

CARMEN DE LA ROSA, PLAINTIFF-APPELLANT, VS. NICOMEDES BARRUGA, DEFENDANT-APPELLEE.

G.R. No. L-2368. June 30, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

In the Court of First Instance of Masbate, this litigation was submitted for judgment upon a stipulation of facts stating that plaintiff Carmen de la Rosa and defendant Nicomedes Barruga were married in 1921; that they separated by mutual consent in 1931; that since then they have lived separately; that "plaintiff is staying with her common-law husband and defendant with his common-law wife"; that they have verbally agreed not to live together again; that during their cohabitation, they acquired a parcel of land (described therein); that defendant has administered the land since 1931; and that the real issue is whether plaintiff is entitled, as she claims, to liquidation of the conjugal partnership and to one-half of the land or to a joint management thereof.

The Honorable Jose R. de Venecia, Judge, dismissed the complaint holding that the separation of conjugal property during the life of the spouses and the existence of the marriage takes place only in the cases provided by articles 1432 and 1433 of the Civil Code, none of which applies to the situation. As to the management of the conjugal property, His Honor also held that under article 1412 of the Civil Code, the husband is the administrator and such administration may be transferred to the wife only in the cases enumerated in article 1441, this being not one of them.

Articles 1432 and 1433 of the Civil Code read as follows:

ART. 1432. In default of a specific declaration in the ante-nuptial contract, no separation of the property of the spouses shall take place during the marriage save by virtue of a judicial decree, except in the case provided for by Article 50.

ART. 1433. Either the husband or the wife may sue for a separation of property, and it shall be decreed whenever the spouse of the plaintiff shall have been condemned to a penalty which carries with it that of civil interdiction, or shall have been declared an absentee, or shall have given cause for divorce.

In order that such separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in any one of the three cases above mentioned.

The appellant Carmen de la Rosa maintains that article 1433 should be applied, because her husband (the appellee) has given cause for divorce, inasmuch as it is admitted that he lives with his common-law wife. But she overlooks her own admission that she (appellant) is staying with her common-law husband, forgetting, furthermore, that under the divorce law (Act 2710, sec. 3), she may not sue for divorce, being herself guilty of adultery.

SEC. 3. The divorce may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage, as the case may be. where both spouses are guilty, a divorce cannot be claimed by either of them. (Act No. 2710; underscoring supplied.)

It should also be indicated that the second paragraph of article 1433 seems to contemplate, as a prerequisite, the judicial declaration of the guilt of the spouse in a separate proceeding. The trial judge, therefore, acted correctly in denying plaintiff's request for separation of property. Incidentally, it should be pointed out that under the Code (art. 1394), the conjugal partnership cannot be renounced during the marriage, except in cases of judicial separation. He also acted correctly in refusing to allow the joint management she requests, because the property is presumed to be conjugal (*Ramirez vs. Bautista*, 14 Phil., 528), and under the Civil Code the husband is the manager of the conjugal partnership property. Although such management shall be transferred to the wife in the situations described by article 1441, none of them exactly fits the circumstances before us. And no legal provision authorizes a decree for joint management.

Judgment affirmed, with costs.

Ozaeta, Actg. C.J., Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

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