8 Phil. 119

[G.R. No. 3459. March 22, 1907]

CHIONG JOC-SOY, PETITIONER AND APPELLANT, VS. JAIME VAÑO ET AL., RESPONDENTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

Genoveva Rosales, a resident of Cebu, made her will on the 26th day of October, 1903. The third clause is in part as follows:

> "3. Of the third part of the estate, which is at my free disposal, I bequeath to the Chinaman Chiong Joc-Soy, the sum of 50,000 pesos, Mexican currency, of which amount 20,000 pesos are for the aforesaid Chiong Joc-Soy, and the balance of 30,000 pesos for the expenses of interment etc. of my late husband Don Nicasio Veloso, * * *."

The rest of her property, which amounted in all to upward of 800,000 pesos, she left to her children. After her death the will was presented for probate in the Court of First Instance of the Province of Cebu and was duly proved and allowed on the 24th of November, 1903, and an administrator with the will annexed was appointed. By order of the court he was allowed one year from the 24th of November, 1903, in which to pay the debts and legacies of the deceased.

On the 6th of February, 1905, the petitioner, Chiong Joc-Soy, the legatee named in the will, filed a petition in the said proceeding for the settlement of the estate of the deceased, Genoveva Rosales, asking that the administrator be directed to pay him the 50,000 pesos mentioned in the will. An order was made by consent on the 28th of February, 1905, directing the administrator to pay to the petitioner the 20,000 pesos expressed in the first part of the legacy. As to the remainder of the amount therein expressed, the court, on the

6th day of March, 1906, made another order or judgment which as afterwards modified directed as follows:

> "And the court hereby orders that the administrator shall immediately pay over to the said Joc-Soy the sum of 30,000 pesos, Mexican currency, or its equivalent in Conant money, at this day's price, fixed by the court, with interest at the rate of 6 per cent per annum from the date of the presentation of the claim, or that is, from the 6th of February, 1905."

From this order both the petitioner, Chiong Joc-Soy, and the administrator and some of the heirs have appealed. No appeal was taken by any one from the order probating the will.

I. As to the appeal of the administrator and the heirs: It is alleged as the first assignment of error that the will was not executed in accordance with the law; that the legacy therein did not, therefore, exist and consequently that the court erred in ordering the administrator to pay the amount thereof to the petitioner.

The complete answer to this claim is that the validity of the will was conclusively established by the order of the court admitting it to probate. The question as to whether in the execution of the will the requirements of the law were complied with was then submitted to that court for decision. It had jurisdiction to decide that question. The heirs who have now appealed were parties to that proceeding. After a hearing, the court decided the question and from that decision none of the heirs appealed. The judgment of the probate court in such case stands like any other decision of a court of competent jurisdiction. Its judgments are binding upon the parties interested and their validity, in the absence of any proof of fraud or accident, or mistake, can be called in question only by an appeal. In this case there is no suggestion of the existence of any of these things. There is no claim made that the heirs were not properly notified of the hearing upon the probate of the will and nothing to indicate that they were not present and took part in that hearing. Section 625 of the Code of Civil Procedure provides that "the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution."

The second error assigned is that the court below ordered the payment of the 30,000 pesos without requiring the petitioner to give a bond conditioned that he would dispose of the money as indicated in the will.

Article 797 of the Civil Code is as follows:

> "The statement of the object of the designation or of the legacy or the application to be given to what has been left by the testator, or the charge imposed by the same, shall not be considered as a condition, unless it appears that such was his will.
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> "What has been left in this manner may be immediately claimed and is transmissible to the heirs who give security for the fulfillment of the orders of the testator and the repayment of what they may have received, with its fruits and interest, should they fail to comply with this obligation."

From the first paragraph of this article it is apparent that there is a presumption in cases of this kind that the legacy is not conditional, and unless it clearly appears in the will that it was the intention of the testatrix in this case to make the legacy conditional, the words used must be considered as not imposing any condition. We think under all the circumstances of the case that the testatrix did not intend to impose upon the legatee any condition in making this gift of 30,000 pesos. It is true, as claimed by the heirs, that it is very evident that she intended the 20,000 pesos to be the absolute property of the petitioner and that as to the 30,000 pesos she had a different intention, but this does not resolve the question presented. That she wished and desired the petitioner to expend the 30,000 pesos as indicated in the will is apparent, but the question is, did she intend to make her gift conditional, or did she rely upon her confidence in the petitioner that he would carry out her suggestion without the necessity of imposing a condition upon him? It appears that the husband of the testatrix was a Chinaman; that she was a Filipina, and that the legatee was a Chinaman. The manner in which persons of Chinese descent spend money to perpetuate the memory of a deceased person of their race does not appear, nor the amount that they are accustomed so to expend, nor the time during which it may be expended. All these circumstances were doubtless known to the testatrix and we believe that knowing them she intentionally selected a person of Chinese birth to carry out her purposes in this regard. We hold, therefore, that the legacy is not conditional.

When the legacy is not conditional, there may, however, be cases which do not fall under the provisions of said article 797.

Scaevola says in his Commentaries on the Civil Code, volume 13, page 646:

> "It is doubtful if the definite directions of the testator, not imposed in the sense of a duty, are embraced in the quoted expression of the purpose of the legacy, with the consequences provided in paragraph 2 of the said article 797. Examples of this class of instructions: 'I bequeath to Luis my property and desire him to expend in good works all in excess of that which is necessary for his support. I name him my heir so that he may as in duty bound attend to the better education of his children.' In these cases, capable of infinite variety, attention must be paid to the true intention of the testator, and if it appears that there was no wish to impose a definite condition, but merely to express a desire or personal opinion as to the best disposal of the estate, then article 797 would not be applicable."

We do not find it necessary to decide whether the legacy in question comes within the provisions of the said article or not, for we are satisfied that, even if it does, the judgment of the court below must be affirmed. A fair construction of the second paragraph of the article indicates that the heirs of the legatee are the only ones who are required to give security, and that such security is not required of the legatee himself.

In the case of Fuentes *vs*. Canon,[1] No. 2386, decided April 16, 1906 (4 Off. Gaz., 379), the will there in question contained the following clause:

> "Twentieth. I order the sum of 3,000 pesos to be delivered to the spouses Don Miguel de la Fuente and Doña Potenciana Medrano to be expended in the purchase of good agricultural land, one-third of which shall belong to them, and of the remaining two-thirds, one third shall be given to the widow and son of Don Eriberto de la Fuente and the other third to the sons and heirs of Don Honorio de la Fuente."

We held that the heirs were bound to pay the full 3,000 pesos to the legatees named in the will and that the court could not require such legatees to give security that they would deliver to the other persons named in the will the parts corresponding to them. The testatrix in that case, however, died prior to the enactment of the Civil Code.

The third assignment of error made by the heirs is that the court erred in ordering the payment of interest from the date of the presentation of the petition. The petitioner in his appeal has also assigned as error the failure of the court to order the payment of interest

from the date of the death of the testatrix, or at least from the expiration of the period of one year granted to the administrator for the purpose of paying the debts.

Article 882 of the Civil Code provides that when the legacy relates to a specific article the legatee is entitled to the income and rents from the death of the deceased, but article 884 is as follows:

> "If the bequest should not be of a specific and determined thing, but generic or of quantity, its fruits and interest from the death of the testator shall belong to the legatee if the testator should have expressly so ordered."

In this case the testatrix did not expressly provide that the legatee should be entitled to interest from her death. In the case of Fuentes *vs*. Canon, above cited, the same question was presented and we there held that the legatee was entitled to interest from the date of his demand for payment. We follow the rule laid down in that case and hold that the court committed no error in ordering the judgment of interest from the date of presentation of the petition by the legatee.

II. As to the appeal of the petitioner, what has been said disposes of all the assignments of error made by him except one. After the court below had made its order of March 6, 1906, in which it directed the payment of 30,000 Mexican pesos, or its equivalent in Philippine currency at that day's price fixed by the court, the petitioner made a motion that the court fix the rate at 100 pesos, Mexican currency, for 100 pesos and 25 centavos, Philippine currency, and presented an affidavit to the effect that that was the market price of Mexican currency on the 6th day of March. The court below, in its order of the 28th of April, which was not made by the same judge who made the order of the 6th of March, held that it was improper at that time to receive evidence as to the market value of the two kinds of money; that no evidence had been presented at the trial as to such market value, and that consequently the court, in making the order, must have intended to apply the rate fixed by the Executive Order then in force.

We can not agree with the court's construction of the order of the 6th of March. We think that order means that the rate of exchange should be the rate which actually existed in Cebu on the 6th day of March, 1906, and the court, not having determined that in his order, left it to the parties to ascertain and determine it when payment was made. That price is a matter which can be easily determined at any time, and we hold that it is the duty of the

administrator, if he pays in Philippine currency, to pay at the market price of Mexican currency at Cebu on the 6th day of March, 1906.

The judgment of the court below is affirmed, without costs to either party in this court.

After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and *Tracey, JJ.,* concur.

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[1] 6 Phil Rep., 117.

Date created: August 01, 2014