

IN THE MATTER OF THE VOLUNTARY DISSOLUTION OF THE CONJUGAL PARTNERSHIP OF JOSE BERMAS, SR. AND PILAR MANUEL BERMAS AND SEPARATION OF PROPERTY. JOSE BERMAS, SR. AND PILAR MANUEL ...

G.R. No. L-20379. June 22, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal from a decision of the Court of First Instance of Zamboanga City denying the petition of appellants Jose Bermas, Sr. and Pilar Manuel Bermas for the voluntary dissolution of their conjugal partnership and the establishment between them of the regime of separation of property as set forth in the deed, Exhibit Q.

The same is entitled "Agreement for Dissolution of Conjugal Partnership and Separation of Property". It was executed by the petitioners on May 31, 1962. It states that they are and have been legally married since December 25, 1932; that they have two children, namely, Manuel T. and Ruben J. Bermas, both of age and married; that, during their marriage, petitioners have acquired twelve (12) parcels of land and two (2) buildings, described in Exhibit Q; that believing that it will redound to their mutual advantage, benefit and gain, and preserve peace and harmony in the family, as well as prevent friction, dissention and confusion among their respective heirs in the future, particularly because petitioner Jose Bermas, Sr. has two (2) sets of children, one by a former marriage, and another by his present wife, the other petitioner, said petitioners have mutually agreed to dissolve their conjugal partnership, and to the establishment of a separation of properties in the manner specified in the contract. Thereupon, the same proceeds to enumerate the properties that shall belong exclusively to Pilar Manuel Bermas and those that shall belong in fee simple to Jose Bermas, Sr. The contract, likewise, contains a stipulation concerning the income derived from rentals, as well as a quitclaim by each party in favor of the other, and provides that, thereafter, any property acquired by any or both of the parties shall pertain to him or her exclusively, or to both as co-owners, as the case may be.

Soon after the execution of this contract, or on June 11, 1962, the petitioners filed with said court the aforementioned petition, alleging therein that they are married as above stated; that they have the two (2) children above-mentioned ; that petitioners had executed the aforementioned agreement; that a voluntary dissolution of the conjugal partnership during Hie marriage is allowed, under Article 191 of the Civil Code, subject to judicial approval; that petitioners and their conjugal partnership have no outstanding debts or obligations; and that the dissolution of said conjugal partnership and the separation of property agreed upon between the petitioners would not prejudice any creditor or third person. Premised upon these allegations, petitioners prayed for the dissolution of said conjugal partnership and the approval of said agreement for separation of properties between them.

Upon the tiling of the petition, the court issued an order setting it for hearing on July 7, 1962, and caused a notice to that effect to be published in a newspaper of general circulation in Zamboanga City, once a week, for three (3) consecutive weeks. After said hearing, the court rendered the appealed decision, denying the petition, upon the

ground that, under Article-192 of the Civil Code of the Philippines, a conjugal partnership shall only be dissolved once legal separation has been ordered, and this cannot take place, Pursuant to Article 191 of the same Code, except upon Civil interdiction, declaration of absence or abandonment, hence, this appeal by the petitioners who maintain that, with judicial approval, a conjugal partnership may, also, be dissolved upon agreement of the spouses. Indeed, the fourth paragraph of said Article 191 reads:

* * * * *

The husband and the wife may agree upon the dissolution of the conjugal partnership during the marriage, subject to judicial approval. All the creditors of the husband and of the wife, as well as of the conjugal partnership, shall be notified of any petition for conjugal approval of the voluntary dissolution of the conjugal partnership, so that any such creditors may appear at the hearing to safeguard his interests. Upon approval of the petition for dissolution of the conjugal partnership, the court shall take such measures to protect the creditors and other third persons".

It should be noted, in this connection, that, although petitioner Jose Bermas, Sr. admittedly has children by a previous marriage, their names have not been given in either Exhibit Q or the petition for the approval thereof, despite the fact that his children with his co-petitioner have been named in both. Consequently, said children by first marriage of petitioner Jose Bermas, Sr. do not appear to have been notified personally of the filing of the petition and of the date of the hearing thereof. In fact, no similar notice appears to have been given to the children of the petitioners herein, although the danger of substantial injury to their rights would seem to be remote.

The situation as regards the children by first marriage is however materially different. Indeed, the contract, Exhibit Q, purports to dissolve and, hence, liquidate the conjugal partnership between the petitioners. But, this liquidation should not and cannot be effected without a liquidation of the conjugal partnership between Jose Bermas, Sr. and his first wife, in which the children by first marriage certainly have an interest (*Oñas vs. Javillo*, 59 Phil. 733, 737). At any rate, said Exhibit Q could adversely affect the rights of said children by first marriage, for, "In case of doubt, the partnership property shall be divided between the different (conjugal) partnerships in proportion to the duration of each and of the property belonging to the respective spouses", as provided in Article 189 of the aforementioned Code (Article 1431 of the Spanish Civil Code). Hence, it is essential that said children by previous marriage be personally notified of the instant proceedings, and that, for this purpose, their names and addresses, as well as the addresses of the children of herein petitioners be furnished by them.

Wherefore, the decision appealed from is hereby set aside, and the case remanded to the lower court for further proceedings in conformity with this decision.

Bengzon, C.J., Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

Judgment set aside.

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