43 Phil. 479

[G. R. No. 17772. June 09, 1922]

FORTUNATO RODRIGUEZ, PLAINTIFF AND APPELLEE, VS. JOSE R. BORROMEO, DEFENDANT AND APPELLANT.

D E C I S I O N

VILLAMOR, J.:

On August 30, 1919, the parties in this case entered into a contract of lease of some rural properties known as *Hacienda Felicidad* in the municipality of La Carlota, Occidental Negros, used for the cultivation of sugar cane. The contract is made a part of the complaint and in it are described the parcels of land so leased. According to the terms of the contract the lessor, the herein plaintiff, leased to the defendant the lands in question for a period of five years, subject to extension at the option of the lessee at the rate of P3,800 per year, which rent was payable at the end of each harvest which should be not later than the month of May of each year.

At the time of entering into the contract by virtue of which the lessor delivered the *Hacienda Felicidad* to the lessee, it was planted with sugar cane and it was agreed between the parties that the lessee would take charge of milling the cane and would pay the lessor the sum of P4.50 per picul of sugar.

It appears from the record that of the five lots so leased one-half of three of them (Nos. 846, 848 and 965) belong to the estate of Julia Guillas, deceased wife of the lessor, and the latter agreed to obtain from the proper court the necessary authority approving the contract of lease of these portions of land belonging to the deceased, of which property he was the judicial administrator. Indeed, he requested the court to approve the lease, but the court denied in October 1919 the authority requested.

In December, 1919, the defendant began to mill the sugar cane of the *hacienda* and on March 10, 1920, the plaintiff commenced this action for the purpose of annulling the contract of lease on the ground that the object thereof was impossible of performance.

After the demurrer of the defendant, based on the ground that the complaint did not allege facts sufficient to constitute a cause of action, had been overruled, with his exception, and the defendant had filed a general denial, the court rendered decision, (a) holding that the contract of lease in question is null and void, (b) sentencing the defendant to return to the plaintiff the *Hacienda Felicidad* with all its improvements, (c) sentencing the plaintiff to pay the defendant the expenses incurred by the latter in the milling of the sugar cane existing on the *hacienda* and to reimburse him with his share of the net earnings of the harvest in proportion to the time he was in possession of the *hacienda*, unless the plaintiff permits him to, harvest and mill the entire crop of the season, and (d) sentencing the defendant to pay the plaintiff the value of 2,431 piculs of sugar at the rate of P15.50 per picul, with legal interest thereon at the rate of 6 per cent per annum from March 6, 1920, until full payment, without any finding as to costs.

Appellant assigns several errors which he himself condensed into one,-"The court erred in declaring null and void the contract in question."

In deciding the question raised by the appellant, we must bear in mind the fact that neither in the original complaint nor in the amended complaint does the plaintiff sue in his capacity as judicial administrator, and neither is there any allegation to the effect that the conjugal partnership between him and his deceased wife had been liquidated. This being so, the questions raised are the following: When a conjugal partnership is dissolved by the death of the wife, who must administer the property of the conjugal partnership? What are the powers of such administrator? Is it necessary for him to obtain the permission of the court in order to lease, for a term of five years, one-half of the property belonging to the partnership?

> "In the case of Enriquez vs. Victoria (10 Phil., 10), this court established the method of administering the property of a conjugal partnership when it is dissolved by the death of the wife. The method established is that when a conjugal partnership is dissolved by the death of the wife, the husband is the administrator of the affairs of the partnership until they are liquidated. In the event of a dissolution by the death of the husband or in case of the demise of the husband after the dissolution by the death of the wife, *his administrator* is also the administrator of the partnership affairs and is the legal representative of the partnership.

> "In the case of Amancio vs. Pardo (13 Phil., 297), this court again affirmed its former decision and held that: 'When a conjugal partnership is dissolved by the death of the wife, the surviving husband, and not the judicial administrator appointed in the proceedings for the settlement of the estate, is entitled to the possession of the property of the conjugal partnership until he has liquidated its affairs. It is an error to settle the affairs of the conjugal partnership, dissolved by the death of the wife, in the special proceedings for the settlement of the wife's estate.' " (Rojas vs. Singson Tongson, 17 Phil, 476.)

In Molera vs. Molera (40 Phil., 566, £69), the court maintained the same doctrine. Said the Court: "This court has repeatedly announced that when a conjugal partnership is dissolved by the death of the wife, the surviving husband and not the judicial administrator appointed in the proceedings for the settlement of the estate, is entitled to the possession of the property of the conjugal partnership until he has liquidated its affairs. As a resolutory principle, it is an error to settle the affairs of the conjugal partnership, dissolved by the death of the wife, in the special proceedings for the settlement of the wife's estate."

These decisions are, in our opinion, conclusive as to the question here presented. Wherefore the plaintiff, as administrator of the conjugal partnership, has the right to the possession of the conjugal property until the liquidation thereof takes place, and he can exercise over such property the same authority as article 1548 of the Civil Code vests in all administrators, to wit:

> "No lease for a term of more than six years shall be made by the husband with respect to the property of his wife, by the father with respect to that of his children, by the guardian with respect to that of his ward, or by a manager in default of special power with respect to the property intrusted to him for management."

This court interpreting said article 1548 in Tipton vs. Martinez (5 Phil., 477), said: "This provision plainly shows that Aguirre could not, as administrator, have validly executed a lease of the land in question for a period of ten years in the absence of special authority to that effect. This, in our opinion, vitiated the contract. This defect, however, did not affect the contract in its entirety, but only in so far as it exceeded the six-year limit fixed by law as the maximum period for which an administrator can execute a lease without special power.

The contract in question was perfectly valid in so far as it did not exceed that limit, it having been executed by the administrator, Aguirre, within the scope of the legal authority he had under his general power to lease. That general power carried with it, under the article above quoted, the authority to lease the property for a period not exceeding six years. There was no excess of authority and consequently no cause for nullification arising therefrom, as to the first six years of the lease. As to the last four, the contract was, however, void, the administrator having acted beyond the scope of his powers.

> "The trial court construed article 1548 of the Civil Code as applying only to administrators of estates of deceased persons. This construction is manifestly erroneous. The provisions of that article are general and apply as well to administrators of property of living as of deceased persons."

It seems that the court below considered that the conjugal partnership between the plaintiff and his deceased wife was liquidated because of the fact that when the husband requested his appointment as judicial administrator of the intestate estate of his wife, he included in the inventory one-half of three of the five lots that were subsequently leased, as belonging to her. We are of the opinion, and so hold, that this inclusion of the property in the inventory, by itself, does not have the effect of a liquidation of the conjugal partnership. The properties were still subject to the payment of the partnership debts; it does not appear that the court had finally approved the accounts of the administrator (liquidator) nor that it had adjudicated the remaining portion to the partners, the deceased and the surviving spouse. There is no practicable way to determine what was the one-half of the conjugal property that belonged exclusively to the deceased spouse. Indeed, although the plaintiff had been appointed judicial administrator of the intestate estate of his wife, he was but a mere administrator and liquidator of the conjugal partnership.

However, if by a fiction of law, we consider that the plaintiff is the judicial administrator of one-half of the conjugal property (pending the liquidation of the partnership) , would it be necessary for him to secure judicial authority to lease such property, for a period of five years ?

Section 643 of the Code of Civil Procedure, provides:

> "Before an executor, or an administrator, enters upon the execution of his trust,

> and letters testamentary or of administration are issued, the person to whom they are issued shall give a bond in such reasonable sum as the court directs, with one or more sufficient sureties, conditioned as follows:
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> "1. * * * * * * *
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> "2. To administer according to law, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and of the same pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court:
>
> "3.* * * * * * *
>
> "4.* * * * * * *"

According to this provision of the law and in harmony with the doctrine in the case of Tipton vs. Martinez, supra, the plaintiff could validly enter into the contract in question without judicial authority therefor.

Reversing the judgment appealed from, the defendant is hereby absolved from the complaint with costs against the plaintiff. So ordered.

Araullo, C. J., Malcolm, Ostrand, Johns, and *Romualdez, JJ*. concur.

RESOLUTION ON MOTION FOR RECONSIDERATION

August 19, 1922.

VlLLAMOR, J.:

Were it not because the mover filed two additional petitions and a memorandum besides the motion twenty-nine pages long filed by him on June 19th, we would not deem it necessary to write this opinion in order to decide his motion for reconsideration, as, ordinarily, resolutions of this kind are made by memorandum orders spread upon the minutes of this Court.

The arguments ably presented by the mover refer to the personality of the plaintiff, to the powers of a judicial administrator, and to the nullity of the contract in question. We think

that we have expressed our opinion upon these points sufficiently clear in the first decision, however, we desire to make it plain that the decisions of this Court, including that of Tipton, decided on January 2, 1906, which were cited in support of our first decision, were rendered after the promulgation of the Code of Civil Procedure.

That the administrator of the conjugal property, the herein plaintiff, was after the death of his wife also appointed administrator of the property of the deceased, does not affect the essence of the matter, in view of the principle enunciated in the Molera case, formerly quoted.

The fact that the certificates of title of parcels 846, 848 and 965, included in the contract of lease under discussion, contain the declaration that such lands belong in equal parts to Fortunato Rodriguez and to his deceased spouse Julia Guillas, far from destroying the presumption that the said lands are conjugal property, it confirms and ratifies the character of such lands as conjugal property; wherefore the adminstration thereof cannot be taken from the surviving spouse while the final liquidation of such property is going on.

Mover cites the case of Lizarraga Hermanos vs. Abada (40 Phil., 124), and maintains that according to the doctrine enunciated in that decision, a judicial administrator cannot mortgage, even with judicial authority, the property under administration. If this is the doctrine laid down in that case we hold that same cannot be successfully cited in this case, for two reasons: Firstly, because after the promulgation of this decision the Legislature enacted Act No. 2884, amending section 714 of the Code of Civil Procedure, empowering the judges of first instance to grant authority to the executor or administrator to sell, mortgage or in any way encumber the real property (under administration) when such sale, mortgage, or encumbrance would be of benefit to the parties in interest, and in no way prejudice any legacies of realty; and secondly, because in the Lizarraga case the property under administration was sought to be mortgaged to answer for the payment of a debt, which juridically involves the idea of disposing of the thing mortgaged, since such a contract carries with it the right to foreclose the mortgage in case of nonpayment of the debt and for this reason the Civil Code, as well as the Code of Civil Procedure, as amended by Act No. 2884, requires that judicial authority be first had. In other words, a judicial administrator is without authority to sell the real property under his administration nor to constitute any mortgage or lien thereon. In order to execute these acts or contracts judicial authority is necessary.

On the other hand, a judicial administrator may lease the property under his administration

for any period of less than 6 years as this is a power tacitly granted by article 1548 of the Civil Code. Specifically speaking, the administrator, as an agent of the court, must comply with the terms of the powers conferred. Section 643 of the Code of Civil Procedure speaking of the duties of executors and administrators, provides:

> "2. To administer according to law, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and of the same pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court;"

This agency consists in the care in accordance with the law of the estate under administration. It is an agency granted in general terms and an agency of this nature embraces only acts of administration of the property. (Art. 1713 of the Civil Code.) If, as we have said, the leasing of such property for any period of less than 6 years, which is an act properly speaking of administration, is impliedly authorized by said article 1548 of the Civil Code, the conclusion appears inescapable that the plaintiff Rodriguez, even when considered as the judicial administrator of the lands in question, could validly lease them for a period of less than 6 years.

It is alleged by the mover that the intestate of which plaintiff was the administrator did not have any debts and consequently he had no necessity of leasing the lands aforesaid. This allegation is untenable. The leasing of, property does not signify, and, necessarily therefore, does not mean that the lessor's object is to obtain funds with which to pay debts; what it signifies is to make the lands so leased productive. When the plaintiff gave in lease the lands in question he did nothing more than to fulfill the duties of every administrator which is to obtain, from the property under his care, the fruits that by its nature it should produce.

It is alleged in the petition for new trial filed with this court that the record of the intestate of Julia Guillas was terminated after this case had been disposed of by the court *a quo* and that the records of this case should be returned to the court of origin in order that the plaintiff-appellee might have an opportunity to prove this fact.

It should be remembered that in our first decision we stated that there was no evidence of the fact that the conjugal partnership between the surviving spouse and the deceased had been completely liquidated at the time of the rendition of judgment hereon, that is to say, on

December 3, 1920. It is now alleged that the partnership was definitely liquidated by virtue of the order dated the 4th of the said month and year, rendered by the court below in the intestate proceedings referred to. Notwithstanding the said order, we are of the opinion that the new trial is unnecessary, because the said order, to our mind, does not affect, the validity of the contract of lease herein discussed. The order of the court approving the tentative partition of the property of the deseased Julia Guillas is as follows:

> "The court finds that the tentative partition dated August 20th of this year is correct, and the same is hereby approved in all its parts and to this effect adjudicates in favor of Samson Rodriguez, Juanita Rodriguez, Inecerio Rodriguez and Gregorio Rodriguez, as the sole heirs of the deceased Julia Guillas the undivided half of lots 486-A, 848 and 965 of the Cadaster of La Carlota, Province of Occidental Negros, subject to the usufruct of the widower in favor of Fortunato Rodriguez. These intestate proceedings are declared terminated, and whoever may be in duty bound is hereby ordered to institute guardianship proceedings for the heirs of said deceased Julia Guillas, as they are all of minor age, and when the said guardian for the said minors has been appointed, he is ordered to take charge of the hereditary portion adjudicated to the said minors, whereupon the bond of the administrator Fortunato Rodriguez will be cancelled."

It results from this order that the former conjugal partnership between the plaintiff and his deceased spouse was converted into an actual community of property among the said plaintiff and his four children in accordance with article 392 of the Civil Code and as to the administration and the better enjoyment of the common thing, according to article 398 of the same Code, the decision of the majority of the co-owners is binding. In the instant case the plaintiff represents the majority portion of the common thing, as aside from the undivided half, he has over the other the usufruct pertaining to the widower which amounts to the portion corresponding to his child not bettered (art. 834 of the Civil Code).

The supreme court of Spain in a decision of May 29, 1906, established the following doctrines:

> "That the nature and particular conditions of the community property make it necessary, for the management and better enjoyment of the thing owned in common, that they follow the decision of the majority owners, to which all the

> others must submit as is established by article 393 of the Civil Code, which provides further that the majority should be understood as the resolution of the co-owners representing the majority interest in the community property, and that if there be no majority or if the decision of such majority should be seriously prejudicial to the common property, the judge, at the instance of any of the co-owners, shall order what may be proper and even appoint an administrator therefor.
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> "Since according to article 1543 of the same Code the contract of lease is defined as the giving or the concession of the enjoyment or use of a thing for a specified time and fixed price, and since such contract is a form of enjoyment of the property, it is evident that it must be regarded as one of the means of enjoyment referred to in said article 398, inasmuch as the terms enjoyment, use, and benefit involve the same and analogous meaning relative to the general utility of which a given thing is capable." (104 *Jurisprudenda Civil*, 443.)

And by sentence of May 1, 1906, that same Tribunal held the following:

> "It is proper to compute, in an annuity existing over a given property owned in common, the part corresponding to each co-owner in order to establish, with all its legal consequences, the amount of his interest in the community property with respect to the other co-owners, because if this is not done (since this evidently represents a real and positive interest in the property equivalent to a compensation for the one owning it especially and for the co-owners in general, consisting in the, value of the annuity over the thing), it will contravene a positive element of greater interest and benefit and would eliminate the interest, which would be contrary to the reality of things and to the provisions of article 398 of the Civil Code which, in treating of the majority interests, clearly refers to all those attached to the thing which is the object of the community property whatever their origin may be." (104 *Jurisprudencia Civil*, 272.)

In view of all of the foregoing, the motion for reconsideration is denied, it being understood, however, that the appellant is held responsible to the appellee for the value of the 2,431 piculs of sugar which he harvested from the sugar cane existing on the *hacienda* at the time of celebrating the contract at the agreed price of P4.50 per picul, that is to say, the amount

of P10,939.50 with its legal interest from the date of the filing of the complaint. So ordered.

Araullo, C. J., Malcolm, Johns, and *Romualdez. JJ.,* concur.

CONCURRING

OSTRAND, *J.*,

I doubt if article 1548 of the Civil Code is applicable to judicial administrators appointed under the Code of Civil Procedure, but upon other grounds, I concur in the result reached by my colleagues.

A lease given by a judicial administrator upon property under his administration and not extending beyond the term of the administration is a mere administrative act and not an incumbrance. The lease in question is therefore in force, at least, until the administration is terminated and is voidable only as to the portion of its term which extends beyond that point. It does not appear in this case that the estate has been turned over to the heirs; on the contrary, it is shown, affirmatively, that no guardian has been appointed for the minors and that they, consequently, cannot take delivery of the property assigned to them. As far as we know the estate, is, therefore, still in the hands of the administrator notwithstanding the fact that the court below, in its order approving the scheme of distribution, declares the administration terminated. As far as the cancellation of the lease is concerned the action is, in my opinion, clearly premature.

Motion denied.

Date created: June 05, 2014