

[ G.R. No. 10902. March 28, 1916 ]

**SERAPIA DE JESUS, PLAINTIFF AND APPELLEE, VS. PABLO PALMA, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**TORRES, J.:**

On December 17, 1912, counsel for Serapia de Jesus filed a written complaint in the Court of First Instance of Pampanga against her husband, Pablo Palma, alleging that about the year 1885 she was married to him in the pueblo of Bacolor in accordance with the rites of the Roman Catholic Apostolic Church; that since then they had lived together continuously until the year 1900, when plaintiff separated from her husband and abandoned the conjugal home; that plaintiff was the mother of eight children, all now of legal age, with the exception of Catalina, of 19 years, of Potenciana, of 13 years, and of Bernardo, of 16 years of age; that neither of the spouses brought any property to the marriage, but that plaintiff's husband afterwards inherited from his parents certain property, the amount of which she did not know; that during their marriage, the two spouses accumulated real and personal property in the nature of community property which was valued at approximately P80,000 and was now in the husband's possession; that plaintiff's husband, in violation of the marriage laws, had committed adultery since 1896 with one Leonora Pabustan, by whom he had had three children; that as a consequence of the illtreatment plaintiff continually suffered on account of such acts of adultery, she had to separate from her husband, and was now reduced to poverty, as she had been abandoned by her husband, notwithstanding that plaintiff was entitled to share in the community property, which was in danger of being lost or of disappearing; wherefore, for the preservation and administration of said property, plaintiff's counsel designated Mariano Buyson as receiver, and concluded by praying the court to decree a divorce or separation between plaintiff and her husband; that a writ of injunction issue against defendant, prohibiting him from administering said property and from intervening in the administration of his own property; that plaintiff be granted the legal custody of all her minor children and a monthly allowance of P300 for her support and

the education of her children; that Mariano Buyson Lampa be appointed receiver, and that after he had furnished bond the sheriff place him in possession of all of defendant's property.

By an order of July 15, 1913, the court assigned to plaintiff a monthly allowance of ₱25 which defendant must pay to her within the first five days of each month. Defendant excepted to this order.

Counsel for the latter, in his written answer, made a general denial of each and all of the facts alleged in each and all of the paragraphs of the complaint and, specifically, those contained in paragraphs 3, 4, 5, 6, and 7 thereof. As a special defense he alleged that all the property held by defendant was his own private property; that plaintiff had no right of action herein; that defendant fell sick with articular rheumatism and with a hemorrhagic orchic-epididymitis and was sick for more than two years and that only after six years did he obtain any alleviation therefrom, but not a complete cure; that since about the middle of the year 1898 he had ceased absolutely to cohabit with or lie with his wife Serapia, surnamed Sinio and not De Jesus, nor had he lain with any other woman; that since the month of August, 1899, defendant had been abandoned by his wife, who had been residing in different places within and without the Province of Pampanga; that she committed adultery with Liberato Palma and with a man named Francisco de Manila, and as a result she had given birth to several children. Said counsel therefore prayed that defendant be absolved from the complaint and that the divorce be granted without alimony, and with the costs of the suit against plaintiff.

The record shows that the person of Serapia de Jesus, the plaintiff, was placed with Leocadia de Jesus for safe-keeping.

After a hearing of the case and the evidence adduced by both parties, the Honorable Judge Llorente, by a judgment of April 15, 1914, granted a divorce between plaintiff Serapia de Jesus and defendant Pablo Palma, with separation of the property belonging to both parties. He ordered that the husband, as administrator of the community property, make a settlement of the affairs thereof within thirty days, and, in case he should not do so, or the parties should not come to an agreement in the matter, that Jose de Leon, Estanislao Santos, and Jose Joven be appointed for the purpose of effecting said settlement and division of the community property. The court further ordered that the minor children under 10 years of age should remain in the custody of Bartola Zablan; that from the date of the judgment and within the first five days of each month, each of said spouses should pay to

said Zablan ₱15 per month for the maintenance of said minors; and that defendant should pay to plaintiff the amount of the alimony in arrears owed by him, at the rate of ₱25 per month from August, 1913, and pay the costs.

Counsel for defendant excepted to this judgment and moved for a new trial.

In view of the nature of the proceedings and of the pronouncements contained in the judgment aforementioned, the commissioners appointed proceeded to settle the affairs and partition the community property of said spouses. The evidence adduced by both parties was heard and, after due consideration of the same, the Honorable P. M. Moir, judge, on April 19, 1915, rendered judgment in which he held that the inventory and a valuation of the community property and of the property inherited by defendant, as set forth in the documents Exhibits A and B, were correct, and that the difference found by said commissioners to exist between the original value and the present value of the defendant husband's own private property should be considered as community property, and that one-half of said difference of value should belong to plaintiff. He further ordered defendant to deliver to plaintiff the property belonging to her. Defendant's counsel also excepted to this judgment and moved that the said two judgments be set aside and that a new trial be granted. These motions were overruled by an order of April 24, which was excepted to by appellant.

The matters at issue in these proceedings are: The divorce prayed for by Serapia de Jesus, with suspension of the common conjugal life; the separation of property between her and her husband Pablo Palma; the approval of the inventory, liquidation, and division, made by commissioners appointed by the court, of the community property of both parties and of the private property belonging to the husband; and also the approval of the difference found by said commissioners to exist between the original and the present value of the husband's private property, the half of which difference of value was also held to belong to plaintiff as community property.

One of the causes which support an action for divorce and a suspension of the common life of a married couple is adultery by the wife in every case, and that by the husband when it results in public scandal or in contempt of the wife.

The record shows it to have been duly proven that defendant, Pablo Palma, committed adultery with Leonora Pabustan, who was living in the conjugal home and by whom he had three children, with notorious contempt of the plaintiff, defendant's own lawful wife.

Therefore, the action brought by the plaintiff to secure a divorce and the separation of her property from that of her husband, is unquestionably proper.

The act of the concubinage of the husband with a woman other than his wife was anciently qualified as adultery by the laws of Titles 2, 9, and 10 of the Fourth Partida; hence it is that the article which treats of concubinage is found in the chapter of the Penal Code that relates to adultery— a classification common to both crimes and so recognized in the decision of the supreme court of Spain of April 3, 1884.

Adultery committed by the husband with a woman other than his wife, in contempt of the latter, qualified in modern law as concubinage, is, in the eyes of the law, a legal and sufficient ground for the offended wife to demand divorce from the husband living in concubinage, though the judgment granting the divorce does not dissolve the marital bond, but only decrees the suspension of the common life between the offended and the offending parties, their separation and that of their common property.

As for the rest, the record does not show it to have been duly proven that plaintiff committed adultery with another man.

Accepting, then, the findings of fact and law contained in the judgments appealed from, of April 15, 1914, and April 19, 1915, for the reason that they are in accord with the law and the evidence, and moreover, deeming the errors assigned by appellant to said judgments to have been refuted, the said two judgments appealed from should be, as they are hereby, affirmed, with the costs against appellant. So ordered.

*Johnson, Moreland, Trent, and Araullo, JJ., concur.*

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