

PROSPERO K. ALAFRIZ, PETITIONER AND APPELLEE, VS. PIA MINA, OBJECTOR AND APPELLANT.*G.R. No. 8231. October 03, 1914*

Ponente: JOHNSON, J.

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At some time before the facts arose upon which the present appeal is based, one Gregorio Navarro died (the exact date not appearing of record). On the 9th day of December, 1910, upon a petition presented for that purpose, Prospero K. Alafriz was appointed as administrator of the estate of the deceased Gregorio Navarro, by the judge of the Court of First Instance of the Province of Ilocos Sur. It appears in said order (9th of December, 1910) that the said Gregorio Navarro at the time of his death, left some minor children, a widow, and property, real and personal. On the said 9th day of December, 1910, the court appointed the widow of the said Gregorio Navarro as the guardian of some of the minor children.

It appears that the said administrator (Prospero K. Alafriz) duly qualified as said administrator on the 10th day of March, 1911, and presented a motion in the Court of First Instance alleging that the said Pia Mina had in her possession a certain document or paper or receipt for certain jewelry deposited by Gregorio Navarro, before his death, as security for a loan obtained from one Salvador Rivero and his wife. Upon the facts stated in this motion, the administrator asked that Pia Mina be cited to appear in court for the purpose of showing whether she had such paper, document or receipt in her possession.

On the 13th day of March, 1911, the Honorable Dionisio Chanco, judge, after considering said motion, issued an order citing Pia Mina to appear in court, upon the 22d day of March, 1911, at 8 o'clock a. m., for the purpose of answering the allegations of said motion.

On the said 22d day of March, 1911, Pia Mina appeared in court. After hearing the respective parties, the judge, on the same day, ordered her to deliver to the clerk of the court the paper or document mentioned in said motion.

On the 23d day of March, 1911, the said Pia Mina complied with the order of the court and deposited with the clerk of the court the pawn ticket, No. 243. At the same time she presented her exception to the order of the court directing her to deliver said ticket to the clerk. She also alleged that she and her mother were the real owners of the jewelry pawned.

On the 28th day of March, 1911, after said document No. 243 had been delivered to the clerk, the court directed the administrator to deposit with the clerk the sum of P160, the amount of the loan obtained by the deceased Gregorio Navarro, for which said jewelry had been deposited as security, and directed the clerk to redeem the said jewelry and to keep it deposited in his (the clerk's) office until the final settlement of the estate. On the same day (the 28th of March, 1911) the clerk complied with the order of the court and redeemed the jewelry in question.

On the 8th day of April, 1911, Pia Mina presented a motion asking that the jewelry represented by the pawn ticket, No. 243, be excluded from the inventory presented by the administrator. Said motion was brought on for

hearing on the 28th day of April, 1911.

At said hearing Pia Mina offered to present proof for the purpose of showing that said jewelry belonged to her and her mother, to which offer the administrator presented an objection, which objection was sustained by the court, and the defendant duly excepted.

Some time after said hearing, and on the 22d day of April, 1912, the lower court made the following order:

"In deciding the written motion of the objector Pia Mina, praying for the removal of the administrator appointed in present case, the court denies the petition and enjoins obedience to its orders of December 9, 1910, and March 28, 1911. The administrator may bring such actions against Pia Mina as he may deem necessary and the rights of which pertain to the intestate estate of which he is the administrator, and against this latter the objector, Pia Mina, likewise may institute such action Or actions as she may consider proper. The jewels deposited shall, however, continue to remain in the office of the clerk of the court until the right of possession and ownership thereof shall have been decided by a competent court.

"It is further ordered that the objector Pia Mina shall comply with her obligation to furnish bond for the proper discharge of her duties as guardian of her minor children, 'Dolores, Isidro, Salud, and Maximina, as previously ordered in this case.

"It is likewise ordered that the administrator shall present a detailed inventory which complies with all the requirements prescribed by law, shall refer accounts and take all steps that may be necessary by law for the due settlement of the intestate estate and the speedy termination of all proceedings in connection therewith."

From the foregoing order the defendant duly excepted and appealed to this court. In this court the appellant presented the following assignments of error:

"I. The trial court erred in granting the petition of the administrator's counsel by summoning Pia Mina to testify in connection with the pawned jewels.

"II. The lower court erred in ordering Pia Mina to present the pawn ticket of the aforementioned jewels.

"III. The court erred in ordering the clerk of the court to redeem the said pawned jewels and keep them in custody in the court.

"IV. The court erred in not permitting the introduction of evidence relative to the ownership of the said jewels.

"V. The court erred in not ordering the exclusion of the said jewels from the inventory presented by the administrator.

"VI. The court erred in not removing Prospero K. Alafritz from his office of administrator, and in not appointing Pia Mina in his stead."

In support of the first assignment of error, the appellant contends that there is no law justifying the order made by the lower court, citing her to appear and to declare concerning the question whether she had property belonging to the estate. She also contends that the administrator should have proceeded by an ordinary action, if he believed that she had in her possession property of the estate. She also alleges that the notice of the hearing on said motion was not served on her in accordance with the rules of the court. As to the last contention she made no objection in the court below. She appeared without objection. We cannot, therefore, consider that question now.

The appellee did not present a brief here.

In answer to the contention of the appellant that there is no law justifying the citation of the defendant in a testamentary proceeding, we find that section 709 of the Code of Procedure in Civil Actions (Act No. 190)

expressly authorizes the order of which complaint is made. Section 709 provides:

"If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of a deceased person complains to the court having jurisdiction of the estate, that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession, or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of, or tends to disclose the right, title, interest or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it, and may examine him on oath on the matter of such complaint; if the person so cited refuses to appear and answer such examination, or to answer such interrogatories as are put to him, the court may, by warrant, commit him to the jail or prison of the province, there to remain in close custody until he submits to the order of the court; and such interrogatories and answers shall be in writing and signed by the party examined, and filed in the clerk's office."

We think said section (709) fully justifies the order made by the lower court citing the appellant to appear, and that no error was committed in making said order.

The second, third, and fourth assignments of error, we think may be considered together.

In support of the second assignment of error, the appellant alleges that the jewelry in question, which had been pawned and which was represented by the pawn ticket, belonged to her. She contends, when the court ordered the jewelry taken from her possession and turned over to the clerk, that she had been deprived of her property without a hearing. She alleges, and the record supports her allegation, that she requested the court to permit her to present proof of her ownership of the jewels, and that the court refused to hear her proof. (See B. of Ex., p. 33.) So far as the record shows, the only proof which the court had, indicating who the owner was, was the pawn ticket itself. The pawn ticket showed that it had been issued to the deceased Gregorio Navarro. That fact, perhaps, constituted prima facie proof of ownership, but it certainly was not absolute proof of ownership. The lower court not only ordered the appellant to turn the pawn ticket over to the clerk, but also ordered the administrator to pay to the clerk the sum of P160, with which to redeem said jewels. In accordance with the order of the court, the clerk did actually redeem said jewels and now has them in his possession. All this was done without permitting the appellant to be heard upon the question of her alleged ownership. If the jewels did, in fact, belong to the appellant then, of course, the court had no right to deprive her of the pawn ticket, nor to use the funds of the estate in redeeming them.

There is nothing in section 709 which justifies the orders complained of in the second and third assignments of error. Said section (709) simply provides that "the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint." There is nothing in the section which authorizes the court to take possession of the property, if any should be found in the possession of the defendant or of the person cited. If, upon the hearing, there was good reason for believing that the person cited had property in his or her possession belonging to the estate, then it was the duty of the administrator to proceed by an ordinary action to recover possession of the same. There may be cases, where papers and documentary evidence of ownership of property are held by a third person belonging to the estate of a deceased person, in which it would be perfectly proper for the court to order the same turned over to the court. We do not now, however, attempt in any way to indicate what would be such a condition nor even to finally decide that such a condition might exist. In the present case the defendant was entitled to retain possession of the pawn ticket, until the question of the ownership of the jewels should be determined in the proper way. The court had no right to deprive her of her evidence relating to the property, until the question of ownership had been settled.

The order of the court of the 22d of April, 1912; directed the administrator to commence an ordinary action

against Pia Mina to recover said jewels, and until that action was concluded, the clerk should retain possession of the same. In said order the court expressly refused to pass upon the question of ownership. This order, it would seem, was not authorized in the proceedings then pending, neither was the order directing the administrator to pay, out of the funds of the estate, the amount necessary to redeem the jewels, until the question of ownership had been settled. No complaint, however, is here made by any one, relating to that order. That part of the order may properly be considered when the administrator renders his account. If, however, the estate or Pia Mina has been damaged by said order, such damages may, perhaps, be settled in an action brought for the purpose of determining the ownership of the jewels. For the present we are not inclined to revoke said order. It may finally appear that the jewels actually belonged to the estate and not to Pia Mina. In that case the jewels will then be where they can be turned over to the administrator without further delay.

With reference to the fourth assignment of error, the record shows that the lower court refused, after hearing the defendant, to allow her to present further proof concerning the ownership of the jewels in question. Section 709 does not seem to make provision for the determination of the right of ownership of property. Said section provides that the person suspected of having property belonging to the estate, may be cited, and the court may examine such person, under oath, on the matter of such property. The section further provides that such interrogatories and answers shall be in writing, and signed by the party examined, and filed in the clerk's office. It will be observed that the section nowhere expressly gives the court the power to determine the right of property. The usual way of determining the right of contending parties to the ownership of property is by instituting an ordinary action for that purpose. This is true whether the property in question belongs to the estate of the deceased person or not. (*Chanco vs. Madrilejos and Abreu*, 12 Phil. Rep., 543.) We are confirmed in our belief that section 709 did not provide for a trial of the right of property of a deceased person, embezzled or alienated by a third person, by the provisions of section 711, which expressly provides for an ordinary action to recover property of a deceased person embezzled or alienated, etc., etc.

The appellant argues, in support of the fifth assignment of error, that the jewels in question should not have been placed in the inventory of the administrator, until there was some positive proof showing that they belonged to the estate. There is much merit in that contention, but the mere fact that the administrator had placed them in his inventory in no way deprives the appellant of her property therein. She is still entitled to be heard upon the question of her ownership, when that question is properly presented to the court. The administrator is responsible for what appears in his inventory. While the order complained of in this assignment of error (fifth) may have been erroneous in the present case, yet we are of the opinion that, for the present, it in no way prejudices the rights of the appellant in her property. She can yet show that the jewels belonged to her.

With reference to the sixth assignment of error, there is nothing in the record which shows that there was any just cause for the removal of the administrator.

While we are persuaded that some of the errors complained of were committed by the lower court, as we have indicated above, nevertheless, they are errors which may be corrected in subsequent proceedings and are therefore, for the present, not prejudicial to the rights of the appellant. Therefore, without intending to legalize the order of the court directing the administrator to redeem the jewels out of the funds of the estate, nor in any way to affirm the order directing that the jewels be turned over to the clerk to be held by him until final settlement of the question of ownership, the judgment of the lower court is hereby affirmed, and without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

DISSENTING

MORELAND, J.

The court finds that the trial court erred in taking the jewelry from the appellant without a hearing and over her objection. It also finds affirmatively that the trial court has no authority with respect to property found in the hands of a third person by virtue of proceedings under section 709 of the Code of Civil Procedure; and that, where the court believes that said third person has property belonging to the estate, it should order the administrator to bring an action to recover it. It has no power or authority, Without a trial and a hearing upon the merits, to require the third person to deliver the property alleged to belong to the estate to the administrator.

Having found that the court erred and that it acted without authority of law in depriving the appellant of the property in question, the court does not, as would seem natural and necessary, reverse the order and require the return of the property to the appellant, but, rather, condones the act of the court, saying:

"If, however, the estate of Pia Mina has been damaged by said order, such damages may, perhaps, be settled in an action brought for the purpose of determining the ownership of the jewels. For the present we are not inclined to revoke said order. It may finally appear that the jewels actually belonged to the estate and not to Pia Mina. In that case the jewels will then be where they can be turned over to the administrator without further delay." and:

"While we are persuaded that some of the errors complained of were committed by the lower court, as we have indicated above, nevertheless, they are errors which may be corrected in subsequent proceedings and are therefore, for the present, not prejudicial to the rights of the appellant. Therefore, without intending to legalize the order of the court directing the administrator to redeem the jewels out of the funds of the estate, nor in any way to affirm the order directing that the jewels be turned over to the clerk to be held by him until final settlement of the question of ownership, the judgment of the lower court is hereby affirmed, and without any finding as to costs, it is so ordered."

This seems to me to be unusual. To admit that the trial court committed errors in its decision and then allege that "they are errors which may be corrected in subsequent proceedings," and, upon this allegation, refuse to correct them, when they are the very errors appealed from and are the very errors assigned in and presented to this court for correction, and are the sole reason and basis of this appeal, is to pervert the purpose of appeals, to deny appellant the remedy which the law concedes, and to assume to name the cases in which the law of appeals shall apply.

In my opinion the order depriving the appellant of her property without due process of law and against her objection, which order is expressly held erroneous by this court upon that ground, should be reversed and the property returned to the appellant, where this court expressly finds it properly belongs.

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