

HERMOGENES MARAMBA, PLAINTIFF-APPELLANT, VS. NIEVES DE LOZANO, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-21533. June 29, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from an order of the Court of First Instance of Dagupan City in its Civil Case No. 10485, dated June 28, 1961. This case was originally brought to the Court of Appeals, but subsequently certified to Us on the ground that the issues raised are purely legal.

It appears that on November 3, 1948, the plaintiff filed an action against the defendant Nieves de Lozano and her husband Pascual Lozano for the collection of a sum of money. After trial, the court a quo on June 23, 1959 rendered its decision, the dispositive part of which is as follows:

"WHEREFORE, the court hereby renders judgment, sentencing the de-fendants herein, Nieves de Lozano and Pascual Lozano, to pay unto the herein plaintiff, Hermogenes Maramba, the total sum of Three Thousand Five Hundred Pesos and Seven Centavos (P3,500.07), with legal interest thereon from the date of the filing of the instant complaint until fully paid.

With costs against the said defendants."

Not satisfied with the judgment, the defendants interposed an appeal to the Court of Appeals but the ap-peal was dismissed on March 30, 1960 for failure of the defendants to file their brief on time. After the record of the case was remanded to the court a quo, a writ of execution was issued, and on August 18, 1960 levy was made upon a parcel of land covered by transfer certificate of title No. 8192 of Pangasinan in the name of Nieves de Lozano. The notice of sale at public auction was published in accordance with law and scheduled for September 16, 1960.

On that date, however, defendant Nieves de Lozano made a partial satisfaction of the judgment in the amount of P2,000.00, and requested for an adjournment of the sale to October 26, 1960. On October 17, 1960, she filed an amended motion, dated October 14, alleging that on November 11, 1952, during the pendency of the case, defendant Pas-cual Lozano died and that the property levied upon was her paraphernal property, and praying that her liability be fixed at one-half (1/2) of the amount awarded in the judg-ment and that pending the resolution of the issue an order be issued restraining the Sheriff from carrying out the auction sale scheduled on October 26, 1960.

On that date the sale proceeded anyway, and the property of Nieves de Lozano which had been levied upon was sold to the judgment creditor, as the highest bidder, for the amount of P4,175.12, the balance of the judgment debt.

On October 27, 1960, plaintiff filed an opposition to the defendant's amended motion dated October 14, 1960. And on June 28, 1961, the trial court issued the questioned order, the dispositive part of which is as follows:

"WHEREFORE, the court hereby grants the motion of counsel for defendant Nieves de Lozano, dated October

5, 1960, which was amended on October 14, 1960, and holds that the liability of the said defendant under the judgment of June 23, 1959, is only joint, or P1,750.04, which is one-half (1/2) of the judgment debt of P3,500.07 awarded to the plaintiff and that the writ of execution be accordingly modified in the sense that the liability of defendant Nieves de Lozano be only P1,750.04 with legal interest from the date of the filing of the complaint on November 5, 1948 until fully paid, plus the amount of P21.28 which is also one-half (1/2) of the costs taxed by the Clerk of Court against the defendant spouses. Let the auction sale of the above-mentioned property of defendant Nieves de Lozano proceed to satisfy her liability of P1,750.04 with legal interest as above stated and the further sum of P21.28 representing the costs, unless she voluntarily pays the same to the judgment creditor (herein plaintiff)."

Plaintiff interposed an appeal from the above-quoted order and assigned several errors, which present three major issues, to wit:

- (a) whether or not the decision of the lower court dated June 23, 1959 could still be questioned;
- (b) whether or not the judgment was joint or solidary; and
- (c) whether or not the judgment debt could be satisfied from the proceeds of the properties sold at public auction.

Plaintiff-appellant submits that a "nunc pro tunc" order should have been issued by the trial court dismissing, as of November 11, 1952, the case against the late Pascual Lozano by reason of his death, and that the lower court should have corrected its decision of June 23, 1959, by striking out the letter "s" in the word "defendants" and deleting the words "and Pascual Lozano."

We do not think that the action suggested would be legally justified. It would entail a substantial amendment of the decision of June 23, 1959, which has long become final and in fact partially executed. A decision which has become final and executory can no longer be amended or corrected by the court except for clerical errors or mistakes,[1] and however erroneous it may be, cannot be disobeyed;[2] otherwise litigations would be endless and no questions could be considered finally settled.[3] The amendment sought by appellant involves not merely clerical errors but the very substance of the controversy. And it cannot be accomplished by the issuance of a "nunc pro tunc" order such as that sought in this case. The purpose of an order "nunc pro tunc" is to make a present record of an order which the court made at a previous term, but which was not then recorded. It can only be made when the thing ordered has previously been made, but by inadvertence has not been entered. In the instant case there was no order previously made by the court and therefore there is nothing now to be recorded.

Now then, it is clear that the decision of June 23, 1959 does not specify the extent of the liability of each defendant. The rule is that when the judgment does not order the defendants to pay jointly and severally their liability is merely joint, and none of them may be compelled to satisfy the judgment in full. This is in harmony with Articles 1137 and 1138 of the Civil Code.

Plaintiff-appellant contends that in any event the entire judgment debt can be satisfied from the proceeds of the property sold at public auction in view of the presumption that it is conjugal in character although in the name of only one of the spouses. The contention is incorrect. The presumption under Article 160 of the Civil Code refers to property acquired during the marriage. But in the instant case there is no showing as to when the property in question was acquired, and hence the fact that the title is in the wife's name alone is determinative. Furthermore, appellant himself admits in his brief (p. 17) that the property in question is paraphernal.

Appellant next points out that even if the land levied upon were originally paraphernal, it became conjugal property by virtue of the construction of a house thereon at the expense of the common fund, pursuant to Article 158, paragraph 2 of the Civil Code. However, it has been held by this Court that the construction of a house at

conjugal expense on the exclusive property of one of the spouses does not automatically make it conjugal. It is true that in the meantime the conjugal partnership may use both the land and the building, but it does so not as owner but in the exercise of the right of usufruct. The ownership of the land remains the same until the value thereof is paid, and this payment can only be demanded in the liquidation of the partnership (*Coingco vs. Flores*, 82 Phil. 284; *Paterno vs. Bibby Vda. de Padilla*, 74 Phil. 377; *Testate Estate of Narciso Padilla*, G. R. No. L-8748, Dec. 26, 1961). The record does not show that there has already been a liquidation of the conjugal partnership between the late Pascual Lozano and Nieves de Lozano. Consequently, the property levied upon, being the separate property of defendant Nieves de Lozano, cannot be made to answer for the liability of the other defendant.

On May 18, 1967 counsel for defendants-appellees filed with Us a petition alleging, inter alia; that prior to the expiration of the redemption period and pursuant to an order of the lower court defendants filed a surety bond in the amount of P3,175.12 as the redemption price, which bond was duly approved by the lower court; that some-time last September 1966, defendants filed a petition before the lower court praying that the sheriff of Pangasinan be ordered to execute the corresponding deed of redemption in favor of defendant Nieves de Lozano represented by her judicial administrator or that, in the alternative, the Register of Deeds of Dagupan City be directed to cancel Entries Nos. 19234 and 20042 at the back of TCT No. 8192; and that said petition was denied by the lower court. The same prayer made below is reiterated in the said petition of May 18, 1967.

The foregoing petition of May 18, 1967 alleges facts which occurred after the perfection of the present appeal and which should therefore be submitted to and passed upon by the trial court in connection with the implementation of the order appealed from, which is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] *Marasigan vs. Ronquillo*, 94 Phil. 237.

[2] *Compania General de Tabacos vs. Alhambra Cigar & Cigarette Manufacturing Co.*, 33 Phil. 508; *Golding vs. Balatbat*, 36 Phil. 941.

[3] *Daquis vs. Bustos*, 94 Phil. 913.

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