

RAFAEL VILLANUEVA, PLAINTIFF AND APPELLANT, VS. AURELIA DADIVAS DE VILLANUEVA, DEFENDANT AND APPELLEE.

G. R .No. 39440. March 14, 1934

Ponente: HULL, J.

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HULL, J.:

The parties in this case are husband and wife. Finally the misconduct of the husband was so great as to compel the wife to withdraw from the family home, and it was necessary for the wife to have recourse to the courts for support for herself and their minor children.

After trial in which judgment was given against the husband, he appealed to this court, which likewise decided against his contentions.[1] Instead of complying with his obligations, he mortgaged some of his properties and left the Islands, leaving his wife and children without means of support.

The judgment in the former case having become final, a writ of execution was issued, and certain of plaintiff's properties were seized and duly sold by the sheriff. The wife bought in those properties at the sale as part payment of the judgment which she had secured, and after the expiration of the statutory period, sheriff's deeds in favor of the wife were duly executed.

Plaintiff in these proceedings asks that those deeds be annulled.

After trial, judgment was given in favor of defendant, and plaintiff brings this appeal. Appellant's main contention is that a purchase at a sale is in effect a contract which a married woman cannot enter into except with the consent of the husband, and therefore the husband has a right to have the sale annulled and the property restored to him. Appellant likewise contends that judgment for support of a wife can only be enforced by contempt proceedings and that therefore execution was unlawful.

No authorities are cited to sustain the second proposition which is obviously incorrect. The wife secured a definite judgment against the husband, which because of its nature may be enforced by contempt proceedings, but it is nevertheless also a judgment for which ^execution can issue. The contention of the husband, appellant, as to the first proposition is likewise erroneous. Annulment of a deed given by a sheriff is an equitable action, and he that comes into a court of equity must do so with clean hands. Certainly appellant in this case has no grounds to appeal to a court of equity in a suit in which his wife is concerned. He has violated his marital obligations and yet seeks to exercise the power which the law gives to the husband for the protection of the conjugal partnership, not for the protection of the partnership, not for the protection of the home. but to leave his wife and minor children in absolute want.

Appellant overlooks the fact that the law authorized the wife to secure the judgment against him. She has the same rights to a writ of execution and to follow through thereon as any other party litigant. If it is necessary for her protection to bid in the property at a sheriff's sale, the husband has no power whatsoever to defeat her rights by a claim of being the head and manager of the conjugal partnership. In fact in many instances it might well be that

the purchase by the wife would be to the benefit of the conjugal partnership rather than that the property should be bought in by an outsider for an inadequate sum.

The judgment appealed from is affirmed. Costs against the appellant. So ordered.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

[1] 54 Phil., 92.

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