

LUIS PALOMAR BALDOVI, PLAINTIFF AND APPELLEE, VS. MANUELA SARTE, DEFENDANT AND APPELLANT.*G.R. No. 11767. March 27, 1917*

Ponente: TORRES, J.

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This is an appeal by bill of exceptions, filed by counsel for Manuela Sarte from the judgment of September 29, 1915, in which the judge of the Court of First Instance of Albay, holding that the action brought by the plaintiff was not barred by statute and that the defendant's debt was conclusively proven, ordered the defendant to pay to the plaintiff P187.50 together with legal interest thereon from June 8, 1910, and the costs of the suit.

By a written complaint of June 11, 1915, Luis Palomar Baldovi brought suit in the Court of First Instance of Albay against Manuela Sarte to recover the sum of P187.50. He alleged as a cause of action that on June 8, 1910, in Legaspi, Albay, Rodolfo G. Tuyet signed an obligation to pay P187.50 to Bias Ausina Pi; that this payment was assumed, by the defendant Manuela Sarte, according to the agreement made by and between her and the said Tuyet, as set forth in a public instrument of the date of June 9, 1910; that since March, 1913, the creditor Pi had repeatedly demanded payment of the said amount but that he had failed to obtain it; that, by an endorsement of January 17, 1915, the plaintiff became the absolute owner of the said note for the sum of P187.50; and that the defendant, in spite of the several demands made upon her for the payment of the said debt, had failed to pay the same.

On August 2, 1915, counsel for Manuela Sarte answered the aforementioned complaint by a general and specific denial of all the facts therein contained. In special defense he alleged that, on the date the said instrument of debt or promissory note was indorsed in favor of the plaintiff, the indorser had no right whatever to collect the amount specified therein, inasmuch as on June 14, 1910, the indorser, Bias Ausina Pi, filed civil suit No. 1264 in the Court of First Instance of Albay against Rodolfo G. Tuyet and Manuela Sarte, jointly, for the recovery of certain credits mentioned in the instrument of June 9, 1910, whose payment the defendant Manuela Sarte had assumed; that in spite of the plaintiff Bias Ausina Pi not having included in his complaint the collection of the said P187.50, judgment in said case No. 1264 was rendered against Rodolfo G. Tuyet, and the complaint was dismissed with respect to Manuela Sarte; that by reason of the failure to include the said credit of P187.50 in the complaint in case No. 1264 the said Bias Ausina Pi had completely abandoned and waived his right to collect the amount of the said promissory note; and that therefore the indorsee was now estopped from demanding the payment of the credit demandable in the previous complaint. Accordingly, the defendant requested that she be absolved from the complaint, with the costs against the plaintiff.

After trial and introduction of evidence by both parties, the court rendered the aforesaid judgment to which the defendant excepted and in writing moved for a new trial. This motion was denied, exception was taken by the moving party, and, upon presentation of the proper bill of exceptions, the same was approved and forwarded to the clerk of this court.

The question raised in this suit and submitted to the decision of this court is whether or not Luis Palomar Baldovi's right to collect the sum of P187.50 (which Ausina Pi, the indorser, could have demanded on June 14, 1910, at the time he filed suit against Rodolfo G. Tuyet and Manuela Sarte for the recovery of a larger sum) has been extinguished by the failure to include this claim in the first action; whether or not the plaintiff indorsee is now estopped, in accordance with the laws of procedure, from demanding the fulfillment of the said obligation; and whether, in a proper case, the defendant Manuela Sarte is obliged to pay the said sum.

The record shows as fully proven that Rodolfo G. Tuyet and the defendant Manuela Sarte contracted a lawful marriage in 1906, since which year Bias Ausina Pi, in the capacity of administrator, had been managing the property and other interests of the said couple; that, according to the settlement made for the services rendered by the administrator, Ausina Pi, from February 3, 1907, to September 20, 1908, the said husband and wife were found to be owing him P1,033.34 (judgment, Exhibit 2); that for unknown reasons of a private nature, the said spouses, by a notarial instrument dated June 9, 1910 (Exhibit A), agreed to separate from each other and to mutually waive the right to alimony. The husband Rodolfo G. Tuyet renounced in behalf of his wife Manuela Sarte all the interest and share he might have in her own private and paraphernal property and all the rights he might have in any and every kind of property acquired during their marriage and furthermore granted to his wife full and ample authority to appear alone in court, either as plaintiff or as defendant, as well as authority to dispose of, assign, or encumber any or all of the property concerned in the contract. In the seventh clause of the said contract the husband and wife stipulated that all the civil suits, brought by one against the other, pending in the Court of First Instance of Albay, should be considered terminated, and bound themselves to ask through their respective counsel for the dismissal of these suits. The eighth, ninth, and tenth clauses of the said contract are of the following tenor:

"Eighth. Dona Manuela Sarte hereby binds herself to pay all the accounts and obligations detailed in the attached statement marked letter A, which forms an integral part of this instrument, and assumes no obligation to make any other payment.

"Ninth. In view of the just causes that exist, Don Rodolfo G. Tuyet will apply for and obtain from the Court of First Instance of Albay and from the Bishop of Nueva Caceres the annulment of his marriage with Dona Manuela Sarte, that is, as regards the Court of First Instance of Albay, of his civil marriage, and with respect to the Bishopric of Nueva Caceres, of his canonical marriage.

"Tenth. Both contracting parties have agreed that this instrument shall have no value or force whatever until the Court of First Instance of Albay shall, by final judgment, have decided the proceedings for the annulment of the marriage existing between the parties, which, in conformity with the ninth clause of this instrument, shall be brought by Rodolfo G. Tuyet."

In the statement of the obligations, letter A, mentioned in the eighth clause, the following appears:

"List of creditors and amounts due them, for the payment of which, by virtue of the attached agreement, Mrs. Manuela Sarte shall alone be responsible.

(Item 16) To Mr. Bias Ausina Pi.....P1,033.34

(Item 17) To Mr. Bias Ausina Pi..... 187.50

* * * * *

(Sgd.) "Manuela Sarte. (Sgd.) Rodolfo G. Tuyet."

On June 9, 1910, Bias Ausina Pi filed a complaint in the Court of First Instance of Albay against Rodolfo G. Tuyet and his wife Manuela Sarte to recover from them P1,033.34 for the administration and cultivation of the

properties privately owned in common by both defendants. On October 31, 1910, judgment in that case was rendered solely against Rodolfo G. Tuyet and the proceedings were dismissed with respect to the defendant Manuela Sarte, with the right reserved to the plaintiff, Bias Ausina Pi, of bringing an action against the said Manuela Sarte in respect to the same amount of P1,033.34 whenever the condition stipulated in the tenth clause of the instrument of separation, Exhibit A, should be fulfilled, first, because the action for annulment of marriage to which the said two clauses of the contract Exhibit A refer was still pending decision in the Court of First Instance and in the Bishopric of Nueva Caceres; and, second, because the defendant Manuela Sarte was not liable for the obligations specified in the statement letter A, until all the requirements and conditions stipulated should have been fulfilled, although at the time this judgment was rendered, October, 1910, the defendant Rodolfo G. Tuyet, after having answered the complaint and admitted all its allegations, left the Philippines and went to Mexico, and the record does not show that he since returned to this country.

It is unquestionable that Manuela Sarte assumed the obligation to pay P187.50 to the creditor Bias Ausina Pi who indorsed the note over to the plaintiff Palomar Baldovi; but the defendant refuses to pay this sum on the ground that her obligation has been extinguished on account of the indorser-creditor's not having attached his claim for this amount to the complaint previously filed against her and her husband for the recovery of the P1,033.34.

It is true that the courts should avoid multiplicity of suits, and that section 90 of the Code of Civil Procedure permits a complaint to contain more than one cause of action, as section 427 of the California Code of Civil Procedure (from which the code in force in this country is derived) provides that the plaintiff may join several causes of action in the same complaint. This legal provision is, however, merely permissive, and the plaintiff is not obliged to unite or join several causes of action in the same complaint.

As there is no positive provision whatever of law or any rule of jurisprudence that makes a joinder of actions obligatory, it is not permissible to hold that because the claim for the P187.50 was not included in the complaint filed by Bias Ausina Pi in June, 1910, the cause of action that is the basis of Palomar Baldovi's complaint was wholly extinguished.

However, although Palomar Baldovi was entitled to recover the amount stated in the promissory note, Exhibit B, signed by Rodolfo G. Tuyet and indorsed to the plaintiff Palomar Baldovi by the creditor Bias Ausina Pi, nevertheless, the record does not show that the hereinabove inserted tenth clause of the contract, by which the defendant Sarte assumed the obligation to pay the sum claimed, was complied with and, until the said condition shall be fulfilled, the wife obligated in the said instrument is not yet liable for the payment of the debts therein specified (see the instrument Exhibit A).

Article 1432 of the Civil Code provides:

"In the absence of a specific declaration in the marriage contract, the separation of the property of the spouses, during the marriage, shall not take place except by virtue of a judicial decree, except in the case prescribed by article 50."

By the clear provisions of this article it is demonstrated that the contract of separation stipulated between the husband and wife Rodolfo G. Tuyet and Manuela Sarte can produce no legal effect, nor, by virtue thereof, can the defendant Sarte be obliged to fulfill the stipulation made between them until a judgment of divorce and separation of property shall have been rendered in proceedings brought by the husband, for the said obligation on the part of the wife is subject to the condition of the tenth clause of the instrument Exhibit A.

In the brief of the appellee Palomar Baldovi, it is stated that Rodolfo G. Tuyet died. The record, however, does not show this fact to have been proven.

For the foregoing reasons,, it is proper to reverse the judgment appealed from and to absolve the defendant Manuela Sarte, as we do hereby, without special finding as to the costs of both instances. So ordered.

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

Moreland, J., concurs in the result.

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