

81 Phil. 258

[G. R. No. L-1423[1]. July 20, 1948]

**MAXIMA GARCIA DE LIM TOCO, PLAINTIFF AND APPELLANT, VS. GO FAY,
DEFENDANT AND APPELLEE.**

D E C I S I O N

TUASON, J.:

This is an appeal from a judgment of the Court of First Instance of Pangasinan filed by the plaintiff whose action was dismissed after the defendant had taken judgment by default and proper trial held.

The purpose of the suit is to recover the possession and ownership of one-half share in a parcel of land which was sold to defendant Go Fay by the sheriff to satisfy a judgment for money in another case in which said Go Fay was plaintiff and Lim Toco was defendant.

Plaintiff is or was lawfully married to Lim Toco tho, was doing business in Pangasinan. Lim Toco is now lead or absent in China whither he went or returned in or about 1930. Before leaving the Philippines he contracted a debt from Go Fay and was sued thereon. Judgment having been entered against him, execution was levied on the parcel of land above mentioned, which afterward was sold by the sheriff to the execution creditor, Go Pay, as the highest bidder. When Go Fay moved the court for the cancellation of Lim Toco's title and the issuance of the transfer certificate in lieu thereof in his name, Maxima Garcia, Lim Toco's wife and present plaintiff, objected as to undivided one-half of that land, alleging that the parcel was conjugal property and that her husband's obligation in favor of the execution creditor for which that land had been levied upon and sold, had been contracted in fraud of her rights. The objection was overruled and Maxima Garcia appealed. This Court, upon review of the case, affirmed the lower court's order. (G.R. No. 48825) The Court held that Lim Toco's obligation was chargeable against the conjugal partnership, having been contracted during the marriage. The fact that Lim Toco and Maxima Garcia had ceased to live under the same roof when the obligation was incurred was deemed by the Court not to

have changed the fundamental principle applicable to the case.

The Court's decision in G.R. No. 48825, *supra* constitutes a complete bar to the instant suit. The action at bar is between the same parties, involves the same property and substantially the same cause of action, and is predicated upon substantially the same theory as the case just referred to. Plaintiff makes the allegations which she, to judge from this Court's decision, made in support of her objection to the issuance of a transfer certificate of title to Go Fay. Thus, she says that Lim Toco's obligation was contracted to defraud and prejudice her and not in the interest of the Conjugal society nor for the support of his legitimate family; that Lim Toco abandoned her in 1923 and lived with another woman; that Lim Toco contracted the debt in question while cohabiting with the latter.

The appellant relies on Mr. Justice Bocobo's concurring opinion in which Mr. Chief Justice Yulo joined. Mr. Justice Bocobo thought it necessary to bear in mind the allegations of Maxima Garcia that her husband's obligation involved in civil case No. 37149 may be fraudulent upon her or may be a purely personal debt of the husband, and that the marriage between her and Lim Toco is not in a 'normal situation.' Citing Article 1413 of the Civil Code he suggested the advisability of clarifying "the rights between the husband and the wife in order to forestall any possible controversy over the scope and effect of the decision in the present case."

The appellant apparently has misunderstood the meaning and effect of the concurring opinion. For one thing, it is no more than an expression of the views of two of the members of the court and did not lay down the rule of the case. For another thing, the opinion does not imply, as the appellant seems to believe, that the way should be left open for a new action against Go Fay over the same issues and property. It was against her husband that her right, in the opinion of the two concurring Justices, should be expressly reserved in order to foil in any attempt to set up *res adjudicata* by her husband or those claiming under him if and when liquidation of the conjugal property should be made. This is made clear by this passage: "So far as Go Fay is concerned, his title to the whole parcel of land is *absolute and free* from any claim or encumbrance in favor of the wife or her heirs, but as *between the husband and the wife* or her heirs, the story does not end with the issuance of a transfer certificate of title in favor of Go Fay. Why? Because upon liquidation of the conjugal partnership, it might turn out that the obligation involved in civil case No. 37149, though entered into during marriage, was nevertheless a purely personal debt of the husband."

The judgment of the lower court is affirmed with costs against the appellant.

Paras, Actg. C.J., Feria, Pablo, Perfecto, Bengzon, Briones, and Padilla, JJ., concur.

^[1] See Resolution of January 31, 1948 (80 Phil., 116).

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