

## REMIGIA HERNANDEZ ET AL., ADMITTED AS INTERESTED PARTIES IN SECOND INSTANCE, PLAINTIFFS AND APPELLEES, VS: LEONCIO BARCELON, DEFENDANT AND APPELLANT.

*G.R. No. 7323. December 11, 1912*

Ponente: TORRES, J.

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### TORRES, J.:

Appeals by Leoncio Barcelon, judicial administrator of the estate of the deceased Lucia Villalon from the orders of March 21, April 30, October 31, and November 9, 1910, issued by the Honorable Judges Estanislao Yusay, F Santamaria, and Simplicio del Rosario.

By a document of October 26, 1908, presented in the testamentary proceedings of the intestate estate of the said Lucia Villalon, Remigia Hernandez represented:

That about the year 1898 she held by lease the fishpond situated in the place called Wawang Dap-dap, barrio of Santa Ines, pueblo of Bulacan, belonging to the said Villalon, while the latter was still alive; with a approximately 36 hectares and bounded on the north by the main river, on the south by the fishponds of Tomas Perez Pascual, on the east by Manila Bay, and on the west by the fishpond of Mariano Gonzalez;

That before this lease had expired in 1900 Tomas Salvador, administrator of the property left by the deceased Villalon, extended same for another year in petitioner's favor;

That after the Supreme Court had declared to be the heirs those who now represent themselves as such, they recognized the lease extended by the administrator. Salvador and also extended it in petitioner's favor;

That Leoncio Barcelon, the present administrator of the property of the intestate inheritance, received the greater part of the rent, having all the receipts therefor in the name of said heirs;

That having learned from the newspaper "El Renacimiento" that property leased had been advertised for sale from the 14th of the said month of October, on condition that for its validity it be approved by the Court of First Instance, she requested the court to disapprove the same in case the heirs did not recognize her lease, thus to prevent the great damage that would be done her if said sale at public auction were realized.

No action on the foregoing motion appears in the record, before the administrator, Leoncio Barcelon, and Faustino Tansimsim, in representation of the latter's mother, Remigia Hernandez, according to the power of attorney a notarial instrument duly exhibited, presented a document in the same testamentary or intestate proceedings, setting forth that by mutual agreement they had decided to terminate, the last question raised by the said Hernandez, in the way set forth in the instrument signed by them on October 29, 1908, and begged the court to approve said agreement in the terms in the same was drawn up.

It appears in said document that Remigia Hernandez, through her son and attorney in fact, Faustino Tansimsim, offered to buy the said fishponds Wawang Dap-dap, the auction whereof was set for October 31, 1908, for the

price of P12,000, without prejudice to her bidding more at the sale she so wished, and under the following conditions: (1) That P2,115.50, advance to various heirs on account as rent for the said fishpond, be deducted from the price thereof; (2) that the payment of the balance, P9,885, or more if she desired to bid it be made in this manner: The first installment, September 1, 1909, P2,471.25; the second installment, Sept 1910, P2,471.25; the third installment, September 1, 1911, P2,471.25; a fourth installment, September 1, 1912, P2,471.25; (3) that if any third should bid, the court was then requested to authorize the administration pay first of all the P2,115.50 to the creditor Remigia Hernandez, or in other case the sale be made under the condition of respecting the pending lease, or paying the creditor said sum of P2,115.50; with inter 12 per cent a year from September 1, 1902, the lease being thereby terminated from said sale. This agreement was submitted to the court approval.

By order of October 21, 1909, at the request of the judicial administrator Leoncio Barcelon, he was authorized to proceed with the sale at public auction of the two estates, one situated in Wawang Dap-dap and the other in Camance, municipality of Bulacan, after due publication of the conditions of the sale. The former should be sold for cash, provided offer be not less than P11,600, or P12,125, payable in two installments, cash and, the other half at the end of a year. In this latter case the estate should be held under special mortgage for completion of the payment, with the further condition that the sale could be rescinded at option of the heirs, if the second installment was not paid. The sale of second estate should also be for cash at the rate of P2,050 or over in increasing proportion. It was understood that the sale of the two said estates should be approved by the court, with the further condition that after the sale had been approved the administrator should record the amount thereof with the clerk of the court for the purposes stated in the instrument of the administrator Barcelona requesting authorization therefore.

The auction of the two estates was held between 11 and 12 a. m., November 30, 1909, according to the notarial certificate on pages 17 to 20 of the record of proceedings, and the judge then, by order of December 7 of the same year, page 21 of the same record, approved the sale of the property in Wawang Dap-dap for P13,000 offered by the purchaser Mariano Gonzalez, with the condition that half of this sum, or P6,500, be paid Gonzalez at the time of the sale and the other half, the same sum, at the end of March, 1910, under the express condition of recording in the deed of sale that if the said purchaser Gonzalez failed to pay said P6,500 the last day of March, 1910, the heirs of Lucia Villalon could at their rescind the sale, without prejudice to making the whole estate constitution special mortgage by the purchaser for the payment of said P6,500.

The sale of the second estate was likewise approved for P3,000 offered by Isabelo Antonio and payable at the time of executing the deed of sale. With reference to the sums the purchaser Isabelo Antonio alleged to have advanced to various heirs, he would be accorded his legal rights when should present a final statement of said advances approved by the heirs. The administrator Barcelon was authorized to execute the prop deeds of sale of the two said estates under the foregoing conditions, a to return to the bidder Mariano Escueta the check for P600; he had deposited as a guaranty for his bid, and finally said administrator was ordered to deposit immediately the sums paid upon execution of the deeds of sale by the purchasers Gonzalez and Antonio with the clerk of the court or in the Banco Espanol-Filipino subject to the order of the court as a sum belonging to the intestate estate of the deceased Lucia Villalo pending in said court, in the latter case submitting the deposit slip from banking institution.

Hearing in the proceedings relative to approval of the agreement of October 29, 1908, between Leoncio Barcelon and the special agent of Remigia Hernandez was by order of court set for 8 a. m. of March 21, 1910, and the parties summoned thereto; On said date the court of Bulacan held the hearing, where to appeared the representative of Remigia Hernandez but not the administrator Leoncio Barcelon or his counsel, and said representative of Hernandez requested the court to approve said agreement of October 29, 1908. After Faustino Tansimsim had acknowledged under oath the authenticity of the document setting forth said agreement, the court

by order of March 21, 1910, page 31, approved said agreement in all its parts, directing that from the sum of P13,000 which Mariano Gonzalez had to pay as the price of the fishpond Wawang Dap-dap and which should be on deposit with the clerk or in the Banco Espanol-Filipino at the disposal of the court, there be deducted the sum of P2,115.50 with interest at 12 per cent a year from September 1, 1902, to the date of deduction thereof, and paid to Remigia Hernandez.

At the request of the latter or her counsel, the court, by order of April 1910, directed that said administrator be required to obey the previous order of March 21, by depositing the sum of P5,585, part of the price of said sale, in the Banco Espanol-Filipino at the disposal of the Court Instance and not of the said administrator, Leoncio Barcelon.

On the same date, April 30, 1910, the administrator Barcelon presented a written petition for complete revocation of the part of said order of March 21, 1910, directing payment to Remigia Hernandez of the sum of P2,115.50 and asking that he be given an opportunity to prove to the court that such debt did not exist, wherefore he excepted to said resolution for the reasons set forth in his petition, page 37.

By another instrument of the same date the administrator Leoncio Barcelon stated that he did not accept the part of the order of April 13, 191 (this should be April 30), which directed the delivery of the proceeds of the sale of said fishpond to other persons, even though they might be officials, wherefore he excepted to said resolution and asked that it be modified by setting aside that portion referring to deposit of the fund question, thus leaving free the administrator, who was under bond of P15,000 to answer for the administration of the property of said inheritance so that he might fulfill his duty as administrator thereof.

Under date of July 2, 1910, counsel for Remigia Hernandez presented a motion requesting: (1) That the administrator Leoncio Barcelon be punished for contempt for not having complied with the directions of the court in its orders of March 21 and 26 and April 30; (2) that the said order of March 21, 1910, be executed by issuing the corresponding order of execution up to the sum of P5,585, deposited in the Banco Espanol-Filipino, for the sum of P2,115.50 with interest at the rate of 12 per cent a year from September 1, [1902] until date of payment. It was alleged that after the court had ordered deposited in the Banco Espanol-Filipino, at the disposal of the court, or with the clerk of the court, the P13,000, the price of the fishpond Wawang Dap-dap, after deduction of the said sum of P2,115.50 with interest at the rate of 12 per cent a year from September until the date of deduction thereof and payment to Remigia Hernandez, the judicial administrator, Leoncio Barcelon, had not made the deposit with the clerk or in the bank, wherefore the court should reiterate its previous order of March 26, but notwithstanding this, the administrator Barcelon on April 27 following deposited in the Banco Espanol-Filipino as an account at his own disposal the sum of P5,685; and in spite of the fact that by another order of April 30, at the request of the party interested compliance with said order of March 21 was again directed, the administrator Barcelon had without legal reason or ground failed to comply with the foregoing orders, disregarding them entirely, and therefore he was guilty of contempt, aside from the damages he had caused the creditor Hernandez, who had not to date collected her debt.

After hearing on this motion with the parties present, page 57, the court by order of October 31, 1910, page 59, declared that there was no reason then for punishing Leoncio Barcelon for contempt and ordered him to comply with the provisions of the orders of March 21 and October 31 within the period of three days from notification of this resolution by delivering Remigia Hernandez said sum with the interest stated up to the date of delivery. Counsel for Leoncio Barcelon excepted to this decision.

By an instrument of November 7, 1910, counsel for the administrator Barcelon after having requested postponement of the date fixed for delivery of certain sum and interest to Remigia Hernandez, page 65, requested for the reasons he gave that the previous decision of October 31, 1910, be reconsidered and set aside, and that a date then be set for a regular hearing of the case in accordance with the provisions of the Code of Civil Procedure,

which request was denied by order of the 9th of the same month and year, whereupon said counsel for the administrator Barcelon excepted.

By virtue of the decision of the court on January 5, 1911, regarding the by preliminary injunction requested by the administrator Barcelon, and o request made by Hernandez's counsel, the court required the administrator Barcelon to file a bond of P4,000, and then admitted the appeals interposed by him against said order of March 21, 1910, and the other issued as a consequence thereof on April 30, October 31, and November 9 of the same year, 1910.

This case deals with fulfillment and execution of an agreement entered in between Leoncio Barcelon, administrator of the property of the deceased intestate Lucia Villalon and Faustino Tansimsim, special attorney in fact for his mother, Remigia Hernandez, lessee of the fishpond Wawang Dap-dap, belonging to said intestate, as it appears in an instrument dated October 29, 1908, signed by the contracting parties and approved by the order of March 21, 1910.

Said agreement is really a compromise designated in law as a consensual contract, reciprocal and for a consideration, whereby the parties settle means of mutual concessions a question that seems doubtful to them, for article 1809 of the Civil Code says:

"A compromise is a contract by which each of the parties in interest, by giving, promising, or retaining something, avoids the provocation of a s terminates one that has already been instituted."

It was to the interest of the administration of that intestate estate to the public auction among other things the said fishpond Wawang Dap-dap, which its owner, Lucia Villalon, had in her lifetime leased to the sai Hernandez, and for this reason the latter, to avoid the great damage tha would be done her by the sale of the. said fishpond, as advertised in t newspaper "El Renacimiento" requested that said sale be disapproved if t heirs of the intestate did not acknowledge her lease' thereon.

For the purpose of forestalling and avoiding a lawsuit over whether in t sale of said fishpond the lease held by the lessee Hernandez should be respected or not, for she had already appealed to the court to protect rights, and regarding his own rights doubtful, the administrator Leoncio Barcelon compromised by recognizing her said rights so that the sale of fishpond might be consummated, and in fact by an instrument dated October 29, 1908, signed by himself and Remigia Hernandez's attorney in fact, they by mutual consent requested, in order to settle the question by her, that the court approve the agreement they had made in the term therein set forth.

The terms of the compromise set forth in said document drawn up oh October 29, 1908, being admitted, it is unquestionable that Remigia Hernandez could or could not bid at the auction of the said fishpond t sum of P12,000 or more if she saw fit; that from the price of the sale the sum of P2,115.50 should be deducted, being amounts paid in advance as rent; that if she were the purchaser the payment of the P9,885 or more should be made in four equal sums and on four fixed dates; that if another person should outbid her the administrator would request the court that the creditor Hernandez be paid first or otherwise the sale would be understood to be made on condition of respecting the pending lease or else Hernandez would be paid her credit, with interest at 12 per cent a year from September 1, 1902, the lease to be terminated by that sale.

Mere perusal of the agreement made by the parties satisfactorily demonstrates that they really agreed to a complete and perfect compromise for avoiding the suit about to be instituted, with the undeniable char of being. consensual, bilateral, and for a consideration, because the contracting parties by consent and mutual agreement made a stipulation involving reciprocal rights and obligations that spontaneously arise fr provisos and terms set forth in that document.

With reference to the effects of the compromise in question article 1816 the same code provides:

"A compromise has, with regard to the parties, the same authority as *res adjudicata*; but summary proceedings shall not be proper except when fulfillment of a judicial compromise is in question."

The agreement or compromise stipulated by the parties and set forth in that document was expressly submitted in writing by the contracting part for the court's approval, and the Court of First Instance in view of fact that there was no law against it, saw fit to approve it throughout and said compromise thereby acquired the nature of a bar to the prosecution of a suit and gave to the question that had arisen between the lessee Hernandez and the administrator Barcelon the character of *res adjudicata* with the effects of a final judgment between the parties who had duly made it.

It is true that a compromise can be impugned as null and void under certain restrictions introduced by the code; but in the present case it does not appear that the compromise is null and void in the form and under the conditions fixed by law.

Article 1817 of the same code prescribes: "A compromise, in which error, deceit, violence, or forgery of documents is involved, shall be subject to the provisions of article 1265 of this code."

Article 1265 thus cited is as follows: "Consent given by error, under duress, or by intimidation, or deceit shall be void."

On account of its consensual character a compromise, to be valid and effective, requires in its performance meeting of the minds in a certain spontaneous, and free way with regard to a definite object or objects; in case it be shown and proved that there was error, deceit, violence, intimidation the compromise would be null, because the consent given therein is null and void through lack of the indispensable requisites of validity and effectiveness.

By agreement with the representative of the lessee Hernandez, the administrator Barcelon expressly and in writing requested approval of the agreement or compromise that both had stipulated; and it does not appear in the case at bar that before the order of approval of March 21, 1910, nor later up to the admission of the appeal that said compromise was attacked or impugned as null and void because it had been made through error, deceit, violence, or forgery of documents and he had not given due consent. Therefore said compromise acquired the authority of *res adjudicata*, so exact compliance with said order is just and proper though it were a case of execution of a final judgment.

Section 333, No. 1, of the Code of Civil Procedure says:

"Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately induced another to believe a particular thing true, and to act upon such belief, can not, in any litigation arising out of such declaration, act, or omission permitted to falsify it."

By virtue of the agreement in the said compromise between the administrator Barcelon and the lessee Hernandez, the latter desisted from objecting to the sale of the fish-pond Wawang Dap-dap in the belief that from the proceeds of the sale she would be reimbursed the amount she had paid in advance as rent for the lease of said fishpond; and after this had been executed it is neither just nor permissible for said administrator to go back on the stipulation in that contract without legal ground or reason in law and be able thus capriciously to escape fulfillment thereof.

The heirs interested in the property administered by Barcelon did not intervene in the said contract of compromise, nor does it appear that the estate left by the deceased Lucia Villalon has been distributed among them and it further does not appear in the case at bar that any one of them has gone into court or presented any claim impugning the lease of said fishpond and the lessee's contentions. On pages 74 to 87 of the testimony in the special proceedings are inserted various receipts for sums accepted by the lessee Remigia Hernandez as rent for that fishpond and signed by different persons apparently interested in that inheritance and by representatives of some of them, among which appear the signatures of Leoncio Barcelon, administrator of the property of the intestate,

estate.

The different questions raised by the administrator Barcelon in order to compliance with the order of March 21, 1910, have been examined and decided by the later orders of October 31 and November 9, which, with that of April 30, 1910, were issued as a consequence and for the execution of the first cited one of March 21.

The administrator Barcelon requested the sale at public auction of that fishpond and because of the objection of the lessee Hernandez, Barcelon, order to avoid a lawsuit with her, entered into this agreement for a compromise. Both contracting parties submitted it by mutual consent to court hearing the proceedings in the intestate estate of the deceased Lucia Villalon for his approval, that fishpond forming part of said estate. action taken by reason of that compromise and the proceedings for the approval thereof are closely connected with the special proceedings alluded to and even form a part thereof, and therefore the judge who presided at them is the only one competent to know the forms, terms, a conditions of that compromise and to issue the order for their approved as he did on March 21, 1910, nor is it correct that an ordinary case against third parties was tried in said special proceedings, for such a to be found in no part of the proceedings.

Finally, and especially because Remigia Hernandez's credit is compos sums accepted in life by the intestate Lucia Villalon and after her death taken by her heirs and by the administrator Leoncio Barcelon, when he h as such administrator undertaken and bound himself by means of a compromise to pay her in exchange for terminating the pending contract lease and selling the fishpond without objection by the lessee who was demanding that her rights be respected, an acknowledgment that would in itself be binding upon the purchaser and would have caused depreciation the estate at the auction, when the creditor Hernandez was careful to h to the terms and conditions of the said compromise for the collection of credit, even though she may not have appealed in time to the assessment commission.

For all the foregoing reasons, whereby the errors assigned to the order appealed from are held to be refuted, fulfillment of the compromise stipulated between the parties is in strict justice proper, and therefore be affirmed, as we do hereby affirm said orders appealed from, with the costs against the appellant.

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

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