

JULIO D. ENRIQUEZ, ETC., PLAINTIFF-APPELLEE, VS. ALEJANDRA PANOPPIO ET AL., DEFENDANTS-APPELLANTS.*G.R. No. 48891. May 28, 1943*

Ponente: OZAETA, J.

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The plaintiff-appellee, as administrator of the intestate estate of the deceased Gregorio Amboy, brought this action against the widow and children of the latter and Cayetano Panopio to annul a mortgage executed by the said widow and children in favor of Cayetano Panopio on a parcel of land of which the deceased and one Anastacio Amboy were co-owners pro indiviso. Said mortgage was executed by the heirs of the deceased after the latter's death and before the institution of the intestate proceeding, to secure the payment of the sum of P900. It turned out that the deceased was indebted in the sum of P964.79 to one Isabel Cordero, whose claim for said amount was duly presented and admitted in the intestate proceeding. To pay said claim the administrator seeks to annul said mortgage and to recover the property from the heirs, alleging that said mortgage was simulated, the mortgagee being a brother of the widow and an uncle of the children of the deceased. The mortgage, which was executed on January 5, 1935, was recorded and annotated on the back of the corresponding certificate of title on November 17, 1938, that is to say, subsequent to the commencement of this action.

The trial court deemed it unnecessary to annul the mortgage in question but declared that the claim of Isabel Cordero was preferred or superior to said mortgage, and ordered the widow and heirs to deliver the possession of the land to the plaintiff in his capacity as judicial administrator of the intestacy of the deceased. From that decision the defendants appealed.

Appellants contend that the mortgage in question was valid because it was executed by all the heirs of the deceased who succeeded to the rights of the latter from the moment of his death in accordance with article 657 of the Civil Code and who as owners had the absolute right to dispose of the property they had inherited according to article 348 of the same Code. Appellants further contend that said mortgage is superior to the claim of Isabel Cordero because the latter's claim was not presented and approved until after the mortgage had been constituted. Both contentions are untenable. While it is true that under article 657 of the Civil Code the rights to the succession of a person are transmitted from the moment of his death, nevertheless, the property of the deceased comes to the heir charged with the debts of the deceased, so that he cannot alienate or charge it free of such debts until and unless they are extinguished either by payment, prescription, or satisfaction in one or the other of the modes recognized by law; the death of the owner of the property creates a statutory lien thereon for the payment of his just debts and obligations, upon the terms and conditions set out in the Code of Civil Procedure. (*Suiliong & Co. vs. Chio-Taysan*, 12 Phil., 13.) Hence, all that the heirs of Gregorio Amboy could mortgage to the defendant Cayetano Panopio was their equity in the property of the decedent consisting of the residue thereof, if any, after his debts and the expenses of administration are paid.

Appellants also contend that the trial court had no jurisdiction to pass upon the preference of the claim of Isabel Cordero because that was not the issue raised by the pleadings but whether or not the mortgage was simulated.

Such contention is also devoid of merit because even assuming that the mortgage was genuine it could not prevail over the statutory liens created by the death of the owner of the property that was subsequently mortgaged by his heirs.

The judgment of the trial court' is correct, it being understood that not only the claim of Isabel Cordero but also the expenses of administration and any other claim against the estate that may have been approved by the probate court are superior to the mortgage in question; and with that clarification said judgment is affirmed, with costs against the appellants. So ordered.

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

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