

IN THE MATTER OF THE ESTATE OF JOAQUINA MIJARES DE FARIÑAS.-ENRIQUE DE LA VEGA, ADMINISTRATOR AND APPELLANT, VS. VICENTE LAVIN, CLAIMANT AND APPELLANT.

G.R. No. 4878. February 27, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

In the proceedings for the settlement of the intestate estate of Joaquina Mijares de Fariñas, deceased, the heirs of Paulino Lavin presented before the commissioners two claims against the estate, one for a debt claimed to be due from Jose Fariñas, the husband of the deceased, to Paulino Lavin, which debt it was said had been assumed by the deceased, and the other for a debt due from the deceased herself to Paulino Lavin. The commissioners disallowed both claims, the heirs appealed to the Court of First Instance, which court allowed the debt claimed to be due from the husband and disallowed the debt claimed to be due from the deceased herself. From this judgment both parties have appealed.

1. If Jose Fariñas, the husband of the deceased, owed anything to Paulino Lavin, it was by reason of two documents, both dated the 17th day of March, 1886. They are substantially in the same form. One of them is as follows:

"Received from Don Paulino Lavin the sum of nine hundred and seventy-one pesos invested in the work on the Tribunal de Santa Catalina, as capitalist partner of the undersigned.

"Vigan, March 17, 1886.

(Signed) "JOSE FARIÑAS."

The other obligation was for 200 pesos, making a total of 1,171 pesos. There was proof other than that contained in the documents themselves to show that Paulino Lavin and Jose Fariñas were partners in the construction of certain public buildings in Ilocos Sur. These documents do not evidence any indebtedness on the part of Fariñas to Lavin. They prove rather, that Lavin had contributed certain money to the business of the partnership, and whether he ever received the money would depend upon the success of the business, a result which could only be known after a liquidation of the partnership affairs. There is no evidence that any such liquidation was ever made and no evidence that, even if such liquidation had been made and profits had resulted, that these profits were in the hands of Fariñas.

But it is said that notwithstanding this fact, the deceased admitted that these documents showed the existence of a debt on the part of her husband, the payment of which she assumed. Her husband died on the 16th day of October, 1888. On the 30th of May, 1889, she made and signed the following indorsement upon each one of the documents:

"I acknowledge as true the contents of the foregoing receipt, as I was present at the time when the amount therein stated was actually delivered and at the time when my late husband signed it with his own hand; and in

testimony thereof, I sign this acknowledgment before the witnesses Don Raymundo Querol, Don Ladislao Donato, and Don Narciso Sebastian.

"Vigan, May 30, 1889."

It will be seen that this document signed by her is simply a recognition of the truth of the statements contained in the document itself, namely, that Paulino Lavin had contributed to the capital of the partnership certain sums of money. It does not even admit the existence of any debt from the husband to Paulino Lavin and in no way assumes the payment of any such supposed obligation.

It follows, therefore, that when in 1894 the heirs of Paulino Lavin commenced an action against the deceased she was in no way responsible for this debt supposed to exist in favor of the heirs and against her husband. It is claimed, however, by the plaintiffs that in the proceedings in that action she recognized the existence of such a debt. That proceeding was an executive action commenced on the 10th day of October, 1894, against the deceased. The document set out in the complaint purported to be signed by the deceased and it stated that after the death of her husband, Jose Fariñas, she had received from Paulino Lavin 1,233.14 pesos. In the proceeding she was required to state: (1) Whether she admitted the truth of the contents of the documents; and (2) whether her signature thereto was genuine. Her answer was as follows:

"She stated that she acknowledged the contents of the document shown to her, because it is true that her late husband Don Jose Fariñas received from Don Paulino Lavin the sum of twelve hundred and thirty-three pesos and fourteen cents therein referred to; in answering the second question, she said that she did not acknowledge the signature and rubric, appearing with her name in the above-mentioned document, as she did not remember signing a sealed document, nor having done so in the presence of the witnesses whose signatures and rubric appear at the foot of the same."

It will be seen that she did not understand the document, or that her answer was not properly taken down. In fact, in a subsequent proceeding in the case it was alleged by her that there had been a mistake in this respect, for the document, the truth of which she admitted, says nothing about any debt due from her husband to Paulino Lavin. On the contrary, it relates solely to her own personal debt incurred after her husband's death. It is to be noticed further that in this answer she did not say that her husband owed Paulino Lavin, but that he had taken a certain amount of money from him. This is entirely consistent with the contents of the documents of the 17th of March, 1886. There is, consequently, nothing in this answer which admits the existence of any indebtedness from her husband to Paulino Lavin and nothing which showed that she assumed the payment of any such supposed indebtedness.

Later in the proceedings an answer was presented in her behalf. In this answer she stated that what she declared when asked to recognize the authenticity of the documents was that her deceased husband owed Lavin 1,171 pesos and not 1,233 pesos. It does not appear that she signed this answer. It may have been signed by her solicitor. Under these circumstances the contents of the answer can not be considered as admissions made by her which could be used as evidence against her in another proceeding entirely disconnected with the subject-matter of the proceeding in which the answer was made. There is, therefore, nothing in the proceeding of 1894 which proves either the existence of a debt from the husband Paulino Lavin or any recognition of such supposed indebtedness by the deceased.

The plaintiff claims, however, that there is such recognition and admission in the will of the deceased made on the 20th of January, 1906. This supposed will contains the following statement:

"I also declare that at the time of the death of my husband he left unfinished a work under contract with the Government, in the pueblo of Santa Maria, and in order to fulfill the obligation of my husband I had to

continue the work until its termination, with such ill fortune that I lost about 2,000 pesos. For the purpose of covering the loss, I borrowed some money from Bon Vicente Lavin, to whom I still owe P1,300, and from the nephews of Father Evaristo Abaya P540, all of them residents of Vigan, and I also sold the parcel of land in Pantay above cited."

It will be seen that this contains no admission of the existence of any debt from her husband to Paulino Lavin. It relates exclusively to a personal debt contracted by her after his death. It is not, therefore, necessary to consider the effect of this supposed will which was not admitted to probate because it never was signed by the deceased.

The result as to this cause of action is that there is no evidence in the case to show any liability on the part of the estate of the deceased for the payment of this 1,171 pesos, and the judgment of the court below allowing this claim must be reversed.

2. The other cause of action relates to a personal debt contracted by the deceased after the death of her husband.

There was received in evidence a statement of the accounts between Paulino Lavin and the deceased commencing in November, 1888, and ending in April, 1889, dated the 30th day of May, 1889, signed by Paulino Lavin, from which it appeared that the deceased owed Paulino Lavin 1,233.14 pesos. The deceased by a writing signed upon the account itself agreed to its correctness.

This document proves the existence of a debt of that amount upon that date and the only question in the case is, whether the statute of limitations has run against this indebtedness.

The action Commenced by the heirs of Paulino Lavin in 1894 was an action to recover this same indebtedness. It is true that that proceeding, being an executive action, was dismissed on the ground that the plaintiff had not presented any document which entitled him to take advantage of such a summary proceeding but when the question of the interruption of the running of the statute of limitations in regard to actions is under consideration the fact that the action is dismissed is of no importance. Article 1973 of the Civil Code is as follows:

"Prescription of actions is interrupted by their institution before the courts, by extrajudicial claim of the creditor, and by any act of acknowledgment of the debt by the debtor."

(See Manresa's Commentaries on the Civil Code, Vol 12, page 883.)

The result is that the judgment of the court below refusing to allow this claim must be reversed and it should be allowed in the amount of 1,233.14 pesos, with interest at the rate of 6 per cent per annum from the 10th day of October, 1894, when a judicial demand for its payment was made.

3. The person who carried on this litigation in the Court of First Instance and in this court is Vicente Lavin, the judicial administrator of the estate of his father, Paulino Lavin. The persons who presented the claim before the commissioners were the heirs of Paulino Lavin and the defendant claims that the plaintiff as administrator has no standing in court because he never presented any claim before the commissioners. It appears that Vicente Lavin was appointed judicial administrator of the estate of Paulino Lavin on the 5th day of March, 1907. This was after the claim had been presented by the heirs to the commissioners. The question involved is simply one of substitution of parties plaintiff. Upon the appointment of Vicente Lavin as administrator as aforesaid he was entitled to have and receive all the claims in favor of the estate of which he was the administrator and entitled to be substituted in the place of the heirs in the prosecution of any such claims. The objection of the defendant, therefore, to his personality can not be sustained.

The judgment of the court below is reversed and judgment entered acquitting the defendant of the second cause of action set out in the complaint and ordering judgment against the defendant and in favor of the plaintiff for the

sum of P1,233.14, with interest at the rate of 6 per cent per annum from the 10th day of October, 1894, and the costs of the first instance. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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