

MARIANO VELOSO ET AL, PLAINTIFFS AND APPELLEES, VS. ANICETA FONTANOSA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4874. March 02, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This case was brought by means of a bill of exceptions to this court for a revision of the facts and evidence. The appeal being heard it appears:

That a complaint was filed with the Court of First Instance of Cebu as follows: (1) That Mariano Veloso, Damiana Veloso, and Melchor Veloso are the sole lawful heirs of Gavino Veloso and Buenaventura Veloso, their father and brother, respectively; (2) that the defendants are Aniceta Fontanosa, as widow of Roberto Ancajas, and Florentina, Leona, Maria, Juan, Romualdo, Vicenta, and Felix, all of the surname of Ancajas, the lawful children of the deceased Roberto, and Estefania Fontanosa, mother and legal guardian of the minor Jose Ancajas; (3) that at the death of Gavino Veloso, Roberto Ancajas owed him the sum of 5,065 pesos which he had borrowed prior to the year 1881; (4) that in the apportionment of the estate, this debt of 5,065 pesos went to Buenaventura Veloso as his portion; (5) that in the year 1882, Roberto Ancajas, after having acknowledged the transfer of his indebtedness by inheritance to Buenaventura Veloso, continued to receive sums of money from the latter on the same conditions, that is, as loans, and bound himself to make annual payments in sugar; (6) that on the 11th of October, 1883, the debt of Roberto Ancajas amounted to 10,449.18 pesos, as shown by a liquidation of accounts made between them and ratified by Roberto Ancajas in the said month of October, 1883; (7) that on August 4, 1884, this balance amounted to 12,199.65 pesos; (8) that on May 31, 1887, it rose to 14,439.40 pesos, which sum, however, was reduced to 12,365.20 pesos by the payment of 2,074.20 pesos on account; (9) that up to the year 1893 the defendants made payments amounting to 642.27 pesos which reduced the amount owing to 11,722.43 pesos; (10) that on the death of Buenaventura Veloso, the defendants, as his sole and lawful heirs, inherited, and that same year divided between them all his property with the exception of the above-mentioned credit, which is at present held pro indiviso between them, and they, as the lawful heirs of Buenaventura Veloso, the creditor, have repeatedly called upon the defendants to pay the said credit, but the latter have constantly refused to do so, thus giving rise to the filing of the complaint; (11) that on account of their delinquency in payment they have caused the plaintiffs damages to the value of 14,068.48 pesos; they therefore asked the court below to sentence the defendants to pay both sums, with legal interest thereon from the time they ceased to make payments, and the costs.

That the attorneys who answered the complaint, subscribed their answer: "Attorneys for Aniceta Fontanesa, Maria, Juana, Romualda, Vicenta, and Felix, all surnamed Ancajas, and for Estefania Fontanosa, having previously signed the receipt for the complaint in this manner: "Attorneys for the defendants, with the exception of Florentina and Leona Ancajas."

That in the answer, in addition to the general denial of all the allegations in the complaint, there was put forward as special defense: (1) That this supposed right of action had prescribed before the action was instituted; (2) that

Romualda Ancajas and some of the other general heirs of Roberto Ancajas were not of age, at the time of the death of Roberto Ancajas, nor at the time of the supposed acceptance of the inheritance, and that there was no judicial intervention in said acceptance.

The trial judge in his findings of fact considers that, among other allegations of the complaint, the following have been proven:

"That Aniceta Ancajas is the wife of the said deceased and that with the exception of the minor Jose Ancajas, who is represented in these proceedings by his legal guardian, Estefania Fontanosa, and is the grandchild of the said deceased Roberto Ancajas, most of the defendants are his children; that as heirs the said defendants took possession of all the property of the said deceased after his death, and at the present time are in possession as the undivided owners thereof." (B. of E., 12.)

And as conclusions of law he says;

"That the defendants being the heirs of Roberto Ancajas, deceased, and having taken possession of the latter's property from the time of his death to the present time, as heirs of the said deceased, and exercising over the same all those acts which show ownership, which, if they were not the heirs, they could not have exercised, they have purely and simply accepted the inheritance from their principal, and consequently, under, article 1003 of the Civil Code, they are liable for the encumbrances with which the heritage is charged, not only with the property of their principal but also with their own; that the defendants, as heirs of the late Roberto Ancajas, having acknowledged and admitted the latter's debt to Buenaventura Veloso, the principal of the plaintiffs, which acknowledgment was made expressly and by means of the payments made by them to the creditor, have contracted the express obligation to pay it under the same terms as their aforesaid principal; that the defendants are liable for the payment of the sum of P11,722.43 to the plaintiffs, in their capacity of heirs, to Buenaventura Veloso, for the debt contracted in his favor by their late principal Roberto Ancajas, and which debt was acknowledged and admitted by them; that as the defendants have acknowledged and admitted the said debt, toward the settlement of which they made the last payment in the year 1893, the right of action for its recovery, by article 1964 of the Civil Code, and in accordance with article 943 of the Code of Commerce, prescribes after the lapse of fifteen years, and inasmuch as the period of fifteen years from said date until the time the complaint herein was presented, has not expired, the conclusion is that the said action is enforceable and should be made effective; that, it being proven that Buenaventura Veloso, the plaintiffs principal, had brought suit against the defendants in the year 1896 for the payment of said debt, it must be concluded that the prescription of the action for recovery has been legally interrupted, in conformity with the provisions of article 1973 of the Civil Code; that the debt of P11,722.43 is a credit which originated from a mercantile contract, and as the interest due the plaintiffs can not be determined, they are entitled to recover the legal interest on said amount from the defendants at the rate of 6 per cent per annum from the month of September, 1893, until the full payment thereof."

The defendants appealed from this judgment of the lower court, alleging the following errors:

- The admission of the books marked as Exhibits A, B, and C as evidence, and the overruling of the motion for their exclusion.
- The admission of Exhibits D, E, F, and G as evidence.
- The finding that the defendants are the heirs of the late Roberto Ancajas, and that they purely and simply accepted the inheritance from the said deceased.
- The overruling of the motion for a new trial.

With regard to the first and second errors, charged against the admission of the documentary evidence of the appellees, the rulings of the court below are in accordance with the law. The books marked as Exhibits A and B

simply serve to show the origin and progress of the debt, and they may be ignored from the moment there was entered on folio 88 of the book marked Exhibit C a debit and credit account, of which Exhibit E is an exact copy, and which shows the account maintained between Buenaventura Veloso and Roberto Ancajas as accepted by the latter and signed by him in proof of his conformity with the balance of P10,449.18 appearing therein. This acknowledgment by their principal must be decisive as to the heirs, and it must be held to be proven that at least they are indebted in said sum of P10,449.18, since against the admission and validity of Exhibit E nothing has been alleged by the appellants in this instance.

As the successive liquidations which the trial court took into consideration until reaching the one at bar are not specifically impugned, either in this instance or in the court below, they are not now, therefore, subject to revision by this court.

As to the prescription of the right of action which is subsidiarily alleged in order to impugn the obligation which, according to the judgment appealed from still exists, the appellants say that "the debt had prescribed so far as the defendants are concerned, with the questionable exception of the defendant Aniceta Fontanosa, widow of Roberto Ancajas, because it appears that said Aniceta Fontanosa was the only person who made any payment, and it is not possible that an act performed by one of the defendants can prejudice the legal rights of the others." (Brief, 5.)

The court below considered as proven: (1) The payments made by the heirs after the death of Roberto Ancajas, the last of which was in 1893; (2) a judicial complaint filed against these same defendants in 1896. From these facts the court below makes the following deductions: First, that the right of action that existed in 1896 to demand the settlement of the debt which, by article 1964 of the Civil Code should prescribe at the expiration of fifteen years, had not prescribed in 1906, the time of filing the present complaint. Second, that in consequence of the filing of the said complaint in 1896, the running of the statute was interrupted, as prescribed by article 1978 of the Civil Code.

It has been proven that on the 11th of October, 1883, Roberto Ancajas acknowledged that a balance of 10,449.18 pesos was standing against him; that since that time he has received and paid amounts in connection with said obligation, the last payment being made shortly before his death in 1888," as stated by the appellants in their brief on page 5, that is, on May 5, 1888, as appears at folio 223 of the book offered in evidence by the appellees as Exhibit C. It therefore follows that in computing the time for prescription from said date it would be necessary to take into consideration the fact that the Civil Code was not yet in force, as it did not become effective until December 8, 1889, and that, at that time, the period for the prescription of personal actions, such as the one at issue, by law 5, title 8, book 11, of the Novisima Recopilacion, was twenty years, which period should expire in 1908 that when the complaint herein was presented in 1906, the term had not expired; therefore, we have not to consider the legal interruption of a term which has not yet expired, as in the present case the question is one of a period of prescription that commenced before the enforcement of the Civil Code, which period, by the terms of article 1939 of the said code, must be governed by the laws then in force.

The Civil Code would only be applicable, if the whole period required thereby for prescription had transpired after it was put in force, notwithstanding the fact that, under the old laws, a longer lapse of time was necessary (art. 1939, Civil Code). And since the 8th of December, 1889, when the Civil Code went into effect, the fifteen years required by the provisions thereof for the prescription of the right of personal actions have certainly elapsed. But in the present case the court below has considered two forms of interruption of the prescription of the right, namely, the exercise thereof before the courts, and the act of the acknowledgment of the debt by the debtor. The said court found that payments were made in the years 1891, 1892, and 1893 by the widow of the late Roberto Ancajas, and the period for the prescription must be counted from the last-mentioned date, because the action could only have been exercised thereafter. It is evident that since then the term required by article 1964 of the

Civil Code has not expired, and supposing that such payments had not been made, the court below considered as proven that in 1896, an action was brought for the recovery of this debt, and against this consideration no error of law or fact has been assigned. No judgment was rendered by reason of the revolution that took place in 1898, and the record of the case was lost through the same cause; facts which were agreed to between the contending parties at this trial. And in conformity with the decision of the supreme court of Spain of July 5, 1904, which interprets the right sense of the aforesaid article 1973, the action then instituted and that now brought are one and the same.

Against the finding of the court below as to the first method of interruption of the prescription, in so far as it considered that the payments made after the death of Roberto Ancajas by his widow, Aniceta Fontanosa, were an acknowledgment of the debt, the appellants allege "that an act performed by one of the defendants can not prejudice the legal rights of the others." But, in accordance with article 1974, interruption of prescription of rights of action in all kind of obligations of the heirs of the debtor, benefits or prejudices them all alike, inasmuch as each and all of them represent the principal, and they jointly succeed him in his rights and obligations.

For all the above reasons the judgment entered by the trial court "That payment shall be made to the plaintiffs of the sum of P11,722.43 with costs," is proper, for the reason that it is in accordance with the law and the merits of the case.

But that the above-stated amount shall be in Philippine pesos " (p11,722.43)," as determined in the judgment, is not in accordance with the law or the merits. Even the latest sum loaned on the 31st of May, 1887, according to the last liquidation considered in, point 8 of the complaint, was that current at the time, and certainly the unit was not then the Philippine peso.

Neither is the sentence contained in the judgment appealed from, that "the legal interest on the said sum at the rate of 6 per cent per annum shall be payable from the month of September, 1893," in accordance with the law. It is proper to sentence the defendants to pay the legal interest of 6 per cent per annum by reason of the default incurred by the heirs of Ancajas (art. 1108, Civil Code), but such default can not date back of September, 1893, that is, from the time of the last payment made by them or by Aniceta Fontanosa. Article 1100 of the Civil Code reads:

"Persons obliged * * * are in default from the moment when the creditor demands the fulfillment of their obligation, judicially or extrajudicially,"

And the judicial demand for the fulfillment of said obligation was only made in 1896; hence, as the date of the complaint interposed in that year has not been fixed, the net amount claimed therein should only commence to bear legal interest from the latter part of 1896, or rather from the beginning of 1897. In a decision of December 3, 1902, the supreme court of Spain held:

"That it is a principle of law, acknowledged and sanctioned by article 1100, in relation to article 1108 of the Civil Code, that interest upon default only becomes due from the time of the judicial or extrajudicial notice by the creditor to the debtor, unless otherwise expressly provided by law, or by virtue of a contract, or on account of special circumstances depending upon the nature of the obligation."

As to the third and fourth errors, it is true that, in view of the evidence submitted with the bill of exceptions, and because all the facts of the complaint have been generally denied by the defendants, the following facts, which are stated in the judgment as resulting from the record, have not been proven:

"That the other defendants, apart from the widow of Ancajas, are the children of the latter, and that Jose Ancajas is his grandchild, all of them being his only heirs; that Estefania Fontanosa is the legal guardian of the minor Jose Ancajas; that as such heirs they took possession of all the property of the deceased and hold the same pro indiviso"

And as a natural consequence, there is no ground for the most important conclusion of law in the decision:

"That, inasmuch as they took possession of the property of the late Roberto Ancajas, and performed all those acts of ownership thereof which, without being heirs they could not have performed, they purely and simply accepted the inheritance from their principal, and have ever since become liable for his debt, not only with the property they received from him, but also with their own property."

Florentina Ancajas is the only person who appeared as the daughter of Roberto Ancajas and testified as a witness for the plaintiffs, but it does not appear that she, or another of the name of Leona (often called Leon), have ever been summoned and cited to appear or that they failed to answer the complaint. It is certain that they have not answered it. From the testimony of this witness it appears that it was Aniceta Fontanosa who, after the death of her husband, Roberto Ancajas, made the three last payments on account of the latter's debt.

Thus, it is not proper that a sentence, rightly entered against the heirs or successors of Roberto Ancajas, should particularly fall upon the persons named in the complaint, and to whom the judgment refers, for no other reason than that they were designated as such heirs in the complaint.

For the reasons above set forth we hold that the net amount due to the plaintiffs by such persons as may turn out to be the lawful heirs of Roberto Ancajas, in addition to those who, apart from the minor Jose Ancajas, appeared in this suit, has been rightly determined, that is, the sum of 11,722.48 pesos, with legal interest thereon at the rate of 6 per cent, from the time the suit was filed in 1896, with the costs of the first instance against the defendants who answered the complaint. The judgment appealed from is hereby set aside in order that a new trial may be held for the purpose of properly determining who are the heirs against whom should be directed the order of payment, and what were the acts and form of acceptance of the inheritance, and of the possession and method of possession of the property remaining at the death of Roberto Ancajas; after which let a new judgment be rendered which shall include a finding of the equivalent of the amount owing in Philippine currency at the time of such decision. No special ruling is made as to the costs in this instance. So ordered.

Torres, Mapa, Johnson, Carson, and Willard, JJ., concur.

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