

GENEROSO MANUEL AND GLICERIA LAXAMANA, PLAINTIFFS AND APPELLANTS, VS. SIMEON LOSANO ET AL., DEFENDANTS. SLXTO DEL ROSARIO, SEVERO LAPIRA, PAULINA RONQUILLO, CATALINO DE LOS SANT...*G. R. No. 12065. July 02, 1918*

Ponente: CARSON, J.

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The principal question presented on this appeal turns upon our disposition of the appellants contentions as to the invalidity of the deed of sale of the lands described in the complaint, which was executed by Sixto del Rosario, in the year 1896, in favor of the plaintiffs' predecessor in interest. But before taking up that question, it will be well to dispose of the other contentions of counsel for the appellants, as to all of which the rulings of the trial judge may be sustained without extended discussion.

(1) There is nothing in the record which would justify the reversal of the order of the trial court denying a motion for a new trial. This motion was based on the ground that Sixto del Rosario was too ill to attend to his business while the action was pending in the court below. It affirmatively appears, however, that he was defended by counsel through-out the entire course of the proceedings; that accompanied by local counsel he visited and consulted counsel in Manila when he first received a copy of the complaint; that though he was ill for some months thereafter, he had recovered sufficiently to be able to appear at the trial in the court below and to testify in his own behalf; and that the purpose of the new trial prayed for is to introduce a new and distinct defense which his present counsel are of opinion that he and his codefendants should have relied upon at the trial instead of that actually interposed. There would never be an end to litigation if new trials were granted the defeated parties on such a showing.

(2) Whatever foundation of fact there may be in the contention that the instrument executed by Sixto del Rosario, purporting to be a deed of sale of the land in question with a reserved right of repurchase, did not evidence a sale of the land, and was intended merely as a mortgage to secure the payment of a debt, it is impossible for us to say that the trial judge erred in holding the instrument to be what it purports on its face to be, there being no competent evidence in the record which would sustain a contrary ruling. While there are indications here and there throughout the record tending to disclose the possibility that; the transaction evidenced by this document was not in fact a sale of the lands mentioned therein, there is no competent and trustworthy evidence in the record in support of the defendants' contentions in this regard, and we are left to vague surmises and conjectures which are wholly insufficient to justify a reversal of the finding by the trial court.

(3) We see no reason for disturbing the conclusions of the trial judge as to the title by prescription acquired by Elias Bacani in the parcel of land adjudicated in his favor, it appearing that he purchased this land in good faith from Sixto del Rosario on the 23d of February, 1894, prior to the date of sale to the plaintiffs' predecessor in interest, and had been in possession under an exclusive claim of ownership from that date down to the date of

the institution of these proceedings in July, 1914, that is to say, for not less than 20 years, more than ten of which elapsed after the adoption of the new Code of Civil Procedure.

(4) We agree with the trial judge that the validity of the composition title issued by the state in favor of Sixto del Rosario on July 29, 1891, and duly registered in his name, cannot now be drawn in question by the introduction of evidence tending to disclose that, prior thereto, the land described in the composition title deed, was a part of the paraphernal property of his wife, in the absence of clear and convincing proof of fraud upon her rights in procur-ing the issuance of the state grant. Title to this property having been acquired by the husband during the period of their marriage, it must be held to have been community property, (bienes gananciales) in the absence of affirm-ative proof to the contrary. (Art. 1407, Civil Code.)

We come now to consider the question as to the validity of the deed of sale of the land described in the complaint, executed by Sixto del Rosario, in the year 1896, in favor of the plaintiffs' predecessor in interest.

This land was acquired by Del Rosario from the state in the year 1891, and as we have seen, it must be held to have constituted a part of the community property (bienes gananciales) of Del Rosario and his wife.

The wife died in the year 1894, leaving several children.

Del Rosario, without judicial sanction, executed a deed of conveyance of the land in question to plaintiffs' prede-cessor in interest in the year 1896.

In reliance upon these facts, counsel for the defendants (Sixto del Rosario, some of the children of Del Rosario and the wife who died in the year 1894, and others claiming title through them) insist that the deed conveying the community property to plaintiffs' predecessor in interest, executed by Del Rosario two years after the death of his wife, should be held to be invalid and ineffective as a con-veyance of these lands, at least to the extent of the interest therein of the children of his deceased wife, who had no part in the execution of the deed, and never authorized nor ratified the act of their father in disposing of the one-half interest in this property to which, counsel contend, they were entitled by right of inheritance from their mother.

It does not appear that any inventory has ever been made of the community property of Del Rosario and his wife; nor that any distribution has been made of such prop-erty among those entitled to the "net remainder" thereof after the payment of the community debts; and indeed it has not been shown that any "net remainder" of such property would be found to exist upon the liquidation of the affairs of the conjugal partnership.

It will readily be seen, then, that these contentions of counsel for the defendants are substantially identical with those ruled upon adversely in the case of Nable Jose vs. Nable Jose (p. 713, ante). We might therefore dispose of then by a reference to our ruling in the former case, were it not suggested that a different ruling should be adopted in the present case, because the deed of conveyance in the case at bar, unlike the deed in the former case, was executed prior to the repeal of the Spanish Code of Civil Procedure by the enactment of section 795 of the new Code of Civil Procedure, which went into effect on the first day of October, 1901.

We are of opinion, however, that the reasoning upon which we rested our ruling in the former case applies with substantially equal force in the present case; and that no distinction in the disposition of these cases should be pre-dicated upon the changes in procedural law under Amer-ican Occupation.

While it is true that the repeal of the Spanish Code of Civil Procedure has rendered it impracticable for a husband liquidator to comply with many of those provisions of the Civil Code, which, by reference to the old Code of Civil Procedure, prescribed the conditions under which judicial sanction of sales of community property could be secured (articles 1030 and 1428, Civil Code); our rulings in the former case were not based exclusively on the

change of procedural law resulting from the enactment of the new Code of Civil Procedure.

Although, as we said in an early case, *Alfonso vs. Natividad* (6 Phil., 240, 244), "It is difficult to harmonize the new system with that part of the old which remains;" still, the difficulties in connection with the proceedings looking to the making of an inventory and the procurement of judicial sanction of sales of community property by the husband liquidator would not seem to be insurmountable. If a substantial rather than a literal compliance with the statutory provisions in this regard be held to be sufficient; and, on general principles, the enactment of a procedural code should not be deemed to have had the effect of changing or modifying the rights and obligations of husband administrators of community property, except only so far as it can be shown that the new statute produces such an effect by necessary and unavoidable implication.

But however this may be, and we express no opinion with regard thereto at this time, our former decision rested on broader foundations than mere procedural changes in the law touching the administration of community property, and the basic grounds upon which the former decision rests will readily be seen to support like conclusions in the case at bar, whatever view may be taken as to the effect of the changes in the procedural law.

Supporting our ruling by citation of a long line of decisions of the Supreme Court of Spain, we held with relation to the community property, that "Prior to the liquidation, the interest of the wife, and in case of her death, of her heirs, is an interest inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of the heirs like that of the wife herself is limited to 'the net remainder' (remanente liquido) resulting from the liquidation of the affairs of the partnership after dissolution of the partnership; and until a liquidation has been had, it is impossible to say whether or not there will be a 'net remainder' to be divided between the interested parties. Until the existence of a 'net remainder' has been determined as a result of the liquidation, they can assert no claim of right or title in or to the community property, which is placed in the exclusive possession and control of the husband as administrator." (See decisions of the Supreme Court of Spain of March 4, 1867; February 11, 1870; May 8, 1873; March 1, 1874; December 23, 1875; March 2, 1881; May 11, 1889; September 29, 1891; January 28, 1898; April 7, 1900; and May 27, 1905, with which compare *Roca vs Banco Territorial y Agricola*, 6 Porto Rico, 339; *Amy vs. Amy*, 15 Porto Rico, 387; and *Packard vs. Arellanes*, 17 Cal., 525.) The following citation from the decision of the Supreme Court of Spain of March 2, 1881, *U5 Jurisprudencia Civil*, 417-420, well illustrates the doctrine in this regard as announced by that court:

"Considering that the prescriptions established by the laws and doctrines invoked in the first two assignments can have no application until after the conjugal partnership has been dissolved by the death of one of the partners and it be ascertained by means of a liquidation whether after the satisfaction and payment of the partnership obligations and debts there remains any property to be divided between the surviving spouse and the successors in interest, of the decedent, which remainder is what constitutes the community property out of which, in the case at bar, the adventitious property of the appellant minor would be determined; and

"Considering that the laws and doctrines invoked in assignments 4, 5, and 7 are inapplicable and could not have been violated in the manner alleged, inasmuch as the parties having stipulated that no settlement had yet been made of the affairs of the conjugal partnership between Don Marcial Melian and Dona Carlota Chiappi, and it not having been ascertained in any other manner what property remained from said partnership to be divided between the interested parties, proof of the point in issue is assumed without taking into account on the other hand that in this suit it is a question not only of the acts, lawful or abusive, of the legal administrator of the common assets (and it can not be denied that Don Marcial Melian is such administrator), but also, and principally, of the validity or nullity of the contracts which were duly executed by and between him and third persons; and

"Considering that the articles of the Mortgage Law cited in the 5th and 6th assignments have not been violated,

inasmuch as, (although in conformity with article 33 of the said law, in force at the time of the execution of the contracts, the annulment of which is requested in the complaint, the records of instruments or contracts which are null in accordance with law are not validated thereby) the defendants come within the excepted case of article Si, since they contracted with the person who in the registry appeared to be entitled to encumber the property that he mortgaged, and it is no valid objection that when he did so his civil status differed from that which he possessed when he re-recorded the property, because the law does not regard this circumstance as a sufficient cause to deprive third persons, holding an interest for value, of the legal warranty afforded them by the registry."

We further held that "The duty to pay the debts and obligations of the partnership imposed in article 1423 of the code carries with it by necessary implication the right to realize the funds necessary for that purpose from the property charged with the debts;" that "The law clothes the surviving husband with the exclusive possession and all the insignia of the power of disposal of the partnership property;" that "The husband, acting as liquidator of the conjugal partnership, and charged with the payment of the community debts, may sell or mortgage all or any part of the conjugal property, real or personal, in the fulfillment of the duties imposed upon him, and give good and valid title to the purchaser or mortgagee;" and that "The doctrine of caveat emptor has no application since it would be inconsistent with the nature and scope of the powers of the husband-administrator, to hold that purchasers of partnership property must look beyond the insignia of power to dispose of the property and ascertain, at their peril, whether in making the sale he is proceeding in the due performance of his duties as such administrator."

It would seem that some misapprehension has arisen as to the scope and effect of the former decision, and perhaps the language used by the writer of that opinion (who is also the writer of this opinion) was subject to misunderstanding, because of a failure to limit or restrict some of the general propositions advanced in the course of the argument. It is said that the former opinion is authority for the proposition that under the law now in force in these Islands, a husband-administrator is substantially relieved of all liability or responsibility in the administration of the community property after the death of his wife.

But a careful examination of that opinion will disclose that despite the somewhat extended scope of the discussion, we expressly limited ourselves to a narrow field of inquiry. Thus we said at the outset: "What then are the relations between the surviving husband and the heirs of the deceased wife resulting from the dissolution of the conjugal partnership; and what are their respective rights, title or interest in and to the conjugal property? An attempt to give a comprehensive answer to this question would carry us far afield, and we shall not attempt to go beyond what seems necessary in the adjudication of the issues raised in the case pending before us, that is to say, the determination of the power of the husband to sell or mortgage the conjugal property pending the liquidation of the conjugal partnership."

Far from holding that the husband is relieved from liability or responsibility in the administration of such property, we said that: "The law expressly imposes upon the husband the duty of liquidating the affairs of the partnership without delay (*desde luego*). It follows therefore that any interested person may institute the proper proceedings to compel him to perform that duty, and that he will be liable to such person for any loss or damage entailed by his neglect to do that which the law expressly prescribes, and for any fraud committed by him with relation to the property while he is charged with its administration."

But it is suggested that the unlimited and uncontrolled power of the husband-administrator is expressly maintained in the former opinion under various rulings therein to the effect that no judicial authorization or approval is required for the sale of the community property; that the law does not indicate how the debts shall be paid, or how the net remainder shall be distributed; that the community property is entrusted to the husband after as well as before the death of his spouse, as exclusive administrator, with full and practically untrammelled power

to deal with it as he may deem best; and that "the object to be accomplished is fixed but the means of accomplishment which are as varied as the circumstances and discretions of men are not indicated. To secure the object in view, he has the exclusive possession and control of the property, and in the performance of his duties, he is not subjected to the guidance or control of the courts (as is the ordinary administrator of the estate of a deceased person) except of course when fraud upon the rights of creditors or the heirs is alleged and proven."

But these, and similar observations in the former opinion, must be read in connection with the context and the issues raised in the case then pending before us. In support of those propositions, we expressly cited articles 1418 to 1423 of the Civil Code, and immediately following these articles there will be found in article 1428, express directions as to the procedure to be followed in the making of the inventory prescribed in article 1418, and the measures to be adopted by the husband-liquidator when, in the course of the liquidation, he undertakes to dispose of the property and secure judicial sanction therefor.

Manifestly, what was said in our former opinion could not have been intended to have the effect, and cannot be held to have had the effect of abrogating or denying the existence of the express provisions of the very chapter of the Code cited as authority for our rulings in the case then under consideration.

We were dealing then, as we are dealing today, with one of the vast number of instances in every day life wherein the husband, after the death of his wife, fails to make an inventory of the community property; or sells or mortgages community property, either real or personal, without first proceeding to a liquidation of the affairs of the conjugal partnership and securing judicial sanction for such sale or mortgage. We expressly recognized the duty imposed upon him, under article 1428, to proceed without delay to the liquidation of the community property under the provisions of that and the succeeding articles of the code, and declared that the heirs of the wife, the creditors, or any other interested party had the right to compel him to perform that duty, and that he would be "liable for any loss or damage entailed by his neglect to do that which the law prescribes." But in determining the question of the validity of sales or mortgages of community property to innocent purchasers for value, in any case wherein the husband-administrator does not proceed to the liquidation of this property under an inventory, and in the manner and form prescribed in article 1418 of the code, et seq., we held that the unique character of his status as administrator without judicial appointment, clothed with the insignia of ownership which marks his possession and control of the property prior to the death of his wife, considered together with the duty resting upon him to pay the debts of the conjugal partnership, justify the conclusion that, since the sale or mortgage of all or any part of the community property will at times be necessary to secure funds for the payment of such debts, it follows that in any case wherein a husband-liquidator does in fact sell or mortgage any part of the community property, the validity of the transaction cannot be challenged, in the absence of fraud or collusion, on the ground that it has not received judicial sanction in the manner and form prescribed in articles 1418, et seq.

The duty to make an inventory and secure judicial sanction of all such sales and mortgages, in any case wherein the consent of all the interested parties is lacking, is clearly imposed by the law, together with the corresponding liability to interested persons for loss or damages resulting from neglect to perform that duty. But the power to make valid sales and mortgages subsists, despite the failure to make an inventory or secure judicial sanction therefor.

In this sense, in the language of the former opinion "he is not subjected to the guidance or control of the courts (as is an ordinary administrator of the estate of a deceased person)." And it is in this sense, and in this connection, that the holdings of the former decision must be construed, when they speak of the "free and uncontrolled discretion" of the husband-administrator to provide for the payment of the debts from the partnership funds in such manner as he sees fit.

We have thought it proper to indicate at this time, the limitations which should be set upon the rulings of the former decision, because an affirmance of the judgment in the court below, in reliance upon the doctrine announced in the former case, might tend to perpetuate the uncertainty which seems to have arisen as to the scope and effect of what was said on that occasion.

Anything which was said in the former opinion which seems to extend the doctrine beyond the limitations herein indicated, should be treated as mere obiter, not necessary to the disposition of the contentions of the parties then before us, and not binding upon ourselves or the courts generally in this jurisdiction.

From various decisions of the Supreme Court of Spain, and notably those of October 14, 1865; March 4, 1867; December 29, 1873; January 8, 1878; April 28, 1882 and June 28, 1886; as also from the Resolutions of the Direction General de los Registros of February 21, 1889; April 5, 1893; October 19, 1900; August 10, 1902 and June 7, 1894 it would appear to be the settled doctrine of the Spanish courts that upon the death of one of the spouses, the community property as such is liable only for the payment of community debts, and cannot properly be subjected to the payment of the individual indebtedness of either spouse; that creditors of either spouse must have recourse to the share of such spouse in the "net remainder" of the community property after liquidation of the conjugal partnership and not to the community property itself in the enforced collection of their claim; that the surviving spouse has no right to dispose of the community property or any part of it by sale or mortgage until the conjugal partnership has been liquidated, except when it may be necessary for the payment of community debts, and in that event, the law contemplates and authorizes such sales with judicial sanction in the manner and form prescribed in articles 1424, 1426, and 1428 of the Civil Code; and that under the old system of registration of real estate, registration might be denied to sales or mortgages of community property when such registration was necessary to perfect the sale or mortgage and it affirmatively appeared from the records that a husband-administrator was attempting after the death of his wife and before the conjugal partnership had been liquidated, to dispose of registered real estate constituting a part of the community property, without either judicial sanction or the consent of the interested parties.

While substantial modifications of the doctrine and the rules touching the disposition of conjugal property on the death of one of the spouses have necessarily resulted from the abrogation of the Spanish Code of Civil Procedure and the enactment of the new Code of 1901 (Act No. 190) it is not our intention and it is not necessary for the disposition of the case at bar to challenge the general doctrine announced by the Spanish courts and text-writers, as indicated in the foregoing citations of authority. We raise no question as to the legal duty resting upon the husband to make the inventory and liquidate the conjugal property without delay upon the death of his wife, in the absence of an agreement by all parties in interest relieving him of that duty. It is not necessary in this case and it was not necessary in the Nable Jose case (*supra*) to go further than to rule that in the absence of fraud and collusion, sales or mortgages of community property, either real or personal, made by a husband-administrator clothed with the insignia of ownership and in whose name the property is held, after the death of his spouse, are valid and effective, the purchaser being entitled to presume that such sales or mortgages are executed for the purpose of securing money to pay community debts and that the vendor has authority to dispose of the property thus administered by him and held in his name—but all this without prejudice to the right of any interested person to hold the husband responsible for any loss or damage resulting from his failure to liquidate the conjugal partnership and secure judicial sanction for the disposition of the property pending such liquidation, or to compel the husband by appropriate proceedings to proceed to the liquidation of the conjugal partnership in accordance with law.

We conclude that the judgment entered in the court below should be affirmed with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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