

PIO MERCADO, PLAINTIFF AND APPELLEE, VS. MARIA TAN-LINGCO, DEFENDANT AND APPELLANT.

G.R. No. 10374. August 18, 1916

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Pio Mercado filed suit against Maria Tan-Lingco, alleging that on July 19, 1909, his wife Rita Raiz Mateo executed in the defendant's favor an instrument in which she acknowledged having received from the said Tan-Lingco a loan of P2,500, to be repaid "within one year, in the month of January or February, 1910, extendible from year to year to the maximum time limit of five years, counting from the month of June, 1909;" that, as security for the payment thereof she mortgaged thirty-one parcels of land of her exclusive ownership, all duly described and specified in said instrument; this document also recited a power of attorney couched in the following terms:

"I, Pio Mercado, a resident of the municipality of Baliuag, Province of Bulacan, P. I., do hereby certify that, for the purposes of articles 60 and 61 of the Civil Code, I confer upon my wife, Rita Raiz Mateo, the marital permission necessary for said lady to appear in court, by herself or through a solicitor, and perform any and all acts in which she may have an interest, and finally, with respect to all acts which, according to the laws in force, a married woman can not perform without her husband's permission, to ratify everything done in matters of contract from the day of her marriage."

That subsequently, on September 22, 1911, his wife and two sons Francisco Mercado and Tomas Mercado liquidated the amount of the debt shown to be owing the defendant Maria Tan-Lingco, in accordance with the preceding contract, and executed in the latter's behalf the following document:

"We, the undersigned mother and children, hereby certify that on this day we have liquidated our debt to Maria Tan-Lingco and it has been found that said debt amounts to exactly P13,000, which we will pay in the month of January of next year, 1912; if we do not, we will pay her in palay during the month of February, 1912. (Sgd.) Rita R. Mateo, Francisco Mercado. Tomas Mercado."

That this contract was executed by his wife without his knowledge, consent, or marital permission. In consequence, plaintiff offered to pay defendant the P2,500 of the original debt, prayed that said contract be declared null and void and that defendant be ordered to deliver to him all the muniments of title pertaining to said lands.

The defendant interposed a demurrer, which was sustained, and as the plaintiff refused to amend his complaint the court absolved the defendant therefrom. Upon appeal this court reversed the judgment and ordered that the cause be remanded to the court whence it came, for further proceedings. (*Mercado vs. Tan-Lingco*, 27 Phil. Rep., 319.)

After the remand of the record the case was proceeded with. Later the trial court rendered judgment in which he held the mortgage deed in question to be null and void, ordered the defendant to deliver to the plaintiff the muniments of title to the land mentioned in said deed, and ordered the plaintiff to pay to the defendant the amount

of the mortgage, P2,500, with legal interest thereon, counting from July 19, 1909.

The defendant appealed.

But all her allegations in support of her appeal must fail before the categorical provision of article 1387 of the Civil Code which says:

"The wife can not alienate, encumber, or mortgage the paraphernal property without the permission of the husband, nor appear in court to litigate with regard to the same, unless she has been judicially authorized for the purpose."

It is true that in 1905 the plaintiff gave his wife authority "for the purposes of articles 60 and 71 (perhaps 61) of the Civil Code, to perform any and all acts and execute any contract in which she may have an interest, and for all acts which, according to the laws in force, a married woman cannot perform without her husband's permission," but the mortgage which this married woman made of thirty-six parcels of paraphernal property belonging to her does not fall within the provisions of articles 60, 61, or 71 (cited, perhaps, incorrectly for 61); the first of these articles relates to the wife's appearance in a suit, and the second, to acquiring and alienating property and binding herself in general, while the sense of article 1387 is that in order to alienate, encumber, or mortgage the paraphernal property, a married woman requires in each case special powers from her husband, inasmuch as he has an interest in the proceeds from his wife's paraphernal property; these proceeds pass to the category of community property of the marriage which is subject to the payment of the conjugal debts. At the end of two years of indebtedness, Rita Mateo liquidated her debt to her creditors, and it was then ascertained that the said debt had increased from P2,500 its amount at the beginning, to P13,000, and the wife and her children promised to pay off this debt in palay if they did not do so in cash, thus depriving the husband of the fruits of the 36 parcels of mortgaged land and defrauding him of the rights granted to him by law. The law rightly requires that this class of contracts shall record the husband's permission, something which is not a mere display of authority but which is of the highest interest for the husband and for the good management of the conjugal partnership.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Johnson, Moreland, and Trent, JJ., concur.

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