

**DIEGO DE LA VIÑA, PETITIONER, VS. ANTONIO VILLAREAL, AS
AUXILIARY JUDGE OF FIRST INSTANCE, AND NARCISA GEOPANO,
RESPONDENTS.***G.R. No. L-13982. July 31, 1920*

Ponente: JOHNSON, J.

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This is an original petition presented in the Supreme Court. Its purpose is to obtain an order declaring: (a) That the respondent, the Honorable Antonio Villareal, as Auxiliary Judge sitting in the Court of First Instance of, the province of Iloilo, has no jurisdiction to take cognizance of a certain action for divorce instituted in said court by the respondent Narcisa Geopano against her husband, Diego de la Viña, the petitioner herein; (b) that the said respondent judge has exceeded his power and authority in issuing, in said action, a preliminary injunction against the said petitioner prohibiting him from alienating or encumbering any part of the conjugal property during the pendency of the action; and (c) that all the proceedings theretofore had in said court were null and void.

It appears from the record that on September 17, 1917, Narcisa Geopano filed a complaint in the Court of First Instance of the Province of Iloilo against Diego de la Viña, alleging: (1) That she was a resident of the municipality of Iloilo, Province of Iloilo, and that the defendant was a resident of the municipality of Vallehermoso, Province of Oriental Negros; (2) that she was the legitimate wife of the defendant, having been married to him in the municipality of Guijulfigan, Province of Negros Oriental, in the year 1888; (3) that since their said marriage plaintiff and defendant had lived as husband and wife and had had nine children, three of whom were living and were already of age; (4) that during their marriage plaintiff and defendant had acquired property, real and personal, the value of which was about P300,000 and all of which was under the administration of the defendant; (5) that since the year 1913 and up to the date of the complaint, the defendant had been committing acts of adultery with one Ana Calog, sustaining illicit relations with her and having her as his concubine, with public scandal and in disgrace of the plaintiff; (6) that because of said illicit relations, the defendant ejected the plaintiff from the conjugal home, for which reason she was obliged to live in the city of Iloilo, where she had since established her habitual residence; and (7) that the plaintiff, scorned by her husband, the defendant, had no means of support and was living only at the expense of one of her daughters. Upon said allegations she prayed for (a) a decree of divorce, (b) the partition of the conjugal property, and (c) alimony pendente lite in the sum of P400 per month.

Subsequent to the filing of the said complaint, Narcisa Geopano, the plaintiff therein, presented a motion, which was later amended, alleging, among other things, that since the filing of her complaint she had had personal knowledge that the defendant was trying to alienate or encumber the property which belonged to the conjugal partnership between the plaintiff and the defendant, to the prejudice of the plaintiff, and prayed that a preliminary injunction be issued against the defendant restraining and prohibiting him in the premises.

The defendant Diego de la Viña, petitioner herein, opposed the said motion for a preliminary injunction, and,

subsequently, demurred to the complaint upon the ground that the court had no jurisdiction to take cognizance of the cause, "nor over the person of the defendant."

After hearing the respective parties the respondent judge, in two separate orders, dated November 1 and November 2, 1917, respectively, overruled the defendant's demurrer, and granted the preliminary injunction prayed for by the plaintiff.

Thereafter and on April 27, 1918, the defendant, Diego de la Viña filed the present petition for certiorari in this court, upon the ground that the respondent judge had no jurisdiction to take cognizance of the action in question, and had exceeded his power and authority in issuing said preliminary injunction.

The questions arising out of the foregoing facts are as follows:

- May a married woman ever acquire a residence or domicile separate from that of her husband during the existence of the marriage?
- In an action for divorce, brought by the wife against her husband, in which the partition of the conjugal property is also prayed for, may the wife obtain a preliminary injunction against the husband restraining and prohibiting him from alienating or encumbering any part of the conjugal property during the pendency of the action?

I.

The petitioner contends that the Court of First Instance of Iloilo had no jurisdiction to take cognizance of the said action for divorce because the defendant therein was a resident of the Province of Negros Oriental and the plaintiff, as the wife of the defendant, must also be considered a resident of the same province inasmuch as, under the law, the domicile of the husband is also the domicile of the wife; that the plaintiff could not acquire a residence in Iloilo before the marriage between her and the defendant was legally dissolved.

This contention of the petitioner is not tenable. It is true, as a general principle of law, that the domicile of the wife follows that of her husband. This rule is founded upon the theoretic identity of person and of interest between the husband and the wife, and the presumption that, from the nature of the relation, the home of the one is that of the other. It is intended to promote, strengthen, and secure their interests in this relation, as it ordinarily exists, where union and harmony prevail. But the authorities are unanimous in holding that this is not an absolute rule. "Under modern laws it is clear that many exceptions to the rule that the domicile of the wife is determined by that of her husband must obtain. Accordingly, the wife may acquire another and separate domicile from that of her husband where the theoretical unity of husband and wife is dissolved, as it is by the institution of divorce proceedings; or where the husband has given cause for divorce; or where there is a separation of the parties by agreement, or a permanent separation due to desertion of the wife by the husband or attributable to cruel treatment on the part of the husband; or where there has been a forfeiture by the wife of the benefit of the husband's domicile." (9 R. C. L., 545.)

The case of *Narcisa Geopano* comes under one of the many exceptions above-mentioned, to wit: "Where the husband has given cause for divorce, the wife may acquire another and separate domicile from that of her husband." In support of this proposition there is a formidable array of authorities. We shall content ourselves with illustrative quotations from a few of them, as follows:

"Although the law fixes the domicile of the wife as being that of her husband, universal jurisprudence recognizes an exception to the rule in the case where the husband's conduct has been such as to furnish lawful ground for a divorce, which justifies her in leaving him, and, therefore, necessarily authorizes her to live elsewhere and to acquire a separate domicile. *Cheever vs. Wilson*, 9 Wall. (U. S.), 108; *Barber vs. Barber*, 21 How. (U. S.), 582; 2 Bishop, Mar. and Div., 475; *Schouler, Hus. and Wife*, sec. 574; 5 Am. and Eng. Encyc. of

Law, p. 756." (Smith vs. Smith, 43 La. Ann., 1140, 1146.)

"The matrimonial domicile of the wife is usually that of the husband, but if she is justified in leaving him because his conduct has been such as to entitle her to a divorce, and she thereupon does leave him and go into another state for the purpose of there permanently residing, she acquires a domicile in the latter state." (Atherton vs. Atherton, 155 N. Y., 129; 63 Am. St. Rep., 650.)

"The law will recognize a wife as having a separate existence, and separate interests, and separate rights, in those cases where the express object of all proceedings is to show that the relation itself ought to be dissolved, or so modified as to establish separate interests, and especially a separate domicile and home, bed and board being put, apart for the whole, as expressive of the idea of home. Otherwise the parties, in this respect, would stand upon very unequal grounds, it being in the power of the husband to change his domicile at will, but not in that of the wife." (Harteau vs. Harteau, 14 Pick. [Mass.], 181; 25 Am. Dec, 372, 375-376.)

"Under the pauper laws, and upon general principles, the wife is regarded as having the domicile of her husband; but this results from his marital rights, and the duties of the wife. If the husband has forfeited those rights by misbehavior, and has left and deserted the wife, they may have different domiciles, in the view of the law regulating divorces." (Harding vs. Alden, 9 Greenl. [Me.], 140; 23 Am. Dec, 549, 552.)

"Though as a general principle of law the domicile of the husband is regarded as the domicile of the wife, according to the prevailing view a wife may acquire a residence or domicile separate from her husband so as to confer jurisdiction upon the courts of the state, in which her domicile or residence is established, to decree a divorce in her favor." (9 R. C. L., 400-401, citing various cases.)

"The law making the domicile of the husband that of the wife is applicable only to their relations with third parties, and has no application in cases of actual separation and controversy between themselves as to the temporary or permanent severance of the marriage ties by judicial proceedings. Vence vs. Vence, 15 How. Pr., 497; Schonwald vs. Schonwald, 55 N. C., 367; Cheever vs. Wilson, 76 IL S. (9 Wall.), 109; 19 L. ed., 605." (Notes, p. 498, 16 L. R. A.)

In the case of Schonwald vs. Schonwald (55 N. C., 343), the plaintiff tried to do what the petitioner in this case insists the respondent Narcisa Geopano should have done. In that case the wife filed a bill for divorce in a court in North Carolina, where her husband resided. She herself had not resided in that state for three years previous to the filing of the suit, as required by the statute; but she claimed that the domicile of her husband was also her domicile and, inasmuch as her husband, the defendant, had been a resident of North Carolina for more than three years, she had also been a resident of that state during that time. The court dismissed the bill, holding that the legal maxim that "her domicile is that of her husband" would not avail in the stead of an actual residence. The court said:

"It is true that for many purposes the domicile of the husband is the domicile of the wife, but it is not so for every purpose. The maxim that the domicile of the wife follows that of the husband cannot be applied to oust the court of its jurisdiction; neither, from parity of reasons can it give jurisdiction." (P. 344.)

Turning to the Spanish authorities, we find that they agree with the American authorities in holding that the maxim or rule that the domicile of the wife follows that of the husband, is not an absolute one. Scaevola, commenting on article 40 of the Civil Code (which is the only legal provision or authority relied upon by the petitioner in this case), says:

"Although article 64 of the Law of Civil Procedure provides that the domicile of a married woman, not legally separated from her husband, is that of the latter, yet, when the tacit consent of the husband and other circumstances justify it, for the purposes of determining jurisdiction, the habitual residence of the woman should be considered as her domicile where her right may be exercised in accordance with article 63." (Scaevola, Civil Code, p. 354.)

Manresa, commenting upon the same article (art. 40) says:

"The domicile of married women not legally separated from their husbands shall be that of the latter. This principle, maintained by the Supreme Court in numerous decisions, was modified in a particular case by the decision of June 17, 1887, and in conformity with this last decision, three others were afterwards rendered on October 13, 23 and 28, 1899, in all of which it is declared that when married women as well as children subject to parental authority live, with the acquiescence of their husbands or fathers, in a place distinct from where the latter live, they have their own independent domicile, which should be considered in determining jurisdiction in cases of provisional support, guardianship of persons, etc." (1 Manresa, 223.)

If the wife can acquire a separate residence when her husband consents or acquiesces, we see no reason why the law will not allow her to do so when, as alleged in the present case, the husband unlawfully ejects her from the conjugal home in order that he may freely indulge in his illicit relations with another woman. Under no other circumstance could a wife be more justified in establishing a separate residence from that of her husband. For her to continue living with him, even if he had permitted it, would have been a condonation of his flagrant breach of fidelity and marital duty. Furthermore, in this case no longer was there an "identity of persons and of interest between the husband and the wife." Therefore the law allowed her to acquire a separate residence. For, "it would do violence to the plainest principle of common sense and common justice to call this residence of the guilty husband, where the wife is forbidden to come, * * * the domicile of the wife." (Champon vs. Champon, 40 La. Ann., 28.)

It is clear, therefore, that a married woman may acquire a residence or domicile separate from that of her husband, during the existence of the marriage, where the husband has given cause for divorce.

II.

We come now to the second question—whether or not the respondent judge exceeded his power in issuing the preliminary injunction complained of by the petitioner.

Section 164 of Act No. 190 provides:

"A preliminary injunction may be granted when it is established, in the manner hereinafter provided, to the satisfaction of the judge granting it:

"1. That the plaintiff is entitled to the relief demanded and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of either for a limited period or perpetually;

"2. That the commission or continuance of some act complained of during the litigation would probably work injustice to the plaintiff;

"3. That the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual."

The petitioner quotes the foregoing section and argues that the respondent Narcisa Geopano was not entitled to have a preliminary injunction issued against her husband because contrary to the requirement of the first paragraph of said section, she was not entitled to the relief demanded, which consisted in restraining the power and authority which the law confers upon the husband; that under articles 1412 and 1413 of the Civil Code, the husband is the manager of the conjugal partnership and, as such, is empowered to alienate and encumber the conjugal property without the consent of the wife; that neither could the wife obtain a preliminary injunction under paragraph 3 of said section, upon the ground that the defendant was committing some acts in violation of the plaintiff's rights, because the plaintiff, as the wife of the defendant, had no right to intervene in the

administration of the conjugal property, and therefore no right of hers was violated.

We cannot subscribe to that argument of counsel. The law making the husband the sole administrator of the property of the conjugal partnership is founded upon necessity and convenience as well as upon the presumption that, from the very nature of the relation between husband and wife, the former will promote and not injure the interests of the latter. So long as this harmonious relation, as contemplated by law, continues, the wife cannot and should not interfere with the husband in his judicious administration of the conjugal property. But when that relation ceases and, in a proper action, the wife seeks to dissolve the marriage and to partition the conjugal property, it is but just and proper, in order to protect the interests of the wife, that the husband's power of administration be curtailed, during the pendency of the action, insofar as alienating or encumbering the conjugal property is concerned.

In her motion for a preliminary injunction, Narcisa Geopano alleged that the defendant was about to alienate or encumber the property belonging to the conjugal partnership, with the object of injuring her interests; and this allegation does not appear to have been controverted by the defendant either in this court or in the court below. In view of this fact, we are of the opinion that under both paragraphs 2 and 3 of section 164 of Act No. 190, above quoted, the respondent judge was empowered and justified in granting the preliminary injunction prayed for by her. It cannot be doubted that, if the defendant should dispose of all or any part of the conjugal property during the pendency of the action for divorce, and squander or fraudulently conceal the proceeds, that act "would probably work injustice to the plaintiff or that it would probably be "in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual." In this case the plaintiff's rights sought to be protected by said paragraph 3 is not the right to administer the conjugal property, as counsel for the petitioner believes, but the right to share in the conjugal property upon the dissolution of the conjugal partnership.

The case under consideration, then, is covered or contemplated by the statute (sec. 164, Act No. 190), so that there can be no question, in our opinion, as to the power of the respondent judge to issue the preliminary injunction complained of by the petitioner. Indeed, even in a case not covered by the statute this court has upheld the power of the Courts of First Instance to grant preliminary injunctions. In the case of Manila Electric Railroad and Light Company vs. Del Rosario and Jose (22 Phil., 433), Doroteo Jose asked for, and the Court of First Instance granted *ex parte*, a writ of preliminary mandatory injunction directing the Manila Electric Railroad and Light Company to continue furnishing electricity to Jose. Thereupon the Light Company filed in this court a petition for the writ of certiorari against Judge S. del Rosario *upor*. the ground that Courts of First Instance in these Islands are wholly without jurisdiction to issue preliminary mandatory injunctions under any circumstances whatever. This court denied that petition, determining the power of the Courts of First Instance to issue preliminary injunctions, as follows:

"The power to grant preliminary injunctions, both preventative and mandatory, is a logical and necessary incident of the general powers conferred upon Courts of First Instance in these Islands, as courts of record of general -and unlimited original jurisdiction, both legal and equitable.

"Insofar as the statute limits or prescribes the exercise of this power it must be followed; but beyond this, and in cases not covered by or contemplated by the statute, these courts must exercise their jurisdiction in the issuance of preliminary injunctions upon sound principles applicable to the circumstances of each particular case, having in mind the nature of the remedy, and the doctrine and practice established in the courts upon which our judicial system is modeled.

"The only limitation upon the power of Courts of First Instance to issue preliminary injunctions, either mandatory or preventative, is that they are to be issued in the 'manner' or according to the 'method' provided therefor in the

Code of Civil Procedure."

We conclude, therefore, that in an action for divorce brought by the wife against the husband, in which the partition of the conjugal property is also prayed for, the wife may obtain a preliminary injunction against the husband, prohibiting the latter from alienating or encumbering any part of the conjugal property during the pendency of the action.

It follows from all of the foregoing that the respondent, the Honorable Antonio Villareal, as Auxiliary Judge sitting in the Court of First Instance of the Province of Iloilo, had jurisdiction to hear and determine the action for divorce instituted in said court by the respondent Narcisa Geopano, and that he did not exceed his power and authority in issuing a preliminary injunction against the defendant, prohibiting him from alienating or encumbering any part of the conjugal property during the pendency of the action.

Therefore, the petition should be and is hereby denied, with costs against the petitioner. So ordered.

Mapa, C. J., Carson, Araullo, Malcolm, Avanceña, Moir, and Villamor., JJ., concur.

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