

103 Phil. 798

[G.R. No. L-8190. May 28, 1958]

GONZALO GARCIA, PLAINTIFF AND APPELLANT, VS. CONSOLACION MANZANO, DEFENDANT AND APPELLEE.

D E C I S I O N

REYES, J.B.L., J.:

This is an action filed by husband Gonzalo Garcia against his wife Consolacion Manzano for the judicial declaration of the separation of their conjugal partnership property (Civil Case No. 23099, Court of First Instance of Manila).

Plaintiff Gonzalo Garcia alleged in his complaint that he and defendant are husband and wife but they have been living separately from each other since 1948, all attempts at reconciliation between them having failed; that plaintiff, a duly licensed doctor of veterinary science, used to be employed in the slaughter-house of the City of Manila, while defendant, with plaintiff's knowledge and consent, engaged in the business of slaughtering large cattle and selling the fresh meat in the city; that as a result of their joint efforts, plaintiff and defendant acquired and accumulated real and personal properties; that upon the separation of the spouses, the defendant assumed the complete management and administration of the conjugal partnership property, has been enjoying said property as well as its accessions and fruits to the exclusion and prejudice of plaintiff, and has even fictitiously transferred or alienated a majority of said property in favor of third persons; that since defendant assumed the management and administration of the conjugal partnership property, she has neglected to file any income tax returns; and that defendant has failed and refused to turn over and deliver to plaintiff his rightful share and participation in the conjugal partnership property and its fruits. Wherefore, plaintiff prayed that judgment be rendered ordering defendant to render a

complete accounting of the conjugal partnership property and its fruits, that judicial pronouncement be made ordering the separation of the conjugal partnership property of the spouses, and that the rightful share therein of each of them be adjudicated pursuant to law.

Upon receipt of copy of the complaint and summons, defendant filed a motion to dismiss the complaint on the ground of failure to state a cause of action because it does not allege any of the grounds recognized by Article 191 of the new Civil Code for decreeing a judicial separation of properties". Plaintiff vigorously opposed the motion to dismiss, claiming that he is entitled to some relief, legal or equitable, under the allegations of his complaint, and that Article 191 of the new Civil Code may also be availed of by the husband where the administration of the conjugal partnership property has been forcibly taken from him by his wife and she abuses the management thereof. Acting on the motion to dismiss, the lower court held that plaintiff's complaint is not included under the provisions of Articles 190 and 191 of the new Civil Code providing for judicial separation of the conjugal partnership property, and that the husband being the legal administrator of the partnership, he "continuo con suficientes remedios legates para asegurar y reafirmar su autoridad en cuanto al manejo de los bienes gananciales dentro de la sociedad conyugal," and ordered the dismissal of the complaint without prejudice. Plaintiff moved for reconsideration, which was denied. Hence, his present appeal.

We agree with the court below that the complaint does not establish a case for separation of property. Consistent with its policy of discouraging a regime of separation as not in harmony with the unity of the family and the mutual affection and help expected of the spouses, the Civil Codes (both old and new) require that separation of property shall not prevail unless expressly stipulated in marriage settlements before the union is solemnized or by formal judicial decree during the existence of the marriage (Article 190, new Civil Code; Article 1432, old Code) ; and in the latter case, it may only be ordered by the court for causes specified in Article 191 of the new Civil Code:

"ART. 191. The husband or the wife may ask for the separation of property, and it shall be decreed when the spouse of the petitioner; has been sentenced to a penalty which carries with it civil interdiction, or has been declared absent,

or when legal separation has been granted.

In case of abuse of powers of administration of the conjugal partnership property of the husband, or in case of abandonment by the husband, separation of property may also be ordered by the court according to the provisions of articles 167 and 173, No. 3.

In all these cases, it is sufficient to present the final judgment which has been entered against the guilty or absent spouse.

The husband and the wife may agree upon the dissolution of the conjugal partnership during the marriage, subject to judicial approval. All the creditors of the husband and of the wife, as well as of the conjugal partnership, shall be notified of any petition for judicial approval of the voluntary dissolution of the conjugal partnership, so that any such creditors may appear at the hearing to safeguard his interests. Upon approval of the petition for dissolution of the conjugal partnership, the court shall take such measures as may protect the creditors and other third persons.

After dissolution of the conjugal partnership, the provisions of Arts 214 and 215 shall apply. The provisions of this Code concerning the effect of partition stated in Arts. 498 to 501 shall be applicable.”

This enumeration must be regarded as limitative, in view of the Code’s restrictive policy. The appellant recognizes that his case does not, come within the purview of the first paragraph of the Article quoted; but vigorously contends that the provisions of the second paragraph, like those of Articles 167 and 178, should be interpreted as applicable, *mutatis mutandis*, to the husband, even if the letter of the statute refers to the wife exclusively.

“ART. 167. In case of abuse of powers of administration of the conjugal partnership property by the husband, the courts, on petition of the wife, may provide for a receivership, or administration by the wife, or separation of property.”

“ART. 178. The separation in fact between husband and wife without judicial

approval, shall not affect the conjugal partnership, except that:

(1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have a right to be supported;

(2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be necessary;

(3) If the husband has abandoned the wife without just cause for at least one year, she may petition the court for a receivership, or administration by her of the conjugal partnership property, or separation of property.”

In support of his thesis, appellant argues that in case of mismanagement and maladministration by the wife, the husband should be entitled to the same relief as the wife, otherwise there would be a void in the law. This contention ignores the philosophy underlying the provisions in question. The wife is granted a remedy against the mismanagement or maladministration of the husband because by express provision of law, it is the husband who has the administration of the conjugal partnership.

“ART. 165. The husband is the administrator of the conjugal partnership.”

“ART. 172. The wife cannot bind the conjugal partnership without the husband’s consent, except in cases provided by law.”

In the system established by the Code the wife does not administer the conjugal partnership unless with the consent of the husband, or by decree of court and under its supervision (Arts. 168, 196) “with such limitations as they (the courts) may deem advisable” (Art. 197 in relation to Article 196). Legally, therefore, the wife can not mismanage the conjugal partnership property or affairs, unless the husband or the courts tolerate it. In the event of such maladministration by the wife (and disregarding the case of judicial authorization to have the wife manage the partnership, since such a case is not involved), the remedy of the husband does not lie in a judicial separation of property but in revoking the power granted to the wife and resume the

administration of the community property and the conduct of the affairs of the conjugal partnership. He may enforce his right of possession and control of the conjugal property against his wife (*Perkins vs. Perkins*, 57 Phil., 205) and seek such ancillary remedies as may be required by the circumstances, even to the extent of annulling or rescinding any unauthorized alienations or incumbrances, upon proper action filed for that purpose. For this reason, the articles above quoted contemplate exclusively the remedies available *to the wife* (who is not the legal administrator of the partnership) against the abuses of her husband because normally only the latter can commit such abuses.

Appellant avers that even if separation of property is not available, the allegations of his complaint entitle him to accounting and other relief. Unfortunately, the complaint not only expressly pleads the nature of the action as one for separation of property, but its allegations clearly proceed on the theory that the plaintiff is entitled to such separation. Thus, the averments regarding fictitious or fraudulent transfers are incompatible with an action between wife and husband alone, for it is elementary that the legality of such transfers can not be passed upon out giving the transferees an opportunity to be heard. Everything considered, we believe that the action of the court *a quo* in dismissing the action in view of the impropriety of the principal remedy sought, but without prejudice to proper proceedings, would better suit the interests of equity and justice, facilitating the clarification and simplification of the issues involved.

Wherefore, the judgment appealed from is affirmed, with costs against appellant. So ordered.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.