

ASUNCION GEFES, PLAINTIFF AND APPELLEE, VS. SILVESTRE SALVIO ET AL., DEFENDANTS. SILVESTRE SALVIO, APPELLANT.*G.R. No. 11387. February 07, 1917*

Ponente: TORRES, J.

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This appeal was filed by counsel for Silvestre Salvio from the judgment of March 17, 1915, in which the trial court held that the two parcels of land in litigation are the private property of the plaintiff, Asuncion Gefes, and that she has the right to their possession and ownership; that the defendants should restore and deliver said lands to the plaintiff and pay her P1,125, the value of 375 cavanos of rice which she was unable to collect because the defendants were in possession of the said property; and that defendants should pay the costs.

By a complaint of the date of February 1, 1913, subsequently amended by another of June 9 of the same year, counsel for Asuncion Gefes commenced these proceedings in the Court of First Instance of the Province of Antique, alleging that the plaintiff was lawfully married to the defendant Silvestre Salvio, but that by a written agreement they lived apart; that when plaintiff married the said defendant she brought to the marriage two parcels of rice land situated in the municipality of Tibiao, Antique, the extent and bounds of which property are set forth in the complaint; that without her knowledge and consent her husband, Silvestre Salvio, sold these lands to Emerenciana Dayanot for P1,950; that she received no part whatever of the said sale price; that during the last four years the possession of this property had been held by the defendants Rafael Costoy, Ariston Importante, and Emilio Mabaguial, sons-in-law of the said Dayanot, who, claiming to be the owners thereof, refused to return them to the plaintiff; that, by reason of such detention, the plaintiff failed to collect the fruits from the said lands amounting to P2,400. Counsel therefore prayed the court to order the defendants to restore to the plaintiff the said two parcels of land and to pay to her the value of the products thereof which she failed to collect, amounting to P2,400, with the costs against the defendants.

The demurrer to the aforementioned complaint having been overruled, counsel for Silvestre Salvio, in answer to the latter, denied all the allegations contained therein, except those relative to the possession of the lands by the persons specified by the plaintiff; in special defense he alleged that the said parcels of land are community property of the marriage between the plaintiff and the defendant Salvio and were sold at the request of the plaintiff herself for the purpose of obtaining funds wherewith to pay the debts contracted by her in Iloilo and other pueblos, through gambling and smoking opium. This defendant therefore prayed to be absolved from the complaint, with the costs against the plaintiff.

In answer to the original complaint the defendant Rafael Costoy alleged in his writing of February 8, 1913, that he held possession of the lands claimed by virtue of an absolute sale made in his favor by Silvestre Salvio, on February 20, 1911, for P600, as proven by the notarial document to this effect executed by and between the parties before the notary public Doroteo E. Alegata. He therefore prayed to be absolved from the complaint, with the costs against the plaintiff.

After a trial at which evidence was introduced by both parties, the court rendered the judgment aforementioned, to which only the defendant Silvestre Salvio excepted and moved for a reopening of the case and a new trial. This motion was denied, exception was taken by the defendant, and, the proper bill of exceptions having been presented, the same was approved and transmitted to this court.

In accordance with the provisions of paragraph 2 of section 115 of the Code of Civil Procedure, Asuncion Gefes brought suit against her husband Silvestre Salvio and certain persons who had purchased from him the two parcels of land, the subject-matter of the claim, for the purpose of recovering said lands. She alleged that she was the exclusive owner of these parcels, having brought them to her marriage with the said Silvestre Slavio. the latter, however, claims that the said land is community property and that the plaintiff is only entitled to one-half of its value; that she has already received that amount, as shown by certain letters written by her and in possession of defendant.

Plaintiff's first husband, Juan Alegata, a Chinaman, died intestate, but was survived by legitimate children, as stated in pages 4 and 5 of the defendant-appellant's brief, although in the writing found on page 82 of the record it is said that the appellant Pompeyo Alegata is a son of the plaintiff and that he also died, in September 1915; and notwithstanding that, on the plaintiff's subsequent marriage with the defendant Salvio no marriage contract was executed, it is asserted that the two parcels of land in question came from her husband's intestate estate and are her exclusive property.

It has been duly proven by the record that as the result of a complaint filed by Felicaino Omalde, a creditor of the plaintiff's first husband, Juan Alegata, and by virtue of the judgment rendered in the proceedings brought under that complaint, the said two parcels of land, on December 26, 1908, were sold at auction to the defendant Salvio for P661, as shown by the receipt Exhibit 2, and that at the expiration of the year fixed by law, the sheriff issued to the purchaser the proper title deed to the lands that were adjudicated to him on December 29, 1909, as accredited by the document Exhibit 3.

The defendant Silvestre Salvio swore that these lands became his property by reason of his having bought them at public auction with the money borrowed by him from Father Narciso Hijalda; that as they were his own he sold them to his codefendants, although he had previously asked his wife's consent to the sale; and that the said lands did not belong to his wife, because, when she married him, she did not bring either cash or real property to the marriage. He also presented several letters, written in Iloilo by the plaintiff Asuncion Gefes, in one of which she ordered the plaintiff to ask a higher price for the land. As may be seen by this letter, dated October 17, 1911, what land is concerned therein or of whom Slavio was to ask a greater price, is not specified, neither does it appear that the land therein referred to was either of the two parcels in question. Father Naciso Hijalda corroborated the statements of the defendant and swore that on December 24, 1908, he loaned defendant P700 with which to buy certain lands at auction.

Notwithstanding this, the fact is indisputable that these lands did not belong to the defendant, and if he brought them at public auction in December, 1908, for P661, he did so with his wife Asuncion's own money. This is evidenced by Exhibit A, a document signed by the said Salvio before the notary Nicolas Tomas on March 27, 1909, in which he clearly sets forth that the said sum of P661, Philippines currency, which he paid for the properties above-mentioned, belonged to the private funds of his wife Asuncion Gefes. He furthermore declared in the said document that she was the true and absolute owner of the said lands by him purchased out of his wife's funds and in her behalf. This document was ratified before a notary and attests the truth of all its contents, even against third persons. The defendant's denial of its authenticity is not supported by any reliable evidence, nor by the affidavit (record, p. 75) presented for the purpose of obtaining a reopening of the case. Furthermore, it is to be noted that the defendant Salvio cannot be heard to repudiate what he solemnly declared in a notarial document.

So that it is here a question of the plaintiff Gefes' own property, acquired at public auction and paid for with her own money, as the defendant, her second husband, expressly testified. It is true that the said two parcels of land belonged to the estate left by her first husband at his death; but it is no less true that they were judicially sold for the purpose of paying his debts, and on being acquired at auction by her second husband, in her name and representation and with her money, they ceased to belong to the intestate estate of her first husband and became the exclusive property of the wife of the defendant Salvio (Civ. Code, art. 1396), and, under the provisions of article 1401 of the Civil Code, cannot be classified as conjugal partnership property. Therefore the defendant had no authority to alienate or encumber the said lands or to execute contracts in regard thereto without the consent of his wife, inasmuch as they were not conjugal partnership property. The sale of the said two parcels of land made by this defendant to his codefendants, is therefore null and void and of no value or effect, for the reason that, as they are not conjugal Salvio, he could not dispose of them without the consent of their lawful owner, the plaintiff.

With respect to the fruits or products of the said lands, it is unquestionable that they pertain to the class of community property and the husband is the administrator thereof. Notwithstanding that the spouses live separately, in the eyes of the law the said partnership subsists, as it does not appear that they have obtained a decrees of divorce or a judicial declaration of separation of property. (Laws 7 and 8, title 10, Fourth Partida.)

The other defendants failed to appear and were declared in default (record p. 31).

For the foregoing reasons, whereby the errors assigned by the defendant-appellant Silvestre Salivo to the judgment appealed from have been refuted, the defendants Silvestre Salvio, Rafael Costoy et al., are hereby sentenced to restore and return to the plaintiff the two parcels of land claimed in her complaint and the defendant Silvestre Salvio is absolved from the obligation of paying the value of the products of the said lands, amounting to P2,400. In so far as it agrees with this decision, the judgment of the lower court is affirmed, and reversed in so far as it does not. No special finding is made as to the costs of this instance. So ordered.

Carson, Moreland, Trent, and Araullo, JJ., concur.

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