

FAUSTINO LICHAUCO, IN HIS OWN NAME AND IN BEHALF OF HIS COHEIRS, EUGENIA, CLARA, JULITA, LUISA, CRISANTO, ZACARIAS, GALO AND TIMOTEA LICHAUCO, PLAINTIFFS AND APPELLANTS, VS. ANA...

G.R. No. 6513. December 15, 1911

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 16th of July, 1908, the plaintiffs commenced an action against the defendants, in the Court of First Instance of Pampanga, for the purpose of recovering the sum of P1,657.75, with interest at 12 per cent from the said 16th of July, 1908.

To this complaint the defendants demurred, which demurrer was, on the 23d of November, 1908, sustained by the Hon. Julio Llorente, judge. On the same day (the 23d of November, 1908) the plaintiffs filed an amended complaint against the defendants. The complaint was accompanied by Exhibits A, B, C, and D,

Later the defendants presented a demurrer which was overruled. On the 2d of July, 1909, the defendants presented a general and special answer, in which they prayed to be relieved from all liability under the complaint, with costs against the plaintiffs.

After hearing the evidence adduced during the trial of the cause; die Hon. Julio Llorente, judge, on the 10th of February, 1910, rendered a judgment in favor of the plaintiffs and against the defendants for the sum of P610.22 Philippine currency, with interest at 6 per cent from the 16th of July, 1908, with the provision that if the defendants failed to pay the said amount, the plaintiffs were entitled to sell at public auction one-sixth part of the land mortgaged under and by virtue of a contract between Mariano Alejandrino and Cornelia Laochangco, dated the 30th of July, 1886. (See Exhibit A.) Mariano Alejandrino was the father of the defendant,. Ana Alejandrino, and Cornelia Laochangco was the mother of the plaintiffs. Mariano Alejandrino and Cornelia Laochangco are both dead.

From the judgment of the lower court the plaintiffs appealed.

From an examination of the record, the following facts seem to be true:

First. That on the 30th of July, 1886, the said Mariano Alejandrino borrowed from the said Cornelia Laochangco the sum of P6,000 Mex., under certain conditions mentioned in the said contract. (See Exhibit A.)

Second. That on the 15th of August, 1895, the said Mariano Alejandrino and Cornelia Laochangco liquidated the amount due under the said contract, Exhibit A, and it was found on that date that there was still due under the said contract the sum of P4,115.75. On the same day (August 15, 1895) the said Mariano Alejandrino borrowed from Cornelia Laochangco the additional sum of P234.25, making a total amount due of 4,350 pesos Mex. (Exhibits B.)

Third. That later, the exact date not appearing of record, the said Mariano Alejandrino died, leaving six children,

the defendant herein, Ana Alejandrino, being one of them.

Fourth. That on the 15th of December, 1906, all of the children of the said Mariano Alejandrino, except the defendant herein, Ana Alejandrino, entered into a contract, by the terms of which they obligated themselves to pay to the plaintiffs the balance due from their father, Mariano Alejandrino. (See Exhibit D.)

Fifth. That on the 23d of April, 1898, the amount due on the said contract of July 30, 1886, was again liquidated and it was found that there was remaining due and unpaid on the said contract, the sum of P4,465. (See Exhibit C.)

Under the provisions of Exhibit B (the contract which was entered into by all of the heirs of Mariano Alejandrino, except the defendant herein, Ana Alejandrino), they obligated themselves to pay their proportional amount of the indebtedness of their father, together with 12 per cent interest, the plaintiffs claim that the amount due on the contract of July 30, 1886, at the time of the commencement of the present action (the 15th of July, 1908), together with the interest amounted to the sum of P9,946.50, and that the defendant herein, Ana Alejandrino, was liable for one-sixth part of said sum, or the sum of P1,657.75.

The defendant, Ana Alejandrino, was not a party to the contract represented by Exhibit D. She did not agree to pay 12 per cent interest on the amount remaining due on the 23rd of April, 1898, of the debt between her father and the plaintiffs herein. There is no proof in the record that any demand was ever made upon her for the payment of her aliquot part of the balance found to be due on the 23rd of April, 1898, either judicially or extra judicially. She was, therefore, not liable to pay interest on her aliquot part of the said amount. The lower court correctly held, however, that she was liable for the payment of one-sixth part of said amount by virtue of her having accepted her proportional part of the property involved and covered by the original contract between her father and the mother of the plaintiffs, bearing date of July 30, 1886, or for the sum of 744.16 pesos Mex., which, reduced to conant, amounted to P610.22, the amount for which the lower court rendered judgment, with 6 per cent from the 16th of July, 1908. While we have not discussed the assignments of error in detail, we believe that we have answered each of them in effect. We have discussed the questions upon their merits as they are presented in the record. There is a question of parties, however, which has not been presented, which we can not overlook.

It will be noted that Faustino Lichauco has brought this action for himself and in representation of his co-heirs. So far as the record shows, the co-heirs have no knowledge of the pendency of the action. Faustino Lichauco shows no authority for representing his co-heirs, except the mere allegation in the title of his complaint. He speaks 'of himself as the plaintiff. The attorney signs himself as attorney for the plaintiff—not for the plaintiffs. Faustino Lichauco represents himself and his co-heirs, and the attorney-at-law, who signs the complaint, represents as he alleges "the plaintiff." There is nothing in the record which shows that the co-heirs are not capable of representing themselves. There is nothing in the record which shows that they ever gave their consent to the commencement of the present action. It may be assumed that they did, but this is not sufficient. The Code of Procedure in Civil Actions provides that in Courts of First Instance a party may conduct his litigation personally or by the aid of a lawyer, and his appearance must be either personal or by the aid of a duly authorized member of the bar. (Sec. 34, Act No. 190.) In the present case the co-heirs are neither in court personally nor by a duly authorized member of the bar. Therefore they are not in court at all, and any judgment which we might render in the present case, with reference to the heirs, either pro or con, would in no way be binding upon them. (*Espiritu vs. Crossfield and Vicente Guasch*, No. 5313).[1]

The present case seems to have been tried in the lower court upon the theory that all of the interested parties were present, and for that reason we have discussed the case upon its merits, believing that the parties would deem further litigation unnecessary, once being informed of the views of this court upon the facts presented. This

assumption, however, is based upon the ground that even though the co-heirs had been represented in the trial of the cause, in accordance with law, no other or different evidence would have been adduced.

Therefore, following the decision of this court in the case of Lichauco vs. Limjuco (19 Phil. Rep., 12), the judgment of the lower court is hereby set aside, unless the coheirs of Faustino Lichauco, within a period of ten days from notification of this decision, shall appear personally or by attorney in the Court of First Instance of the Province of Pampanga, either as plaintiffs or defendants, and in writing indicate their full conformance with the proceedings had in the present cause. In which case, the Court of First Instance of the Province of Pampanga is hereby directed to enter a judgment confirming the judgment heretofore rendered by said court on the 10th day of February, 1910.

Mapa, Carson, and Moreland, JJ., concur

[1] Resolution of the Supreme Court, Dec. 10, 1909; see Robinson vs. Villafuerte, 18 Phil, Rep., 171.

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