estate, not only with the property of the same, but also with his own."

"Art. 1023. The benefit of inventory produces the following effects in favor of the heir:

"1. The heir shall not be bound to pay the debts and other charges on the inheritance except in so far as the property of the same may go.

"2. He retains against the estate all the rights and actions which he may have had against the deceased.

"3. His private property shall not be confused for any purpose whatsoever, to his injury, with the property belonging to the estate."

"Art. 999. Pure and simple acceptances may be express or implied.

* * * * *

"Implied acceptance is one made by acts which necessarily imply a wish to accept, or acts which no one should have a right to execute except in the capacity of an heir.

"Acts of mere preservation, or provisional administration, do not imply the acceptance of the inheritance, if, at the same time, the title and character of heir have not been assumed."

"Art. 992. Any person having the free disposal of his property may accept or repudiate an inheritance.

"An inheritance left to minors or incapacitated persons may be accepted in the manner prescribed in number 10 of article 269. Should the guardian accept by himself, the acceptance should be considered as made under benefit of inventory."

From these provisions it is inferred: (1) That without express acceptance of the inheritance, the children of the debtor spouses can not be sued for the payment of the latter's debts; (2) that, with respect to the mortgaged rural property, they could, with or without the acceptance of the inheritance, be sued in order that the mortgage creditor might collect his credit in rem by bringing a real action which is inherent in a mortgage right; (3) that the act of possessing, preserving and administering this rural mortgaged property was a natural duty of the children on the death of their parents, in order that the creditor's right might not be abandoned and prejudiced, but this act of mere preservation and provisional administration did not imply an acceptance of the inheritance, inasmuch as thereby they had not assumed the title or capacity of heirs; (4) that the fact that the said children consented to the judgment in so far as concerned the sale of the property mortgaged by their parents does not mean that they also agree to pay all shortage not covered by the amount realized from such sale, especially if, besides the mortgaged property, they have not received, preserved, or administered other property of their parents' estate; (5) that if the parents left other property not acquired or accepted as an inheritance by these children, no action can be maintained against the latter with a view of bringing such property under execution, as they have not contracted any personal obligation with regard to it, not having received it as an inheritance; (6) that, in an identical case, judgment could only be enforced against them for the recovery of an amount equal to the value of the said property, if they had acquired or accepted it as an inheritance, but not a greater amount, it being unlawful to levy upon their own property in execution of judgment, inasmuch as, according to law, since they were minors in 1897, they could receive such inherited property in no other manner than under benefit of inventory, and the benefit of inventory is for the purpose of avoiding a confusion of the heir's own property with that of his predecessor in interest which he has inherited.

If under these substantive provisions of the Civil Code, under which the mortgage action of the creditor, Rufino Tongoy, should have been brought, the children of the spouses Hinlo and Jamandre should only have been called upon to deliver the mortgaged property; no personal liability whatever rested upon the said children, as none was transmitted to them; the action brought partaking of the character of a real action, greater still, in the light of the provisions of the Code of Civil Procedure, is the evidence of the illegal nature of the procedure of extending the mortgage action to cover property which in no wise is shown to have been left by those debtors, but which appeared by legitimate and unassailable titles to belong exclusively to Agapito Hinlo; even if it really had been left by the said debtors, execution could not have been levied thereon in the manner that it was, against the legitimate protests of its true owner and possessor.

"Mortgage debt due from estate" is the caption of section 708 of the Code of Civil Procedure, which provides:

"A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the committee, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant."

Rufino Tongoy could choose between his personal right and his real right; he could, by renouncing his real security, present his claim before the committee which would have been appointed in the probate proceeding on the estate of the spouses Hinlo and Jamandre, or he could have brought, in a separate trial, the proper action for the collection of his mortgage credit or to realize upon his security, making the executor or administrator a party defendant. He chose this last alternative, but he did not sue an executor or administrator of the estate of Hinlo and Jamandre.

"If there is a judgment for a deficiency," continues the section above quoted, "after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may prove his deficiency judgment, before the committee against the estate of the deceased; or he may rely upon his mortgage or other security alone, and foreclose the same at any time, within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate."

After the sale of the mortgaged property, the widow of Tongoy did not endeavor to obtain a judgment for the amount which remained unpaid, and she limited her action to a demand that the sheriff attach and sell the animals which she supposed to belong to the debtors, and the sheriff attached and sold them, which acts of both parties were entirely illegal. With the judgment, which it was necessary for her to have previously obtained, she could have applied to the committee to take into account her claim against the estate as one of the personal credits against the same; this she did not do, but through the sheriff she continued to enforce the execution of the judgment by levying upon some animals owned by Agapito Hinlo, thus violating the provisions of the law and thereby radically vitiating the proceedings had, which were, moreover, an infringement of the particular rights of a third party.

The judgment appealed from is, therefore, perfectly proper and is hereby affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, and Moreland, JJ., concur.

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