

**JUAN YSASI, PETITIONER, VS. HON. JOSE F. FERNANDEZ, AS
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCI-DENTAL (BACOLOD CITY, BRANCH V), MARIA ALDECOA DE
YSASI AND ...**

G.R. No. L-28593. June 25, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The core of the problem we are called upon to resolve - simply stated - is whether a husband may be deprived of his powers of administration over conjugal partnership properties upon mere allegations of abuse of such powers.

This issue came about upon facts to be narrated below:

Juan Ysasi, petitioner, and Maria Aldecoa de Ysasi, one of the respondents, are husband and wife. Petitioner concedes for present purposes[1] that Hacienda Manucao-A, situate in Hinigaran, Negros Occidental, is conjugal property of said spouses.[2] Since 1948, the spouses have been commuting between the Philippines and Spain where they also own real properties. But the husband shuttled more frequently between the two countries on account of the manage-ment of the hacienda.

Hacienda Manucao-A had been managed by one Valentin Bilbao, from 1952 to 1965. Juan Ysasi, however, maintained overall supervision. Then in 1965, Jon Ysasi, a son of the spouses, took over as manager. In 1966, Juan Ysasi instructed their younger son, Jose Mari Ysasi, to assist Jon Ysasi in the management of the hacienda. Jon Ysasi did not allow him to participate. He also refused to let Jose Mari act as Cashier of the hacienda even as the latter was so designated by the father. Dissension between the two developed.

This prompted the wife to leave Spain for the Philippines in May of 1967. Her mission was to iron out the differences between the two brothers and to inquire into the affairs of the hacienda. For this purpose, she brought with her a letter from Juan Ysasi to the sons and a list of matters she was to ascertain and report to her husband. Claim is made by the husband that she never made any such report.

In June of 1967, Jon Ysasi resigned from his position as manager of the hacienda in a letter addressed to his parents. The resignation was accepted by Juan Ysasi. Whereupon, Valentin Bilbao, who was then in Spain, was designated by the husband to take his son's place.

Valentin Bilbao, arrived in this country on August 19, 1967. Jon Ysasi refused to turn over the hacienda to Bilbao upon the claim that his mother already took possession and administration of the hacienda since his resignation in June of 1967.

Subsequently, the wife filed a verified petition dated Septem-ber 5, 1967 in the Court of First Instance of Negros Occidental (Bacolod City, Branch V).[3] She sought the administration of the conjugal partnership properties, or, in the alternative, separation of property with ex parte petition that she be appointed receiver pendente lite. Her

grounds were that her husband was not in a position to manage the conjugal properties directly and personally owing to his age (77 years) and his blind left eye; and that he abandoned petitioner and their conjugal properties without just cause. The respondent judge granted her ex parte petition on the same day.

Forthwith, the husband, through counsel, moved to set aside the order appointing his wife receiver pendente lite. The wife opposed.

On September 22, 1967, respondent wife filed a supplemental petition. She asked respondent judge to modify the September 5, 1967 order by appointing instead a disinterested person, preferably the Bank of the Philippine Islands, as receiver if said disputed order cannot be fully and immediately implemented.

Answer to the petition and the supplemental petition was filed on October 3, 1967.

The September 5, 1967 order was set aside by respondent judge on October 7. The wife's October 14 motion to reconsider failed of its purpose on October 23, 1967.

Juan Ysasi, in his answer of October 3, traversed the averments in his wife's petition, set up affirmative defenses and counter-claim and sued out a third-party complaint against Jon Ysasi. At the same time, Juan Ysasi moved for the issuance of a writ of preliminary mandatory and preventive injunction to compel his wife and son to turn over to Valentin Bilbao Hacienda Manucao-A and to make them desist from interfering with Bilbao's administration of the hacienda. The issuance of a writ of preliminary mandatory and preventive injunction was opposed by wife and son.

On October 30, 1967, Jon Ysasi answered Juan Ysasi's third party complaint heretofore adverted to.

Then, on November 10, 1967, the Bank of the Philippine Islands, mortgagee of the hacienda, filed an Urgent Motion to Authorize Crop Loan Releases.

The following day, the husband, Juan Ysasi - who earlier that same month arrived from Spain - asked the court that the releases be made to him. Objection thereto was registered by the wife.

The wife's Reply and Answer to the Counterclaim was filed on November 10, 1967. Her petition was further amended on November 22, 1967 to elaborate on her charges of fraud. Answer was made by the husband on November 30, 1967.

On December 22, 1967, respondent judge came out with the disputed order. The dispositive portion thereof reads:

"WHEREFORE, in view of the foregoing considerations the petition for preliminary mandatory injunction is hereby denied.

"With respect to the release of the crop loan lines, the Court shall resolve this question at a later date. In the meantime the Bank of the Philippine Islands is hereby ordered to give monthly allowance of P1,500.00, each, to the plaintiff and defendant, any time upon demand from receipt of this order. In this connection, it is hereby announced that if within a period of ten (10) days from receipt of this order no serious objection is received from any of the parties, Hacienda Manucao-A shall be ordered placed under the receivership of the Bank of the Philippine Islands who shall use to the operation and financing of the Hacienda out of the crop loan previously granted by said Bank, and the profits shall be liquidated after the termination of this case. However, before the property is taken from the possession of the plaintiff wife, the Bank of the Philippine Islands shall be ordered to pay all expenses incurred by her in connection with the operation of the Hacienda during the period of her possession."

Petitioner's move to reconsider was rejected by respondent judge on January 17, 1968.

Came the present petition before this Court. Petitioner here seeks, on certiorari, to annul the orders of December 22, 1967 and January 17, 1968; and a mandatory injunction to compel private respondents Maria Aldecoa de Ysasi and Jon Ysasi to turnover, to petitioner the possession and control of Hacienda Manucao-A.

1. The husband is the administrator of the conjugal partnership. This is a right clearly granted to him by law.[4] More, the husband is the sole administrator. The wife is not entitled - as of right - to joint administration.[5] The husband may even enforce right of possession against the wife who has taken over the administration without his consent. And, the wife may be punished for contempt for her refusal to deliver to him the conjugal assets.[6] She may be required to render full and complete accounting of such properties.[7]

2. Of course, it is the wife's prerogative to ask the courts to remove administration of the conjugal properties from the husband for her protection. This, Article 167 of the Civil Code concedes, thus:

"Art. 167. In case of abuse of powers of administration of the conjugal partnership property by the husband, the courts, on petition of the wife, may provide for a receivership, or administration by the wife, or separation of property." [8]

Respondent wife has taken advantage of this codal provision by instituting Civil Case 8306 aforesaid. Her main gripe is abandon-ment and fraud amounting to abuse of powers of administration. As if this were not enough, she asked for the appointment of a receiver pendente lite, that is, before she had adduced evidence to confirm her assertions of fraud. Respondent judge, at first, granted her petition in an order dated September 5, 1967, only to set it aside afterwards.

But when petitioner asked, by way of a preliminary mandatory injunction, that respondents - wife and son - be compelled to deliver the hacienda to the manager, Valentin Bilbao, respondent judge refused. Private respondents' insistent assertions of fraud on the part of the husband could have befuddled the issue, misdirected respondent judge's course of action. Well to remember, however, are Tolentino's observations on this point, viz:

"On the other hand, the changes introduced by our code have not relegated the husband to the position of an ordinary administrator of another's property. He himself has an interest in the community property. Although certain rights are now recognized in the wife, authorizing her to intervene in and question some acts of the husband, the code still assumes the existence of a residuary authority in the latter with respect to the administration of community property. The grant of certain rights to the wife is specific, and must be restrictively construed, so that all others not granted expressly cannot be considered as enjoyed by her. The right to require the husband to render an accounting is not among those granted to her." [9]

Neither may the husband be divested of his administration upon mere assertions of fraud. These must first be proven. The law presumes good faith. We prefer to adhere to, rather than depart from, the wise rule: *Fraus est odiosa et non praesumenda*.

Here, we have but bare allegations of fraud. Petitioner husband, accordingly, is entitled to take over possession and management of the hacienda.

3. Respondent judge's announced intention to place the hacienda under receivership of the Bank of the Philippine Islands is a virtual reversal of his order setting aside the appointment of a receiver in the person of the wife. Receivership has been rightfully tagged as a harsh remedy. It is to be granted with extreme caution.[10] The purpose of receivership, as a provisional remedy, is to preserve or protect the rights of the parties during the pendency of the main action. To apply this remedy to the case at hand is to lose sight of its purpose. At stake here are the husband's power of administration and the wife's right to be protected from abuse thereof. The wife's right rests upon proof of such abuse. Absent that proof, the wife's right does not exist.

Receivership is also aimed at the preservation of, and at making more secure, existing rights. Certainly, it cannot be used as an instrument for the destruction of those rights. The conclusion remains: Petitioner may not be forced to surrender his statutory right to administer the conjugal properties by the simple expedient of merely charging him with the naked averment that he has forfeited that right.

Receivership at this stage is improper.

4. As we perceive the necessity of protecting petitioner husband's right to management, so are we concerned with the possible abuses that may ensue therefrom and which may result in damage to the wife. As we balance in one equation the interests of husband and wife in the premises, we feel that mandatory injunction should issue but only upon bond.[11]

For the reasons given -

We vote to grant the petition for certiorari;

We strike down the orders of respondent judge of December 22, 1967 and January 17, 1968 complained of, in Civil Case 8306, and declare them null and void; and

We direct respondent judge to issue a writ of preliminary mandatory injunction ordering and compelling respondents Maria Aldecoa Ysasi and Jon Ysasi to turn over to petitioner the possession and control of Hacienda Manucao-A, and all the agricultural machinery, implements, work animals, and other properties used in the operation of the hacienda, as well as its records, papers, documents and books of accounts, upon petitioner's filing, and said judge's approval, of a bond in the sum of P50,000 to answer for any and all damages which private respondents or any of them may suffer by reason of the issuance of said injunction.

No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

[1] Petition herein, p. 11.

[2] According to petitioner, the property was acquired in 1951. Petitioner's Answer to the petition below, p. 6; Rollo, p. 91.

[3] Civil Case 8306, entitled "Maria Aldecoa de Ysasi, Petitioner, versus Juan Ysasi, Defendant; Jon Ysasi, Third-Party Defendant.

[4] Article 165, Civil Code.

[5] De la Rosa vs. Barruga (unreported), L-2368, June 30, 1950.

[6] Perkins vs. Perkins, 57 Phil. 205, 211.

[7] Perkins vs. Director of Prisons, 58 Phil. 271, 281.

[8] Emphasis supplied.

[9] I Tolentino, Civil Code of the Philippines, 1960 ed., p. 413; italics supplied.

[10] Velasco vs. Go Chuico, 28 Phil. 39, 41; Tuason vs. Concepcion, 54 Phil. 408, 419; Claudio vs. Zandueta, 64Phil. 812, 818, See also: Ylarde vs. Enriquez, 78 Phil. 527, 534.

[11] See petition herein, pp. 24-25.

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