

VICENTA FRANCO, PLAINTIFF AND APPELLANT, VS. C. W. O’BRIEN, DEFENDANT AND APPELLEE.

G.R. No. 5074. March 27, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of the city of Manila to recover the possession of certain pawn tickets issued by the Monte de Piedad of Manila to Luisa Peña and by her delivered to the plaintiff. The tickets were so delivered to the plaintiff by virtue of the following contract:

"We, the undersigned, Agustin G. Gavieres and Luisa Peña, by these presents sell, convey, and transfer to Doña Vicenta Franco y Memije for the sum of nine hundred and seventy pesos and ninety cents (\$970.90), thirty-one (31) pawn tickets for certain jewels pledged in the Monte de Piedad, numbered as follows: 25648, 25650, 25652, 25653, 25654, 25655, 25656, 25657, 25658, 25660, 25662, 25664, 25666, 25668, 25669, 25670, 25671, 25672, 25673, 25674, 25675, 25676, 25677, 25678, 25679, 25680, 25681, 25683, 25684, 25685, and 25686.

"Leaving in the possession of Doña Vicenta Franco y Memije the above thirty-one (31) pawn tickets, reserving the right to repurchase them until the 9th of January, 1907, by paying to Dona Vicenta Franco y Memije the sum of nine hundred and seventy pesos and ninety cents (\$970.90) aforesaid. In case of failure so to do, this sale shall become absolute and irrevocable.

"In testimony whereof, and as evidence of our agreement, we sign this document at Manila, this 9th day of October, 1906.

"This document was executed in duplicate.

(Signed) "LUISA PEÑA.

(Signed) "VICENTA FRANCO Y MEMIJE.

(Signed) "AGUSTIN GA. GAVIERES."

This case relates only to seven of the tickets mentioned in this contract.

The only evidence introduced by the plaintiff was the contract itself. The only evidence introduced by the defendant, in addition to a short statement by himself was parts of the record in case No. 5133 in the Court of First Instance of the city of Manila, which was a special proceeding for the settlement of the estate of Luisa Peña, deceased.

The court below decided the case in favor of the defendant, and the plaintiff has appealed.

The contract presented by the plaintiff showed, prima facie, a right in her to the possession of the tickets, whether the contract be considered as a contract of sale with the right to repurchase, or a contract of pledge, for in either case she had possession of the tickets and even in the case of pledge was entitled to retain that possession until the debt due her had been paid. But the defendant claims that this prima facie case made by the plaintiff has been

destroyed by the proceeding had in case No. 5133, and that in that case a decision was rendered in his favor which conclusively adjudicated the rights of the parties as to these tickets. The plaintiff was brought into that proceeding by a petition filed therein by the defendant as attorney for the administrator and heirs of Luisa Peña on the 31st of July, 1907. This petition alleged that the 31 pawn tickets were delivered to the plaintiff to secure the payment of 970.90 pesos and that the administrator and heirs had offered to redeem the same, but that the plaintiff had refused to allow such redemption and had sold or was about to sell the tickets. The prayer of this petition was as follows:

"Wherefore this representation asks that this honorable court issue an order directing the said Vicenta Franco immediately to show cause why she should not deliver said pawn tickets to the estate or into court pending the settlement of this matter and accept the sum for which they are given as security and for such other and further relief as may be just and proper."

On the same day the court made an order, a part of which was as follows:

"After a careful consideration of said case, it is hereby ordered that Doña Vicenta Franco shall appear before this court on the 31st day of July, 1907, at 3 p. m., to answer the aforesaid petition of the administrator, and to deliver to the court, in case it be so ordered at that time, the pawn tickets described in the petition of the above-mentioned administrator."

The court below said that this proceeding by which the plaintiff was brought into case No. 5133 was a proceeding had under section 709 of the Code of Civil Procedure, by virtue of which a person suspected of having property belonging to the estate of a deceased person may be cited and examined in regard to such property, and added, "it would be strange indeed if the court after finding as a result of such examination that the property belonged to the estate could not so declare."

This view of the court as to the construction of section 709 was erroneous as has been decided by this court in the case of *Chanco vs. Madrilejos*[1] (7 Off. Gaz., 230). In that case, speaking of section 709, the court said-

"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," and it was held in that case that, after the party cited had appeared, had been examined under oath, and her testimony had been taken down in writing and filed in the clerk's office, the proceeding was ended, and this court refused to issue a mandamus to the judge to proceed further with the case and receive evidence upon the disputed questions.

That decision determines that the power of the court in case No. 5133, so far as the plaintiff, a stranger to that proceeding, was concerned, was limited to causing her to appear and be examined. It had no jurisdiction in that probate proceeding to determine who was the owner of the property. That question should have been determined in an ordinary action brought by the administrator against the plaintiff.

It is claimed, however, that the plaintiff voluntarily appeared in that proceeding, submitted herself to the jurisdiction of the court, and asked that the court decide that she was the owner of the tickets. What was done on the 31st day of July, at 3 o'clock in the afternoon, at which time the plaintiff was ordered to be present, does not

appear. It seems that some order was then made directing her to deliver the pawn tickets to the clerk of the court, but such order does not appear in the record sent to this court.

On the 16th day of August, 1907, the plaintiff appeared by counsel in proceeding No. 5133, and presented an answer to the petition of the administrator and the heirs. In this answer she set forth fully all the facts relating to the transaction between her and Luisa Peña, deceased, and the heirs and administrator. The prayer of her answer was as follows;

"Therefore, we pray the court that the petition of the administrator and the heirs of the estate of Doña Luisa Peña that the pawn tickets in question be delivered to the court, be denied with costs against the plaintiff."

It will be seen that she did not ask for any affirmative relief. She simply asked that the proceeding be dismissed. The proceeding being one apparently under section 709, she was bound to appear and make some answer. Her appearance can not be considered as a consent that her right to the ownership of this property be tried in that proceeding. Neither do we think that her answer can be so considered for she merely asked that the proceeding be dismissed.

On the 23d of November, 1907, the judge filed a decision relating to the matter. It does not appear from that decision, nor from any other evidence before us that the plaintiff appeared at the trial or took any part in case No. 5133 after the presentation by her of her answer on the 16th day of August, 1907.

The judgment of the court below is as follows:

"It is therefore ordered and adjudged that the heirs to said estate, or the administrator thereof, are entitled to possession and ownership of the following described pawn tickets now in the hands of the clerk of the court upon payment to Vicenta Franco of the amount found to be due thereon, as hereinbefore stated, viz: 25650, 25654, 25660, 25664, 25668, 25679, and 25684."

Under the view which we have taken of the proceeding, the court had no power to render such a judgment, because in that probate proceeding it had no power to determine the rights of third persons, strangers to the estate, to property claimed to be owned by them. Whether the judgment would have been conclusive against the plaintiff if she had voluntarily appeared and submitted the matter to the decision of the court is a question which we are not called upon now to decide, but we hold that what was done by her was not an agreement that the court might decide the controversy between the parties in that proceeding.

There is another view of the case which leads to the same result. It will be seen that the court below did not decide that the administrator or the heirs were entitled to the immediate possession of the property. It only decided that they would be entitled to that possession when they, had paid the plaintiff what was due to her upon her claim. There is no evidence in the case to show that this sum has ever been paid. The court below held that it had been paid, or that it did not appear that it had not been paid, evidently holding that the burden of proof was on the plaintiff to show that such payment had not been made. This is contrary to the rulings of this court. It has always been held here that the burden of showing payment is upon the defendant. Moreover, no claim was made in the proceeding in case No. 5133 to the effect that this debt had been paid. The claim simply was that the heirs and administrator had offered to pay it. The judge himself must necessarily have found that the debt had not been paid, otherwise he would not have made the order that he did. The mere fact that the document on which the plaintiff relies was found among the records in case No. 5133 is no proof that it came from the possession of the defendant, and no proof that the plaintiff was paid.

On the 9th of October, 1907, the court made an order in case No. 5133 which is as follows:

This ease is now before the court by virtue of certain pawn tickets of the Monte de Piedad which it is alleged are the property of this intestate estate and are now deposited with the clerk of the court:

"It appearing that the term of said tickets expires today, and that it is necessary that the same be renewed by paying their interest;

"It is ordered that the clerk be and is hereby authorized to present said pawn tickets Nos. 25668, 25654, 25650, 25684, 25679, 25664, and 25660, and renew them by paying the corresponding interest, said tickets being subject to a lien in favor of the person who advanced the money to pay the interest."

It appears that 86 pesos were furnished by the defendant O'Brien for the purposes named in that order and that the tickets had been renewed.

On the 15th of February, 1908, the court directed the clerk to deliver the pawn tickets to the defendant O'Brien upon his filing a bond with the court. This was done and the pawn tickets are now in the possession of the defendant.

All of these proceedings relating to the payment of the interest and the delivery of the tickets to the defendant were had in a case to which the plaintiff was not a party. She is in no way bound by these orders.

The judgment must be reversed. It seems probable, however, from what appears in the answer of the plaintiff in case No. 5133, that the plaintiff may have extended the time for the repurchase of the tickets and that the defendant may be able to prove this fact by evidence other than that presented at the trial already had and to prove that within the time thus extended an offer of repurchase was made. A new trial should be granted to give the defendant an opportunity for making this showing.

The judgment is reversed and a new trial ordered. No costs will be allowed to either party in this court.

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

[1] 12 Phil. Rep., 543.

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