

BENIGNO DEL RIO, PLAINTIFF AND APPELLANT, VS. CARLOS PALANCA TANGUINLAY, DEFENDANT AND APPELLEE.

G.R. No. L-1271. May 31, 1949

Ponente: TUASON, J.

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TUASON, J.:

This suit was brought to recover money which plaintiff alleges to have furnished from December, 1942 to February, 1945 for the support and subsistence of defendant's five minor natural children. The amount is itemized in plaintiff's Exhibit A, a statement signed by the minor's mother and which reads as follows:

"Por la presente certifico que en el periodo que cubre del 1 de noviembre de 1942 hasta el 31 de enero de 1945 he recibido en calidad de prestamo y con interes del 6% anual de Don Benigno del Rio las cantidades que mas abajo se detallan en sus correspondientes recibos:

"Recibo primero, 31-Dic-1943

P7,200.00

"Recibo segundo, 1-Sept-1944

18,668.00

"Recibo tercero, 31-Dic-1945

81,400.00

"Recibo cuarto, 21-Ene-1945

54,000.00

"Total

P161,268.00

"Son:

"Ciento Sesenta y un Mil Doscientos sesenta y ocho pesos.

"S. E. u O

"Manila, 1 de Marzo de 1945

(Fda.) "Maria Cuartero Gomez

"Tutora de los Menores Palanca Cuartero

"Nota:—Aqui no esta incluido un prestamo hecho a Don Vicente Singson Encarnacion el 19 de Sept. de 1944 y que caduca en la misma fecha en el año 1946 del que es solidaria y mancomunadamente fiador Don Benigno del Rio, prestamo que tiene que reconocer Don Carlos Palanca."

The action is base don article 1894 of the Civil code which reads:

"Cuando, sin conocimiento del obligado a prestar alimentos, los diese un extraño, este tendra derecho a reclamarlos de aquel, a no constar que los dio por oficio de piedad y sin animo de reciamarlos."

Analyzing the foregoing provision, this Court observed in *Ramirez vs. Redfern*, 49 Phil., 849. 889, that "For one to recover under the provisions of article 1894 of the Civil Code, it must be alleged and proved, first, that support has been furnished a dependent of ne bound to give support but who fails to do so, second, that the support was supplied by a stranger; and third, that the support was given without the knowledge of the person charged with the duty."

With reference to the first requisite, the record reveals that in a case for support intituted by Maria Dolores Cuartero in behalf of her children against the defendant, the Court of First Instance of Manila handed down a decision on September 22, 1943, approving an agreement by the parties whereby the defendant promised to pay the mother of the minors P1,500 a month for their maintenance. It also appears that before that date—on May 9, 1942—the parties had signed a carta-convenio for the same purpose but for a lower rate of allowance per month. It is not denied that the defendant more than complied with the terms of the above decsion. Besides P1,500 a month, he sent the children extra case and foodstuffs, shoes and clothings.

And the plaintiff admittedly was aware of the foregoing arrangement. What he says is that P1,500 a month was utterly insufficient. The remedy in that case was to ask the court ot inrease the allowance. It may be said in this connection that if the value of the prevailing Japanese currency had deteriorated, the court, in our opinion, retained the jurisdiction to increase or diminish the allowance as the circumstances might justify. However, as a matter of fact, P1,500 a month was deemed by the court as late as August 8, 1944, to be adequate. In denying a motion of the children's mother to raise the allowance, teh court stated that P1,500 was sufficient to pull the children through those critical days in comparative comfort.

The third requirement of the law is also lacking. The plaintiff made the alleged advances not only with the knowledge but apparently against the wishes of the defendant. In Exhibit F, a memorandum dated January 1, 1943, and sent by the plaintiff to the defendant, Del Rio informed Palanca that up to December 31, 1942, he had handed Maria Dolores Cuartero P750 as a loan for the support and education fo teh defendant's children and requested that the amount be paid. It will be noted that in the same Exhibit, the plaintiff complained that the defendant had not answered his previous letters, "recordandole los prestamos que yo le hago a Doña Maria y Vd. se hace sordo."

In the face of this attitude of the defendant, the plaintiff was not justified in continuing supplying money to the mother of the children, unless he wanted to give it out of charity or without the expectation of recovering it from the defendant. His remedy is against Maria Dolores Cuartero.

This conclusion makes unnecessary a discussion of the second requirement. It suffices to state that the plaintiff and one of the children were engaged and were married afterward.

The decision of the lower court dismissing the action is affirmed with costs against the appellant.

Paras, Feria, Pablo, Perfecto, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J.:

I certify that the Chief Justice concurs in this decision.

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