

JOSE MARIN, ADMINISTRATOR AND APPELLANT, VS. VALENTINA NACIANCENO, CLAIMANT AND APPELLEE.

G.R. No. 5939. March 29, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is a proceeding to compel the payment of a legacy. The legacy over which this action arose was bequeathed to Felisa Hernandez, who died before the testatrix, leaving surviving her the petitioners in this case her only heirs at law and next of kin. The testatrix did not alter her will in respect to this legacy after the death of the legatee, although she was cognizant thereof, the deceased legatee being a near relation.

Opposition to the payment of this legacy was made by the executor of the will upon the ground that the legacy having been to Felisa Hernandez and she having died before the testatrix, the legacy necessarily lapsed because, under the provisions of the Civil Code, the heirs and next of kin of a deceased person take only such property as was vested in the deceased at the time of his death; that the legacy not having vested before the death of the legatee such legatee had no interest therein which could pass to her heirs and next of kin.

The petitioners rely for relief, and for escape from said provisions of the Civil Code, upon section 758 of the Code of Civil Procedure. That section reads as follows:

"When a devise or a legacy is made to a child or other relation to the testator, and the devisee or legatee dies before the testator, leaving issue surviving the testator, such issue shall take the estate so given as the devisee or legatee would have done, if he had survived the testator, unless a different disposition is required by law."

The executor asserts that this provision of the code is inapplicable by reason of the fact that it is in direct opposition to express provisions of the Civil Code above referred to, and that said section having as a part thereof the sentence, "unless a different disposition is required by law," indicates clearly and necessarily that it was the intention of said section to exclude from its operation said provisions of the Civil Code.

In our opinion this construction would repeal and annul the section absolutely. The sole and whole object of the section is to avoid the effects of the very provisions of the Civil Code referred to. No other purpose is possible. It could not have been, then, the intention of the legislature to destroy by said section the force of said provisions and, in the very section destroying those provisions, incorporate a sentence resuscitating them. It would amount to an absurdity to say that the legislature enacted a law and repealed it at the same time.

If the petitioners are not entitled to the payment of this legacy, then section 758 has absolutely no value and can produce no results. It might as well never have been written. It is a most flagrant violation of the rules of statutory construction to give to a statute a meaning which, in effect and in reality, repeals it altogether, where any other reasonable construction is possible. (*Farmers Bank vs. Hale*, 59 N. Y., 53, 59; *Sutherland, Statutory Construction*, paragraph 221.)

We do not now decide what is the meaning of the phrase referred to, nor to what it refers. That is unnecessary to a

decision of the case before us. We now simply hold that it will not bear the construction given to it by the opponents of the motion before us.

We are of the opinion that the order of the court below requiring the payment of the legacy as petitioned is correct under the law and must be affirmed.

The judgment appealed from is, therefore, affirmed, with costs.

Carson and Trent, JJ., concur.

Johnson, J., concurs in the result.

DISSENTING

TORRES, J.,

Though the undersigned respects the majority opinion concerning this most important question of law decided in the preceding decision, he can not be convinced that, by section 758 of the Code of Civil Procedure, various articles of the Civil Code - a collection of substantive laws which comprises an entire, complete system of legislation on the testate and intestate succession of a deceased person and on the: rights established by statute, as well those pertaining to heirs by force of law, to voluntary heirs, and to different kinds of legatees recognized by law - were repealed.

The said section of the Code of Civil Procedure provides:

"Devisee dying before testator. - When a devise or a legacy is made to a child or other relation to the testator, and the devisee or legatee dies before the testator, leaving issue surviving the testator such issue shall take the estate so given as the devisee or legatee would have done, if he had survived the testator, unless a different disposition is required by law."

In none of the sections of the said Code of Procedure does there exist, in my opinion, any provision whatever contrary to that of the above section, but there are in force various articles of the Civil Code which are entirely opposed to the provisions, partly, of the said section 758, and I say partly because I do not wish to refer to the legacy left by a testator to his son, inasmuch as this latter, according to the Civil Code, is his heir by force of law.

My objection concerns that other relative and legatee who should die before the testator and whose descendants surviving him are entitled, according to the said section 758, to inherit from the said testator and to succeed him in his estate, as if they themselves were his legatees; because this provision is entirely opposed to various articles of the Civil Code which should be respected, as ordered in that very section 758 by the words "unless a different disposition is required by law," therein contained.

The plaintiffs who claim the legacy made by the testatrix, Vicenta Hernandez, in behalf of their mother, Felisa Hernandez, a niece of the former, exercise the right of the heirs or successors of the said legatee, and not that of the successors of the testatrix, and as the said legatee died before the testatrix and, therefore, could not have acquired any right whatever to the said legacy, on account of her having died before the testatrix, it is not understood how the aforementioned plaintiffs have been able to acquire a right to the legacy bequeathed to their mother, when she herself, during her lifetime, could not acquire such a right to the said legacy, inasmuch as no provision was made in the will that, in case of the death of the legatee, her children should succeed her in the legacy as if they were the legatees themselves. The right of the legatee is equal to that of the voluntary heir, and article 766 of the Civil Code prescribes:

"A voluntary heir, who should die before the testator, the person disqualified to inherit, and the person who renounces the inheritance, do not transmit any rights to their heirs, excepting the provisions of articles 761 and 857."

These exceptions do not refer to the case of an heir who dies before the testator.

So that the legatee who dies before the testator, as he acquired no right whatever to the legacy, could not in turn transmit such a right to his heirs; he could, while he lived, have entertained the hope of receiving the legacy after the death of the testator, but, in the case at bar, that hope could not be converted into realization because, when the legatee died, the owner of the property out of which the legacy was to be made, still lived, and the premature death of the legatee invalidated her right and she was unable to transmit it to her successors, in this case the children of Felisa Hernandez who claim the legacy of the P2,000 to which legacy their deceased mother was unable to acquire any right whatever, and, therefore, could transmit none to them, for the testatrix was still living.

With respect to the right of representation, article 924 of the Civil Code provides:

"The right which all the relatives of a person have to succeed him in all the rights which he would have if alive, or which he might have inherited, is called the right of representation."

Article 925 of the same code prescribes:

"The right of representation shall always take place in the direct descending line, but never in the ascending.

"In the collateral line it shall take place only in favor of the children of brothers or sisters, whether they be of the whole or half blood."

The plaintiffs are children of the legatee, Felisa Hernandez, a niece of the testatrix, and therefore can not allege any right whatever of representation with respect to the legacy which their said mother, the legatee, could not receive, because she died before the testatrix, who was only an aunt of hers.

With regard to the question at issue, it must be borne in mind that civil personality is extinguished by the death of the persons. (Art. 32, Civil Code.) The act by which a person disposes of all his property or of a part of it, to take effect after his death, is called a will. (Art. 667 of the same code.) The rights to the succession of a person are transmitted from the moment of his death. (Art. 657 of the same code.) The plaintiffs were unable to allege what right could have been transmitted to them by their mother Felisa Hernandez at the moment of her death, in support of their present claim for the legacy left by the testatrix who survived the said Hernandez.

The case at bar concerns a pure and simple legacy, without condition whatever nor term for its delivery, and, with respect to this class of legacies, article 881 of the Civil Code prescribes:

"A legatee acquires a right to the pure and simple legacy from the death of the testator, and transmits it to his heirs."

The legatee, Felisa Hernandez, having died before the testatrix, Vicenta Hernandez, she, the former, could not transmit to her children any right in the legacy of the P2,000 which the latter left in her will.

All the requirements of the said articles and others of the Civil Code, which are in perfect harmony one with another, and form one methodic set of provisions relative to the testate or intestate succession of a deceased person and to the right to inherit by will or by force of law, are those which were expressly respected by the words "unless a different disposition is required by law," contained in the said section 758 which, while it is in accord with the substantive law as regards the legitimate successor of the child and recognizes the right of representation of the nephew of the testator, appears to be in manifest conflict with the said law as regards a relative, as in the case of Felisa Hernandez where her children after her death, which occurred while the testatrix was still living,

now claim to be entitled to, receive the legacy left by the latter, not to them, but to their mother, for whom the law allows no right of representation in connection with the said legacy.

The said Act No. 190 lacks a preamble, and even if it had one it would still be inexplicable because, immediately following the provision contained in the said section 758, which destroys categorical provisions of the Civil Code, and in the last lines thereof appear the words "unless a different disposition is required by law." If we are to regard the sense and meaning of these words, we can not but understand that provisions of the Civil Code must be observed and complied with that are notably contrary and opposed to that contained in the oft-cited article 758 of the Code of Civil Procedure, which code can not properly repeal various articles of the Civil Code by the proviso contained at the end thereof. The plaintiffs are not testamentary legatees by virtue of the aforesaid will of Vicenta Hernandez.

For the foregoing reasons it should have been decided, in our opinion, and found that, with a reversal of the judgment appealed from, the plaintiffs, the children of Felisa Hernandez, are not entitled to receive by right of representation the legacy left by Vicenta Hernandez in her will, and, therefore, the plaintiffs' prayer should have been denied, without special finding as to the costs.

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