

43 Phil. 237

[G. R. No. 17024. March 24, 1922]

**DOMINGO BEARNEZA, PLAINTIFF AND APPELLEE, VS. BALBINO DEQUILLA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ROMUALDEZ, J.:

In the year 1903, Balbino Dequilla, the herein defendant, and Perpetua Bearneza formed a partnership for the purpose of exploiting a fish pond situated in the barrio of Talisay, municipality of Barotac Nuevo, Province of Iloilo, Perpetua obligating herself to contribute to the payment of the expenses of the business, which obligation she made good, and both agreeing to divide the profits between themselves, which they had been doing until the death of the said Perpetua in the year 1912.

The deceased left a will in one of the clauses of which she appointed Domingo Bearneza, the herein plaintiff, as her heir to succeed to all her rights and interests in the fish pond in question.

Demand having been made upon Balbino Dequilla by Domingo Bearneza for the delivery of the part of the fish pond belonging to his decedent, Perpetua, and delivery having been refused, Domingo Bearneza brought this action to recover said part of the fish pond and one-half of the profits received by the defendant from the fish pond from the year 1913 to 1919, as damages (the amended complaint was filed on April 12, 1920), amounting, according to plaintiff, to the sum of thirteen thousand one hundred pesos (P13,100).

In his answer, the defendant denies generally and specifically the allegations of the complaint, and alleges, as special defense, that "the formation of the supposed partnership between the plaintiff and the defendant for the exploitation of the aforesaid fish pond was not carried into effect, on account of the plaintiff having refused to defray the expenses of reconstruction and exploitation of said fish pond," As another special defense, the defendant alleges "that in the event that the court should hold the plaintiff to be entitled to the

undivided one-half of the fish pond, claimed in the complaint, the plaintiff's action has prescribed, the time for bringing the same having elapsed."

Proceedings having been held as usual, the court below rendered judgment, declaring the plaintiff owner of one-half of the fish pond, which was composed of the portions known as "Alimango" and "Dalusan," but without awarding him any of the damages claimed by him, the same not having been proven, in the opinion of the court, and ordering the defendant to pay the costs.

From this judgment the defendant appeals, making various assignments of error. The plaintiff did not appeal from that part of the judgment denying his claim for damages; hence the only question we are called upon to decide is whether or not the plaintiff has any right to maintain an action for the recovery of one-half of the said fish pond.

The partnership formed by Perpetua Bearneza and Balbino Dequilla, as to the existence of which the proof contained in the record is conclusive and there is no dispute, was of a civil nature. It was a particular partnership, as defined in article 1678 of the Civil Code, it having had for its subject-matter a specified thing, to wit, the exploitation of the aforementioned fish pond. Although, as the trial court says in its decision, the defendant, in his letters to Perpetua or her husband, makes reference to the fish pond, calling it "our," or "your fish pond," this reference cannot be held to include the land on which the said fish pond was built. It has not been proven that Perpetua Bearneza participated in the ownership of said land, and Exhibits 2 and 3 of the defendant show that he has been paying, as exclusive owner of the fish pond, the land tax thereon, although in Exhibit X he says that the said land belongs to the State. The conclusion, therefore, from the evidence is that the land on which the fish pond was constructed did not constitute a part of the subject-matter of the aforesaid partnership.

Now, this partnership not having been organized in the form of a mercantile partnership, and, therefore, the provisions of the Code of Commerce not being applicable thereto (article 1670 of the Civil Code), it was dissolved by the death of Perpetua Bearneza, and falls under the provisions of article 1700, subsection 3, of the same Code, and not under the exception established in the last paragraph of said article 1700 of the Civil Code.

Neither can it be maintained that the partnership continued to exist after the death of Perpetua, inasmuch as it does not appear that any stipulation to that effect has ever been made by her and the defendant, pursuant to the provisions of article 1704 of the Code last

cited.

The partnership having been dissolved by the death of Perpetua Bearneza, its subsequent legal status was that of a partnership in liquidation, and the only rights inherited by her testamentary heir, the herein plaintiff, were those resulting from the said liquidation in favor of the deceased partner, and nothing more. Before this liquidation is made, which up to the present has not been effected, it is impossible to determine what rights or interests, if any, the deceased had, the partnership bond having been dissolved.

There is no sufficient ground for holding that a community of property existed between the plaintiff and the defendant, it not being known whether the deceased still had any interest in the partnership property which could have been transmitted by will to the plaintiff. There being no community of property, article 395 of the Civil Code cited by the plaintiff in support of his contention can have no application to the case at bar.

Neither can it be said that the partnership continued between the plaintiff and the defendant. It is true that the latter's act in requiring the heirs of Perpetua to contribute to the payment of the expenses of exploitation of the aforesaid fishing industry was an attempt to continue the partnership, but it is also true that neither the said heirs collectively, nor the plaintiff individually, took any action in response to that requirement, nor made any promise to that effect, and therefore no new contract of partnership existed.

We find that the plaintiff has not sufficiently shown his right of action.

The judgment appealed from is modified, the same being affirmed insofar as it denies the plaintiff's claim for damages, and reversed insofar as it declares the said plaintiff owner of one-half of the fish pond, "Alimango" and "Dalusan," here in dispute.

No special finding as to costs is made. So ordered.

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

