

JOSEFA FULGENCIO, PLAINTIFF AND APPELLEE, FERNANDO FULGENCIO, INTERVENER, VS. BENITA GATCHALIAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5772. January 23, 1912

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal raised through a bill of exceptions by counsel for the defendants, from a judgment rendered by the Honorable Judge Isidro Paredes.

On August 17, 1908, Josef a Fulgencio, the administratrix of the intestate estate of Dionisio Fulgencio, filed with the Court of First Instance of Pangasinan a written complaint, amended on the 26th of the same month, against Benita Gatchalian, Petrona Clavo, Emeteria Cristobal, Leoncia Belen, and Gabriela Lopez, the latter represented by her husband, named Panong, alleging that by virtue of letters of administration, issued in her behalf on July 22, 1908, in case No. 203, she entered upon the discharge of the duties of her office with full powers to take possession of and administer all the property of the estate of the deceased Dionisio Fulgencio; that, of the defendants, Benita Gatchalian is a widow, Petrona, Emeteria and Leoncia, single, and Gabriela, the wife of the said Panong; that Benita Gatchalian, by order of July 27, was appointed administratrix, conjointly with the plaintiff, of the estate of the said deceased, the required letters of administration having been issued to her, although, by a writing of the date of August 6, Gatchalian tendered her resignation as administratrix, which was accepted by the court, wherefore the plaintiff was the sole party upon whom it was incumbent by law to fulfill the said office; that the defendants Petrona, Emeteria, Leoncia and Gabriela were then in charge of a part of the estate of the deceased and were under the care and direction of the defendant Gatchalian; that the deceased, Dionisio Fulgencio, legally married, in second wedlock, the defendant Benita Gatchalian, with whom he did not have, during the time they were married, any surviving or posthumous child, and left only one legitimate son, by his first marriage, named Fernando Fulgencio, who was living with the plaintiff; that Dionisio Fulgencio, on marrying Gatchalian, brought the sum of 2,500 pesos Mexican currency as his own private property; that the conjugal partnership of the deceased Fulgencio with the said Gatchalian, and the aforementioned sum, produced, up to the time of the husband's death, several thousand pesos, all the property of the said partnership consisting of the following:

A.

A house of mixed material, constructed on land belonging to a third party and situated on calle Rizal of the pueblo of Bautista, assessed at

P400.00

B.

A lot containing a warehouse, built of strong materials and with four doors, on the same street and in the same

pueblo, assessed at

602.90

C.

A bakery, called "El Porvenir," with all its accessories and stock, and a cigar and cigarette stand, installed in the house previously described, the reasonable value of all of which is

600.00

D.

A bazar of foreign and domestic articles and a shop for the sale of cloth, installed in the said warehouse and reasonably worth

1,000.00

E.

A share of stock in a cockpit in the municipality of Bautista, worth

650.00

F.

Three carabaos, reasonably worth, altogether

120.00

G.

Various articles of household furniture, reasonably worth, altogether

100.00

H.

Four shops for the sale of cloth, situated in the market of Bautista, worth altogether, at a reasonable valuation

1,000.00

Total

4,472.90

That all the property afore-described belonged exclusively to the conjugal partnership of the deceased Dionisio Fulgencio and the defendant Benita Gatchalian, with the exception of the said sum of 2,500 pesos Mexican currency; that the property described in the first seven paragraphs above was under the control and in the legal possession of the defendants Benita Gatchalian, Petrona Clavo, Emeteria Cristobal, Leoncia Belen and Gabriela Lopez, and that the defendant Gatchalian was, with the exception of such property, insolvent; that a demand having repeatedly been made upon the defendants for the friendly delivery by them of the said property, they categorically refused to deliver the same, and that such property was liable to disappear and suffer material damage unless a receiver were appointed for its preservation and administration during the pendency of the suit, as indeed a part of the property in question had already disappeared.

For the foregoing reasons, the plaintiff asked that a person, whose name was not expressed, be appointed as receiver of the property described in the 8th paragraph of her complaint, and that the court order that, after taking oath and giving bond, the defendants deliver, to the receiver appointed, the property aforementioned; that in due season judgment be rendered declaring that Dionisio Fulgencio, on marrying Benita Gatchalian, brought to the marriage the sum of 2,500 pesos, which should be deducted from the community property; that the other property enumerated belongs exclusively to the conjugal partnership; that the plaintiff has a perfect right to ask for the appointment of a receiver who shall be entitled to the possession of the said property for the purpose of preserving and administering it, and that judgment be rendered in her behalf, against the defendants.

Counsel for the defendants, answering the preceding complaint, set forth: that the defendants Petrona Clavo, Emeteria Cristobal, Leoncia Belen, and Gabriela Lopez, instead of the erroneous names under which the last three appear to have been designated, denied absolutely each and all of the facts alleged against them in the complaint; and that the defendant Benita Gatchalian admitted the facts related in paragraphs 1, 2, 3, 4, and 6, but specifically denied those referred to in paragraphs 5, 7, 8, 9, 10, 11, 12, and 13, of the same.

As a special defense, Gatchalian added that her deceased husband, Dionisio Fulgencio, on his marriage with her, brought as property of his own only a few articles from his drug store, amounting to the sum of 100 pesos; that the defendant Gatchalian, on her marriage with the said deceased, brought 9,000 pesos in cash and 3,000 pesos in goods; that the profits obtained by the widow Gatchalian, in the business in which she engaged with the said sum, as well as with the 100 pesos brought in by her deceased husband, were squandered by the latter in his lifetime in gambling, and that consequently, the capital brought to the marriage by Gatchalian, far from increasing, was considerably diminished; that all the property designated under the letters A to G, paragraph 8 of the complaint, was acquired by the defendant Gatchalian with her own funds, except the effects mentioned under letters C and D, which were the subject matter of current accounts, yet unsettled, with various commercial houses in Manila; that the receivership for the property in litigation, as adjudged by the court, was unnecessary for the reasons already stated, and as shown by the affidavits attached, and that the defendant Gatchalian would suffer considerable and irreparable loss and detriment were an order not issued directing the discharge of the receiver; and she further petitioned the court for the discontinuance of the receivership of the property in question and the discharge of the said receiver from his office, in accordance with section 180 of Act No. 190, and offered to give bond, should the court so require, as security for the property in litigation and for any loss and damages which might be found in behalf of the plaintiff, and finally, asked that all the defendants be absolved from the complaint, stating that the property specified under letters A, B, C, D, E, F, and G did not belong to the conjugal partnership, but exclusively to the defendant, Benita Gatchalian, and asked that the plaintiff be sentenced to pay the costs.

The guardian of the minor Fernando Fulgencio, by a writing of October 10, 1908, set forth that the latter was the legitimate son of the deceased spouses Dionisio Fulgencio and Tecla Monzon who died intestate, the former in Calasiao on June 30, 1908, and the latter in the city of Manila on June 4, 1897; that the deceased Monzon was the first wife of Fulgencio, and left as her sole heir by operation of law the said minor, with property in Manila consisting of a native dry-goods store, which property was sold unconditionally by her deceased husband on December 30, 1897, for 3,000 pesos Mexican currency, half of which sum, or 1,500 pesos, belonged to the minor, Fernando Fulgencio, as the heir by force of law of the deceased Tecla Monzon, but remained in the control of his father Fulgencio during the latter's lifetime and was brought by him upon his marriage, in second wedlock, with the defendant Benita Gatchalian and included in the estate left by the deceased Dionisio Fulgencio, which estate was being illegally held by the defendant; that the said sum of 1,500 pesos should bear legal interest at six per cent per annum from December 30, 1897, until it should be delivered to the minor, its owner, who several times demanded of the plaintiff, Josefa Fulgencio, and of the defendants, the delivery to him of the said sum, with interest, in Philippine currency; that they refused to accede to the claim of the said minor, who thereby suffered

damage to the amount of 100 pesos; therefore, the guardian prayed that judgment be rendered sentencing the defendants Benita Gatchalian, Petrona Clavo, Emeteria Cristobal, Leoncia Belen and Gabriela Lopez to deliver to the said minor the said sum of 1,500 pesos Mexican currency, or its equivalent in Philippine currency, together with legal interest thereon, secured by the property of the intestate estate of the deceased Dionisio Fulgencio, to the payment of 100 pesos for loss and damage, and the costs.

The defendants, in answer to the complaint of the intervener, Fernando Fulgencio, made a specific and general denial of each and all of the allegations of each and all of the paragraphs of the said complaint.

As a special defense, they all set up the same allegations of the special defense contained in the written answer to the complaint of the administratrix, Josefa Fulgencio.

On motion for dismissal, they set forth: That the claim of the intervener has for its purpose the collection of money from the intestate estate of Dionisio Fulgencio, wherefore the said claim should, be dismissed in accordance with section 119, in connection with sections 669, 686, 700, and 703, of the Code of Civil Procedure; that the intervener, as the son and heir of the deceased Dionisio Fulgencio, is not entitled to sue the defendant administratrix until his share of the estate shall have been adjudicated to him, pursuant to section 704 of the Code of Civil Procedure, and therefore they asked for the absolution of the defendants from the dismissal of this case with respect to the intervener, with the costs against the former.

After the trial and the introduction of evidence adduced by the parties, the court, on December 29, 1908, rendered judgment absolving the defendant, Gabriela Lopez, from the complaint, and sentencing the defendants, Benita Gatchalian, Petrona Clavo, Emeteria Cristobal, and Leoncia Belen, to deliver to the plaintiff the property of the estate of the deceased Dionisio Fulgencio, which they were retaining in their possession, and to pay the costs, dismissed the other petitions of the complaint and answer as well as the claim of the intervener, Fernando Fulgencio, and discharged the receiver, Aproniano Santos, canceling the bond executed by the latter. To this judgment the defendants excepted and moved for a rehearing on the grounds that the evidence did not sufficiently support the judgment and that the latter was contrary to law, equity and justice, and announced their intention to appeal, which motion was overruled by an order of November 11, 1909. Exception thereto was taken by the defendants, and, the proper bill of exceptions being presented, the same was approved and forwarded to the clerk of this court.

It is sought in this litigation to have the judicial administratrix of the intestate succession of the deceased Dionisio Fulgencio given possession of the property of different kinds, which constitute the estate of the said deceased and are now under the control of the latter's widow, Benita Gatchalian, and the other defendants.

The said widow was appointed administratrix of the estate of her deceased husband, jointly with the plaintiff, Josef a Fulgencio, a sister of the latter; but the widow, Benita Gatchalian, expressly renounced the appointment, and Josef a Fulgencio remained the sole administratrix of the intestate estate and, in the fulfillment of the duties of her office, among other things asked that there be restored to her the possession of the property left by the deceased, consisting chiefly of conjugal partnership property, in order that she might preserve and administer the same as belonging to the estate of which she was the administratrix.

The defendants denied the allegations of the complaint, and one of them, the said widow, Benita Gatchalian alleged: that her deceased husband only brought, when they were married, certain drugstore effects which were worth about one hundred pesos, while she brought to the conjugal partnership 9,000 pesos in cash and goods to the value of 3,000 pesos, and acquired by use of her funds the property described in the complaint, expecting a portion thereof which was the subject matter of accounts current, yet unsettled, with various commercial firms of Manila; she therefore prayed that they be absolved from the complaint, and that the property described in the

complaint be held to be the private exclusive property of the widow, Benita Gatchalian, and not conjugal partnership property.

It is a fact, proved by the record, that the conjugal partnership formed between Dionisio Fulgencio, during his lifetime, and Benita Gatchalian and dissolved by the husband's death, owed several large debts and the testamentary executrix, in the fulfillment of her duty, has a right to claim the possession of all the property belonging to the estate of which she is the judicial administratrix, in order that, pursuant to law, she may make the required inventory and proceed, with the authorization of the court, to pay the debts duly presented to the commissioners of appraisal appointed in the special proceedings. It is an incontrovertible principle of law that, before proceeding with the division among the heirs, of the property left to them by the deceased, it is first necessary to settle the debts of said deceased predecessor in interest, without prejudice to the rights of the surviving widow, in relation to her own property which does not form a part of the conjugal partnership property nor is liable for the payment of the obligations existing against the conjugal partnership.

Evidence was introduced to prove that the widow, Benita Gatchalian, on contracting marriage with the now deceased Dionisio Fulgencio, brought to the conjugal partnership, property worth about twelve thousand pesos, being paraphernalia of the wife's exclusive ownership; but once included among the property of the conjugal partnership, a demand for its exclusion on the part of its legitimate owner could properly be made only after the formation of the inventory of the property that constitutes the estate of her deceased husband.

If the widow Benita Gatchalian now held the office of testamentary executrix, it would be her duty to make the inventory of the property belonging to the marriage dissolved by the death of her husband, and she would settle the claims which in any and all matters might be addressed to her against the intestate succession of her deceased husband; however, the duties of the office of testamentary executor being performed by another person, and there being debts of considerable amount to settle, the judicial administratrix is entitled to demand that she be placed in possession of the property that forms the assets of the intestate estate, in order that she may proceed to inventory the same and to pay the legitimate debts duly claimed in the special intestate proceedings, exception being made of and without prejudice to the rights of the widow with respect to her paraphernal property, which is not liable for the debts of the conjugal partnership.

At the beginning of the hearing of this case, the attorneys for both parties agreed that the following facts should be considered as proven:

"1. That the dry-goods stores managed by the defendants Petrona Clavo, Emeteria Cristobal and Leoncia de Belen, are inscribed in the tax register in the name of the deceased Dionisio Fulgencio;

"2. That the property, said in the answer to be the subject matter of accounts current and which according to the complaint consists of a bakery, a cigar and cigarette stand, a bazar for the sale of foreign and domestic articles, and a dry-goods shop, is also inscribed in the said tax register in the name of the same deceased, Dionisio Fulgencio; and

"3. That all the other property described in the complaint, except the drygoods store managed by the defendant Gabriela Lopez, was acquired during the marriage of the said Dionisio Fulgencio and Benita Gatchalian and is in the name of the said Dionisio Fulgencio in the respective documents pertaining thereto."

This agreement lends greater weight to the plaintiff administratrix's claim, because, if the property at present under the control of the widow is of a paraphernal nature, it must necessarily be inventoried as belonging to the estate of the deceased Dionisio Fulgencio.

Article 1407 of the Civil Code provides:

"All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife."

Among other obligations expressly specified in article 1408 of the same code, as being those for which the conjugal partnership shall be liable, are the debts and obligations contracted during the marriage.

If it be not proven conclusively that the property claimed by the administratrix is paraphernalia and belongs exclusively to the defendant Benita Gatchalian, it must be deemed to be conjugal partnership property, liable for the debts of the conjugal partnership, and therefore, by virtue of the preinserted agreement, the administratrix has a right to be placed in possession of the same for the purpose of its inventory in the special proceedings, without prejudice to the rights of the widow Benita Gatchalian in relation to her own property or to that of the nature of paraphernalia, for, once the inventory of the property of the intestate estate has been made, the latter will have the same opportunity to claim the exclusion of the property belonging to her exclusively and that of the nature of paraphernalia.

For the foregoing reasons, wherein the errors assigned to the judgment appealed from have been refuted, and admitting those alleged with relation to Gabriela Lopez and Fernando Fulgencio, it is proper, in our opinion, to affirm as we do hereby affirm the said judgment, with the costs against the appellant.

Mapa, Johnson, Carson, and Trent, JJ., concur.

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