

MARGARITA TABUNAN, PLAINTIFF AND APPELLANT, VS. TIMOTEO MARIGMEN AND CONSORCIA MARIGMEN, DEFENDANTS AND APPELLEES.

G. R. No. L-9727. April 29, 1957

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Isabela, dismissing plaintiff's complaint.

From the allegations of the complaint, it appears that plaintiff is the wife of Valentin Catalon. On January 30, 1937, Catalon was issued a homestead title (O.T.C. No. 1-4315) of a parcel of land in Callang, Roxas, Isabela. The title is in the name of Valentin Catalon, married to Margarita Tabunan. Plaintiff and Catalon are living separately and have been so for some time. On July 13, 1948, Catalon sold the homestead at P1,000 to the defendants, and a transfer certificate of title (No. T-880) issued in the names of the latter.

In the first cause of action it is prayed that plaintiff be allowed to repurchase the entire homestead. In the second, it is alleged that the homestead is conjugal property of the spouses; that the same was sold without plaintiff's knowledge and consent, and without she having received portion of the selling price, and she, therefore, prayed that 1/2 of the homestead be given her. In the third, she prayed for the return of the produce of the homestead during the period of time that the same has been in the possession of defendants.

The defendants upon being summoned, moved to dismiss the complaint on the ground that plaintiff has no legal capacity to sue, that the action is barred by the statute of limitations, and that the complaint states no cause of action.

The Court sustained the motion to dismiss on the ground that plaintiff's husband as administrator of the conjugal property, had the right and power to sell the homestead, without the consent of the wife; and that in accordance with Section 119, Commonwealth Act No. 141, the demand of the plaintiff that she be allowed to repurchase the property could not be granted as the repurchase was not effected within the period of 5 years from the date of the sale in 1948 (the action having been filed on January 19, 1955). A point raised by plaintiff, but which was also overruled by the court below, is that the sale was made in fraud of the conjugal rights of the wife and, therefore, the said sale is null and void under paragraph 2 of Article 1413 of the old Civil Code. The court a quo held that this provision refers to sales in violation of the provisions of the Civil Code and those in fraud of the rights of the wife, and cannot apply to the sale in question because there is no violation of the Civil Code or any allegation of any fraud committed against the wife.

On this appeal, it is claimed on behalf of the plaintiff-appellant that the sale as to 1/2 of the entire homestead is invalid and is not binding on the plaintiff-appellant; that the power or right of the husband to sell the conjugal property is recognized only in cases where the husband and wife are not separated. We do not find merit in these claims of the plaintiff-appellant. The right of the husband to administer and dispose of conjugal property of the spouses is not limited to the cases[^] in which the husband and wife are living together as spouses, and that said

right to administer or dispose of does not cease upon the separation of husband and wife. The husband's right in this respect is full, absolute and complete. Article 1413 of the old Civil Code provides:

"In addition to his powers as manager the husband may for a valuable consideration alienate and encumber the property of the conjugal partnership without tile consent of the wife.'3 (par. 1)

Claim is also made that defendants knew that the homestead they were buying belong to the spouses and that the wife was living separately from her husband, and that under such circumstances it is unfair and unjust that they be allowed to purchase the property, without* advice having been given the wife and without her sharing in the proceeds thereof. We are aware of these circumstances, but the provisions of the law in force at the time of the sale must be enforced. The considerations that the plaintiff-appellant has raised must have impelled the amendment of the law (Art. 166, Civil Code), which now prohibits sale of conjugal property without the wife's consent. But the provisions of the Civil Code (that the husband may not sell conjugal property without the consent of the wife) may not apply as the sale took place in 1948 as the application of the new law would destroy a vested right, the defendants having already acquired title to the property before the new provisions was enacted.

The most important issue raised on the appeal, however, is the supposed violation of paragraph 2 of Article 1413 of the old Civil Code in that the sale was in fraud of the wife and, therefore, could not prejudice her. The trial court's ruling was to the effect that no concrete' allegation of fraud committed against the wife or her heirs is made in the complaint. We disagree with this ruling. For the purposes of paragraph 2 of Article 141S of the old Civil Code the allegation under the first cause of action "that the sale was consummated without the knowledge and consent of plaintiff and that "she was not shared with the purchase price thereof", together with the further allegation that plaintiff and her husband are living separate from each other, are sufficient. The homestead being conjugal partnership property of both spouses, in which the wife, even if living separately, had a right and interest, the dictates of reason and fairness demanded that the husband advise or inform the wife thereof. Absence of such advice amounted to a fraud of her rights.

As to prejudice to plaintiff's rights, the allegation that she received no share in the proceeds of the sale, also alleged in the complaint, should be sufficient to bring the case under the above-mentioned paragraph 2, Article 1413 of the old Civil Code. It is true that the existence of actual prejudice can be determined only after the liquidation of the conjugal partnership (9 Manresa, pp. 578-581; Baello vs. Villanueva, 54 Phil. 213). The fact that plaintiff's rights may depend on a contingency, i.e., the presence of sufficient conjugal properties to respond for her share, does not mean that she has no right of action at all and that her action is premature. Under the facts 'alleged in the complaint, which are not contradicted in 'the motion for dismissal, the plaintiff is. entitled, to protect her rights, to have her contingent interest in the homestead recorded and annotated on the title. This has toeen the holding of this Court in Baello vs. Villanueva, supra, thus:

"The court below, upon these same grounds, held that the donation in question is illegal, but in view of the fact that the action for nullity was prematurely brought, as the liquidation of the conjugal partnership had not been made, dismissed the complaint. We hold this conclusion of the court to be correct.

"But the appellant prays that in any event, some remedy be granted to safeguard her right should it appear from the liquidation of the conjugal partnership that this donation made by Juan Crux Sanchez is prejudicial to her half of the property donated in whole or in part. It is contended that the donees may alienate the property to third persons, who, shielded by good faith, might render the plaintiff's right to ask for the nullity, of the donation, if prejudicial, virtually ineffective,

"This petition is reasonable. Upon the supposition set forth by the attorneys for the appellant, her right to ask for the nullity of the donation would indeed become illusory, and she is, for this reason, entitled to some protection ensuring her exercise of this right later on. For this purpose, we consider that the best protection for

the plaintiff would be to record in the register and in the title of the defendant donees this condition of their estate. In this way, whoever acquires from them the property donated will not be able to allege ignorance that they acquired a right subject to the plaintiff's contingent right to ask for the nullity of the donation, should it be prejudicial to her in any way.

"Wherefore, it is held that the donation of the land in question made by Juan Cruz Sanchez in favor of the defendants is illegal and subject to nullification, according to the result of the liquidation of the conjugal property of the spouses Juan Cruz Sanchez and the plaintiff, and it is ordered that this condition be noted in the 'defendants' title * * *."

It is also to be noted that allegation in the complaint is to the effect that defendants knew that the homestead was conjugal partnership property. This allegation bars any claim that defendants acquired the homestead in good faith, for value and without notice.

For the foregoing, we hold that under the allegations of the complaint plaintiff has a cause of action as well as a remedy, as above indicated, and that the complaint should not have been dismissed. The order of dismissal is, therefore, hereby reversed and the case remanded to the lower court for further proceedings. So ordered.

Bengzon, Padilla, Reyes, A., Bautista Angelo, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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