

FRANCISCA PUZON, PLAINTIFF AND APPELLANT, VS. MARCELINO GAERLAN, EMMA VLLLANUEVA AND ROSALINA GUNDRAN, DEFENDANTS AND APPELLEES.

G. R. No. L-19571. December 31, 1965

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Francisca Puzon from the final order dated September 15, 1960 of the Court of First Instance of Baguio in Civil Case No. 950 entitled Francisca Puzon vs. Marcelino Gaerlan, Emma Villanueva and Rosalina Gundran, of the following tenor:

"Plaintiff and defendant Gaerlan are husband and wife but have been living apart for a number of years—reconciliation thus far is not possible and in order to avoid conflicting interests, plaintiff and defendant Gaerlan have agreed that upon payment by the plaintiff to defendant of the sum of P35,000.00, defendant waives all right to the conjugal properties, real and personal, consisting of the Baguio house and land, the house and land at San Lorenzo Village, Makati, Rizal, and the Department Store known as "Paquitas" located at Session Road, Baguio, as well as any accounting for rentals or profits received by plaintiff, in favor of said plaintiff. This waiver is understood without prejudice to rights of creditors of the conjugal partnership and of husband and wife as of the date of this order."

"Plaintiff is, therefore, ordered to pay. defendant Marcelino Gaerlan the sum of P35,000.00 within 45 days from receipt of this order. Her failure to make this payment will justify the issuance of writ of execution."

Francisca Puzon and Marcelino Gaerlan were married on May 15, 1944. Among the real and personal properties acquired by them during coverture was a two-story building situated at 39 General Luna Road, Baguio City. Due to estranged relations, they separated sometime in 1958.

On March 1, 1960 Gaerlan executed a contract of lease with Emma Villanueva and Rosalina Gundran over the basement of the residential building mentioned above providing, inter alia, that the lessees shall pay the monthly rental of the premises to Gaerlan. Because of such stipulation, appellant commenced Civil Case No. 950 in the Court of First Instance of Baguio against the lessees and her husband, "to determine and declare the rights and duties of the parties (the spouses) under the contract (Annex "A") referred to, insofar as the stipulation concerning the receipt of payment is concerned, * * *."

Gaerlan's motion for the dismissal of the complaint on the ground that it stated no cause of action having been denied, he filed his answer to the complaint. The lessees, on the other hand were declared in default.

When the case was called for trial on July 12, 1960, a pre-trial was held on petition of appellant. In the course thereof, the spouses entered into a compromise agreement the terms of which are embodied in the appealed order quoted heretofore.

Appellant does not deny that she and her husband had entered into the compromise agreement whose terms

appear substantially embodied in the said order. She claims, however, that the lower court had no authority to dissolve the conjugal partnership, as provided for according to her in the appealed order. In fact, the two assignments of error made in her brief read as follows:

I.

"The court a quo erred by its order of September 15, 1960, in dissolving the conjugal partnership between the appellant Puzon and appellee Gaerlan."

II

"The order of September 15, 1960 of the Honorable court below is contrary to law."

A perusal of the record sufficiently discloses that the final order appealed from embodies what apparently was agreed upon by the parties in the presence of the judge of the lower court during a pre-trial conference. Consequently, said final order is not subject to appeal (*De los Reyes vs. Ugarte*, 22 Off. Gaz., 498; *Enriques vs. Padilla*, G. R. No. 782, September 1946).

Moreover, a perusal of the same order fails to disclose any pronouncement or declaration of the lower court dissolving the conjugal partnership between appellant and appellee. It simply provides that, upon payment by the plaintiff to defendant of the sum of P35,000.00, defendant waives all right to the conjugal properties, real and personal, consisting of the Baguio house and land, the house and land at San Lorenzo Village, Makati, Rizal, and the department store known as "Paquitas" located at Session Road, Baguio, as well as any accounting for rentals or profits received by plaintiff, in favor of said plaintiff. It is clear, therefore, that properties other than those enumerated in the order are not included in the agreement, much less other properties yet to be acquired by either spouse. Consequently, we find the appeal to be without merit, and is hereby dismissed.

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

Appeal dismissed.

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