2 Phil. 12

[G.R. No. 955. March 07, 1903]

RAMON CHAVES, PLAINTIFF AND APPELLEE, VS. RAMON NERY LINAN, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

The judgment impugned in the aforesaid bill of exceptions, presented by defendant, orders among other things the exclusion from the liquidations therein admitted of the sum of $18,712.08¾ representing the credits and property mentioned by plaintiff in the liquidation contained in his complaint. No legal reason is given for such an exclusion. The credits and property in question pertained to the extinguished partnership, hence the interest that each partner has therein is unquestionable. Therefore it is not possible to consider the liquidation as finally settled and ended or determine which of the partners is the true debtor according, thereto; consequently the judgment excepted to can not be sustained, as it does not definitely decide or determine the question pending as to the mere exclusion or omission of the sum referred to. This item, having been acknowledged by both parties, should necessarily be included in the final settlement of the affairs of the partnership, and must be taken.into account in the liquidation and determination of the suit pending between the parties.

The profit and loss of the partnership must be divided in the manner stipulated, and if the agreement should only refer to the participation of each partner in the profits then their corresponding share of the losses shall be in the same ratio.

In the absence of an agreement the share of each partner in the profits anil losses shall he in proportion to what he may have contributed. The partner who contributes his services only shall receive a share equal to the one who has contributed the least. If besides his services he should have contributed capital, he shall also receive the proportional share which may pertain to him for his capital. (Art. 1689) of the Civil Code.)

The partition between the partners is governed as to the form and the obligations arising therefrom by the rules of succession. The industrial partner can not claim for himself any part of the property contributed; he can share only in the profits and benefits, in conformity with the provisions of article 1689, if the contrary should have not been expressly stipulated.

The judgment rendered below and brought before us on exception should have1 decided the issues in accordance with these legal principles and the provisions contained in the Civil Code with respect to the division of estates among heirs.

Without the inclusion of the amount referred to as having been omitted in the liquidation and final settlement of the business engaged in by the partnership existing between the parties, there would be no legal means of fixing definitely in the final liquidation and decision of the case the amount of profits and losses had by the partnership. For this reason the judgment appealed can not be sustained.

The Supreme Court in the exercise of its appellate jurisdiction can either affirm, reverse, or modify any final judgment, order, or decree and can direct that the proper judgment be entered, or that a new trial be had. The latter, in the opinion of this court, would be the proper action in the case before us, so that after a complete liquidation is made final judgment may be rendered in the premises.

Wherefore, in view of the provisions of article 496 of the Code of Civil Procedure and for the foregoing reasons, this court deems it proper that the final judgment excepted to by defendant, Nery Linan, be set aside and a new trial had upon the issues raised by the parties, the judge to proceed in accordance with law, with no special order as to the costs of this instance. It is so ordered.

Arellano, C. J., Cooper, and *Mapa, JJ.,* concur.

DISSENTING

WILLARD, J., with whom **LADD, J.,** concurs:

I dissent. There is no certificate by the judge nor any statement in the bill of exceptions that it, the bill of exceptions, contains all the evidence produced and all the proceedings had at the trial in the court below. On the contrary it plainly appears from the contents thereof that

it does not contain all the proceedings. The appellee made two motions in this court that the entire record be sent here in order that the imperfections in the bill of exceptions might be corrected. These motions were opposed by the appellant and denied by this court. Why the court below excluded this sum of $18,712.08¾ from the accounting does not appear. To the judgment which so excluded it the appellant took no exception. He moved for a new trial on the ground that the findings of fact Avere manifestly against the weight of the evidence, but said nothing about any error of law in excluding this sum from the accounting. It is more than probable that it consisted almost entirely of uncollectible accounts due the firm. That each party charged the other with the loss suffered by reason of the uncollectibility of these accounts does appear. The parties may have preferred to leave them out of the liquidation, each one retaining his interest in them and dividing between themselves later anything realized from them. It is not unlikely that, if we had the whole record before us it would appear that the appellant consented that this item might be left out. The appellant ought not to be allowed to bring here an incomplete record, to oppose all efforts to have it perfected, and to secure a reversal of the judgment, when if we had before us all that the court below had before it when the judgment was rendered such judgment might have to be affirmed.

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