

URSULA JOSE DE VILLABONA, PETITIONER, VS. THE COURT OF APPEALS AND SIMEONA SANTOS DE JOSE, RESPONDENTS.*G. R. No. 10799. April 28, 1958*

Ponente: LABRADOR, J.

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Action instituted by Ursula Jose de Villabona, petitioner herein, one of the children of the deceased Ramon Jose by his marriage to Asuncion Reyes, now deceased, to be declared with the other children of said marriage, owners of an undivided one-half share of a lot located at No. 530 Zurbaran Street, Sta. Cruz, Manila, and building erected thereon, as the share of the said deceased Ramon Jose in his conjugal partnership with his surviving spouse, the defendant Simeona Santos Vda. de Jose. Against a judgment rendered by the Court of Appeals, affirming that of the Court of First Instance of Manila dismissing the action, the plaintiff has appealed to this Court by certiorari.

The subject matter of the action is Lot No. 12-B, Block No. 2210, San Lazaro Estate, G.L.R.O. Record No. 11546, located at the corner of Zurbaran and Mangahan Streets, Sta. Cruz, Manila, and the building of strong materials constructed thereon, described in amended plan (Exh. 6). Both the land and the building are declared in the name of the defendant Simeona Santos, originally under assessment No. 189 and subsequently No. 203. Plaintiff claims that the lot in question was acquired during the marriage of the late Ramon Jose and the defendant Simeona Santos, and that the building constructed thereon was also erected during the existence of the said marriage, for which both lot and building are presumed conjugal partnership properties of the said spouses. The defendant specifically denies the above claims, and by way of counterclaim she alleges that the complaint is malicious and unjust. She, therefore, prays that the complaint be dismissed and that the plaintiff be ordered to pay defendant attorney's fees in the sum of P1,000 and moral damages in the amount of P10,000. The Court of First Instance, Hon. Froilan Bayona, presiding, held that both the lot and the building constructed thereon are paraphernal properties of the defendant. Case having been appealed by the plaintiffs to the Court of Appeals, the latter affirmed the judgment.

The evidence submitted, which consists mainly of document's official or authentic, discloses the following: Defendant's title to the lot was issued upon the execution of an extrajudicial deed of partition between defendant Simeona Santos, Bonifacia Santos and Mercedes Santos (Exh. 3), in which they declare that they are owners proindiviso of lot No. 12, Block 2210, Hacienda de San Lazaro, covered by Transfer Certificate of Title No. 37211, Manila. The lot now in question is expressly assigned and conveyed to defendant Simeona Santos as her share in the common property. This deed of partition bears the writing conformity and signature of defendant's deceased husband Ramon Jose. As to when Transfer Certificate of Title No. 37211 was issued in the name of Simeona Santos, Bonifacia Santos and Mercedes Santos nothing is disclosed in the record. Title issued in the name of defendant Simeona Santos as a result of the partition is Transfer Certificate No. 38003 and is dated at Manila on May 30, 1931.

On August 17, 1931, Simeona Santos executed a deed of mortgage of the said lot for a loan of P8,500, in favor of El Ahorro Insular. This mortgage was registered on August 18, 1931. On November 28, 1936, Simeona Santos

transferred the mortgage to the National Loan and Investment Board for a loan of P7,500, and on January 14, 1941 the mortgage was again transferred to the Agricultural and Industrial Bank for P7,000. The mortgage was cancelled on September 17, 1948. All the above transactions appear at the back of Transfer Certificate of Title No. 38003

As already adverted to previously, the permit to construct the building on the lot bears No. A-9235, dated August 27, 1931, under the name of Simeona Santos de Jose, and the final certificate issued is No. 17674 dated November 19, 1931 (Exh. I). The plan for the building is in the name of Simeona Santos de Jose (Exh. 6). The insurance policy issued on the building is also in the name of Mrs. Simeona Santos de Jose (Exhs. 7, 7-a, 7-b, 7-c, 7-d for the years 1941, 1942, 1943 and 1944). All payments on the real estate loan after the war have been in the name of Simeona Santos. The only documents relating to the lot and building bearing the name of Ramon Jose are the receipts for payment to the Agricultural and Industrial Bank, although the account indicated as being paid is Trust Department Account 6012-R, which is in the name of the defendant Simeona Santos. The marriage between the deceased Ramon Jose and Simeona Santos took place on May 9, 1920 (Exh. E), and Ramon Jose died on November 6, 1943. It also appears from the record that Transfer Certificate of Title No. 3800 was originally issued in the name of "Simeona Santos, married to Ramon Jose," but that after the death of the latter the name appearing on the transfer certificate of title was changed to "Simeona Santos, widow."

The main issue raised before us is: Does the evidence submitted justify the decision of the lower court that the land and the building constructed thereon are paraphernal properties of the defendant Simeona Santos; or is it not insufficient to overcome the presumption that they are conjugal properties? Also, in the event that the lot is paraphernal property of the defendant is the building constructed thereon conjugal partnership property in accordance with Article 1404, par. 2 of the Spanish Civil Code?

We find that there is no evidence in support of the claim that the lot was acquired by the defendant during the lifetime of her spouse Ramon Jose. The deed of extrajudicial partition, as a result of which title to the lot was issued in defendant's name, shows that defendant was a co-owner of the bigger lot which was subdivided among three original co-owners. When this co-ownership of the bigger lot which was subdivided by the co-owners was originally acquired by the three, is not shown. The issuance of the title for the first time in the exclusive name of Simeona Santos does not mean that she acquired it for the first time on that date (of execution of said partition). Most probably the lot which was subdivided among the three co-owners must have been bought in common or inherited from parents or other relatives. But by his conformity to the partition, Ramon Jose acknowledged his wife's exclusive ownership. There is furthermore evidence that counsel for the plaintiff had admitted that this lot in question is paraphernal property of (Exh. 1). There is, therefore, no basis for the claim that the lot was acquired during the marriage between Simeona Santos and Ramon Jose, or is conjugal partnership property.

The provisions of the Spanish Civil Code which may have application to the next issue, which is that of the ownership of the building constructed on the lot, are par. 4, Article 1396 and par. 2 of Article 1404, which provide as follows:

"The following is the separate property of each of the spouses:

- Property purchased with money belonging exclusively to the husband or the wife." (Article 1396)

"Buildings constructed during the marriage on land belonging to one of the spouses, shall also belong to the partnership, but the value of the land shall be paid to the spouse to whom it belongs." (Art. 1404)

The important issue upon which the decision of the important question must rest is whether the money obtained as loan from El Ahorro Insular, with which the building was constructed, is conjugal partnership property or paraphernal property, because if the funds obtained are conjugal in nature then paragraph 2 of Article 1404 would apply and, in the opposite case, that of paragraph 4 of Article 1396.

Under the law the husband is the administrator of the conjugal partnership properties (Art. 1412, Spanish Civil Code); and if it was the intention of the spouses to have secured the loan for the partnership, the husband would naturally have joined in the execution of the mortgage as a principal debtor, with all the legal consequences resulting to the partnership. He did not, however, participate in the execution of the mortgage but only the wife secured the loan in her own name and consequently for herself alone. That the loan was meant to be for herself, the wife, is also borne out by the fact that the permit for the building which was to be constructed and the plans there were made in the name of the wife and not in the name of the partnership. This execution by the wife alone of the mortgage, the securing of the permit in her own name and the construction of the building also in her own name, to the exclusion of her husband, point out to the fact that she and her husband had agreed that the loan would be her own responsibility. These circumstances also point out to the intention of the husband and his wife to make it appear clearly that the new building was to be erected with the exclusive funds of the wife and that it would be her own exclusive property, this being in line with the provisions of paragraph 4 of Article 1396 of the Spanish Civil Code. A building constructed using a loan obtained under the above circumstances belongs exclusively to the wife, this question having been expressly passed upon by this Court in the case of *Lim Queco vs. Ramirez* 11 Phil 162;

"Mientras estaban viviendo en armonia, el apelante y la apelada, hicieron construir una casa en las referidas cuatro fincas urbanas de la ultima; pero, para ello, hubo necesidad de que ella solicitase y obtuviese de 'El Ahorro Insular' que es una sociedad mutua de contruccion y prestamos, el 24 de febrero de 1933, un prestamo de P3,500. No recibio sin embargo, de esta suma, sino solamente la cantidad de P2,884.10 porque el resto se habia invertido en el pago por adelantado de intereses, y en el de ciertas primas, y en el de los demas gastos incidentales de la transaccion. Para garantizar el pago del referido prestamo, la apelada hipoteco a su acreedora 'El Ahorro Insular' con el consentimiento del apelante sus mencionadas cuatro fincas."

"No hay por que decir nada de la cantidad obtenida por via de prestamo de 'El Ahorro Insular', porque la misma no puede en modo alguno ser considerada como un bien ganancial. Es en todo caso bien parafernial de la apelada porque si la obtuvo, fue poniendo en garantia de su pago, sus propios bienes paraferniales; y de estos dice la ley que son todos aquellos bienes que la mujer aporta al matrimonio sin incluirlos en la dote, y los que adquiere despues de constituida la misma sin agregarlos a ella. Y no vale decir que los bienes paraferniales de la apelada, porque en puridad no lo es, en el sentido en que la frase 'frutos' esta usada en los articulos 1385 y 1401 delCodigo Civil."

The fact that payments of the installments on the unpaid balance of the loan secured by the mortgage were in the name of the husband loses importance if we take into account that the payment was made applicable to the account of the wife. What the source was of the payments no evidence has been given. We find, however, that of the original loan of P8,500 there was still due and owing in the year 1941 the amount of P7,000, although it is claimed by the defendant herself that only P5,000 remains of the indebtedness after the death of her spouse; so that of the original loan of P8,500, not all of which has been received because the interest was already deducted from the loan, some P8,000 must have been paid out of conjugal partnership funds. The right of the heirs of the deceased husband to demand that portion of this advance partnership funds be borne by the defendant should however be recognized barring such defenses as may have existed or may have arisen.

Wherefore, the judgment appealed from is hereby affirmed, with costs against the appellant, subject to the reservation mentioned above.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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