6 Phil. 88

[G.R. No. 2342. April 11, 1906]

CONCEPCION CALVO, PLAINTIFF AND APPELLEE, VS. ANGELES OLIVES AND HER HUSBAND, EDUARDO GUTIERREZ, ET AL., DEFENDANTS AND APPELLANTS.[1]

D E C I S I O N

CARSON, J.:

Francisco Gonzalez de la Fuente, the deceased husband of the plaintiff in this case, was the owner at the time of his death of an undivided half interest in the following property, namely: A house on Calle Palacio, Manila; a building known as No. 96 Escolta, Manila; a hacienda situated in Pasacao, Province of Camarines, and certain furniture and jewelry; the other undivided half interest in said estate being the property of the defendants Angeles, Paz, and Gabriel Olives, all of said property being burdened with certain debts and legacies amounting to 11,741.53 pesos, Mexican currency. The title to two houses in Ermita, Manila, was also registered in the name of the said De la Fuente at the time of his death, this latter property being subject to a debt of 12,000 pesos, Mexican currency, in favor of one Julian de la O.

Under the terms of the will of the said De la Fuente, all of his property was given to the defendants Angeles, Paz, and Gabriel Olives, subject, nevertheless, to a life interest in the usufruct thereof in favor of his widow Concepcion Calvo, the plaintiff in this case.

In the settlement of the estate differences arose between the plaintiff and the defendants, and with a view to the adjustment of these differences the following agreement was entered into:

> "The undersigned, Angeles and Paz Olives, in the presence of their respective husbands, and Gabriel Olives, as heirs of certain property of Francisco Gonzalez de la Fuente, and Concepcion Calvo, as usufructuary heiress of the said Gonzalez, agree upon a division of the inheritance, the principal conditions of

which are as follows:

"First. The property No. ____ on the Escolta, half of which belonged to the testator, shall be sold at a price not less than ninety thousand pesos.

"Second. From the proceeds of the sale there shall be paid to the *Obras Pias* the amount owing Mr. Roensch, that owing Julian de la O., and the unpaid legacies made by Jose Gonzalez de la Fuente.

"Third. The remainder shall be turned over to Concepcion Calvo to be used by her as usufructuary heiress after she has given a mortgage bond (*fianza hipotecaria*.)

"Fourth. Concepcion Calvo relinquishes her right to reimbursement of the amounts expended by her on account of the last illness and the burial of the testator. But in compensation for this she shall have all the movable property of the testator with the exception of a set of buttons, etc., etc., belonging to the testator's father, which shall go to Gabriel Olives as the only male grandson.

"Fifth. With regard to the pieces of property purchased by the testator from Pantaleona Rivera, which were paid for by money half of which belonged to the testator and the other half to the heirs of Paz Gonzalez, Concepcion Calvo recognizes the said heirs as absolute owners of the half of the interest of the testator in and to the said property.

"Sixth. Angeles, Paz, and Gabriel Olives respect the legacy of the testator to Concepcion Calvo, and acknowledge her right to enjoy the usufruct of half of the house No. 97 Calle Palacio, half the estate of Pasacao, and half the interest of the Ermita houses.

"Seventh. Gabriel, Angeles, and Paz Olives renounce all rights they may have as wards of the testator to require a rendering of accounts of any kind.

"Eighth. Concepcion Calvo shall be entitled to claim from Pantaleona Rivera whatever taxes she may have paid for the Ermita houses after the death of the testator.

"In witness whereof, we sign the present document in Manila, this 4th day of May, 1903.

> "(Signed) Angeles O. de Gutierrez, Concepcion Calvo, Eduardo Gutierrez, Gabriel Olives, Paz O. de Martinez, and Manuel Martinez."

The building on the Escolta was sold for the sum of 90,000 pesos, Mexican currency, and a short time thereafter the property in Ermita was resold to its original owner for the sum of 15,000 pesos, Mexican currency. Out of the money realized from the Escolta property 11,741.53 pesos was paid on account of the above-mentioned debts and legacies, and out of the proceeds of the sale of the houses in Ermita the above-mentioned debt of 12,000 pesos was paid to the said Julian de la O.

The defendants negotiated the resale of the Ermita property and the payment of the 12,000 pesos debt thereon, and retained the entire balance of 3,000 pesos arising out of the transaction; and further received from the proceeds of the sale of the Escolta property the sum of 45,892 pesos; the balance of the proceeds of the sale of the Escolta property after the payment of the above-mentioned debt, amounting to 32,365.97 pesos, was left in the hands of one Barrera to be paid over to the plaintiff upon the execution of a proper mortgage bond to secure its return to the defendant at her death, which balance is now in the hands of C. C. Cohn, attorney, he having been appointed by the Court of First Instance as receiver to hold the said funds, subject to the orders of the court.

Plaintiff refuses to accept the said balance, and insists that under the terms of the foregoing agreement she is entitled to have one-half of the amount received for the San Luis property and the whole amount of the purchase price of the property on the Escolta, less the amount of the debts mentioned in the second article of the agreement.

The court below was of opinion that the language of the third article of the foregoing agreement leaves no room for interpretation or construction, and that the word "remainder" as used therein refers necessarily to the balance remaining after deducting from the whole amount received from the Escolta property the amount of the debts and legacies mentioned in the second article. We are of opinion, however, that the court erred in its construction of this section of the agreement, and we think that the word "remainder" must be limited to the inheritance which it was the intention and object of the parties to divide, for the preamble expressly states that the parties, as heirs of Francisco Gonzalez de la Fuente, agree upon a division of the inheritance, and it is admitted that one-half of the property on the Escolta was the property of the defendants, and formed no part whatever of said inheritance.

Article 1283 of the Civil Code provides that "however general may be the terms of a contract, there shall not be understood as included therein things and cases different from those regarding which the interested parties proposed to contract;" and we are of opinion that although the word "remainder," as used in the third article of the said agreement, might, in the broadest acceptation of the term, refer to the total balance resulting from the sale of the Escolta property; nevertheless, under the provisions of the foregoing article it should be limited to the subject-matter of the agreement, and thus limited, it must be taken to refer to the remainder of the share of the inheritance in which Concepcion Calvo had a usufructuary life interest.

That this is the correct interpretation of the language used is confirmed by the fact that the article itself expressly provides that the "remainder" to be turned over to Concepcion Calvo was to be used by her "as usufructuary heiress," and it is not contended that she had an interest as usufructuary heiress in more than an undivided one-half interest in this particular property.

Under the provisions of article 1282 of the Civil Code, in determining the intention of the parties to an agreement, it is proper to give special consideration to the circumstances surrounding its execution, and we are further confirmed in our interpretation of the language of the article in question by the conduct of the parties to the contract as it appears of record, and by a review of the circumstances under which the agreement was executed.

It is unnecessary to review in detail the evidence touching the conduct of plaintiff throughout the negotiations, and it is sufficient to say that we think that it strongly tends to prove that she never expected to receive more than one-half of the net proceeds of the sale of the Escolta property until after the agreement had been duly executed, when an apparent ambiguity in the language of one of its provisions seems to have suggested the construction of its terms which she is now endeavoring to enforce.

The plaintiff's contention that the defendants agreed to give her a usufructuary life interest in their half of the Escolta property in consideration of certain concessions made by her is not borne out by the record, and an examination of the alleged concessions discloses that, so far as concessions were made, they came largely if not wholly from the defendants.

Plaintiff claimed that she was entitled to reimbursement for the amount expended by her on account of the last illness and the burial of the testator, and this claim was recognized and adjusted in the fourth article of the agreement.

Plaintiff set up a claim for moneys which she alleges were due the estate of De la Fuente on account of advances made by him to the defendants during the extended period in which he had been acting as their guardian, but we are satisfied, from an examination of the record, that this claim was not a genuine one and was not well founded, whereas the defendants, who had demanded a settlement of guardianship accounts, claiming that the estate of De la Fuente was owing them some 50,000 pesos might have recovered a substantial part of this sum if it could not be made to appear that all of the income of their estate had been properly expended in their education, maintenance, and support.

Plaintiff further claimed that prior to the death of De la Fuente the defendants had no right, title, or interest in or to the Ermita property, said property having been purchased by him and duly recorded in his own name, but it appears that the money with which De la Fuente purchased the Ermita property was derived from the sale of property in which he and the defendants were joint and equal owners, and therefore it would appear that even though it be admitted that defendants could not establish an equitable title to a one-half interest in the Ermita property, it is clear that the estate of the guardian would be required, in any event, to account for a sum equal to the amount of the share of the funds used in its property which belonged to the defendants.

It appears that of the funds invested in the Ermita property 7,500 pesos came into the hands of De la Fuente in his capacity as guardian of the defendants, but under the terms of the agreement they received only an interest in said property worth 1,500 pesos, they having conceded the payment out of the joint property of De la Fuente and themselves, of the debt of 12,000 pesos, with which this property was burdened. We think, therefore, that any concession made in the matter of the Ermita property was in fact made by the defendants and not by the plaintiff.

The only other concession claimed to have been made by the plaintiff was the giving of her consent to the sale of the Escolta property and the payment of certain debts mentioned in the second article of the agreement. And while it may be admitted that in agreeing to join in the sale of this property there was a concession to the wishes and desires of the defendants, yet it is inconceivable that they should agree, or the plaintiff in good faith propose, that in consideration of her agreement to sell so valuable a piece of property in but one-half of which she held merely a usufructuary interest, the owners of the other half were to grant her a usufructuary life interest in the total net proceeds of the sale. Furthermore, it appears that the sale was an extremely advantageous one, and that the plaintiff should have been equally interested with the defendants in the final and amicable settlement of the questions

arising out of the distribution of the inheritance and the payment of the debts of the testator.

We are satisfied from an examination of all the circumstances surrounding the execution of the contract that there were no concessions on the part of the plaintiff which by any possibility could be considered as a reasonable consideration to support a grant of a usufructuary life interest in the defendants' share of the proceeds of the sale of the Escolta property, and that such concessions as she may have made were fully compensated in the agreement by the waiver of the defendants' claim for a liquidation and settlement of the testator's guardianship accounts, and their agreement to have the said debt of Julian de la O. made a debt against the joint property of the defendants and De la Fuente.

The defendants, on their part, contend that under the provisions of the second article of the said agreement all the debts mentioned therein should be paid exclusively out of the share of the proceeds of the sale in which, under the will, the plaintiff had a usufructuary interest for life. But the language of the article is express and explicit, and we think that it was manifestly the intention and agreement of the parties that all of these debts and legacies should be paid out of the total proceeds of the sale before division was made, and it is to be noted that the abovementioned provision of the code is not applicable to the second article because, so far as it appears from the record, all the debts and legacies mentioned therein were a charge against the property in which De la Fuente and the defendants had a joint interest, and the payment of the debts with which the property was charged was plainly contemplated as a preliminary step to the division of the inheritance.

Ninety thousand pesos were realized from the sale of the Escolta property, and 15,000 pesos from the sale of the Ermita property. From the funds thus realized payment was made of the debts and legacies mentioned in the second article of the agreement amounting to 22,741.53 pesos. The balance amounting to 81,258.47 pesos should have been divided equally between the plaintiff and the defendants, the plaintiff receiving 40,629.23 pesos to be enjoyed during her life as usufructuary heiress upon the execution of a proper mortgage bond as required by the terms of the agreement. The defendants in fact received 45,892.50 pesos from the net proceeds of the sale of the Escolta property, and 3,000 pesos from the net proceeds of the sale of the Ermita property, or 8,263.27 pesos more than they were entitled to under the terms of the agreement, and the funds left in Barrera's hands and now in the hands of C. C. Cohn, receiver, as appears by the judgment of the trial court, amount to 32,365.97 pesos, being 8,263.27 pesos less than the amount to which the plaintiff is entitled as usufructuary heiress.

No assignment of error was made as to that portion of the judgment of the trial court which deals with the property on Calle Palacio and the hacienda at Pasacao, and therefore the questions involved therein are not before us for review.

The judgment of the trial court is reversed without costs to either party, and it appearing that execution was not suspended pending the appeal, and it not appearing from the record whether the order of the court directing the defendants to pay into the court the amount of said judgment has or has not been complied with, after twenty days let the cause be remanded to the trial court where judgment will be entered in accordance with the foregoing principles, and the proper orders entered to give effect to the same. So ordered.

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

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[1] See 4 Phil. Rep., 203.

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