

ALFREDO CHANCO, ADMINISTRATOR OF THE ESTATE OF MAXIMO MADRILEJOS AND AGUSTINA RUTOR, PETITIONER, VS. ANACLETA MADRILEJOS, AND JOSE C. ABREU, JUDGE OF FIRST INSTANCE, RESPONDENTS.

G.R. No. 5049. January 19, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

This is an action of mandamus brought originally in this court. The defendants appeared and answered and the plaintiff has moved for judgment upon the pleadings.

The proceeding in the court below was one brought under the provisions of section 709 of the Code of Civil Procedure. That section is as follows:

"If an executor or administrator, heir, legatee, creditor, or other person interested in the estate of a deceased person complains to the court having jurisdiction of the estate, that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession, or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of, or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it, and may examine him on oath on the matter of such complaint; if the person so cited refuses to appear and answer such examination, or to answer such interrogatories as are put to him, the court may, by warrant, commit him to the jail or prison of the province, there to remain in close custody until he submits to the order of the court; and such interrogatories and answers shall be in writing and signed by the party examined, and filed in the clerk's office."

On the 4th of September, 1908, the plaintiff filed a petition in the Court of First Instance of the Province of Romblon-Capiz, asking that the defendant Anacleta Madrilejos be cited to appear and answer with reference to certain books, documents, and papers belonging to the estate, which the administrator claimed she had in her possession, and that when it was proved that they were in her possession, the court ordered their immediate delivery to the administrator. A citation having been issued, Anacleta Madrilejos appeared and filed a written answer denying that she had the documents in her possession. She was afterwards examined under oath in court as to the possession of these documents, when she again denied that she had them in her possession. The court thereupon ordered that her declaration thus made in open court be read to her and that she sign it, and that it be filed in the clerk's office. The plaintiff then offered to prove by other witnesses that notwithstanding the denial of the defendant she did have these books, documents, and papers in her possession. The court refused to admit this evidence and held that section 709 did not contemplate the trial of any issue of fact as to the actual possession of the property nor did it contemplate the making of any order by the court directing the delivery to the administrator of property which the court might decide to be in the possession of the defendant, but that when the defendant had appeared and been examined and her testimony had been signed by her and filed, the proceeding was ended. In

support of this view the court below cited Werner's American Law of Administration, volume 2, paragraph 325.

No further proceedings apparently were taken in the court below and the plaintiff has applied to this court for a writ of mandamus directing the judge to continue the proceeding in the court below and receive such proofs as the parties might offer.

Whether or not the order made by the court below was a final order made in special proceedings from which the plaintiff might have appealed, we do not decide, because we agree with the court below in his view concerning the construction of section 709.

It was said in the argument by the plaintiff that no question of title to property is involved in this proceeding, the defendant not claiming to be entitled to the possession of the documents referred to in the petition. But if the plaintiff's theory in regard to section 709 is correct, the court would be bound in a case where the defendant admitted his possession of personal property other than documents and papers and claimed to be the owner thereof to try that litigated question in this summary proceeding and determine what the rights of the parties were to the property involved. It will be observed that the section nowhere expressly gives the court any such power. The usual way of determining the rights of contending parties to the ownership of property is by the institution of an ordinary action. This is true whether the property in question belongs to the estate of a deceased person or not. That it was contemplated that this ordinary proceeding should be followed in cases relating to property of a deceased person embezzled or alienated by a third person is apparent from section 711, which is as follows:

"If a person, before the granting of letters testamentary or of administration on the estate of a deceased person, embezzles, or alienates, any of the money, goods, chattels, or effects of such deceased person, such person shall be liable to an action in favor of the executor or administrator of such estate for double the value of the property sold, embezzled, or alienated, to be recovered for the benefit of such estate."

There are provisions in section 709 which indicate that it was not the intention of the legislator to provide in that proceeding for a trial as to the ownership of property. It is not necessary in the petition filed therein to allege that the defendant has in fact concealed, embezzled, or conveyed away any property. It is sufficient to allege that the plaintiff suspects that he has done it.

It is to be noted, moreover, that the proceeding may be commenced by a creditor of the estate. It can not be supposed that the legislator intended to allow a creditor to litigate with a third person the title to property claimed to belong to an estate in a proceeding in which the administrator was not a party and in which the estate was not represented.

The subject-matter here in litigation has appeared in this court twice before. (*Chanco vs. Madrilejos*, 5 Phil. Rep., 319, and *Chanco vs. Madrilejos*, 9 Phil. Rep., 356.) It was not held in the latter case, as appears to be claimed by the plaintiff, that the proper proceeding for the recovery of the possession of these documents was that indicated by section 709. On the contrary, the court said at page 362:

"If the plaintiff desired to obtain possession of documents which were supposed to be in the possession of the defendant, it was his duty to proceed by the proper form of subpoena and not by the method followed in this particular case."

As the views above expressed dispose of the case upon its merits, it is ordered that judgment be entered in favor of the defendants, acquitting them of the complaint, with the costs against the plaintiff. So ordered.

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

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