

MANILA SURETY & FIDELITY COMPANY, INC., PETITIONER, VS. TRINIDAD TEODORO AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-20530. June 29, 1967*

Ponente: MAKALINTAL, J.

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The Manila Surety & Fidelity Company, Inc., filed this petition for review by certiorari of the decision of the Court of Appeals in its Case No. CA-G. R. No. 30916. The case relates to the execution of a joint and several judgment for money obtained by the said company against the Philippine Ready-Mix Concrete Co., Inc. and Jose Corominas, Jr., in a litigation started in 1952 in the Court of First Instance of Manila (Civil Case No. 17014), whose decision was affirmed by the Court of Appeals with only a slight modification in respect of the award for attorney's fees.

The proceedings which took place thereafter are narrated in the decision sought to be reviewed as follows:

"When said decision became final, respondent Manila Surety secured on September 20, 1961, from the Court of First Instance of Manila in Civil Case No. 17014 a second alias writ of execution addressed to respondent provincial sheriff of Rizal whose deputy, together with counsel for respondent Manila Surety, repaired to the residence of herein petitioner at No. 794 Harvard Street, Mandaluyong, Rizal, and levied upon a car, some furniture, appliances and personal properties found therein belonging solely and exclusively to the petitioner with the exception of a sewing machine which belonged to a maid by the name of Nati Fresco, a G.E. television set which was the property of the minor Jose Alfonso Corominas, and a baby grand piano as well as a Columbia radio phonograph which belonged to Jose Corominas, Jr. As the petitioner was then abroad, her sister Josefina Teodoro, to whom she had entrusted the custody and safekeeping of the properties, had made representations to the deputy sheriff and to the counsel of respondent Manila Surety regarding the ownership of the petitioner over certain personal effects levied upon, but they ignored the same and proceeded with the levy.

Thus, respondents caused the posting at several places notices of sale, preparatory to disposing petitioner's properties at public auction.

To stay the sale at public auction of petitioner's properties, she filed on November 3, 1961, with the Court of First Instance of Rizal a complaint with injunction, entitled 'Trinidad Teodoro vs. Manila Surety & Fidelity Co., Inc. and the Provincial Sheriff of Rizal', praying among other things for damages and a writ of preliminary injunction which was accordingly issued upon petitioner's filing of a bond in the sum of P30,000.00 enjoining the provincial sheriff of Rizal from selling at public auction the properties claimed by said petitioner.

However, on November 9, 1961, respondent Manila Surety filed an 'Omnibus Motion to Dismiss the Complaint and to Dissolve Injunction' to which an opposition was filed.

After the parties had adduced their evidence in support of their respective claims and after hearing their arguments, the lower court declared that the properties in question are community properties of Trinidad Teodoro (herein petitioner) and Jose Corominas, Jr., dissolved on May 12, 1962, the writ of preliminary injunction it had issued and dismissed the complaint (Civil case No. 6865, CFI-Rizal).

Not satisfied, Trinidad Teodoro (as plaintiff in said civil case No. 6865 of Rizal) interposed an appeal. In the meanwhile, however, the Manila Surety filed on May 29, 1962, in the Court of First Instance of Manila a motion for the issuance of a third alias writ of execution for the satisfaction of the judgment debt in civil case No. 17014. Acting upon said motion the Court of First Instance of Manila issued on June 2, 1962, the 'Third Alias Writ of Execution.'

Thus, on June 7, 1962, deputies of the provincial sheriff of Rizal again repaired to the residence of herein petitioner at No. 794 Harvard St., Mandaluyong, and levied upon the same properties, with the exception of the baby grand piano and the 'Columbia' phono-graph which were the properties of Jose Corominas, Jr. and which had already been sold at public auction November 6, 1961 for P3,305.00, the Regal sewing machine owned by Nati Fresco, the beds found in the boy's and girl's rooms, a marble dining table and chairs, a stereophonic phono-graph and the G.E. television set. And on the following day, June 8, 1962, respondent provincial sheriff of Rizal advertised the sale at public auction of the aforementioned properties claimed by herein petitioner, setting the date thereof for June 16, 1962."

Trinidad Teodoro thereupon filed an original petition for injunction in the Court of Appeals to stop the scheduled sale. On October 24, 1962 the said Court rendered the decision now under review, granting the writ prayed for and permanently enjoining respondent provincial sheriff of Rizal from selling at public auction the properties in question for the satisfaction of the judgment debt of Jose Corominas, Jr.

The case for herein petitioner rests on the proposition that the said properties, claimed by respondent Teodoro to be hers exclusively, pertain to the co-ownership established between her and Jose Corominas, Jr., pursuant to Article 144 of the Civil Code, and consequently may be levied upon on execution for the satisfaction of the latter's judgment debt. The facts relied upon in support of this theory of co-ownership are stated in the decision of the court *quo* and quoted by the Court of Appeals, as follows:

"Jose Corominas, Jr. and Sonia Lizares were married in Iloilo on January 5, 1935. On November 29, 1954, a decree of divorce was granted by the Court of the State of Nevada dissolving the bonds of matrimony between Sonia Lizares and Jose Corominas, Jr. x x x

"Trinidad Teodoro met Jose Corominas, Jr. in Hongkong on October 30, 1955. x x x On March 26, 1956, they went through a Buddhist wedding ceremony in Hongkong. Upon their return to the Philippines they took up residence in a rented house at No. 2305 Agno Street, Manila. x x x On September 5, 1961, plaintiff and Jose Corominas, Jr. were married for a second time on Washoe County, Nevada, U.S.A."

Additional pertinent facts, also mentioned in the decision under review and not controverted by the parties, are that Sonia Lizares is still living and that the conjugal partnership formed by her marriage to Corominas was dissolved by the Juvenile and Domestic Relations Court of Manila upon their joint petition, the decree of dissolution having been issued on October 21, 1957.

The principal issue here is the applicability of Article 144 of the Civil Code to the situation thus created. This Article provides:

"When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership."

There is no doubt that the decree of divorce granted by the Court of Nevada in 1954 is not valid under Philippine law, which has outlawed divorce altogether; that the matrimonial bonds between Jose Corominas, Jr. and Sonia Lizares have not been dissolved, although their conjugal partnership was terminated in 1957; and that the former's subsequent marriage in Hongkong to Trinidad Teodoro is bigamous and void.

While Article 144 speaks, inter alia, of a void marriage without any qualification, the Court of Appeals declined to apply it in this case on two grounds: (1) the subsisting marriage of Corominas to Sonia Lizares constitutes an impediment to a valid marriage between him and respondent Trinidad Teodoro, which impediment, according to a number of decisions of the Supreme Court, precludes the establishment of a co-ownership under said article, and (2) the funds used by said respondent in acquiring the properties in question were "fruits of her paraphernal investments which accrued before her marriage to Corominas."

The decisions cited under the first ground are *Christensen vs. Garcia*, 56 O.G. No. 16, p. 3199, *Samson v. Salaysay*, 56 O.G. No. 11, p. 2401; and *Osmeña vs. Rodriguez*, 54 O.G. No. 20, p. 5526. In a proper case, where it may be necessary to do so in order to resolve an unavoidable issue, the precise scope of the "no impediment to a valid marriage" dictum in said decisions will undoubtedly deserve closer examination, since it establishes an exception to the broad terms of Article 144. For one thing, a situation may arise involving a conflict of rights between a co-ownership under that provision and an existing conjugal partnership formed by a prior marriage where, for instance, the husband in such marriage lives with another woman and with his salary or wages acquires properties during the extra-marital cohabitation. A ruling would then be in order to determine which - as between the co-ownership and the conjugal partnership - could claim ascendancy insofar as the properties are concerned.

In the present case, however, we find no need to pass on this question. The particular properties involved here, which were admittedly acquired by respondent Teodoro, cannot be deemed to belong to such co-ownership because, as found by the trial court and confirmed by the Court of Appeals, the funds used in acquiring said properties were fruits of respondent's paraphernal investments which accrued before her "marriage" to Corominas. In other words they were not acquired by either or both of the partners in the void marriage through their work or industry or their wages and salaries, and hence cannot be the subject of co-ownership under Article 144. They remain respondent's exclusive properties, beyond the reach of execution to satisfy the judgment debt of Corominas.

Several procedural questions have been raised by petitioner. First, that the injunction issued by the Court of Appeals was improper since it was not in aid of its appellate jurisdiction; second, that respondent Trinidad Teodoro having elected to appeal from the decision of the Court of First Instance of Rizal, she may not pursue the remedy of injunction as she did in this case; third, that respondent's petition for injunction in the Court of Appeals failed to state a cause of action; fourth, that the proper remedy available to respondent was by filing a third-party claim; and finally, that the trial judge should have been included as party respondent in the petition for injunction.

As to the first and second points, the fact is that respondent Trinidad Teodoro perfected her appeal to the Court of Appeals, which found that there were questions of fact involved therein, one of them being whether the properties in question were acquired before or after her void marriage to Corominas. In aid of its appellate jurisdiction, therefore, the said Court could issue a writ of injunction. Of course, what happened here was that before the record on appeal could be filed (on June 18, 1962) or approved (on September 8, 1962) a third alias writ of execution was issued by the trial court (on June 2, 1962) and the properties in question were again levied upon by the sheriff and advertised for sale on June 16, 1962. It was impracticable for respondent to first wait for the appeal to be elevated to and docketed in the Court of Appeals and then secure the ancillary remedy of injunction therein. An independent petition for injunction, under the circumstances, was not unjustified.

Respondent could, indeed, have filed a third party claim instead as indicated in Rule 39, Section 15. But then her sister Josefina Teodoro did make such a claim in her behalf after the second alias writ of execution was issued, but it was ignored and the sheriff proceeded with the levy. In any event, a third party claim is not an exclusive remedy: the same rule provides that nothing therein contained "shall prevent such third person from vindicating his claim to the property by any proper action."

We do not deem it to be a reversible error for Trinidad Teodoro not to include the trial Judge as party-respondent in her petition for injunction in the Court of Appeals. The trial Judge would have been merely a nominal party anyway, and no substantial rights of petitioner here have been prejudiced by the omission.

In view of the foregoing, the judgment of the Court of Appeals is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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