

**SANCHO MONTOYA, ET AL., PLAINTIFFS AND APPELLEES VS.
MARCELINO IGNACIO, ET AL., DEFENDANTS. MAECELINO IGNSCIO
AND ESTELITA PONIENTE, THIRD-PARTY-PETITIONERS AND
APPELLANTS.**

G. R. No. 10518. November 29, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

In a decision rendered by this Court in the case of Sancho Montoya, etc., et al. vs. Marcelino Ignacio, G. R. No. L-5868, the said Marcelino Ignacio as defendant therein was sentenced to pay the plaintiffs the sum of P31,000 as damages for the death of a passenger in a vehicle operated as a public service in the name of said defendant. The decision was promulgated on December 29, 1953 and entered on February 4, 1954. Thereafter, the record was remanded to the Court of First Instance, and a writ having issued for the execution of the sentence, the sheriff levied on property registered in the name of the spouses Marcelino Ignacio and Estelita Poniente consisting of a third interest in a lot described in Transfer Certificate of Title No. T-3497 of the land records of Cavite province and a residential house of strong materials standing thereon, and advertised its sale as required by the Rules. Claiming that the property levied upon was their family home duly constituted and therefore exempt from execution, the spouses filed a petition in court to have the sale enjoined. But the petition was denied, as was also a subsequent motion for reconsideration which alleged the further ground that as the judgment debtor had, according to the judgment creditors themselves, personal properties (consisting of 14 passengers jeepneys) sufficient to satisfy the judgment, the levy on real property was not lawful, the court having rejected this new ground with the statement that the judgment debtor had himself asked that he be relieved from surrendering the said personal properties to the court or to the sheriff because they no longer belonged to him. The spouses appealed to the Court of Appeals, but that court has certified the appeal here as involving only questions of law.

The main question for determination is whether the property in question should be declared exempt from execution as a family home extra-judicially constituted. The trial court ruled against exemption on the ground that the alleged family home was constituted after a money judgment against Marcelino Ignacio had been rendered.

The new Civil Code, in its article 223, provides for the establishment of what it calls "the family home", which shall consist of "the dwelling house where a person and his family reside, and the land on which it is situated".

Such family home may be constituted judicially (through a verified petition of the owner approved by the Court of First Instance as provided in Article 225) or extra-judicially (by mere declaration of the owner embodied in a public instrument and recorded in the Registry of Property as provided in Articles 240, 241 and 242), and once constituted in the manner provided, it is to be "exempt from execution, forced sale or attachment except as provided in Articles 232 and 243." These articles read:

"Art. 232. The family home, after its creation by virtue of judicial approval, shall be exempt from execution, forced sale, or attachment, except:

- (1) For nonpayment of taxes; or
- (2) in satisfaction of a judgment on a debt secured by a mortgage constituted on the immovable before or after the establishment of the family home.

In case of insolvency of the person constituting the family home, the property shall not be considered one of the assets to be taken possession of by the assignee for the benefit of creditors."

"Art. 243. The family home extra-judicially formed shall be exempt from execution, forced sale or attachment except:

- (1) For nonpayment of taxes;
- (2) For debts incurred before the declaration was recorded in the Registry of Property;
- (3) For debts secured by mortgages on the premises before or after such record of the declaration;
- (4) For debts due to laborers, mechanics, architects, builders, material-men and others who have rendered service or furnished material for the construction of the building."

As will be noted, Article 232 refers to a family home judicially constituted while Article 243 refers to a family home extra-judicially formed. As the family home involved in the present case was established extra-judicially, it comes under Article 243 and, in accordance with subdivision (2) of that article, it is not exempt from execution for debts incurred before it was recorded in the Registry of Property.

We find no merit in appellants' contention that the "debts" mentioned in subdivision (2) of Article 243 refer only to monetary obligations willfully contracted and do not include money judgments arising from torts. The word is not qualified and must, therefore, be taken in its generic sense. Moreover, a money judgment is just as much a debt as a monetary obligation voluntarily assumed, and no special reason exists for putting it below the category of the latter for the purpose of Article 243. And it may not be amiss to state further that the judgment herein sought to be satisfied through a levy on appellants' property is not based on liability arising from tort, as appellants would suppose, but on liability for breach of contract of transportation, consisting in the carrier's failure to take a passenger safely to destination.'

It is also contended that even supposing the judgment in question to be also a debt, still it is not a debt incurred before the family home was, in the present case, recorded in the Registry of Property, because the said judgment, though promulgated on December 29, 1953, did not become final until it was entered on February 4, 1954, about half a month after the said family home was recorded in the Registry of Property on January 19. Again, we find no merit in this contention. To exempt from execution a family home that is constituted only after a money judgment has been rendered against its owner is to sanction evasions of execution and defeat the clear intent of subdivision (2) of Article 243. Moreover, note must be taken of the fact that in the present case the judgment debtor's liability for damages arose or was incurred when he breached his contract of transportation by not carrying a passenger safely to destination. That was in January, 1949, or several years before the judgment.

It is also urged that the house and lot in question are not conjugal property since appellants are not legally married, and that so much thereof as pertains to one of them cannot be levied upon to satisfy a judgment against the other. The point thus raised deserves no serious consideration in the face of Marcelino Ignacio's sworn declaration contained in the public instrument creating the family home to the effect that he was married and that his spouse was Estelita Poniente, a declaration which is also borne out by the certificate of title of the property "issued", as therein stated, "in the name of the spouses Marcelino Ignacio and Estelita Poniente" and confirmed in a motion filed by them in court (an urgent motion for reconsideration) where they refer to themselves as "Marcelino Ignacio and his wife." Surely, appellants cannot be heard to say that they are married or not married as suits their convenience. Moreover, there is something to appellees' claim that this issue was not brought up in the lower court and cannot therefore be properly raised in this appeal.

The plea is made that even supposing the family home in this case to be conjugal property, still the wife's share thereof should not be made to answer for a debt incurred by the husband alone in the absence of proof that the said debt was contracted for the benefit of the conjugal partnership in accordance with Article 161—(1) of the new Civil Code. But, as already stated, the obligation to pay damages in this case was incurred in January, 1949, when the husband breached his contract of transportation by failing to carry passenger safely to destination. That was before the new Civil Code went into effect, and under the law then in force—Article 1408-1 of the old Civil Code—the conjugal partnership is liable for "all the debts and obligations contracted during the marriage by the husband."

Equally unmeritorious is the claim that evidence should have been received to inform the; trial court that there were personal properties, consisting of TPU jeepneys, registered in the name of the judgment debtor which should have first been exhausted before levy could be lawfully made on real property. It appears that this same claim was properly overruled in the court below in view of the request made by the judgment debtor himself in one of his pleadings that he be relieved from delivering the said jeepneys to the court or to the sheriff because he had already transferred them to other persons.

Lastly, we note that by our resolution of May 10, 1954, rendered in G. R. No. L-771S, we have already dismissed for lack of merit a petition filed by the appellants herein to annul the same orders now complained of and to allow the parties to present evidence on the issue of whether or not the family home was established before the judgment in G. R. No. L-5868 had become final and executory.

In view of all, the foregoing, the orders appealed from are affirmed, with costs against the appellants. p

Paras, C. J., Bautista Angelo, Labrador, Concepcion, J. B. L., Endencia, and Felix, JJ., concur.

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