

MARCELO CASTILLO, JR., FELICISIMO CASTILLO, ENCARNACION CASTILLO, AMELIA CASTILLO, JAIME CASTILLO, ROMALDO CASTILLO, VICTORIA CASTILLO, LETICIA CINCO, LEVI CINCO AND DANIEL CINC...*G.R. No. L-16857. May 29, 1964*

Ponente: REYES, J.B.L., J.

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The legitimate children and descendants of the late Marcelo Castillo, Sr. pray for the review and reversal of the decision of the Court of Appeals, in its Case CA-G.R. No. 19377-R, that affirmed the decision of the Court of First Instance of Bulacan, declaring that the fishpond in San Roque, Paombong, Bulacan, (covered by TCT No. 9928 of the Registry of Deeds of said province), was the exclusive paraphernal property of respondent, Macaria Pasco, surviving spouse of the deceased Marcelo Castillo, Jr., and dismissing the complaint for partition and accounting filed by petitioners in said Court of First Instance.

The Court of Appeals found, and the petitioners-appellants do not dispute, that in October 1931 Marcelo Castillo, Sr., being a widower, married Macaria Pasco, a widow who had survived two previous husbands. Petitioners were children and grandchildren (representing their deceased parents) of Marcelo Castillo, Sr. by his previous marriage. On April 3, 1933, Marcelo Castillo, Sr. died, and his widow married her fourth husband, Luis San Juan, on June 8, 1934.

On December 22, 1932, Gabriel Gonzales, as co-owners of the litigated fishpond, executed a deed of sale (Exh. I) conveying said property to the spouses Marcelo Castillo and Macaria Pasco for the sum of P6,000 (although the deed recited a higher amount), payable in three installments: P1,000 upon execution of the deed (Exh. I) P2,000 on January 25, 1933 Without interest; and P3,000 within one year thereafter, with 11% interest from February 1, 1933, but extendible for another year.

Against the contention of petitioners-appellants that the fishpond thus bought should be considered conjugal for its having been acquired during coverture, the Court of Appeals declared it to be paraphernal, because it was purchased with exclusive funds of the wife, Macaria Pasco. She admittedly a woman of means even before she married Marcelo Castillo, Sr., and the latter's principal source of income was only his P80 a month salary, as provincial treasurer (as found by the Court of First Instance), besides two small residential lots and fishponds, which were encumbered and later transferred to his five children by his first wife and whom he was then supporting in medical and high school. Actually, Marcelo Castillo, Sr., died without enough assets to pay his debts.

In point of fact, the Court of Appeals found that the initial payment of P1,000 for the fishpond now in litigation was made up of P600, that one of the vendors (Gabriel Gonzales) owed to appellee Pasco, and P400 in cash, Which the latter paid out of the proceeds of the sale of one of her nipa lands. The second installment of P2,000 appears to have been paid with the proceeds of loan from Dr. Nicanor Jacinto, to whom the fishpond was

mortgaged by both spouses. Dr. Jacinto later assigned his interest to Dr. Antonio Pasco. The last payment of P3,000 was derived from a loan secured by a mortgage (Exh. 2) on 2 parcels of land assessed in the name of Macaria Pasco, and one of which she had inherited from a former husband, Justo S. Pascual, while the other lot encumbered was assessed in her exclusive name.

It was also found by the Court of Appeals that upon the death of Marcelo Castillo, Sr., the loan and mortgage in favor of Dr. Jacinto (later assigned by him to Dr. Antonio Pasco) was still outstanding. Unable to collect the loan, Dr. Pasco foreclosed the mortgaged, and the encumbered fishpond was sold to him; but the sale was subsequently annulled. Later, on September 7, 1949, respondent Macaria Pasco judicially consigned P12,300 on account of the mortgage debt and its interest, and completed payment by a second consignment of P752.43 made on April 24, 1950. As the estate of Castillo had no assets adequate to pay off the claims against it, the Court of Appeals concluded that the amounts consigned belonged to the widow Macaria Pasco, respondent herein.

It is not gainsaid that under the Spanish Civil Code of 1889, that was the applicable law in 1932, the property acquired for onerous consideration during the marriage was deemed conjugal or separate property depending on the source of the funds employed for its acquisition. Thus, Article 1396 of said Code provided:

“ART. 1396. The following is separate property of either spouse:

1. xxxxxxxxxxxxxxxx
2. xxxxxxxxxxxxxxxx
3. xxxxxxxxxxxxxxxx
4. That bought with money belonging exclusively to the wife or to the husband.

On the other hand, Article 1401 prescribed that:

"ART. 1401. To the conjugal property belong:

1. Property acquired for valuable consideration during the marriage at the expense of the common fund, whether the acquisition is made for the partnership or for one of the spouses only."

The last clause in Article 1401 (par. 1) indicates that [the circumstance of the sale of the fishpond in question being made by the original owners in favor of both spouses, Marcelo Castillo, Sr. and Macaria Pasco, is indifferent for the determination of whether the property should be deemed paraphernal or conjugal. As remarked by Manresa in his Commentaries to the Civil Code, Vol. IX (5th Ed.), p. 549, "la ley atiende, no a la persona en cuyo nombre o a favor del cual se realiza la compra, sino a la procedencia del dinero".

As above-noted, the Court of Appeals determined that the initial payment of P1,000 for the fishpond now disputed was made out of private funds of Macaria Pasco. Appellants, however, argue that since there is no express finding that the P600 debt owed by Gabriel Gonzales came exclusively from private funds of Pasco, they should be presumed conjugal funds, in accordance with Article 1407 of the Civil Code of 1889. The argument is untenable. Since the wife, under Article 1416, can not bind the conjugal partnership without the consent of the husband, her private transactions are presumed to be for her own account, and not for the account of the partnership. The finding of the Court of Appeals is that Gabriel Gonzales owed this particular indebtedness to Macaria Pasco alone, and in the absence of proof that the husband authorized her to use community funds therefor, the appellate Court's finding cannot be disturbed by us. Whether the evidence adverted to should be credited or not is for the Court of Appeals to decide.

Appellants next assail the conclusion of the Court of Appeals that the other two installments of the purchase price should be, like the first one, deemed to have been paid with exclusive funds of the wife, because the money was raised by loans guaranteed by mortgage on paraphernal property of the wife. The position thus taken by appellants

is meritorious, for the reason that the deeds show the loans to have been made by Dr. Nicanor Jacinto, and by Gabriel and Purificacion Gonzales, to both spouses Marcelo Castillo and Macaria Pasco, as joint borrowers. The loans thus became obligations of the conjugal partnership of both debtor spouses, and the money loaned is logically conjugal property. While the securing mortgage is on the wife's parapherna, the mortgage is a purely accessory obligation that the lenders could waive if they so chose, without affecting the principal debt which was owed by the conjugal partnership, and which the creditor could enforce exclusively against the latter if they so desired.

In *Palanca vs. Smith Bell & Co.*, 9 Phil. 131, this Court ruled as follows (cas. cit. at p. 133):

"This P14,000, borrowed by said Emiliano Boncan upon the credit of the property of his wife, became conjugal property (par. 3, Art. 1401, Civil Code) and when the same was reinvested in the construction of a house, the house became conjugal property and was liable for the payment of the debts of the husband (Art. 1408, Civ. Code)."

If money borrowed by the husband alone on the security of his wife's property is conjugal in character, a fortiori should it be conjugal when borrowed by both spouses. The reason obviously is that the loan becomes an obligation of the conjugal partnership which is the one primarily bound for its repayment,

The case of *Lim Queco vs. Cartagena*, 71 Phil. 162, is clearly distinguishable from the *Palanca* case in that in the *Lim Queco* case the wife alone borrowed the money from "El Ahorro Insular" although she guaranteed repayment with a mortgage on her parapherna, executed with her husband's consent. Since the wife does not have the management or representation of the conjugal partnership where the husband is qualified therefor, the loan to her constituted a transaction that did not involve the community, and the creditor could seek repayment exclusively from her properties. Logically, as this Court then held, the money loaned to the wife, as well as the property acquired thereby, should be deemed to be the wife's exclusive property.

The analogy between the case now before us and the *Palanca vs. Smith Bell* case is undeniable, and the *Palanca* ruling applies. We, therefore, find that the two installments, totalling P5,000, of the price of the fishpond were paid with conjugal funds, unlike the first installment of P1,000 that was paid exclusively with money belonging to the wife Macaria Pasco, appellee herein.

As the litigated fishpond was purchased partly with paraphernal funds and partly with money of the conjugal partnership, justice requires that the property be held to belong to both patrimonies in common, in proportion to the contributions of each to the total purchase price of P6,000. An undivided one-sixth (1/6) should be deemed paraphernal, and the remaining five-sixths (5/6ths) held property of the conjugal partnership of spouses Marcelo Castillo and Macaria Pasco (9 Matiresa, Com. al Codigo Civil (5th Ed.), p. 549).

"Puesto que la ley atiende, no a la persona en cuyo nombre se realiza la compra, sino a la procedencia del dinero, considerando el hecho como una verdadera sustitucion y conversion del dinero en otros objetos, debemos deducir que cuando una finca, por ejemplo, se compra con dinero del marido y de la mujer, de la mujer y de la Sociedad, pertenece a aquellos de quienes procede el precio, y en la proporcion entregada por cada cual. Si pues marido y mujer compran una casa, entregando el primero de su capital propio 10,000 pesetas, y la segunda 5,000, la casa pertenecera a los dos conyuges pro indiviso, en la proporcion de las terceras partes al marido y una tercera a la mujer." (Manresa, op. cit.).

The payment by the widow, after her husband's death, of the mortgage debt due to Dr. Pasco, the assignee of the original mortgagee, Dr. Nicanor Jacinto, does not result in increasing her share in the property in question but in creating a lien in her favor over the undivided share of the conjugal partnership, for the repayment of the amount she has advanced, should it be ultimately shown that the money thus delivered to the creditor was exclusively

owned by her.

It follows from the foregoing that, as the fishpond was undivided property of the widow and the conjugal partnership with her late husband, the heirs of the latter, appellant herein, were entitled to ask for partition thereof and liquidation of its proceeds. The ultimate interest of each party must be resolved after due hearing, taking into account (a) the widow's one-sixth direct share; (b) her half of the community property; (c) her successional rights to a part of the husband's share pursuant to the governing law of succession when the husband died; and (d) the widow's right to reimbursement for any amounts advanced by her in paying the mortgage debt as aforesaid. All these details must be settled after proper trial.

WHEREFORE, the dismissal of the original complaint is hereby revoked and set aside, and the records are ordered remanded to the court of origin for further proceedings conformable to this opinion.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Paredes, Regala and Makalintal, JJ., concur.

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