

JOSE T. PATERNO, EXECUTOR OF THE WILL OF MAXIMINO M. A. PATERNO, DECEASED, PLAINTIFF AND APPELLEE, VS. CATALINA SOLIS, ADMINISTRATRIX OF THE ESTATE OF GREGORIO AGUILERA, DECEASE...

G.R.No. 5025. February 10, 1910

Ponente: CARSON, J.

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CARSON, J.:

Judgment was rendered in this action in favor of the plaintiff and against the defendant, in their respective representative capacities, declaring the estate of Gregorio Aguilera, deceased, to be indebted to the estate of Maximino M. A. Paterno, deceased, in the sum of 237,116.85 pesos Mexican currency, together with interest amounting to 282,564.19 pesos Mexican currency, and providing for the foreclosure of a lien upon certain real estate to secure the payment of this indebtedness, created by Gregorio Aguilera, deceased, in two separate instruments, dated April 21, 1896, and July 3, of the same year.

Appellant makes the following assignment of errors:

- "1. In recognizing that the plaintiff Jose T. Paterno has legal capacity to bring this action.
- "2. In not stating in the judgment the fact or facts considered as proven, in order to sentence the defendant to the payment of the sum of 237,116.85 pesos, as principal, which with interest amounts to 282,564.19 pesos.
- "3. In stating that these amounts must be reduced to local currency at the official rate of the Government.
- "4. In sentencing the defendant to pay the sum of \$519,691.04, that is, to pay, in addition to the amount of the debt, interest at the rate of 10 per cent thereon from the 3d of July, 1896.
- "5. In rejecting the evidence offered by the defendant in support of her answer, especially when there was no objection on the part of the other party to its introduction, and in admitting all that adduced by the plaintiff, including Exhibits 6 and 7.
- "6. In sustaining the demurrer interposed by the plaintiff to the counterclaim of the defendant."

The first assignment of error is based upon three grounds: First, that the plaintiff being but one of three executors appointed in the will of Maximino M. A. Paterno did not join with him his coexecutors as plaintiffs in this action; second, that the will confers no authority upon the executors to institute or to maintain actions on behalf of the estate; and, third, that the period within which the executors appointed in the will were authorized to represent the estate of the deceased had expired long prior to the institution of this action on July 8, 1907, testator having died on the 26th day of July, 1900.

Article 895 of the Civil Code is as follows:

"Should the executors be appointed severally, only those acts performed by all of them together, or by one of

them legally authorized by the others, shall be valid; and, in case of disagreement, when the act has been agreed to by the majority."

Plaintiff and his coexecutors were authorized .by the express terms of the will to act as such, jointly and severally, and as appears from a duly executed power of attorney, made a part of the record in this case, plaintiff's coexecutors conferred upon him full and lawful authority to act for and on their behalf in instituting this action. Under the provisions of the above-cited article of the code, we are of opinion that he was clearly entitled to institute and maintain this action without joining his coexecutors with him as parties thereto.

The twentieth clause of the last will and testament of Maximino Paterno, deceased, is as follows:

"He authorizes his executors, after the death of the grantor, to take possession of his property, to administer it, to demand (reclamar), receive, and recover (cobrar) everything that may belong to him, to pay his just debts, to issue receipts, orders of payment (cartas de pago), cancel mortgages * * * extending the legal term of their appointment for such period as they may require for the fulfillment of their duties."

The authority thus conferred is manifestly sufficient to sustain the right of the executors to institute and maintain an action for the enforcement of a lien to secure a debt due to the estate. The right so to do is a necessary incident of the power to administer the estate of the deceased, and to make demands for (reclamar), receive, and recover (cobrar) all debts due thereto. (Manresa's Commentaries on the Civil Code, vol. 6, third edition, p. 754, discussing the provisions of art. 901 of the Civil Code.)

The contention of appellant that the period wherein the executors were authorized to act on behalf of the estate had expired prior to the date of the institution of this action, is completely disposed of by an examination of the will itself, which provides that the time limited by law for the administration of the estate by the executors is extended to all the time which might be necessary for the complete performance of their duties ("prorrogandoles el plazo legal del albaceazgo por el mayor tiempo que necesitaren para el cumplimiento de su cargo"). The provisions of article 904 of the Civil Code, which limit the time within which executors must perform their duties to one year, apply merely to cases where the testator has failed to prescribe the period during which his executors may act, and article 905 clearly provides that when a longer period has been fixed in the will, the provisions of the will prevail. The will having provided that the executors should have all the time necessary, we think that in the absence of objection by those interested in the distribution of the estate, and proof that all the time necessary for its administration by the executors had elapsed, they must be held to have lawfully continued in the exercise of their office up to the time of the institution of this action.

"That law 16, title 10, partida 6, and article 904 of the Civil Code are not applicable when the testator fixes no term for the appointment of the executors and grants them such ample powers for the whole period as may be necessary for the conclusion of the business intrusted to them." (Jurisprudencia Civil, vol. 83, of 1898, p. 494, complete compilation, published by the directors of the Revista General de Legislacion y Jurisprudencia.)

The second assignment of error is not sustained by an examination of the decision itself. After setting out that the various public instruments, wherein Gregorio Aguilera, deceased, acknowledged his indebtedness and created the lien which this action was brought to foreclose, were submitted without objection on the part of the defendant except upon the technical ground that the plaintiff was not the legal representative of the estate, and that no evidence was introduced by the defendant which tended to establish payment, the trial judge held that "the principal debt as set out and acknowledged in the instrument creating the lien is 237,116.85 pesos, bearing interest from the 3d day of July, 1896, at the rate of 10 per cent per annum and which interest amounts to date to 282,564.19 pesos." This finding is fully supported by an examination of the record, including these public documents, and was a sufficient finding to sustain the judgment declaring the amount of the indebtedness and directing the foreclosure of the lien in the event of the nonpayment of the debt.

The third assignment of error based upon the provision contained in the decision of the trial court that the amount of indebtedness set out in his findings of fact should be reduced "to the value of the present legal tender money of the Philippine Islands at the Government official rate in force this day (the date of the judgment)" must be sustained, since under the provisions of section 3 of Act No. 1045, it was his duty to "receive evidence as to the real and just value in Philippine currency of the currency named in the contract, debt, or obligation, including evidence of the local market value of such currency, its value in neighboring countries as currency, its value in the great markets of the world, its bullion value, and any other facts necessary to determine its true value," and to give judgment for the amount of the indebtedness thus reduced. The decision of the trial judge should, therefore, be modified by substituting for so much thereof as provides for the reduction of the amount stated in Mexican currency to Philippine currency "at the Government official rate," a provision that the reduction be made in the manner and form prescribed in section 3 of Act No. 1045.

The appellant bases his fourth assignment of error upon the construction which he insists should be given the instruments acknowledging the indebtedness and creating the lien, which formally set out that the maker of the instrument, Gregorio Aguilera, is in debt "to Maximino M. A. Paterno y Yamson two hundred and thirty-seven thousand one hundred and sixteen pesos and eighty-five centimos, which amount will bear interest at the rate of 10 per cent per annum, and he binds himself to pay it within the term of one year from the said day, 21st of April, in the form and under the same conditions stipulated in the original deed of May 27, 1891, and specified in the first paragraph hereof."

Appellant insists that this language is not a stipulation that the principal debt shall bear interest until paid, but merely a stipulation that it shall bear interest from the time of the execution of the instrument until the date when it fell due. We do not think it necessary to waste time discussing this contention, as the language of the above citation, taken together with that of the entire instrument wherein it appears, clearly discloses the intention of the parties thereto that the indebtedness acknowledged therein should bear interest, at the rate agreed upon, until paid.

The fifth assignment of error is based upon the refusal of the trial court to admit evidence offered by the defendant tending to disclose that a part of the lands upon which the lien was created by Gregorio Aguilera, deceased, was not the property of the deceased, and belongs to the defendant herself in her individual capacity. We think the court properly excluded evidence of this character offered by Catalina Solis as administratrix of the intestate estate of Gregorio Aguilera, deceased. She formally admitted the execution of the instruments creating the lien, wherein the deceased expressly declared that the property in question was his and that he had a right to execute the lien. Clearly neither he nor his personal representative could be heard in an action to enforce the lien thus created to deny the ownership of the property. Nor could she be permitted to submit proof of her own right or title in and to the property in question or any part thereof, since she was not a party to the action in her individual capacity. If she desired to set up an independent individual claim of ownership to part of the property which this action was instituted to foreclose, she should have had herself made a party to the action in her individual capacity, and thus submit her claim in due form for adjudication, at the same time securing relief from the duty of defending this action as administratrix, it appearing that her allegations of ownership of an interest in the land in question are necessarily in conflict with the interests of the estate which she represents in these proceedings. We may say, however, that this decision does not absolutely deprive her of her right so to do, since under the provisions of section 121 of the Code of Civil Procedure she may be permitted to intervene in this action at any time prior to the actual foreclosure of the lien and distribution of the proceeds, to assert her right in and to the property in question, and to set up her claim of title in the form and manner prescribed in that section, upon such reasonable conditions as the court may deem proper, in view of her negligence and failure so to do while the action was pending in the court below.

Exception was also noted to the action of the trial judge in excluding certain evidence touching the disappearance of the coffee crop in the district wherein the land in question is located, and the consequent inability of the debtor to exercise the election given him to settle his indebtedness in coffee at a stipulated price, but this evidence was so manifestly irrelevant that we do not deem it necessary to discuss the action of the trial court in excluding it.

The sixth assignment of error can not be maintained. It is based upon the fact that the trial judge sustained a demurrer to a so-called counterclaim. As a counterclaim, this pleading is wholly meaningless, and in so far as it is a mere repetition of the allegations by way of special defense, that part of the property upon which the lien was created by Gregorio Aguilera, deceased, was not his sole property but the property of the defendant, Catalina Solis, in her individual capacity, it has already been shown to be improper.

Twenty days hereafter let judgment be entered affirming the judgment of the court below, except in so far as it fixes the rate of exchange for the reduction to Philippine currency of the amount of the indebtedness as stated in Mexican currency, which should be modified by substituting for the rate of exchange indicated in the judgment a rate of exchange to be ascertained in accordance with the provisions of section 3 of Act No. 1045; and let the judgment thus entered further direct the return of the record in ten days from the date of entry of said judgment to the court below, where the proper proceedings will be had to ascertain the rate of exchange on the day of the former judgment, and an order entered modifying the former judgment accordingly. So ordered.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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