

WILLIAM AHERN, PETITIONER AND APPELLANT, VS. TORIBIO JULIAN, OBJECTOR AND APPELLEE. PERCY A. HILL, ASSIGNEE.

G.R. No. 13952. February 06, 1919

Ponente: CARSON, J.

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CARSON, J.:

The schedule filed by the petitioner in these voluntary insolvency proceedings sets forth that he has no property, estate or effects of any kind whatsoever, other than his personal clothing valued at P50 and claimed as exempt from execution; and a claim of P186.67 due from Sofronia Garcia de Ahern, his wife, for services rendered as manager of her rice mill from March 1, 1917 to March 27, 1917, the date of the filing of the petition, the amount of the salary being fixed at the rate of P200 per month.

The objector, a judgment creditor claiming the sum of P3,578.80 under his judgment, opposed the discharge of the petitioner, on the ground that a certain parcel of land, registered in the name of the wife of the petitioner together with a rice mill constructed thereon and the business conducted in the mill in the name of the wife of the petitioner, are in fact bienes gananciales (marital community property), and as such subject to the payment of the husband's debts, and therefore improperly omitted from the schedule filed by him at the institution of these proceedings.

The material undisputed facts as disclosed by the record are as follows:

"The petitioner, Ahern, was married in the year 1901. For several years prior to the year 1913 Ahern was engaged in the garage business in Manila. The business did not seem to prosper, and in that year it was taken over by one of the creditors, the International Banking Corporation. At that time Ahern's judgment indebtedness amounted to some ten or twelve thousand pesos, including the judgment of indebtedness to the objector in these proceedings. Most of this indebtedness was reduced to judgment prior to April 1, 1912.

"In the year 1910 a tract of land near Manila was purchased by, and registered in the name of Ahern's wife. This tract was sold some time thereafter, the registered transfer of title bearing date of May 4, 1914. Ahern and his wife declare that the proceeds of this land were turned over to Ahern by his wife, and by him used to pay various unspecified debts arising out of the garage business.

"Some time in the year 1913 and a few months after the garage business had been turned over to the International Banking Corporation on account of its claims against Ahern, Ahern and his wife went to Cabanatuan, in the Province of Nueva Ecija, where a tract of land was bought by Ahern's wife for the sum of P13,031 and registered in her name. Upon this tract of land a rice mill was constructed in which rice-cleaning machinery was installed, the total amount invested in the mill, the machinery and the land upon which the mill was constructed being some P60,000 as appears from the testimony of Mrs. Ahern. The mill was erected and the milling business carried on under the management of the husband, acting as the agent for his wife; and it is claimed by both husband and wife that the enterprise has not proven to be a profitable one."

Counsel for the objector insists, and we think correctly, that the facts thus related raise the presumption, under the provisions of article 1407 of the Civil Code that the land in Cabanatuan, the mill constructed thereon and the

milling business conducted there are all marital community property of the petitioner and his wife and as such subject to the payment of his debts.

Counsel for the petitioner does not challenge the correctness of this contention of the objector but insists that the evidence of record tending to show that all this property was the separate property of Ahern's wife, and not communal property, is sufficient to overcome the presumption to the contrary under the provisions of the code. The only evidence in the record in support of this contention of the counsel for petitioner is the unsupported and uncorroborated testimony of the husband and wife, and we agree with the trial judge that this testimony is so inherently unreasonable and improbable, and so lacking in corroborative written evidence which it might be anticipated would be produced in the event that this testimony were true, that it is wholly insufficient to overcome the presumption to the contrary under the express terms of the Civil Code.

The husband and wife testified that the money with which the tract of land in Manila was purchased in the year 1910 was 'her own money' but submitted no evidence tending to show from whom she received it or by what means she acquired it. This property was sold some few years after it was purchased; neither the date of sale nor the price for which it was sold appear of record though the registered transfer of title bears the date of May 4, 1914, after the garage business had been sold and about the time the rice mill was constructed and the milling business inaugurated. Both the husband and the wife say 'the proceeds of the sale of the land in Manila were turned over to the husband and used by him for the payment of certain unspecified obligations incurred in connection with the garage business, but if this evidence were true, it would seem that the tract must have been sold before, the garage business was taken over by the bank and before the land in Cabanatuan was purchased.

It is not necessary, however, to inquire too closely as to the precise date of this transaction, though the course of events seem to justify the inference that the proceeds of the sale of this land were in fact invested in the milling business at Cabanatuan.

In explanation of the source of the funds used in purchasing the land and constructing the mill in Cabanatuan, both the husband and wife testified that an aunt of the wife gave her ₱25,000 with which to go into this business, and that the rest of the money that was needed in the construction of the rice mill and the conduct of the business was borrowed from various individuals by the wife on her personal account. No written or documentary evidence was introduced in support of this alleged loan, or gift, or advance of P25,000; and the testimony as to the conditions under which it was loaned, donated or advanced is, in the highest degree, unsatisfactory.

To overcome the statutory presumption that all of this property, acquired during the marriage of petitioner and his wife is communal property (*bienes gananciales*) the burden of proof clearly rested on the petitioner. If the facts are contrary to that legal presumption, the petitioner and his wife, better than any one else, should be able to establish these facts by the production of satisfactory evidence. Doubt and uncertainty may well be anticipated on a question of this kind where the interests of the husband and wife are opposed to each other, or in cases wherein the lapse of time, or the death of one or both of the spouses may have rendered the production of affirmative evidence difficult or impossible. But in a case such as that now under consideration, wherein both husband and wife appear to be interested in establishing separate ownership in the wife; wherein both spouses are living; and wherein the facts to be established are of comparatively recent origin, we are justified in requiring clear, satisfactory and convincing proof in rebuttal of the statutory presumption, when the interests of third persons would be materially prejudiced by our failure to give the presumption its full force and effect.

Petitioner and his wife would have the court believe that this money was turned over to the wife, at a time when the husband was heavily involved in debt in the conduct of his garage business, without any record whatever of the transaction having been made in writing, and apparently without any formal or express agreement or

understanding as to the condition under which it was advanced. The testimony of the wife is to the effect that her aunt advanced the money on some sort of an understanding that the wife and aunt would engage in the rice-milling business as partners, the aunt as the capitalist partner and the wife as the industrial partner. Her account of the transaction, however, is so vague and indefinite as to put the whole matter in doubt; and the improbability of the truth of her testimony is emphasized by the testimony of the husband from which it would appear that the money was advanced by way of a gift or a loan; by the circumstances surrounding the purchase of the land on which the mill was built; by the measures adopted for the raising of funds to complete the building and install the machinery; and by the conduct of the business after the mill was completed.

The property records of Nueva Ecija disclose that the land upon which the mill was constructed was bought by, and registered in the name of the wife; and that a mortgage was executed by the wife upon this land without any reference to the existence of the aunt's alleged interest in the land or the rice mill erected or in course of erection upon it. It appears, furthermore, that the wife did in fact borrow considerable sums of money, as she avers on her own personal account, to complete the mill and to carry on the rice-milling business. The husband superintended the erection of the mill, and managed the rice-milling business, and did so, as it is alleged, as the agent of his wife. And yet it nowhere appears that at any time throughout the course of these transactions did the aunt intervene in her capacity as capitalist partner, or demand or receive accounting or participation in the business. The aunt, herself, was not called to testify and the only evidence in the record as to her intervention in the affairs of her niece is the vague, uncertain and highly unsatisfactory oral testimony of the petitioner and his wife as to her munificence.

If the money was advanced by way of a loan or a gift we might fairly expect that some written evidence of the transaction would have been made, and preserved, and submitted in evidence in the course of the proceedings in the court below; and if the money was advanced as capital to be invested in so considerable an enterprise as the Cabanatuan Rice Mill would seem to have been, there can be little doubt that the interest of the capitalist partner would be evidenced by documentary records of some sort which would have been offered in evidence in support of the contentions of the petitioner.

In discussing the contentions of counsel as to the character and weight of the evidence necessary to overcome a presumption in the case of *Alpuesto vs. Perez Pastor and Roa* (38 Phil. Rep., 785) we said:

"Where the law imposes the burden of proof upon a party to establish the bona fides of such a transaction, as this, against a presumption of fraud, it is his duty, if he expects to be believed, to lay before the court, so far as is within his power, a complete and true revelation of all circumstances surrounding the affair; and where he suppresses evidence or negligently fails to call a witness supposed to know the facts, it may be presumed that the testimony of the witness, if adduced, would be unfavorable,"

We agree with the trial judge that the evidence submitted in the case at bar is wholly insufficient to overcome the statutory presumption as to the communal character of the Cabanatuan property held in the name of the wife of the petitioner; and we think that the claim that that property was acquired by the wife with money furnished to her, individually, by her aunt, may be dismissed in the language of the case just cited in dealing with a somewhat similar claim advanced in that case as follows:

"The courts must be excused if they refused to listen with childish credulity to pretensions of this character." In view of our disposition of petitioner's contentions based on the alleged advance of P25,000 to his wife by her aunt, we deem it unnecessary to stop to inquire the effect of the alleged investment of funds, borrowed from other sources, in the construction and operation of the rice-mill. It must be very clear, nevertheless, that even if it were conceded that the aunt had in fact advanced the P25,000 to petitioner's wife, as alleged, it would still be necessary to consider the effect of the investment of considerable sums borrowed from other sources in the

enterprise.

We find nothing in the record which would justify us in disturbing the findings of the trial judge; and we agree with him that the petitioner should be required to include the Cabanatuan property in his schedule of property subject to the payment of his debts. It does not appear, however, that the petitioner's wife has been made a party to these proceedings, and we are of opinion that the order directing the inclusion of the Cabanatuan property in the petitioner's schedule should be made, without prejudice to the right of the wife to appear in the proceedings in her own behalf to defend her interests, if any she have.

Ten days hereafter let judgment be entered affirming the order entered in the court below with the costs of this instance against the appellant, and five days thereafter let the record be returned to the court below, for further proceedings in accordance with law, after due notice has been served upon the wife of the petitioner to appear and defend her interests in the premises, it affirmatively appearing from the record that she lays claims of ownership to an interest in the property ordered included in the petitioner's schedule. So, ordered.

Arellano C.J., Torres, Araullo, Street, Avanceña, and Moir, JJ., concur.

Judgment affirmed.

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