

SIMPUCIO ALINSOLORIN, PETITIONER, VS. MATEO M. CANONoy, AS PRESIDING JUDGE OF BRANCH III, 14TH JUDICIAL DISTRICT AND ANDREA SALUD, RESPONDENTS.

G. R. No. L-16744. March 31, 1965

Ponente: DIZON, J.

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DIZON, J.:

Petition for certiorari with a prayer for the issuance of a writ of preliminary injunction filed by Simplicio Alinsolorin against Andrea Salud and the Hon. Mateo M. Canonoy, presiding judge of the Court of First Instance of Cebu, 14th Judicial District, to annul the latter's order of January 12, 1960 in Civil Case No. R-5682, on the ground of lack of jurisdiction.

On August 11, 1958, respondent Salud commenced Civil Case No. R-5682 in the Court of First Instance of Cebu against her husband, petitioner Alinsolorin, for separation of conjugal properties and for the return of her paraphernal properties. Alinsolorin denied the material averments of the complaint and further alleged that, inasmuch as the parties were very old and unable to personally administer their properties, he, as administrator of the conjugal partnership, had named their grandson, Julian Suaring, to administer their lands and collect the fruits thereof, with the obligation of turning over the same to them; that his wife had been receiving her share of the fruits.

After due trial, the respondent judge rendered judgment as follows:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered:

1. Declaring the first three parcels described in par. 2 of the petition as the paraphernal properties of the petitioner with right to the immediate possession of the same, and ordering the defendant or his attorney-in-fact to deliver the same immediately to her;
2. Declaring the remaining five parcels described in par. 3 of the petition as the conjugal properties of the spouses, and maintaining the husband as the administrator thereof;
3. Ordering the said defendant to pay to the petitioner twenty pesos monthly as her liquidated share of the produce of the conjugal properties, and exempting her from rendering any report on the income of her paraphernal properties.

No costs and damages."

Subsequently, upon discovering that petitioner had sold the conjugal properties to their grandson, Julian Snaring, for P3,000.00, respondent Salud filed an action against them for the annulment of the sale.

Meanwhile, as petitioner failed to pay the monthly allowance of P20.00 as required in the judgment rendered in Civil Case No. R-5682—which had become final—Salud filed a motion therein to declare petitioner in contempt of court. During the hearing thereon, petitioner explained to the court that his failure to pay the allowance was due to

the fact that he had already sold the conjugal properties to Julian Suaring and that the proceeds of the sale were used to defray the family expenses.

Resolving the motion for contempt, the respondent judge, on January 12, 1960, issued the following order subject of the present petition.

"The court hereby resolves:

1. In the interim the civil case involving the validity or nullity of the supposed sale of the conjugal properties in favor of Julian Suaring is pending, to order the defendant to deposit the proceeds of the said sale in the Court within ten (10) days from receipt hereof; and to pay wit of the said deposit the monthly pension of the plaintiff herein."

The only issue now before Us is whether or not respondent judge had jurisdiction to issue the order of January 12, 1960.

Petitioner argues that the respondent judges order requiring him to deposit in court the proceeds of the alleged sale in favor of Snaring and to pay respondent Salud the monthly pension of P20.00 from the proceeds aforesaid is a modification or alteration of the judgment of July 8, 1959 which had become final; that it is also a limitation or diminution of his powers of administration over the properties without authority or jurisdiction; and that in issuing the order complained of, the respondent judge gave respondent Salud a relief not sought for in her motion for contempt of court.

All the above contentions are without merit.

As petitioner himself admits, the decision rendered in Civil Case No. R-5682 has long ago become executory. Thereunder, it was his obligation, inter alia, to pay the monthly sum of P20.00 to his wife "as her liquidated share of the produce of the conjugal properties". Neither can petition en deny the right, nay, the duty of the respondent judge to see to it that the aforesaid judgment of the court is faithfully carried out. By selling the conjugal properties to his grandson, petitioner obviously intended to avoid complying with his duty under said judgment. It was clearly, therefore, within the authority of the respondent judge first, to order petitioner to deposit in court what the latter claims to have been the proceeds of the alleged sale and to require him to use them in paying the amount due to his wife. That this relief was granted by the respondent judge in resolving a motion for contempt filed by petitioner's wife is of no moment, it being clear that such relief is another means of compelling petitioner to comply with the final judgment referred to heretofore.

WHEREFORE, the petition under consideration is dismissed, with the result that the writ prayed for is denied.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala, Makalintal and Zaldivar, JJ., concur.

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