

TRINIDAD BAUTISTA, PLAINTIFF AND APPELLANT, VS. ACISCLO JIMENEZ, ADMINISTRATOR OF THE ESTATE OF MARIA JOSUE, DEFENDANT AND APPELLEE.*G.R. No. 7332. January 18, 1913*

Ponente: TORRES, J.

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This appeal, by bill of exceptions, was entered by counsel for the plaintiff, Trinidad Bautista, from a judgment of January 12, 1911, whereby the Honorable Jose C. Abreu, judge, dismissed the complaint and disallowed the counter-claim interposed by the defendant, without special finding as to costs.

By a written motion of July 15, 1910, counsel for the plaintiff requested: that it be finally held that the useful and necessary improvements which the latter had made, as the possessor in good faith of the properties specified in the complaint, amount to the total value of P14,900; that, before proceeding, in accordance with the judgment of July 8, 1909, with the division of the estate left by her husband, Donato Lelis, at his death, the estate of Maria Josue then under administration, to which belonged two-thirds of the inheritance from Donato Lelis, should pay to the plaintiff the P000, the amount of two-thirds of the debts which the plaintiff had paid, besides the sum of P9,933.34, the total value of two-thirds of the said improvements made by the plaintiff on the properties mentioned; and that a reasonable delay be granted to the said administration of the estate of Maria Josue for the reimbursement to the plaintiff of all the sums mentioned and, in case of nonpayment, that all the property specified be awarded to the plaintiff in satisfaction of the encumbrances on the property which belonged to the deceased Lelis. It was further requested that the costs be taxed against the defendant. In connection with the said motion plaintiff alleged: that, by virtue of a will executed by her husband, Donato Lelis, in 1883 in Sorsogon and duly recorded, the plaintiff had, since that year, when Lelis died, and as the sole heir by will, been in the quiet and peaceable possession of the parcels of land and the lots with their respective houses, specified in the complaint under paragraphs A to G, two of which are situated in different parts of Sorsogon; that, in the decision rendered by the Supreme Court on December 23, 1908, in the civil case prosecuted by Acisclo Jimenez, as administrator of the estate of Maria Josue against Trinidad Bautista, now the plaintiff, it was recognized that the latter was entitled to a one-third interest in the aforesaid properties, by reason of the before mentioned will executed by Donato Lelis, and the heirs of Maria Josue to two-thirds of the estate left by the deceased Lelis; that, during the twenty-five years and while the plaintiff had in good faith been holding the said properties by reason of the said will, she had made improvements thereon as follows: on the parcel of land A, to the value of P2,000; on parcel B, P500; parcel C, P300; parcel D, P300; parcel E, P400; parcel F, P400; and on parcel G, in rebuilding the house thereon constructed and keeping the same in a state of repair, P8,000 and P2,000, respectively.

Thus, the useful improvements made on the said properties amounted to P11,100, and the necessary improvements to P3,800, and were effected by the plaintiff during the said twenty-five years that she was in possession of the said properties as the owner thereof under her husband's will; that, by final judgment of the court, it was held that the plaintiff was entitled to a credit of P2,000 for the two-thirds of the testator's debts which

she had paid; that therefore, before proceeding to divide the said property, now under the plaintiff's control, she should be reimbursed the sum above mentioned; and that, up to the date of the complaint, Trinidad Bautista had not yet been paid the value of the improvements.

By a ruling of October 4, 1910, the court sustained the demurrer to the complaint. Therefore the plaintiff, on the 6th of the same month, presented a supplementary complaint wherein her counsel reproduced each and all of the facts alleged in the principal complaint and added that the useful improvements made on parcel A, including the cost of clearing and bringing under cultivation ground for the planting of 50,000 hemp plants, expenses of maintenance, and taxes from 1902 to 1910, amounted to a total of P5,000.

Necessary improvements made in clearing, bringing under cultivation and upkeeping parcel B, amounted to P500; clearing and first plowing were done on parcel C to the value of P300; necessary improvements on parcel D, relating to its upkeep and the repairs required on account of typhoons, amounted to P300; improvements made on parcel E, in connection with new plantings and the preservation of the property, P340; on parcel F, improvements for the preservation of the property which, during the last twenty years, amounted to P400; on parcel G a building, erected of wood and masonry, adjoining the small house left by the testator, and enclosed by a wall 45 meters in circumference, and another wall of stone, 182 meters long, constructed around the entire parcel. All these improvements amounted to P8,000, the total of the expenditure detailed in the complaint. For the preservation of this building repairs were made, after the typhoons of 1883 and 1905, costing P1,000 on each of these two occasions.

It was further alleged that the total cost of the improvements made amounted to P14,900 and that all those mentioned were for the benefit of the said urban and rural properties which, had they not been improved, would not now exist; therefore, the plaintiff prayed that the defendant be sentenced in all respects in accordance with the plaintiff's petition contained in his principal complaint.

The demurrer presented by the defendant having been overruled, the latter, in his written answer of November 7, 1910, admitted paragraphs 1, 3, and 6 of the complaint and denied generally and specifically each and all of the allegations contained in paragraphs 2, 4, 5, 7, and 8 of the same, with the exception of the facts explicitly admitted in the counterclaim.

As a special defense, counsel for the defendant alleged that the plaintiff lost all right to make any claim for improvements made on the property, which was the subject matter of another action, then terminated and decided, wherein the administrator Jimenez was the plaintiff, and Trinidad Bautista the defendant, because he failed then to set up the proper counterclaim, if he believed himself entitled so to do, in accordance with the provisions of section 97 of the Code of Civil Procedure.

In the counterclaim he alleged: that, on July 23, 1906, Barbara Lelis and the administrator Jimenez filed a suit against the present plaintiff, Trinidad Bautista, for the recovery of possession of the property left by the deceased Donato Lelis, which suit was decided by the Supreme Court on December 23, 1908,[1] in favor of the plaintiffs, whereby they were awarded two-thirds of the estate of the said Lelis, and Trinidad Bautista the other one-third of the same, and it was ordered in that decision that the cause be remanded to the lower court for the purpose of a new trial to determine the indebtedness of the deceased testator that was paid by his widow Bautista; that the court, on July 8, 1909, rendered judgment at the new trial, finding that Lelis' debts paid by his widow amounted to P3,000, and that, therefore, the heirs of Maria Josue must pay to Trinidad Bautista P2,000, two-thirds of such indebtedness; that, since the 25th of July, 1905, the date of the complaint for the recovery of possession, the plaintiff Bautista had not rendered accounts of the products of the property which she retained under her control, nor shared them with the heirs of Maria Josue, notwithstanding the repeated demands made upon her so to do,

which products amounted to P15,000; and therefore two-thirds of this sum, belonging to the heirs of Maria Josue, amounted to P10,000, from which was to be deducted the P2,000 owed by those heirs to the plaintiff Bautista, leaving a remainder of P8,000 to be paid to them by the latter, as her share of the value of the products. The defendant, accordingly, prayed that judgment be rendered in his favor by sentencing the plaintiff to deliver to him two-thirds of the estate left by Donato Lelis, pursuant to the decision of the Supreme Court, and that, after deducting the P2,000 from the sum of P10,000, she deliver to him the remainder, as his share of the two-thirds of the products of the property detained, and also pay to the defendant P2,000 for each year that should elapse until a complete division and an adjudication of two-thirds of the property in plaintiff's possession be made with the costs of the trial upon the plaintiff.

Counsel for the latter, on November 8, 1910, made a written general denial of the facts alleged by the defendant in his special defense and admitted the facts A, B, and C of the counterclaim, denying fact D, and alleged that the plaintiff had not rendered accounts to the administrator of the estate of Maria Josue for the reason that the said administrator had not paid to the plaintiff the P2,000 mentioned in the decision of the Supreme Court of July 8, 1909, and as ordered therein.

The trial having been held and evidence adduced by both parties, the court, on January 12, 1911, rendered judgment, which was excepted to by the plaintiff, who duly filed the proper bill of exceptions, which was approved and forwarded to the clerk of this court.

In the present action, a demand was made for the payment of the two-thirds of the useful and necessary improvements that the plaintiff alleges she made on the said rural and urban properties, which payment should have been made to the administrator of the estate of Maria Josue, and the judge, abstaining from deciding whether the plaintiff was or was not entitled to two-thirds of the improvements, confined himself to a determination of the question of law raised by the defendant in his special defense and held that the plaintiff, Trinidad Bautista, had lost all right to demand reimbursement for the said improvements, pursuant to the provisions of section 97 of the Code of Procedure in Civil Actions, because she had not, in the previous suit brought by the administrator of the estate of the said deceased Maria Josue, through a counterclaim, presented the said claim for reimbursement for the improvements made on the property willed to her by her late husband Donato Lelis.

In the previous action instituted in the same court of Sorsogon by the administrator of the estate of the deceased Maria Josue and by the latter's daughter, Barbara Lelis, against Trinidad Bautista, a decision was rendered by the Supreme Court (No. 3394, 12 Phil. Rep., 322) reversing the judgment of the trial court and holding that the property left by Donato Lelis at his death was not conjugal property; that the latter could not by will deprive his forced heirs of their interest in the property; that his testamentary heiress was entitled to a one-third interest in his estate; and that such heiress could recover the proportional part of the debts of the deceased which she had paid before the said forced heirs could receive the shares belonging to them under the law.

The action brought by the administrator of the estate of Maria Josue and by the latter's daughter, Barbara Lelis, in the previous suit, was really one of petition for the inheritance, founded on the hereditary right that pertained to the parents of Donato Lelis, to wit, Teodoro Lelis and Maria Josue, as such parents' forced heirs, pursuant to article 935 of the Civil Code; and, as Trinidad Bautista did not in that suit present a counterclaim for reimbursement for the improvements, as she does in the present case, it was held in the judgment appealed from that the said Bautista was no longer entitled to demand payment for the said improvements.

Section 97 of the Code of Civil Procedure, the provisions of which are the grounds of the judgment which disallows the plaintiff's claim, provides as follows:

"If the right out of which the counterclaim arises exists at the time of the commencement of the action and

arises out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or is necessarily connected with the subject of the action, neither the defendant nor his assignee can afterwards maintain an action against the plaintiff therefor if the defendant omits to set up a counterclaim for the same. But if the counterclaim arises out of transactions distinct from those set forth in the complaint as the foundation of the plaintiff's claim and not connected with the subject of the action, the defendant shall not be barred from any subsequent action upon such counterclaim by reason of his failure to set it up in his answer to the pending answer."

In the previous suit the issue was whether Barbara Lelis, the heir of the deceased parents of the testator, Donato Lelis, under the rule of representation, was entitled to the legal portion which pertained to those parents by operation of law, notwithstanding the will of Donato Lelis, the husband of the plaintiff, Trinidad Bautista; and although the action of petition for the inheritance had for its positive final object the recovery of the property of which the said inheritance consisted, the principal object and the fundamental purpose of the said action was to obtain a recognition and a judicial declaration of such right to such legal portion as pertained to the parents of the deceased testator, since the latter's sister, Barbara Lelis, only represented the rights which she had inherited from her parents. Therefore, upon the institution of the previous action claiming the inheritance in question, it cannot be conceived that there already existed in the plaintiffs behalf a right to the useful and necessary improvements made on the properties of which the inheritance claimed by the abintestate heir consisted, inasmuch as the plaintiff Bautista held the property which her husband left her at his death, under a probated will, which instrument of itself constitutes a sufficient deed of transfer, in her favor, of the ownership of the said property; and further, since, from what was alleged in the complaint which initiated the said first suit, filed by the administrator of the estate of the deceased Maria Josue and by the latter's daughter, Barbara Lelis, it is not possible to deduce any motive or right whatever on which could have been founded an action seeking payment for the improvements in question, which have no necessary connection with the hereditary right claimed in that suit. Consequently Trinidad Bautista, the defendant in that litigation, was neither entitled nor obliged to present a counter-claim for payment for the improvements, which she now claims in the present action.

If the said administrator and Barbara Lelis had not brought the action of petition for the inheritance, and if the courts had not declared that the parents of the testator were entitled to a part of the estate of Donato Lelis, notwithstanding his will, the, latter's widow, Trinidad Bautista, who inherited from her husband and entered into possession of his estate by virtue of his will, would always have continued in the possession and enjoyment of the hereditary property as the legitimate owner thereof. The widow Bautista is now obliged to deliver to her sister-in-law a part of the property which she, the former, had by will inherited from Donato Lelis, inasmuch as, in conformity with the claim made by Bautista as the heir of the deceased parents of the testator, the courts had to recognize such parents' right to a part of the property which constitutes the inheritance left by Donato Lelis at his death, notwithstanding his aforementioned will.

Thus the claim for the payment of the improvements is founded on a right which originated at the time the courts decided the question raised by the heiress and successor of the rights of the parents of the deceased testator—a claim in no wise connected with the principal object of the previous litigation. Therefore the aforesaid widow, who avers that she made improvements for the benefit of the property which constitutes the inheritance that is to be the subject of partition between herself and the heiress of her husband's parents, is not barred from bringing the action to enforce her claim for reimbursement for the improvements in question. Trinidad Bautista opposed the claim presented in the previous suit and asked for the inheritance of her deceased husband; she defended herself with the will executed by the latter, by reason of which instrument she believed herself, in good faith, to be the owner and lawful possessor of the property which she had inherited by will. It was therefore improper to require of her, as testamentary heir, that she should have demanded by counterclaim the value of the improvements that

she made, for, until the judgment rendered in the previous suit, whereby the plaintiff's right was defined, became final, Bautista was firmly convinced that she was the lawful owner of the property claimed by her in good faith.

If the present plaintiff had then claimed the value of the improvements, she would have recognized the right which Barbara Lelis alleged she then had to the property which this plaintiff was holding in good faith by reason of her husband's will. That she should have done so, could not reasonably have been required of Trinidad Bautista, then the defendant, during the controversy, not over the estate left by the testator Lelis at his death, but over the hereditary right alleged by the latter's sister in representation of her parents in a part of the estate.

On these grounds the trial judge should have disallowed the special defense alleged by the defendant and treated the issue pending with regard to the improvements as one not decided, since that issue was not raised, discussed, or disposed of in the previous suit.

Under such premises, and the question of law having been decided, as to whether the plaintiff Bautista may still claim in this suit reimbursement for the improvements concerned, and, further, in view of the fact that, as a new trial was not asked for, a review of the evidence may not be had in this case, we deem it proper to remand the case to the Court of First Instance in order that the petitions by the plaintiff in her complaint, and those by the defendant in his written answer, may be disposed of in accordance with law.

For the foregoing reasons, the judgment appealed from is reversed and it is ordered that this case be remanded to the Court of First Instance whence it originated, together with a certified copy of this decision, in order that the judge may decide the claims of both parties in accordance with law and the evidence adduced at trial, and determine the value of the improvements.

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

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