

FRED M. HARDEN ET AL., PETITIONER, VS. EMILIO PEÑA ET AL., RESPONDENTS.

G.R No. L-1499. November 21, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

When the husband commits frauds against the wife in the administration of their conjugal partnership, what remedies are available to her? That is the question involved in this petition for certiorari to annul several orders promulgated by the respondent judge and his predecessor in civil case No. 59634 of the Manila court of first instance.

The new Civil Code contains an appropriate answer; but adjudication of this controversy must be made according to the principles prevailing before the approval of such recent legislation that is not retroactive in general.

In December, 1917, and in the city of Manila, Fred M. Harden, an American citizen, domiciled in the Philippines, married Esperanza Perez, a native-born Filipina. Thereafter they engaged in business and acquired considerable property, personal and real, until the year 1938 when they stopped living together.

On July 12, 1941, she commenced the aforesaid action in which, alleging unjust abandonment by her husband, and resulting mismanagement of the business by him and Jose Salumbides his attorney-in-fact, aggravated by fraudulent transfers and conversions of conjugal property to prejudice her interests, she asked (1) that she be awarded a monthly alimony; (2) that she be permitted to participate in the management of the conjugal partnership; (3) that Fred be ordered to account for and to return to the Philippines the sum of P449,015.44 he had fraudulently transferred to Hongkong; (4) that Salumbides be required to account for P285,000 belonging to the partnership; and (5) that certain transfers of mining shares made by Fred be avoided. Esperanza further prayed for preliminary injunction restraining defendants from making any transfer of partnership property without the consent of the court.

The injunction was issued upon the filing of a nominal bond. On August 18, 1941, the defendants moved for its dissolution upon the ground that the complaint stated no cause of action. Esperanza objected, and the motion remained unacted due to the Pacific War.

Meantime, in October, 1941, Fred answered the complaint, denying his wife's charges of desertion and deception. He claimed she had no cause for action, inasmuch as their marriage was still subsisting. And in the matter of properties he invoked his domicil in New Jersey, U. S. A., according to whose statutes the properties enumerated in the complaint belonged exclusively to him.

During the Japanese occupation, proceedings in the litigation were suspended by virtue of Instruction No. 28 of the Japanese Military Administration. After the liberation, i. e., on May 15, 1946, Esperanza moved for reconstitution of the records, which had been destroyed during the battle for Manila; and on October 23, 1946, the respondent judge declared the partial reconstitution thereof.

A few days later, on November 12, 1946, Esperanza filed a petition for the appointment of a receiver to take charge of all the belongings of the marital association, because she had discovered that between March 23 and July 23, 1946, Fred and Salumbides had surreptitiously remitted to Hongkong more than P220,000, notwithstanding the injunction issued in July, 1941. The respondent judge, favorably acting on said petition, appointed Abelardo Perez as receiver with a bond of P10,000.

On March 8, 1947, the defendants prayed for discharge of the receivership. Fred alleged he did not abandon his wife, having made liberal provisions for her. He affirmed he never intended to deprive her of any rights, and had given no cause for divorce; and that although he had evidence of her adultery with John Hart, he continued to provide for her welfare.

On May 24, 1947, the respondent judge denied the motion for dissolution of the injunction of July 12, 1941. And on September 3, 1947 he denied the motion to discharge the receivership.

This special civil suit is now submitted mainly to question the authority of the trial court to issue the writ of injunction and to establish the receivership. There are other minor issues, like the payment of litigation expenses of Esperanza and the allowances granted for her maintenance; but these shall be considered later.

Challenging the legality of the injunction, the petitioner Harden quotes our several decisions holding repeatedly that the interest of the wife in the conjugal partnership prior to its liquidation is "inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until there appears that there are assets in the community as a result of the liquidation and settlement".[1] He argues that inasmuch as Esperanza has no title to the properties of the partnership, (her rights being dormant or inert) she may not apply for injunction to protect such mere incipient or dormant interest, until dissolution of the marriage occurs.

He particularly invokes the decisions in *Saavedra vs. Ibañez*, (56 Phil., 33), and *Baello vs. Villanueva*, (54 Phil., 213) to support his view that "injunction can not be availed of by a wife who seeks to prevent the defraudation of her rights to the conjugal properties".

The petitioner Harden also cites several decisions in the United States wherein courts refused to interfere with the husband's "reckless and extravagant expenses", (*Garrozi vs. Dastas*, 204 U. S. 64, 51 law. Ed. 369) holding that he may spend the community property substantially as he chooses, and if he wastes it in debauchery, the wife has no redress.[2]

In reply, the respondents explain that the statements in the decisions invoked by petitioner to the effect that the wife's interest "is inchoate or mere expectancy" were plain obiter dictum, and that, anyway, such holding was corrected or amplified in *Gibbs vs. Government of the Philippine Islands*, 59 Phil., 293. They also argue that those decisions only mean that the wife may not ordinarily prevent or annul the conveyance, by the husband, of specific pieces of the conjugal property, (because her title to those pieces has not yet vested)—which is not the case here.

As to the *Saavedra* and *Baello* decisions, respondents contend that injunction was denied therein because it was unnecessary; whereas, in this litigation such remedy is necessary, in view of the kind of property involved and the circumstances disclosed.

Respondents claim that *Garrozi vs. Dastas* was overruled by *Arnett vs. Reade*, (55 L. Ed. 478) and that *U.S. vs. Robbins* was founded upon a statute in California proclaiming the husband's power of absolute disposition. And lastly they offer authorities and arguments to prove that the remedy of injunction is available to the wife to prevent her husband from further fraudulent disposition of conjugal assets.

The points in contestation have been thoroughly discussed in the pleadings and memoranda of counsel on both

sides.

As the marriage of the Hardens was contracted in Manila where Harden was domiciled and as the parties made no stipulation regarding their system of ownership, the spouses should be deemed to have adopted the legal conjugal partnership.[3] All property acquired during the marriage is presumed to be conjugal unless the contrary is proved.[4]

The husband is the manager. He may for valuable consideration alienate and encumber their property without the consent of the wife. But alienations in fraud of the wife shall not prejudice her or her heirs.[5]

Fully aware of the above provisions, specially Article 1413, petitioner Harden agrees to respondents' thesis that when, in his administration of the conjugal affairs the husband makes fraudulent conveyances prejudicial to the wife, the law affords the latter certain remedies. What are these? The disagreement begins here. According to petitioners, she may annul the alienations after the conjugal partnership has been liquidated or else procure an injunction when she starts divorce proceedings against the husband.

According to respondents, the wife may ask for injunction and receivership, the identical remedies Esperanza has employed.

The decisions of this Court seem to have recognized that the wife has at last three courses of action: (a) suit to annul the fraudulent alienation; (b) action for separate maintenance or divorce with preliminary injunction; and (c) suit to convert the conjugal estate into an ordinary tenancy in common.

In *De la Viña vs. Villareal*, (41 Phil., 13), we upheld an injunction issued to preserve the wife's rights to conjugal partnership property and to curtail the husband's power of disposition, saying:

"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 interest 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."

True that the injunction was issued in an action by the wife to dissolve the marriage; but the decision did not say that the equitable power of injunction may only be exercised when divorce or liquidation proceedings are started. The divorce proceeding in that litigation was an additional circumstance lending validity to the injunction. It was not the condition sine qua non. The divorce proceedings patently showed a cessation of those normal married relations in which the husband's powers of disposition must be left undisturbed.

Yet divorce is not the only situation where such normal relations have ended. Where, as in this case, the wife is abandoned and purposely kept in the dark about the affairs of the community and is victimized by the fraudulent conspiracy between Fred and Salumbides, the harmonious relations vanish, and the urgency of protecting the wife's interests by injunction becomes apparent. Even supposing that proceedings for the separation of the spouses are essential to the issuance of an injunction, the record shows that on November 6, 1941, Esperanza amended her complaint announcing her determination to sue for divorce and to demand the liquidation of the conjugal partnership properties. That should have cured any deficiency in the writing of the injunctive decree.

The petitioner cites the precedent of *Saavedra vs. Ibañez*, *supra*, wherein the wife was in danger of being cheated by probable future conduct of her husband in alienating conjugal property, unless some means were adopted to

safeguard her interests. The court of first instance declined to grant an injunction, and this Supreme Court approved the denial, saying that a mere annotation of the suit in the registry of property was enough. However this precedent merely shows, in our opinion, either that the Supreme Court did not desire to interfere with the lower court's discretion in refusing to grant a preliminary injunction or that the Supreme Court believed a mere registry was ample protection for the wife.

The precarious position of respondent Esperanza Harden is entirely different. The trial judges were convinced of the necessity of the injunction and authorized it, and reasonable ground therefor is apparent, considering the petitioner's conduct in making remittances to foreign countries of substantial amounts of money and securities, totalling P449,015.44 in addition to other deceptions practiced upon her. Surely these expenditures may not be impeded by mere annotations in the registry.

Defraudations of the wife are alleged to be the following: (a) the fraudulent conspiracy between the two petitioners to remove funds of the couple from the Philippines to Hongkong; (b) the deposit of funds and shares of stock of said conjugal partnership in the name of third persons to deceive the respondent Esperanza Harden; (c) and the gratuitous transfers of conjugal securities to some foreign residents in pursuance of the same tricky combination.

Additional subsequent fraudations are specifically alleged in the consolidated amended complaint as follows:

Date 1946

Amount withdrawn

Transferred to

March 23

P20,000.00

Hongkong & Shanghai Banking
Corp., Hongkong

July 23

202,042.90

Do.

September 20

20,196.80

Virginia Recreation,
Long Beach, California

November 2

50,000.00

Unknown

November 13

203,833.64

Chartered Bank of India,

Australia and China,
Hongkong

November 21

504,531.32

Do.

Total

P1,000,608.66

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In those states of the American Union where the community property system obtains,[6] (California, Texas, Washington) , the wife during marriage may resort to appropriate judicial remedies—like injunction—against the husband's fraudulent acts. The courts of equity will afford adequate relief, and the husband may be restrained from engaging in transactions involving community property which are clearly inimical to the welfare of the community.[7]

In *Stewart vs. Stewart*, (249 Pac. 196), the Supreme Court of California, speaking of the wife's right to protect her share of the conjugal partnership, said:

"* * * She has, by virtue of the share which in her own sphere she has contributed toward the acquisition and conservation of such properties, rights therein which have been always safeguarded against the fraudulent or inconsiderate acts of her husband with relation thereto, and for the assertion and safeguarding of which she has been given access to appropriate-judicial remedies both before and after the time when her said rights and interests would ripen and become vested through the death of the husband or other severance of the marriage relation, whenever such rights and ultimate interests were affected by or threatened with such forms of invasion. * * *" (Italics ours).

And in this country, it has been held that—

"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.

"In so far 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 modelled." (*Manila Electric vs. Del Rosario*, 22 Phil., 433; *De la Viña vs. Villareal*, 41 Phil., 23-24).

We conclude on this phase of the controversy that the injunction of July, 1941, should not be dissolved nor declared void.

Concerning the receivership, the petitioner maintains it is improper because (1) it wrested or purported to wrest from Fred's hands the possession of conjugal properties, the administration of which is expressly vested in him by the Code, and (2) he being an American permanently domiciled in New Jersey, the laws of said state determine the status of their marital belongings.

It is believed the respondents are correct in contending that the receivership does not alter the right of possession, and that, anyhow, it is a temporary expedient, permitted on equitable grounds as the most convenient and feasible means of administering or disposing of the property in litigation for -the mutual benefit of the contending parties.

And, notwithstanding petitioner's assertions of permanent domicil in New Jersey to escape the effects of the Philippine partnership system, the papers seem to indicate he was domiciled in Manila. At any rate, the lower court so found, and this is hardly the proceeding to overturn such finding of fact.

It may be observed in this connection that the New Civil Code permits the courts to grant relief to the wife in case of abuse of powers by the husband in the administration of the conjugal partnership property.

"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." (New Civil Code).

"Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property * * *." (New Civil Code).

"Art. 178. The separation in fact between husband and wife without judicial approval, shall not affect the conjugal partnership, except that:

* * * * *

"If the husband has abandoned the wife without just cause for at least one year, she may petition the court for a receivership, or administration by her of the conjugal partnership property, or separation of property." (New Civil Code.)

The above articles express no more than the concepts of equity and justice applied in the various decisions we have previously adverted to. More, they reflect unmistakable intuitions of enlightened policy corresponding with the dictates of social convenience, to which court decisions must necessarily be adjusted whenever possible.

Other decrees of the respondent judge which are challenged by herein petitioner Harden are these: (a) April 5, 1947, requiring him to pay the transportation expenses to Manila of Esperanza Harden; (b) May 30, 1947, requiring him to give her P10,000 for services of her lawyer at the taking of the deposition which petitioner intends to take in New Jersey; and (c) July 12, 1947, requiring him to spend out of conjugal money a monthly allowance of P2,500 for Esperanza as alimony pendente lite.

There is no necessity at this time to discuss the validity of such directives, because the petitioner may raise the same questions in an appeal he may interpose from the decision of the main case. Anyway, the big amount of property in litigation being unquestioned, any advances made to the wife will certainly be amply guaranteed by her portion of the marital possessions. Petition denied, with costs.

Moran, C.J., Paras, Feria, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Nable Jose, et al. vs. Nable Jose, et al., 41 Phil., 713; Manuel, et al. vs. Losano, et al., 41 Phil., 855, etc.

[2] U. S. vs. Robbins, 70 L. Ed., 235.

[3] Article 1315, old Civil Code.

[4] Article 1407, supra; Gasiano vs. Samaniego, (30 Phil., 135); Sison vs. Ambalada, (30 Phil., 118).

[5] Articles 1412, 1413, supra.

[a] Uy Goque, et al. vs. Sioca, et al., (45 Phil., 430); Gallion vs. Gayares, et al., (53 Phil., 43).

[b] De la Viña vs. Villareal, (41 Phil., 13).

[c] Aenlle vs. Bertrand Rheims, (52 Phil.. 553).

[6] Osorio vs. Posadas, 56 Phil., 748.

[7] 41 C. J. S., p. 1076, citing Johnson vs. National Surety Co., (5 P. 2d 39, 118 Cal. App. 227); Weir vs. King, (Civ. App., 166 S. W. 2d. 187; In re Coffey's Estate, (81 P. 2d 283, 195 Wash. 379).

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