7 Phil. 745

[G.R. No. 1056. March 13, 1907]

AGUEDA BENEDICTO DE LA RAMA, APPELLEE, VS. ESTEBAN DE LA RAMA, APPELLANT.

D E C I S I O N

WILLARD, J.:

On July 5, 1902, the Court of First Instance of the Province of Iloilo entered a final judgment in this case, decreeing a divorce to the plaintiff on the ground of the husband's adultery, as well as the payment of 81,042.76 pesos due her as her unpaid share of the property belonging to the conjugal partnership, as well as the sum of 3,200 pesos as an allowance for her support since the date on which the action was instituted.

From this judgment the defendant appealed to this court, which, on December 8, 1903, reversed the decree of the Court of First Instance, incorporated in its opinion certain findings of fact, and ordered judgment absolute that the complaint be dismissed. (Benedicto *vs*. De la Rama, 3 Phil. Rep., 34.) Thereafter the plaintiff appealed to the Supreme Court of the United States, which on April 2, 1906, reversed the judgment of this court. (De la Rama *vs*. De la Rama, 201 U. S., 303.) The opinion of the Supreme Court of the United States concludes as follows:

> "We have reached the conclusion that there is no such preponderance of evidence in favor of the theory of plaintiff's guilt as authorized the Supreme Court to set aside the conclusions of the court below upon the ground that these findings were plainly and manifestly against the weight of the evidence. In this connection it is proper to bear in mind that the trial judge had all these witnesses before him and doubtless formed his conclusions largely from their appearance on the stand, their manner of giving testimony, and their apparent credibility. Under the circumstances we think the Supreme Court should have affirmed rather than reversed the action of the lower court.

> "While the right of the plaintiff to her proportion of the conjugal property, to alimony pending suit, and to other allowances claimed is the basis of our jurisdiction, the decree of the Supreme Court in dismissing plaintiff's petition renders it unnecessary to review the action of the Court of First Instance in fixing the amount that it held plaintiff was entitled to recover. We are, therefore, of the opinion that the decree of the Supreme Court dismissing the action must be reversed and the cause remanded to that court for further proceedings not inconsistent with this opinion."

After the case had been remanded to this court, and on the 2d of November, 1906, the plaintiff made a motion that the judgment of the Court of First Instance be affirmed, an order was made for the submission of printed briefs upon certain questions indicated in the order. Such briefs have been submitted, and the case is now before us for a final resolution.

Upon the defendant's appeal from the Court of First Instance to this court, eight errors were assigned by him. The first four relate to the question of adultery. This court sustained those assignments and said:

> "Our conclusion is that neither one of the parties is entitled to a divorce. The result makes it unnecessary to consider that part of the judgment which relates to the settlement of the conjugal partnership."

The action of this court upon those four assignments of error relating to adultery was reversed by the Supreme Court of the United States, and by the decision of that court they were definitely disposed of. The other assignments of error relate to that part of the decision of the Court of First Instance which treats of the division of the conjugal property, the allowance of alimony, and the order of the court below that the case be referred to the fiscal for criminal proceedings against the defendant. As has been said, these assignments of error were not considered by this court in view of the result which it reached upon the other assignments. Nor were they discussed by the Supreme Court of the United States.

The claim of the appellant now is, however, that the whole case was finally disposed of by the decision of the latter court, and that the only thing remaining for this court to do is to affirm the judgment of the Court of First Instance in its entirety.

With this view we can not agree. The only thing considered by the Supreme Court of the

United States was that part of the decision of the Court of First Instance which related to the right of the plaintiff to a divorce. It did not pass upon the division of the conjugal property. Its order was that the case be remanded to this court for further proceedings not inconsistent with its opinion. If the contention of the plaintiff is true, it seems that the order of that court would have been one reversing the judgment of this court and affirming that of the Court of First Instance. By remanding the case to this court for further proceedings not inconsistent with the opinion of the Supreme Court, it seems to have been the intention of that court that this court should dispose of the assignments of error not already disposed of.

The fifth assignment of error is as follows:

> "Se ha infringido el articulo 1418 y otros del Codigo Civil al admitir el Juzgado, dentro del presente juicio, el avaluo y division efectiva de los supuestos bienes gananciales."

It was claimed by the defendant, in his brief in his original appeal to this court in support of this assignment of error, that it was not proper to settle the affairs of the conjugal partnership in the divorce proceeding, and that no such settlement of a conjugal partnership could ever be made until there had been a final judgment ordering the divorce, from which no appeal had been taken, or as to which the time to appeal had expired, and in his argument in this court in the motion presented on the 2d of November, 1906, he repeats the same claim.

In our opinion, however, this assignment of error was disposed of by the decision of the Supreme Court of the United States. As was said in that decision, the jurisdiction of that court depended entirely upon that part of the judgment of the Court of First Instance which directed the payment of 81,000 pesos. If the Court of First Instance had no jurisdiction to make any order for the payment of money in a divorce proceeding, that part of the judgment would have to be eliminated. In taking jurisdiction of the case the Supreme Court of the United States necessarily held that a liquidation of the affairs of the conjugal partnership could be had in a divorce proceeding. The fifth assignment of error, therefore, can not now be urged by the defendant.

The sixth assignment of error was as follows:

> "Ha incurrido en error en cuanto fija la cuantia de la mitad de dichos supuestos

> bienes gananciales en 81,042 pesos y 75 centimos, sin haber tenido a la vista los antecedentes y datos necesarios y sin haber tenido en cuenta ademas las perdidas sufridas y las deudas contraidas por la razon social Hijos de I. de la Rama."

This assignment of error not having been considered either by the Supreme Court of the United States or by this court, is now open to consideration by us, and must, we think, be sustained. The Civil Code states in detail the manner in which the affairs of a conjugal partnership shall be settled after the same has been dissolved. Article 1418 provides, except in certain cases not here important, that an inventory shall at once be made. We have held in the case of Alfonso *vs*. Natividad[1] (4 Off. Gaz., 461), that when the partnership is dissolved by the death of the husband this inventory must be made in the proceedings for the settlement of his estate. And in the case of Prado *vs*. Lagera[1] (5 Off. Gaz., 146), that the inventory thus formed must include the *bienes parafernales* of the wife. It is very evident from the provisions of the Civil Code that that inventory includes the capital of the husband, the dowry of the wife, the *bienes parafernales* of the wife, and all the property acquired by the partnership during its existence. After this inventory has been made it is provided by article 1421 that there shall be first paid the dowry of the wife, in the second place the *bienes parafernales* of the wife, in the third place the debts and obligations of the conjugal partnership, and in the fourth place the capital of the husband. Articles 1424 and 1426 then provide as follows:

> "ART. 1424. After the deductions from the inventoried estate specified in the three preceding articles have been made, the remainder of the same estate shall constitute the assets of the conjugal partnership.
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> "ART. 1426. The net remainder of the partnership property shall be divided, share and share alike, between the husband and the wife, or their respective heirs."

It is thus seen that the conjugal property which is to be divided when the partnership is dissolved, is determined not with reference to the income or profits, which may have been received during the partnership by the spouses but rather by the amount of the actual property possessed by them at such dissolution after making the deductions and payments aforesaid. This is positively provided by article 1424.

An examination of the decision of the Court of First Instance shows that no attempt was made to comply with any one of these statutory provisions. No inventory of the partnership property existing at the time of the trial, at which the liquidation was made, was ever formed. No provision was made for paying to the wife the sum of 2,000 pesos, which was either the dowry or *bienes parafernales* of the wife. No provision was made for returning to the husband his capital in the partnership, which amounted to at least one-third of the assets of the firm of Hijos de I. de la Rama, which assets, according to the inventory made January 30, 1901, amounted to 1,130,568 pesos. The court below rejected entirely the method prescribed by the Civil Code for the liquidation of this partnership and in fact liquidated it, as appears from the decision, upon an entirely different basis. He determined in the first place the income which each person had received from his or her property during the partnership, finding that the wife during that time had received from her property 345 pesos as income and that the husband had received 162,430.53 pesos. He then says:

> "The total value therefore of the conjugal partnership existing between the plaintiff and the defendant in the present case amounts to 162,775.53 pesos. The words of the statute say that the same must be divided share and share alike. This means that each should have 81,387.76 pesos. The wife already having in her possession 345 pesos of this sum, she is entitled to receive from the husband 81,042.76 pesos as being the sum necessary to equalize the holdings of the property which, according to the statute, must be regarded as belonging to the conjugal partnership."

It needs no argument to show that this manner of liquidating the affairs of the conjugal partnership is entirely unwarranted by the law. The theory of the Civil Code is that the conjugal property is the actual property which is left at the dissolution of the partnership. It can, therefore, never be determined by adding up the profits, which had been made each year during its existence, and then saying that that result is the conjugal property. The difference between the two systems of liquidation is well illustrated in this case. The court below found that the profits of the partnership of Hijos de I. de la Rama from the time of its organization up to June 30, 1901, amounted to 290,101.31 pesos. The evidence in the case shows, however, that the capital with which the firm started was 1,058,192 pesos, and that on June 30, 1901, the value of its entire property was 1,130,568 pesos, an increase of only 72,376 pesos. Taking the method adopted by the court below, if the conjugal partnership

had been dissolved on June 30, 1901, it would have had as an asset one-fourth of this sum of 290,101.31 pesos, but following the rule laid down by the Civil Code it would have only had one-fourth of 72,376 pesos, the difference between the value of the property of said firm when it was organized and its value on the 30th of June, 1901.

The other assignments of error were not urged in the last brief presented by the appellant and in any event we do not think they can be sustained.

The result is that that part of the judgment of the Court of First Instance ordering the divorce, ordering the payment of 3,200 pesos, Mexican currency, by the defendant to the plaintiff, and the costs of the action, is affirmed. That part of it ordering the payment by the defendant to the plaintiff of 81,042.76 pesos, Mexican currency, is set aside, and the case is remanded to the court below for the purpose of liquidating in this action the affairs of the conjugal partnership (considering the same to have been dissolved on the 5th of July, 1902) in accordance with the rules laid down in the Civil Code, and a judgment will be entered in that court for the amount which appears from such liquidation to be due from the defendant to the plaintiff. No costs will be allowed to either party in this court.

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

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

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[1] 6 Phil. Rep., 240.

[1] Page 395, *supra*.

DISSENTING

JOHNSON, J., with whom concurs **CARSON, J.:**

This cause was originally tried in the Court of First Instance of the Province of Iloilo. A judgment was there rendered in favor of the plaintiff and against the defendant. The

defendant appealed to this court and the judgment was reversed. The plaintiff appealed to the Supreme Court of the United States, where the judgment of this court was reversed, and the cause was remanded for further proceedings not inconsistent with the opinion of the Supreme Court of the United States.

On the 9th day of November, 1906, the plaintiff presented a motion in this court asking that the original judgment of the Court of First Instance be affirmed. The attorney for the defendant opposed this motion, and this court ordered that the respective parties submit briefs. These briefs were duly submitted and on the 23d day of January, 1907, a majority of this court, after an examination of the evidence adduced during the trial of said cause in the Court of First Instance of the Province of Iloilo, decided that the inventory, made by the said Court of First Instance, had not been made in accordance with the provisions of the Civil Code. We are of the opinion that this court has no right or authority to examine the evidence adduced during the trial of said cause in the court below for the reason that the defendant and appellant did not there make a proper motion for a new trial, justifying this court in examining the evidence. We are of the opinion that this court has no authority to examine the evidence adduced during the trial in the Court of First Instance unless the appellant has made a motion for a new trial in that court *"upon the ground that the findings of fact are plainly and manifestly against the weight of the evidence"* (paragraph 3, section 497 of the Code of Procedure in Civil Actions), and the judge of said lower court has overruled said motion, and the defendant has duly excepted to such ruling.

By reference to the motion for a new trial presented in this cause in the court below, it will be seen that the same was not based upon these grounds. We are of the opinion that the motion presented for a new trial comes under the provisions of sections 145 and 146 of said code, and the overruling of the same does not constitute a ground of exception upon which an appeal can be based for the purpose of securing a reexamination of the evidence in this court.

Admitting, however, that said motion was sufficient to justify this court in examining the evidence, we are of the opinion that even then the evidence adduced during the trial upon the question of the conjugal property is sufficient to justify the conclusions of the said Court of First Instance and that the judgment of the lower court should be affirmed in this particular. And, moreover, in view of the fact that the defendant made no appearance in the Supreme Court of the United States when the case was pending there, and made no defense when the very question was being considered by that court which is presented to this court now, we are of the opinion that a new trial should not be granted, and that the plaintiff, who

is clearly entitled to the relief granted by the lower court, at the close of the trial should not be further annoyed or kept out of that portion of the conjugal property to which she is clearly entitled.

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