

SECOND DIVISION

[G.R. NO. 149926, February 23, 2005]

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. EDMUND SANTIBAÑEZ AND FLORENCE SANTIBAÑEZ ARIOLA, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on certiorari under Rule 45 of the Revised Rules of Court which seeks the reversal of the Decision^[1] of the Court of Appeals dated May 30, 2001 in CA-G.R. CV No. 48831 affirming the dismissal^[2] of the petitioner's complaint in Civil Case No. 18909 by the Regional Trial Court (RTC) of Makati City, Branch 63.

The antecedent facts are as follows:

On May 31, 1980, the First Countryside Credit Corporation (FCCC) and Efraim M. Santibañez entered into a loan agreement^[3] in the amount of P128,000.00. The amount was intended for the payment of the purchase price of one (1) unit Ford 6600 Agricultural All-Purpose Diesel Tractor. In view thereof, Efraim and his son, Edmund, executed a promissory note in favor of the FCCC, the principal sum payable in five equal annual amortizations of P43,745.96 due on May 31, 1981 and every May 31st thereafter up to May 31, 1985.

On December 13, 1980, the FCCC and Efraim entered into another loan agreement,^[4] this time in the amount of P123,156.00. It was intended to pay the balance of the purchase price of another unit of Ford 6600 Agricultural All-Purpose Diesel Tractor, with accessories, and one (1) unit Howard Rotamotor Model AR 60K. Again, Efraim and his son, Edmund, executed a promissory note for the said amount in favor of the FCCC. Aside from such promissory note, they also signed a Continuing Guaranty Agreement^[5] for the loan dated December 13, 1980.

Sometime in February 1981, Efraim died, leaving a holographic will.^[6] Subsequently in March 1981, testate proceedings commenced before the RTC of Iloilo City, Branch 7, docketed as Special Proceedings No. 2706. On April 9, 1981, Edmund, as one of the heirs, was appointed as the special administrator of the estate of the decedent.^[7] During the pendency of the testate proceedings, the surviving heirs, Edmund and his sister Florence Santibañez Ariola, executed a Joint Agreement^[8] dated July 22, 1981, wherein they agreed to divide between themselves and take possession of the three (3) tractors; that is, two (2) tractors for Edmund and one (1) tractor for Florence. Each of them was to assume the indebtedness of their late father to FCCC, corresponding to the tractor respectively taken by them.

On August 20, 1981, a Deed of Assignment with Assumption of Liabilities^[9] was executed by and between FCCC and Union Savings and Mortgage Bank, wherein the FCCC as the assignor, among others, assigned all its assets and liabilities to Union Savings and Mortgage Bank.

Demand letters^[10] for the settlement of his account were sent by petitioner Union Bank of the Philippines (UBP) to Edmund, but the latter failed to heed the same and refused to pay. Thus, on February 5, 1988, the petitioner filed a Complaint^[11] for sum of money against the heirs of Efraim Santibañez, Edmund and Florence, before the RTC of Makati City, Branch 150, docketed as Civil Case No. 18909. Summonses were issued against both, but the one intended for Edmund was not served since he was in the United States and there was no information on his address or the date of his return to the Philippines.^[12] Accordingly, the complaint was narrowed down to respondent Florence S. Ariola.

On December 7, 1988, respondent Florence S. Ariola filed her Answer^[13] and alleged that the loan documents did not bind her since she was not a party thereto. Considering that the joint agreement signed by her and her brother Edmund was not approved by the probate court, it was null and void; hence, she was not liable to the petitioner under the joint agreement.

On January 29, 1990, the case was unloaded and re-raffled to the RTC of Makati City, Branch 63.^[14] Consequently, trial on the merits ensued and a decision was subsequently rendered by the court dismissing the complaint for lack of merit. The decretal portion of the RTC decision reads:

WHEREFORE, judgment is hereby rendered DISMISSING the complaint for lack of merit.^[15]

The trial court found that the claim of the petitioner should have been filed with the probate court before which the testate estate of the late Efraim Santibañez was pending, as the sum of money being claimed was an obligation incurred by the said decedent. The trial court also found that the Joint Agreement apparently executed by his heirs, Edmund and Florence, on July 22, 1981, was, in effect, a partition of the estate of the decedent. However, the said agreement was void, considering that it had not been approved by the probate court, and that there can be no valid partition until after the will has been probated. The trial court further declared that petitioner failed to prove that it was the now defunct Union Savings and Mortgage Bank to which the FCCC had assigned its assets and liabilities. The court also agreed to the contention of respondent Florence S. Ariola that the list of assets and liabilities of the FCCC assigned to Union Savings and Mortgage Bank did not clearly refer to the decedent's account. Ruling that the joint agreement executed by the heirs was null and void, the trial court held that the petitioner's cause of action against respondent Florence S. Ariola must necessarily fail.

The petitioner appealed from the RTC decision and elevated its case to the Court of Appeals (CA), assigning the following as errors of the trial court:

1. THE COURT A *QUO* ERRED IN FINDING THAT THE JOINT AGREEMENT (EXHIBIT A) SHOULD BE APPROVED BY THE PROBATE COURT.

2. THE COURT A *QUO* ERRED IN FINDING THAT THERE CAN BE NO VALID PARTITION AMONG THE HEIRS UNTIL AFTER THE WILL HAS BEEN PROBATED.
3. THE COURT A *QUO* ERRED IN NOT FINDING THAT THE DEFENDANT HAD WAIVED HER RIGHT TO HAVE THE CLAIM RE-LITIGATED IN THE ESTATE PROCEEDING.^[16]

The petitioner asserted before the CA that the obligation of the deceased had passed to his legitimate children and heirs, in this case, Edmund and Florence; the unconditional signing of the joint agreement marked as Exhibit "A" estopped respondent Florence S. Ariola, and that she cannot deny her liability under the said document; as the agreement had been signed by both heirs in their personal capacity, it was no longer necessary to present the same before the probate court for approval; the property partitioned in the agreement was not one of those enumerated in the holographic will made by the deceased; and the active participation of the heirs, particularly respondent Florence S. Ariola, in the present ordinary civil action was tantamount to a waiver to re-litigate the claim in the estate proceedings.

On the other hand, respondent Florence S. Ariola maintained that the money claim of the petitioner should have been presented before the probate court.^[17]

The appellate court found that the appeal was not meritorious and held that the petitioner should have filed its claim with the probate court as provided under Sections 1 and 5, Rule 86 of the Rules of Court. It further held that the partition made in the agreement was null and void, since no valid partition may be had until after the will has been probated. According to the CA, page 2, paragraph (e) of the holographic will covered the subject properties (tractors) in generic terms when the deceased referred to them as "all other properties." Moreover, the active participation of respondent Florence S. Ariola in the case did not amount to a waiver. Thus, the CA affirmed the RTC decision, *viz.*:

WHEREFORE, premises considered, the appealed Decision of the Regional Trial Court of Makati City, Branch 63, is hereby AFFIRMED *in toto*.

SO ORDERED.^[18]

In the present recourse, the petitioner ascribes the following errors to the CA:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE JOINT AGREEMENT SHOULD BE APPROVED BY THE PROBATE COURT.

II.

THE COURT OF APPEALS ERRED IN FINDING THAT THERE CAN BE NO VALID PARTITION AMONG THE HEIRS OF THE LATE EFRAIM SANTIBAÑEZ UNTIL AFTER THE WILL HAS BEEN PROBATED.

III.

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE RESPONDENT HAD WAIVED HER RIGHT TO HAVE THE CLAIM RE-LITIGATED IN THE ESTATE PROCEEDING.

IV.

RESPONDENTS CAN, IN FACT, BE HELD JOINTLY AND SEVERALLY LIABLE WITH THE PRINCIPAL DEBTOR THE LATE EFRAIM SANTIBAÑEZ ON THE STRENGTH OF THE CONTINUING GUARANTY AGREEMENT EXECUTED IN FAVOR OF PETITIONER-APPELLANT UNION BANK.

V.

THE PROMISSORY NOTES DATED MAY 31, 1980 IN THE SUM OF P128,000.00 AND DECEMBER 13, 1980 IN THE AMOUNT OF P123,000.00 CATEGORICALLY ESTABLISHED THE FACT THAT THE RESPONDENTS BOUND THEMSELVES JOINTLY AND SEVERALLY LIABLE WITH THE LATE DEBTOR EFRAIM SANTIBAÑEZ IN FAVOR OF PETITIONER UNION BANK.

[19]

The petitioner claims that the obligations of the deceased were transmitted to the heirs as provided in Article 774 of the Civil Code; there was thus no need for the probate court to approve the joint agreement where the heirs partitioned the tractors owned by the deceased and assumed the obligations related thereto. Since respondent Florence S. Ariola signed the joint agreement without any condition, she is now estopped from asserting any position contrary thereto. The petitioner also points out that the holographic will of the deceased did not include nor mention any of the tractors subject of the complaint, and, as such was beyond the ambit of the said will. The active participation and resistance of respondent Florence S. Ariola in the ordinary civil action against the petitioner's claim amounts to a waiver of the right to have the claim presented in the probate proceedings, and to allow any one of the heirs who executed the joint agreement to escape liability to pay the value of the tractors under consideration would be equivalent to allowing the said heirs to enrich themselves to the damage and prejudice of the petitioner.

The petitioner, likewise, avers that the decisions of both the trial and appellate courts failed to consider the fact that respondent Florence S. Ariola and her brother Edmund executed loan documents, all establishing the *vinculum juris* or the legal bond between the late Efraim Santibañez and his heirs to be in the nature of a solidary obligation. Furthermore, the Promissory Notes dated May 31, 1980 and December 13, 1980 executed by the late Efraim Santibañez, together with his heirs, Edmund and respondent Florence, made the obligation solidary as far as the said heirs are concerned. The petitioner also proffers that, considering the express provisions of the continuing guaranty agreement and the promissory notes executed by the named respondents, the latter must be held liable jointly and severally liable thereon. Thus, there was no need for the petitioner to file its money claim before the probate court. Finally, the petitioner stresses that both surviving heirs are being sued in their respective personal capacities, not as heirs of the deceased.

In her comment to the petition, respondent Florence S. Ariola maintains that the petitioner is trying to recover a sum of money from the deceased Efraim

Santibañez; thus the claim should have been filed with the probate court. She points out that at the time of the execution of the joint agreement there was already an existing probate proceedings of which the petitioner knew about. However, to avoid a claim in the probate court which might delay payment of the obligation, the petitioner opted to require them to execute the said agreement.

According to the respondent, the trial court and the CA did not err in declaring that the agreement was null and void. She asserts that even if the agreement was voluntarily executed by her and her brother Edmund, it should still have been subjected to the approval of the court as it may prejudice the estate, the heirs or third parties. Furthermore, she had not waived any rights, as she even stated in her answer in the court a quo that the claim should be filed with the probate court. Thus, the petitioner could not invoke or claim that she is in estoppel.

Respondent Florence S. Ariola further asserts that she had not signed any continuing guaranty agreement, nor was there any document presented as evidence to show that she had caused herself to be bound by the obligation of her late father.

The petition is bereft of merit.

The Court is posed to resolve the following issues: a) whether or not the partition in the Agreement executed by the heirs is valid; b) whether or not the heirs' assumption of the indebtedness of the deceased is valid; and c) whether the petitioner can hold the heirs liable on the obligation of the deceased.

At the outset, well-settled is the rule that a probate court has the jurisdiction to determine all the properties of the deceased, to determine whether they should or should not be included in the inventory or list of properties to be administered.^[20] The said court is primarily concerned with the administration, liquidation and distribution of the estate.^[21]

In our jurisdiction, the rule is that there can be no valid partition among the heirs until after the will has been probated:

In testate succession, there can be no valid partition among the heirs until after the will has been probated. The law enjoins the probate of a will and the public requires it, because unless a will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may be rendered nugatory. The authentication of a will decides no other question than such as touch upon the capacity of the testator and the compliance with those requirements or solemnities which the law prescribes for the validity of a will.^[22]

This, of course, presupposes that the properties to be partitioned are the same properties embraced in the will.^[23] In the present case, the deceased, Efraim Santibañez, left a holographic will^[24] which contained, inter alia, the provision which reads as follows:

(e) All other properties, real or personal, which I own and may be discovered later after my demise, shall be distributed in the proportion indicated in the immediately preceding paragraph in favor of Edmund and Florence, my children.