

FRED M. HARDEN, PETITIONER, VS. EMILIO PEÑA AND ESPERANZA P. DE HARDEN, RESPONDENTS.

G.R. No. L-1816. November 21, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

The petitioner prays that, after proper proceedings, be rendered annulling the orders of the respondent judge dated October 7, 1947 and November 13, 1947 in civil case No. 59634 of the Manila court of first instance. Both required Fred M. Harden—under pain of contempt—to return to the Philippines within fifteen days the amount of P1,000,608.66 which he had remitted abroad, and to redeposit the same in the account of the Plaza Lunch at the Manila Branch of the Chartered Bank of India, Australia and China.

On July 12, 1941, Esperanza P. Harden filed an action in Manila against Fred M. Harden (whom she married in December, 1917, in this city) and one Jose Salumbides concerning administration of their conjugal partnership, payment of alimony and accounting (Civil Case No. 59634). The following proceedings took place in that litigation:

- On the same day, July 12, 1941, the court issued a writ of preliminary injunction commanding the defendants to desist and refrain from transferring or alienating moneys and other properties belonging to the conjugal partnership, except for valuable consideration with the consent of the court.
- On September 9, 1947, Esperanza filed a motion stating that despite the injunction and without the consent of the court, Fred M. Harden had on various dates made remittances totalling P1,000,608.66 to Hongkong and California. Wherefore, she requested that Fred M. Harden be ordered to retrieve that amount for redeposit here.
- Fred M. Harden opposed the motion, stating various reasons which were replied to by Esperanza's counsel. A rejoinder to her reply was subsequently answered with a rejoinder to the rejoinder.
- After considering the arguments of both parties, the Hon. Emilio Peña, Judge, issued the order of October 7, 1947, which upon a lengthy reargument was-reiterated in his order of November 13, 1947. That order reads in part,

"It is hereby ordered x x x that an order of preliminary injunction be immediately issued, addressed to the defendants Fred M. Harden and Jose Salumbides, commanding them to desist and refrain from transferring or alienating monies, funds, shares of stock, bonds, houses, and all other properties and assets, real or personal, belonging to the aforesaid conjugal partnership, and which may be found in the names of said defendants, or either of them, except for a valuable consideration and with the consent of this Court first had and obtained, upon the filing of a nominal bond of P500."

The petitioner's contention may be reduced to the following main propositions:

- (a) The writ of preliminary injunction of July 12, 1941, was void ab initio, for lack of jurisdiction or abuse of discretion;

(b) Even if valid, the writ did not cover monies acquired by Fred M. Harden after the liberation, or moneys not existing on July 12, 1941;

(c) Esperanza has no right to complain because she herself induced her husband to send funds outside of the Philippines;

(d) Abuse of discretion was committed because the question whether this amount of P1,000,608.66 belongs to the conjugal partnership is precisely one of the issues in the main case No. 59634 and in the incidental case No. L-1499 of this Court;

(e) It is inequitable to require this redeposit, because anyway the conjugal properties in the Islands are worth more than three million and a half pesos, and the rights of Esperanza are guaranteed by the half-portion of this amount that will surely be adjudged to Fred M. Harden.

The above propositions will be taken up in their order:

(a) The arguments advanced in support of the petitioner's first proposition are those submitted in G.R. No. L-1499 of this Court wherein petitioner herein questions the authority of the Manila court of first instance to establish a receivership in Case No. 59634 and to issue injunction orders pursuant thereto. Inasmuch as we upheld in that case (G.R. No. L-1499) the validity of the injunction, the validity of the orders must also be sustained. The most that petitioner may claim is that the injunction was erroneously issued. But authorities are to the effect that an injunction duly issued must be obeyed, however erroneous the action of the court may be, until its decision is overruled by itself or by a higher court.

(b) The petitioner argues that supposing the injunction of July 12, 1941, was valid, it did not and could not affect moneys and other properties acquired by him after the liberation.

We fail to see any merit in the contention. So long as the conjugal partnership has not been properly liquidated, all earnings of the spouses belong to it and the injunction order was broad enough to cover partnership property then existing as well as profits subsequently earned. The respondents were at some pains to show that such money was actual earnings of the business of the partnership; but it is not necessary to delve into the matter because, as we declare, the order made no distinction.

(c) Petitioner's objection concerning this point is that Esperanza Harden had been requesting him to send money out of the Philippines for her expenses and those of their daughter Sarah. He argues that inasmuch as he did nothing more than to comply with her request, he should not be responsible for the withdrawals of money he had necessarily to make.

This objection has practically been eliminated by our resolution of March 2, 1948, wherein we indicated to petitioner that he should ask the lower court to be relieved of the duty of bringing back to the Philippines the amounts he had delivered or sent to Mrs. Harden and Sarah Harden.

(d) It is alleged that the respondent abused his discretion in ordering the redeposit of the amount of P1,000,608.66 because the question whether Fred M. Harden was under such obligation constituted one of the issues in the case, the nature of the funds being in contest, Mrs. Harden asserting they were conjugal, and the petitioner sustaining they were his own personal funds.

There being no question that the parties were and still are married, the presumption is that properties or moneys earned during the marriage are conjugal.[1] And it is not always an abuse of discretion to issue an injunction to protect the plaintiff's rights even if such rights are denied by the defendant.[2]

Now, having issued the injunction, the court had power and authority to compel obedience thereto. It does not

matter that the propriety of the injunction was challenged before this Court in G.R. No. L-1499. Unless we promulgated a restraining order, His Honor could indulge in the assumption that there was here no desire to interfere with proceedings designed to re-establish the status quo. More than that, on October 29, 1947, we denied the request of herein petitioner in G. R. No. L-1499 that preliminary in-junction issue to restrain the execution of the order of October 7, 1947.

(e) Finally it is argued that inasmuch as there are in the Philippines assets of the conjugal partnership amounting to P3,500,000, it is unnecessary to require this redeposit inasmuch as Esperanza's rights are protected by her moiety of the assets found in this country.

Respondent's reply points out that actually the estate and effects in our territory do not exceed P2,000,000; that petitioner Harden has already withdrawn from the Philippines at least about P3,456.440; and that consequently the properties in the Philippines will not be sufficient to make up for Esperanza's share in the amount of P1,000,608.66. Under such circumstances we are not prepared to hold that the trial judge's insistence on the redeposit constituted grave abuse of discretion.

Consequently the petition must be, and is hereby denied.

Moran, C.J., Paras, Feria, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Article 1407, old Civil Code; Casiano vs. Samaniego, 30 Phil., 135; Sison vs. Ambalada, (30 Phil., 118).

[2] cf. Rustia vs. Franco, 41 Phil., 280; Rodulfo vs. Alfonso, (42 Off. Gaz., 2439; 76 Phil., 225).

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