

[G. R. No. 18034. September 02, 1922]

SINFOROSO BUENAVENTURA, AS ADMINISTRATOR OF THE ESTATE OF JUAN BUENAVENTURA, DECEASED, AND TIMOTEO DEL ROSARIO, PETITIONERS AND APPELLEES, VS. TOMAS B. RAMOS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

JOHNSON, J.:

It appears from the record that on the 4th day of January, 1921, the said Sinforoso Buenaventura, as administrator, presented a petition in the Court of First Instance of the Province of Bulacan, asking permission to sell a certain fishery belonging to the estate of Juan Buenaventura, deceased. The petition for permission to sell said fishery alleged that it was in bad condition; that the estate was unable to make the necessary repairs; that the heirs of the estate were poor and without adequate and necessary funds; that the heirs were numerous and that in order to make the necessary repairs in said fishery, it was necessary to sell the same and to divide the proceeds among the heirs.

On the 5th day of February, 1921, the heirs of the estate of Juan Buenaventura presented an opposition to the said motion of the administrator. On the 7th day of February, 1921, the court denied said petition for the reasons following: First, that the commissioners appointed to make an inventory of the estate of Juan Buenaventura had not rendered a report; second, because there was then pending an action in favor of the estate and against the tenant of said fishery by the name of Santos Chua Hong; third, that without an inventory showing the value of the estate, the court was unable to fix the value of said fishery; and fourth, that if the action against said Santos Chua Hong resulted favorably to the estate, its administrator might find sufficient funds to make the necessary repairs in said fishery. On the 21st day of February, 1921, the administrator renewed his petition for authority to sell said fishery. On the 24th day of February, 1921, the heirs again presented further opposition to granting said petition.

Notwithstanding the strong opposition presented by the heirs to the said petition of the

administrator, the Honorable Bartolome Revilla, judge, granted said petition on the 2d day of March, 1921, and authorized said administrator to offer the fishery in question for sale, with the understanding that the sale should not be consummated until the report of the offers received by him should be made to, and confirmed by the court. On the 14th day of March, 1921, the defendants excepted to the order, authorizing the sale of the fishery, upon the ground that said order was illegal and contrary to the provisions of sections 714, 716, 717, and 718 of Act No. 190, and for the further reason that all of the heirs of the estate of Juan Buenaventura were opposed to said sale, except the administrator, and for the further reason that the reasons given for the sale of the fishery were not sufficient in law to justify the said order of the court.

On the 15th day of March, 1921, the administrator reported to the court that he had received two offers to buy said fishery; the first for the sum of P10,500 and the second for the sum of P11,000. The first was received from Dr. Juan Nolasco and the second from the said Timoteo del Rosario. The administrator recommended that the offer to purchase said fishery of the said Timoteo del Rosario be accepted. On the 21st day of March, 1921, the defendants presented their opposition to the confirmation of the sale as requested by the administrator, presenting many reasons in support of their opposition.

Notwithstanding the strong opposition presented by the heirs and defendants, the Honorable Bartolome Revilla, on the 30th day of March, 1921, authorized the sale and directed that the same be sold to the said Timoteo del Rosario. To that order of the court an exception was duly made and a motion for reconsideration was presented, which was denied by the lower court on the 8th day of April, 1921. An appeal was duly taken.

The record was received in the Supreme Court on the 12th day of September, 1921. On the 15th day of November, 1921, the appellees presented a motion asking that the appeal be dismissed for the reason that it had not been perfected in accordance with the provisions of the law. That motion was denied on the 8th day of December, 1921. Thereafter, and after several motions for an extension of time within which to present their briefs, which were granted, the appellees again on the 22d day of May, 1922, presented another motion to dismiss the appeal. Said motion was based upon the ground that the appellants had not presented their appeal bond until after fifteen days from the date on which the judge had fixed the amount of the same, whereas the law and rules provide that the bond should have been presented within five days from the date the amount was fixed by the trial court. The fact that the bond was not presented within fifteen days from the date the judge had fixed the amount of the same, is a fact which existed at the time the appellees presented their

first motion to dismiss in this court. The date of the order fixing the amount of the bond, and the time of the presentation of the bond were matters of record in the lower court. Had the fact, that the bond was not presented on time, been called to the attention of the court in the first motion to dismiss, it would have received attention ; but not having been presented at that time while the facts upon which it is based did exist at the time the first motion was presented, it must now be denied, for the reason that we have decided in cases without number that a second motion to dismiss the appeal upon grounds existing at the time the first motion was presented, should never be granted, unless at the time of the denying of the first motion, permission was obtained to present a second. Appellants should not be annoyed nor delayed by subsequent motions based upon grounds existing at the time of a previous motion, made for the same purpose. (Lucido and Lucido vs. Vita, 20 Phil., 449; King vs. Pony Gold Mining Co., 24 Montana, 470; Hellings vs. Duvall, 131 Cal., 618; Bingham vs. Brumback, 24 111. App., 332; Ferguson vs. Bruckman, 164 N. Y., 481; Pettit vs. Hamlyn, 42 Wis., 434.)

The grounds upon which the second motion is based necessarily existed at the time of the presentation of the first motion to dismiss the appeal in the present case. That being true, the same is hereby denied.

Passing to a consideration of the errors assigned by the appellants, it will be noted that in their first assignment of error they allege that the lower court committed an error in authorizing the sale of the fishery in question, in opposition to the wishes of the heirs, and that said order of sale was illegal and unjustified. In support of that assignment of error the appellants cite the facts of the petition for authority to sell and sections 714 to 722 of Act No. 190. By reference to the petition for authority to sell the fishery in question, it will be noted that the only reasons given are: First, that the fishery is in bad condition; second, that the estate is without funds to make the necessary repairs; third, that in order to make the necessary repairs it will require a considerable sum of money; fourth, that the heirs are poor people and without adequate funds to maintain their respective families; fifth, that the heirs are numerous; sixth, that the sale was necessary in order to make a partition of the interests of the estate among the heirs; and seventh, that the partition is necessary for the convenience of the heirs. It will be noted that the petition contains no allegation that there were any unpaid debts existing against the estate of Juan Buenaventura. The defendants allege, and the fact is not denied, that an action was pending against one Santos Chua Hong for a considerable sum of money, which sum, when recovered, might be sufficient to make the necessary repairs in the said fishery. Sections 714 to 722 of Act No. 190 provide when an executor or administrator of the estate of a deceased person may sell the property of the

estate, both real and personal.

Section 714 provides, among other things, that when the personal estate of the deceased is not sufficient to pay the debts and charges of administration without injuring the business of those interested, and when the testator has not otherwise made sufficient provision for the payment of debts and charges against the estate, the court, on application of the executor or administrator, *with the consent and approbation, in writing, of the heirs*, devisees, and legatees, residing in the Philippine Islands, may grant a license to sell, tot that purpose, in lieu of personal estate, if it clearly appears that such sale of real estate would be beneficial to the persons interested, and will not defeat any devise of land, in which case the assent of the devisee shall be required.

Section 715 provides that when an application is made for license to sell real estate *for payment of debts or charges* of administration in accordance with the provisions of section 714, and it appears that a part cannot be sold without injury to those interested, the court may grant license to sell the whole of said estate, or such part as is necessary or beneficial to those concerned.

Section 716 provides that no license to sell real estate shall be granted, if any of the persons interested in the estate give a bond in conformity with an order of the court, conditioned to pay the debts and expenses of administration, within such time as the court may direct.

Section 718 provides that when it appears to the court that it will be beneficial to the heirs and those interested in the estate of a deceased person, by reason of their residing out of the Islands or otherwise, that a part or the whole of the personal estate, or a part or the whole of the real estate or both, should be sold, the court *may*, upon the application of the administrator or executor, *with the consent and approbation, in writing, of the heirs* who are interested in the estate to be sold, grant license to sell the whole or a part of the estate, although not necessary to pay debts, etc. There are other provisions of section 718 which do not relate to the question presented here. Section 722 contains the regulations for license to sell real and personal estate of deceased persons.

It will be noted, from the sections above quoted, that there are but two cases, speaking generally, under which an administrator may sell real and personal estate of a deceased person. The conditions are (a) when it is necessary to pay the debts and charges against the estate, and (b) when it is made to appear to the court that it will be beneficial to the heirs and those interested in the estate. (Sections 714 and 718 of Act No. 190.)

It will be further noted from the provisions of the sections above quoted: (a) That when it becomes necessary or advisable to sell real estate in order to pay debts and charges, the court may order the same sold when the consent and approbation, in writing, of the heirs, are given, and not then even, unless it clearly appears that the sale of the real estate would be beneficial to the persons interested and will not defeat any devise of land; and (b) that the court may grant a license to sell the real estate of a deceased person when it is made to appear that the sale will be beneficial to the heirs, etc., and those interested in the estate. But, even in that case, the sale or order for sale must be made with the *consent and approbation, in writing*, of the heirs, etc., who are interested in the estate to be sold. Personal property, however, may be sold on the application of the executor or administrator, if it appears necessary for the purpose of paying debts, legacies, or expenses of administration, or for the preservation of the property. In the sale of personal property, for the purposes indicated, the consent of the heirs is not necessary. (Section 717 of Act No. 190.)

Paragraph 2 of section 722 provides that, in the cases where the consent of heirs, devisees, and legatees is required for the sale of real estate, the executor or administrator shall produce to the court their assent in writing, signed by such heirs, etc.

In the present case there was no allegation or showing, nor any attempt to make it appear, that there were any debts or charges against the estate of Juan Buenaventura, which make it necessary to sell the real estate of that estate. While there was an attempt made to show that the sale of the real estate would be beneficial to the heirs, the petition was not made "with the consent and approbation, in writing, of the heirs," etc. Not only did the administrator fail to show "the consent and approbation, in writing of the heirs," etc., but the record clearly shows that the heirs opposed, *in writing*, to the sale of the fishery in question.

The Legislature in adopting the sections to which reference is made above, preventing the sale of the real estate of the deceased without the written consent of the heirs, evidently had in mind the provisions of articles 657-661 of the Civil Code, which provide that the heirs of a deceased person succeed, from the moment of his death, to all the rights and obligations of the deceased by the mere fact of his death. The heirs become the owners of the property immediately upon the death of the ancestor, and they can not be deprived of the same except in the manner provided for by law. Being the owners of the property immediately, by succession upon the death of the ancestor, they can only be deprived of their right by the procedure established by law. (Inocencio vs. Gat-Pandan, 14 Phil., 491;

Ilustre vs. Alaras Frondosa, 17 Phil., 321; *Malahacan vs. Ignacio*, 19 Phil., 434; *Fernandez vs. Tria*, 22 Phil., 603, 618-620; *Bondad vs. Bondad*, 34 Phil., 232, 235; *Rocha vs. Tuason and Rocha de Despujols*, 39 Phil., 976, 983, 984.)

Of course that succession may be defeated or modified provided the deceased, the former owner, left a will. And it may be added, further, that the heir acquires the rights of the ancestor, subject to any and all of the obligations of the ancestor against the estate, and subject to certain exceptions of the Civil Code relating to the acceptance of the heir, *inventory*, etc. (Arts. 1010-1034, Civil Code.) In other words, if the heir accepts without reservation an estate, he accepts it with all the obligations existing against it at the time of the death of the ancestor. If the heir accepts an estate under an inventory, then his responsibility to satisfy the existing obligations is limited to the value fixed in the inventory.

Under the provisions of the Civil Code (arts. 657-661), the rights to the succession of a person are transmitted from the moment of his death; in other words, the heirs succeed immediately to all of the property of the deceased ancestor. The property belongs to the heirs at the moment of the death of the ancestor as completely as if the ancestor had executed and delivered to them a deed for the same before his death. In the absence of debts or obligations existing against the estate, the heir may enter upon the administration of said property immediately. When the heirs are all of lawful age and there are no debts, there is no reason why the estate should be burdened with the costs and expenses of an administrator. The property belonging absolutely to the heirs, in the absence of existing debts against the estate, the administrator has no right to intervene in any way whatever in the division of the estate among the heirs. (*Ilustre vs. Alaras Frondosa*, *supra*; *Malahacan vs. Ignacio*, *supra*; *Fernandez vs. Tria*, *supra*.)

The only ground upon which an administrator can demand of the heirs at law the possession of real property of which his intestate was seized at the time of his death, is, that such property will be required to be sold to pay the debts of the deceased. (*Ilustre vs. Alaras Frondosa*, *supra*; *Malahacan vs. Ignacio*, *supra*.)

Of course, if the heir refuses to give his consent to the sale of the property to satisfy obligations existing against the estate at the time of the death of the ancestor, then such obligations or debts may be recovered in an ordinary action, because when he accepts the property, as an heir, he accepted it with the obligations which existed against the ancestor. By pure and simple acceptance, or without benefit of inventory, the heir becomes liable for all the debts and obligations of the estate, not only with the property of the same, but also

with his own. (Arts. 998, 999, 1003, 1023, Civil Code; *Hinlo vs. De Leon*, 18 Phil., 221, 227; *Aramburu vs. Ortiz*, 14 Phil., 691.)

The holder of the debt or obligation against the estate of a deceased person, when the heirs have accepted the same in accordance with the provisions of articles 998 and 999 of the Civil Code, has the right to select from among the heirs one or more, whom he may prefer, or from whom he believes he can best recover, and for the reason that if the debt is single the obligation of the debtors in favor of the creditor of a deceased person is also one and indivisible, the creditor is entitled to claim the entire amount of his credit from any one of the heirs who accepted the inheritance without benefit of inventory, and also from any of the others who received the same with benefit, to the extent of their hereditary portion. (Arts. 988, 998, 1003, 1110, 1023, Civil Code; *Aramburu vs. Ortiz*, *supra*; *Hinlo vs. De Leon*, *supra*.)

The heirs having become the absolute owners of the property of the ancestor, and there being no debts or obligations against the same which existed at the time of the death of the ancestor, it is a matter of no importance to the administrator or to any other person, that the property is in a state of bad repair. The repair or improvement of the property is for the heirs after having become the absolute owners of the same, and is a question solely for their consideration. In the absence of debts or obligations against the estate at the time of the death of the ancestor, the heirs, as absolute owners, may manage and control the same without interference on the part of the administrator.

The plaintiffs in the present case not having shown the existence of any of the facts or conditions under which the property in question might be sold under the above quoted provisions of Act No. 190, the lower court committed an error in granting the petition for permission to sell, and also committed an error in authorizing the sale and in confirming the sale after it was made. Therefore, the judgment of the lower court is hereby revoked, and it is hereby ordered and decreed that a judgment be entered, revoking the judgment appealed from and absolving the defendants from all liability under the complaint. And without any finding as to costs, it is so ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

Ostrand, J., concurs in the result.

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