

2 Phil. 44

[ G.R. No. 559. March 14, 1903 ]

**MANUEL BARRIOS Y BARREDO, PLAINTIFF AND APPELLANT, VS. MARIA PASCUALA DOLOR ET. AL., DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**MAPA, J.:**

The plaintiff has brought an action for the recovery from the defendants, heirs of the late Don Ciriaco Demonteverde, of one-half of a sugar estate and the stock thereon, which he claims to have purchased from the said Don Ciriaco Demonteverde. In support of his contention as to the law of the case he attached to the complaint a public instrument which appears to have been executed by himself and Demonteverde, February 3, 1883, in which, according to the plaintiff, a stipulation is made for a contract of partnership for the operation of the said estate, and, furthermore, a community of ownership is established with respect to the estate in favor of the two parties to this instrument. It does not appear that this instrument has been recorded in the registry of property.

Service of the complaint having been had on the defendants, Dona Maria Pascuala Dolor raised an incidental issue as a previous question, praying that the instrument referred to be ruled out of evidence on the ground that it had not been recorded in the registry of property, and that it be returned to the plaintiff without leaving in the record any transcript or copy thereof or extract therefrom, resting this contention upon article 389 of the Mortgage Law. This motion was granted by the judge by order of the 24th of March, 1898, against which the plaintiff appeals.

The article cited is literally as follows: "From the time this law goes into operation the ordinary and special courts and the Government offices will not admit any document or instrument by which rights subject to inscription according to this law are constituted, transmitted, acknowledged, modified, or extinguished, unless recorded in the register, *if the object of the presentation of such document is to enforce, to the prejudice of a third person,*

*a right which should have been recorded."*

In view of the latter part of this article, the question has been raised in this incidental issue whether the defendants, as heirs of Don Ciriaco Demonteverde, can and should be regarded as third persons for the purposes of the Mortgage Law, with respect to the contract executed by Demonteverde and evidenced by the instrument above mentioned.

The Mortgage Law itself, in article 27, gives the definition of a third person, which is, "he who has not taken part in the act or contract recorded."

According to this the parties to a contract are not third persons; consequently, Demonteverde was not a third person with respect to the contract entered into by him and evidenced by the instrument in question. He not being such a third person, neither can his heirs be so regarded, nor should they be so regarded with respect to the same contract, because they are only the juridical continuation of his personality, they having been surrogated, by virtue of the right of succession, to all his rights and obligations, in accordance with provisions of article 661 of the Civil Code.

This doctrine, which is a mere consequence of the general principles of law, has received express sanction in the decisions of the supreme court of Spain. In its judgment of the 27th of January, 1881, the latter held that acts, both in court and out, consented to by the person who lawfully took part therein, are effective with respect to the heirs or successors of such parties, who are not to be regarded as third persons for this purpose; and in its judgment of the 28th of January, 1892, it was decided by the same court that heirs are nothing more than the continuation of the legal personality of their decedent and can not be considered in any degree as third persons within the meaning of article 27 of the Mortgage Law.

The defendants, therefore, are not third persons with respect, to the contract entered into by their decedent, Don Ciriaco Demonteverde, in the instrument of February 3, 1883, and they therefore can not avail themselves of the prohibition contained in article 389 of the Mortgage Law for the purpose of opposing the admission of this instrument as evidence in the case, because not recorded in the registry of property. This prohibition was established solely and exclusively in favor of those who, within the meaning of that law, are third persons. Were it otherwise, the position of the\* defendants would be superior to that of the person from whom they derived their rights, because lie, not being a third person, could not set up such an exception. This would certainly be most illogical from a legal point of view, in view of the fact that the heir is, as above stated, a mere continuation of the civil personality

of his decedent.

The defendants not being third persons, it becomes unnecessary to decide whether the instrument referred to is or is not subject to inscription in accordance with article 2 of the Morignige Law, because, at all events, and however this may be, the mere failure to record the instrument in the registry of property can not be a bar to its admission as evidence in this case, as the action is not brought against a third person in the sense of this word as used in the law referred to.

Consequently we reverse and annul the order of the court below, overruling the motion made on behalf of Dona Maria Pascuala Dolor, without special condemnation, as to the costs of either instance. So ordered.

*Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.*

*Torres, J., did not sit in this case.*