

ESTRELLA DE LA CRUZ, PLAINTIFF AND APPELLEE, VS. SEVERINO DE LA CRUZ, DEFENDANT AND APPELLANT.

G.R. No. L-19565. January 30, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

The plaintiff Estrella de la Cruz filed a complaint on July 22, 1958 with the Court of First Instance of Negros Occidental, alleging in essence that her husband, the defendant Severino de la Cruz, had not only abandoned her but as well was mismanaging their conjugal partnership properties, and praying for (1) separation of property, (2) monthly support of P2,500 during the pendency of the action, and (3) payment of P 20,000 as attorney's fees, and costs.

The court a quo forthwith issued an order allowing the plaintiff the amount prayed for as alimony pendente lite, which, however, upon defendant's motion, was reduced to -P2,000.

On June 1, 1961 the trial court rendered judgment ordering separation and division of the conjugal assets, and directing the defendant to pay to the plaintiff the sum of P20,000 as attorney's fees, with legal interest from the date of the original complaint, that is, from July 22, 1958, until fully paid, plus costs. From this judgment the defendant appealed to the Court of Appeals, which certified the case to us, "it appearing that the total value of the conjugal assets is over "P500,000."

The basic facts are not controverted. The plaintiff and the defendant were married in Bacolod City on February 1, 1938. Six children were born to them, namely, Zenia (1939), Ronnie (1942), Victoria (1944), Jessie (1945), Bella (1946), and Felipe (1948). During their coverture they acquired seven parcels of land of the Bacolod Cadastre, all assessed at P45,429, and three parcels of the Silay Cadastre, all assessed at "P43,580. All these parcels are registered in their names. The hacienda in Silay yielded for the year 1957 a net profit of P3,390.49.

They are also engaged in varied business ventures with fixed assets valued as of December 31, 1956 at P496,006.92, from which they obtained for that year a net profit of "P75,655.78. The net gain of the Philippine Texboard Factory, the principal business of the spouses, was P90,454.48 for the year 1957. As of December 31, 1959, the total assets of the various enterprises of the conjugal partnership were valued at "P1,021,407.68, not including those of the Top Service Inc., of which firm the defendant has been the president since its organization in 1959 in Manila with a paid-up capital of ₱50,000, ₱10,000 of which was contributed by him. This corporation owns the Beverly Hills Subdivision in Antipolo, Rizal, the Golden Acres Subdivision and Green Valley Subdivision in Las Pinas, Rizal, and a lot and building located at M.H. del Pilar, Manila purchased for "P285,000, an amount borrowed from the Manufacturer's Bank and Trust Company.

The spouses are indebted to the Philippine National Bank and the Development Bank of the Philippines for loans obtained, to secure which they mortgaged the Philippine Texboard Factory, the Silay hacienda, their conjugal house, and all their parcels of land located in Bacolod City.

The essential issues of fact may be gleaned from the nine errors the defendant imputes to the court a quo, namely,

- In finding that the only visit, from May 15, 1955 to the rendition of the decision, made by the defendant to the conjugal abode to see his wife was on June 15, 1955;
- In finding that the letter exh. 3 was written by one Nenita Hernandez and that she and the defendant are living as husband and wife;
- In finding that since 1951 the relations between the plaintiff and the defendant were far from cordial and that it was from 1948 that the former has been receiving an allowance from the latter;
- In finding that the defendant has abandoned the plaintiff;
- In finding that the defendant since 1956 has not discussed with his wife the business activities of the partnership, and that this silence constituted "abuse of administration of the conjugal partnership;"
- In declaring that the defendant mortgaged the conjugal assets without the knowledge of the plaintiff and thru false pretences to which the latter was prey;
- In allowing the plaintiff, on the one hand, to testify on facts not actually known by her, and, on the other hand, in not allowing the defendant to establish his special defenses;
- In ordering separation of the conjugal partnership properties; and
- In sentencing the defendant to pay to the plaintiff attorney's fees in the amount of P20,000, with interest at the legal rate.

Two issues of law as well emerge, requiring resolution: (1) Did the separation of the defendant from the plaintiff constitute abandonment in law that would justify a separation of the conjugal partnership properties? (2) Was the defendant's failure and/or refusal to inform the plaintiff of the state of their business enterprises such an abuse of his powers of administration of the conjugal partnership as to warrant a division of the matrimonial assets?

The plaintiffs evidence may be summarized briefly. The defendant started living in Manila in 1955, although he occasionally returned to Bacolod City, sleeping in his office at the Philippine Texboard Factory in Mandalagan, instead of in the conjugal home at 2nd Street, Bacolod City. Since 1955 the defendant had not slept in the conjugal dwelling, although in the said year he paid short visits during which they engaged in brief conversations. After 1955 up to the time of the trial, the defendant had never once visited the conjugal abode, and when he was in Bacolod, she was denied communication with him. He has abandoned her and their children, to live in Manila with his concubine, Nenita Hernandez. In 1949 she began to suspect the existence of illicit relations between her husband and Nenita. This suspicion was confirmed in 1951 when she found an unsigned note in a pocket of one of her husband's polo shirts, which was written by Nenita and in which she asked "Bering" to meet her near the church. She confronted her husband who forthwith tore the note even as he admitted his amorous liaison with Nenita. He then allayed her fears by vowing to forsake his mistress. Subsequently, in November 1951, she found in the iron safe of her husband a letter, exh. C, also written by Nenita. In this letter the sender (who signed as "D") apologized for her conduct, and expressed the hope that the addressee ("Darling") could join her in Baguio as she was alone in the Patria Inn and lonely in "a place for honeymooners". Immediately after her husband departed for Manila the following morning, the plaintiff enplaned for Baguio, where she learned that Nenita had actually stayed at the Patria Inn, but had already left for Manila before her arrival. Later she met her husband in the house of a relative in Manila from whence they proceeded to the Avenue Hotel where she again confronted him about Nenita. He denied having further relations with this woman.

Celia Banez, testifying for the plaintiff, declared that she was employed as a cook in the home of the spouses from

May 15, 1955 to August 15, 1958, and that during the entire period of her employment she saw the defendant in the place only once. This declaration is contradicted, however, by the plaintiff herself who testified that in 1955 the defendant "used to have a short visit there," which statement implies more than one visit.

The defendant, for his part, denied having abandoned his wife and children, but admitted that in 1957, or a year before the filing of the action, he started to live separately from his wife. When he transferred his living quarters to his office in Mandalagan, Bacolod City, his intention was not, as it never has been, to abandon his wife and children, but only to teach her a lesson as she was quarrelsome and extremely jealous of every woman. He decided to live apart from his wife temporarily because at home he could not concentrate on his work as she always quarreled with him, while in Mandalagan he could pass the nights in peace. Since 1953 he stayed in Manila for some duration of time to manage their expanding business and look for market outlets for their texboafd products. Even the plaintiff admitted in both her original and amended complaints that "sometime in 1953, because of the expanding business of the herein parties, the defendant established an office in the City of Manila, wherein some of the goods, effects and merchandise manufactured or produced in the business enterprises of the parties were sold or disposed of". From the time he started living separately in Mandalagan up to the filing of the complaint, the plaintiff herself furnished him food and took care of his laundry. This latter declaration was not rebutted by the plaintiff.

The defendant, with vehemence, denied that he has abandoned his wife and family, averring that he has never failed, even for a single month, to give them financial support, as witnessed by the plaintiff's admission in her original and amended complaints as well as in open court that during the entire period of their estrangement, he was giving her around 500 a month for support. In point of fact, his wife and children continued to draw allowances from his office of a total ranging from "P1,200 to "P1,500 a month. He financed the education of their children, two of whom were studying in Manila at the time of the trial and were not living with the plaintiff. While in Bacolod City, he never failed to visit his family, particularly the children. His wife was always in bad need of money because she played mahjongg, an accusation which she did not traverse, explaining that she played mahjongg to entertain herself and forget the infidelities of her husband.

Marcos V. Ganaban, the manager of the Philippine Texboard Factory, corroborated the testimony of the defendant on the matter of the support the latter gave to his family, by declaring in court that since the start of his employment in 1950 as assistant general manager, the plaintiff has been drawing an allowance of P1,000 to P1,500 monthly, which amount was given personally by the defendant or, in his absence, by the witness himself.

The defendant denied that he ever maintained a mistress in Manila. He came to know Nenita Hernandez when she was barely 12 years old, but had lost track of her thereafter. His constant presence in Manila was required by the pressing demands of an expanding business. He denied having destroyed the alleged note which the plaintiff claimed to have come from Nenita, nor having seen, previous to the trial, the letter exh. C. The allegation of his wife that he has a concubine is based on mere suspicion. He has always been faithful to his wife, and not for a single instance has he been caught or surprised by her with another woman.

On the matter of the alleged abuse by the defendant of his powers of administration of the conjugal partnership, the plaintiff declared that the defendant refused and failed to inform her of the progress of their various business concerns. Although she did not allege, much less prove, that her husband had dissipated the conjugal properties, she averred nevertheless that her husband might squander and dispose of the conjugal assets in favor of his concubine. Hence, the urgency of separation of property.

The defendant's answer to the charge of mismanagement is that he has applied his industry, channeled his ingenuity, and devoted his time, to the management, maintenance and expansion of their business concerns, even

as his wife threw money away at the mahjongg tables. Tangible proof of his endeavors is that from a single cargo truck which he himself drove at the time of their marriage, he had built up one business after another, the Speedway Trucking Service, the Negros Shipping Service, the Bacolod Press, the Philippine Texboard Factory, and miscellaneous other business enterprises worth over a million pesos; that all that the spouses now own have been acquired through his diligence, intelligence and industry; that he has steadily expanded the income and assets of said business enterprises from year to year, contrary to the allegations of the complainant, as proved by his balance sheet and profit and loss statements for the year 1958 and 1959 (exhibits 1 and 2); and that out of the income of their enterprises he had purchased additional equipment and machineries and has partially paid their indebtedness to the Philippine National Bank and the Development Bank of the Philippines.

It will be noted that the plaintiff does not ask for legal separation. The evidence presented by her to prove concubinage on the part of the defendant, while pertinent and material in the determination of the merits of a petition for legal separation, must in this case be regarded merely as an attempt to bolster her claim that the defendant had abandoned her, which abandonment, if it constitutes abandonment in law, would justify separation of the conjugal assets under the applicable provisions of article 178 of the new Civil Code which read: "The separation in fact between husband and wife without judicial approval shall not affect the conjugal partnership, except that ... 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 addition to abandonment as a ground, the plaintiff also invokes article 167 of the new Civil Code in support of her prayer for division of the matrimonial assets. This article provides that "In case of abuse of powers of administration of the conjugal partnership property by the husband, the courts, on the petition of the wife, may provide for a receivership, or administration by the wife, or separation of property." It behooves us, therefore, to inquire, in the case at bar, whether there has been abandonment, in the legal sense, by the defendant of the plaintiff, and/or whether the defendant has abused his powers of administration of the conjugal partnership property, so as to justify the plaintiff's plea for separation of property.

We have made a searching scrutiny of the record, and it is our considered view that the defendant is not guilty of abandonment of his wife, nor of such abuse of his powers of administration of the conjugal partnership, as to warrant division of the conjugal assets.

The extraordinary remedies afforded to the wife by article 178 when she has been abandoned by the husband for at least one year are the same as those granted to her by article 167 in case of abuse of the powers of administration by the husband. To entitle her to any of these remedies, under article 178, there must be real abandonment, and not mere separation.[1] The abandonment must not only be physical estrangement but also amount to financial and moral desertion.

Although an all-embracing definition of the term "abandonment" is yet to be spelled out in explicit words, we nevertheless can determine its meaning from the context of the law as well as from its ordinary usage. The concept of abandonment in article 178 may be established in relation to the alternative remedies granted to the wife when she has been abandoned by the husband, namely, receivership, administration by her, or separation of property, all of which are designed to protect the conjugal assets from waste and dissipation rendered imminent by the husband's continued absence from the conjugal abode, and to assure the wife of a ready and steady source of support. Therefore, physical separation alone is not the full meaning of the term "abandonment", if the husband, despite his voluntary departure from the society of his spouse, neither neglects the management of the conjugal partnership nor ceases to give support to his wife.

The word "abandon", in its ordinary sense, means to forsake entirely; to forsake or renounce utterly.[2] The dictionaries trace this word to the root idea of "putting under a ban." The emphasis is on the finality and the

publicity with which some thing or body is thus put in the control of another, and hence the meaning of giving up absolutely, with intent never again to resume or claim one's rights or interests.[3] When referring to desertion of a wife by a husband, the word has been defined as "the act of a husband in voluntarily leaving his wife with intention to forsake her entirely, never to return to her, and never to resume his marital duties towards her, or to claim his marital rights; such neglect as either leaves the wife destitute of the common necessities of life, or would leave her destitute but for the charity of others." [4] The word "abandonment," when referring to the act of one consort of leaving the other, is "the act of the husband or the wife who leaves his or her consort willfully, and with an intention of causing perpetual separation." [5] Giving to the word "abandoned," as used in article 178, the meaning drawn from the definitions above reproduced, it seems rather clear that to constitute abandonment of the wife by the husband, there must be absolute cessation of marital relations and duties and rights, with the intention of perpetual separation.

Coming back to the case at bar, we believe that the defendant did not intend to leave his wife and children permanently. The record conclusively shows that he continued to give support to his family despite his absence from the conjugal home. This fact is admitted by the complainant, although she minimized the amount of support given, saying that it was only P500 monthly. There is good reason to believe, however, that she and the children received more than this amount, as the defendant's claim that his wife and children continued to draw from his office more than "P500 monthly was substantially corroborated by Marcos Ganaban, whose declarations were not rebutted by the plaintiff. And then there is at all no showing that the plaintiff and the children were living in want. On the contrary, the plaintiff admitted, albeit reluctantly, that she frequently played mahjongg, from which we can infer that she had money to spare.

The fact that the defendant never ceased to give support to his wife and children negatives any intent on his part not to return to the conjugal abode and resume his marital duties and rights. In *People v. Schelske* [6] it was held that where a husband, after leaving his wife, continued to make small contributions at intervals to her support and that of their minor child, he was not guilty of their "abandonment", which is an act of separation with intent that it shall be perpetual, since contributing to their support negated such intent. In *In re Hess' Estate*, supra, it was ruled that a father did not abandon his family where the evidence disclosed that he almost always did give his wife part of his earnings during the period of their separation and that he gradually paid some old rental and grocery bills.

With respect to the allegation that the defendant maintained a concubine, we believe, contrary to the findings of the court a quo, that the evidence on record fails to preponderate in favor of the plaintiffs thesis. The proof that Nenita Hernandez was the concubine of the defendant and that they were living as husband and wife in Manila, is altogether too indefinite. Aside from the Uncorroborated statement of the plaintiff that she knew that Nenita Hernandez was her husband's concubine, without demonstrating by credible evidence the existence of illicit relations between Nenita and the defendant, the only evidence on record offered to link the defendant to his alleged mistress is exh. C. The plaintiff however failed to connect authorship of the said letter with Nenita, on the face whereof the sender merely signed as "D" and the addressee was one unidentified "Darling." The plaintiffs testimony on cross-examination, hereunder quoted, underscores such failure:

Q. You personally never received any letter from Nenita?

A. No.

Q. Neither have you received on any time until today from 1949 from Nenita?

A. No.

Q. Neither have you written to her any letter yourself until now?

A. Why should I write a letter to her.

Q. In that case, Mrs. De la Cruz, you are not familiar with the handwriting of Nenita. Is that right?

A. I can say that Nenita writes, very well.

Q. I am not asking you whether she writes very well or not but, my question is this: In view of the fact that you have never received a letter from Nenita, you have not sent any letter to her, you are not familiar with her handwriting?

A. Yes.

Q. You have not seen her writing anybody?

A. Yes.

Anent the allegation that the defendant had mismanaged the conjugal partnership property, the record presents a different picture. There is absolutely no evidence to show that he has squandered the conjugal assets. Upon the contrary, he proved that through his industry and zeal, the conjugal assets at the time of the trial had increased to a value of over a million pesos.

The lower court likewise erred in holding that mere refusal or failure of the husband as administrator of the conjugal partnership to inform the wife of the progress of the family businesses constitutes abuse of administration. For "abuse" to exist, it is not enough that the husband perform an act or acts prejudicial to the wife. Nor is it sufficient that he commit acts injurious to the partnership, for these may be the result of mere inefficient or negligent administration. Abuse connotes willful and utter disregard of the interests of the partnership, evidenced by a repetition of deliberate acts and/or omissions prejudicial to the latter.[7]

If there is only physical separation between the spouses (and nothing more), engendered by the husband's leaving the conjugal abode, but the husband continues to manage the conjugal properties with the same zeal, industry, and efficiency as he did prior to the separation, and religiously gives support to his wife and children, as in the case at bar, we are not disposed to grant the wife's petition for separation of property. This decision may appear to condone the husband's separation from his wife; however, the remedies granted to the wife by articles 167 and 178 are not to be construed as condonation of the husband's act but are designed to protect the conjugal partnership from waste and shield the wife from want. Therefore, a denial of the wife's prayer does not imply a condonation of the husband's act but merely points up the insufficiency or absence of a cause of action.

Courts must needs exercise judicial restraint and reasoned hesitance in ordering a separation of conjugal properties because the basic policy of the law is homiletic, to promote healthy family life and to preserve the union of the spouses, in person, in spirit and in property.

"Consistently 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 Code (both old and new) requires 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 Civil 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." [8]

Furthermore, a judgment ordering the division of conjugal assets where there has been no real abandonment, the separation not being wanton and absolute, may altogether slam shut the door for possible reconciliation. The estranged spouses may drift irreversibly further apart; the already broken family solidarity may be irretrievably shattered; and any flickering hope for a new life together may be completely and finally extinguished.

The monthly alimony in the sum of P2,000 which was allowed to the wife in 1958, long before the devaluation of the Philippine peso in 1962, should be increased to P3,000.

On the matter of attorney's fees, it is our view that because the defendant, by leaving the conjugal abode, has given cause for the plaintiff to seek redress in the courts, and ask for adequate support, an award of attorney's fees to the plaintiff must be made. Ample authority for such award is found in paragraphs 6 and 11 of article 2208 of the new Civil Code which empower courts to grant counsel's fees "in actions for legal support" and in cases "where the court deems it just and equitable that attorney's fees . . . should be recovered." However, an award of P10,000, in our opinion, is, under the environmental circumstances, sufficient.

This Court would be remiss if it did not, firstly, remind the plaintiff and the defendant that the law enjoins husband and wife to live together, and, secondly, exhort them to avail of — mutually, earnestly and steadfastly — all opportunities for reconciliation to the end that their marital differences may be happily resolved, and conjugal harmony may return and, on the basis of mutual respect and understanding, endure.

Accordingly, the judgment a quo, insofar as it decrees separation of the conjugal properties, is reversed and set aside. Conformably to our observations, however, the defendant is ordered to pay to the plaintiff, in the concept of support, the amount of P3,000 per month, until he shall have rejoined her in the conjugal home, which amount may, in the meantime, be reduced or increased in the discretion of the court a quo as circumstances warrant. The award of attorney's fees to the plaintiff is reduced to "P10,000, without interest. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Judgment reversed and set aside.

[1] Tolentino, Civil Code of the Philippines, Vol. I, p. 436.

[2] See Webster's International and standard dictionaries.

[3] In re Hess' Estate, 257 NYS 278.

[4] Gay vs. State, 31 S.E. 569.

[5] Note 4, supra.

[6] 154 N.W. 781, 783.

[7] Tolentino, *supra*, p. 418

[8] *Garcia vs. Manzano*, 103 Phil. 798.

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