

JOSEFA PATRICIO, PLAINTIFF AND APPELLANT, VS.. CLARO PATRICIO, DEFENDANT AND APPELLANT.

G.R. No. 24314. February 19, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This action is for the liquidation and partition of the property belonging to the conjugal partnership of the spouses Claro Patricio and Cecilia Rivera who died on January 3, 1916.

In the year 1914, the deceased Cecilia Rivera had commenced in the Court of First Instance of Manila an action for the liquidation and separation of the property belonging to her and to her husband, the herein defendant, as ganancial property; but that action was dismissed in 1916 on account of the death of the said Cecilia Rivera.

In 1923, Josefa Patricio, the only surviving child of the spouses, Rivera and Patricio, brought this action. She died on July 5, 1924, and was substituted by her minor children Pablo, Gerundia, Carmen, and Rosa Rivera and Rosario Patricio, all represented by their guardian ad litem appointed by the court; so that the question now pending is between grandchildren and grandfather.

On January 8, 1924, the defendant made the liquidation, as ordered by the lower court, from which it appeared that there was a balance of P384.75 in favor of the defendant. This liquidation having been objected to by the plaintiffs, the parties introduced their evidence as to the conjugal property that should have been included in the liquidation and the court rendered judgment sentencing the defendant to pay the plaintiffs the sum of P12,868 with legal interest thereon from January 6, 1923, the date of the filing of the complaint, plus the costs.

From this judgment both parties appealed. Plaintiffs claim that the total value of the conjugal partnership property in question exceeds P148,340.75; on the other hand the defendant maintains that at the time of the dissolution of the conjugal partnership between him and his deceased spouse Cecilia Rivera there did not even exist the sum of P26,921.69 left, as stated in the liquidation made by the lower court in its judgment.

The trial court, in discussing the evidence presented in this case, says in part in its decision the following: "The great amount of oral and documentary evidence introduced by both parties during the trial of this case shows that the defendant acquired many valuable properties, immovables and cash, after becoming a widower and his marriage with the deceased Cecilia Rivera having been dissolved. Inasmuch as the plaintiffs have not succeeded in proving that said properties have been acquired with money belonging to the conjugal partnership, the court cannot hold that such properties belonged to the conjugal partnership nor. that the plaintiffs are entitled thereto."

We agree with this holding of the trial court, except as to the properties to be later enumerated, which must belong to the conjugal partnership formed by the deceased Cecilia Rivera and the defendant.

The liquidation of the conjugal partnership property must be made in accordance with the provisions of articles 1418 to 1431 of the Civil Code. (Tabotabovs.. Molero, 22 Phil., 418.)

In the case of *De la Rama vs. De la Rama* (7 Phil., 745), this court held:

"In liquidating a conjugal partnership an inventory of the actual property possessed by the spouses at the time of the dissolution must be made. It is error to determine the amount to be divided by adding up the profits which had been made in each year of its continuance and saying that the result is that amount."

Under the above cited doctrine the amounts mentioned in the appealed judgment, to wit, the P6,000 deposited by the defendant with the Bank of the Philippine Islands on January 20, 1913; the P3,000 deposited by the defendant on November 29, 1915, with the same bank; and the P13,621.69 deposited by the defendant in the Monte de Piedad on several occasions from January 1, 1905, to January 1, 1916, should not be included in the liquidation for the reason that they did not exist at the time of the dissolution of the partnership, which occurred on January 3, 1916. It is true that the said sums of P6,000 and P3,000 were deposited by the defendant with the Bank of the Philippine Islands on the dates Aforementioned, but it appears that said sums were withdrawn from that Bank by the said defendant in the months of January and February, 1914. It is also true that the defendant at different times has made deposits with the Monte de Piedad, but from the evidence of the plaintiffs, it appears that on December 31, 1915, the defendant had only a balance of P16.40 in the said Monte de Piedad, as on previous occasions he had made several withdrawals; so that the amount of P13,621.69 stated in the judgment should not be included in the liquidation.

As to the amount of P3,500, it appears from Exhibit G, that the defendant withdrew this sum from his account in the Bank of the Philippine Islands and placed it in the name of Asuncion Bautista y de Leon on February 24, 1914. This transfer of the amount of P3,500 to Asuncion Bautista, who is now the defendant's second wife, made four months before the filing of the original complaint for liquidation and partition of the conjugal property in question, is considered by us as made in fraud of the defendant's first wife, who under the law was entitled to one-half of the conjugal property, for as alleged in the complaint of 1914 at folio 263, second part of the record, the said defendant was at that time living with the aforesaid Asuncion Bautista, having abandoned his first wife Cecilia Rivera. This amount of P3,500 must also be included in the liquidation of the said conjugal property.

Plaintiffs maintain that the cabaret known as La Casta Susana which was sold by the defendant to the National Amusement Co., Inc., for the price of P36,000 belongs also to the conjugal partnership of Cecilia Hivera and Claro Patricio. The parties introduced evidence about this point. Plaintiffs presented Exhibit Q, which contains the deed of purchase and sale of January 7, 1920, the deed of sale executed by Claro Patricio on November 8, 1919, and the testimony of Claro Patricio. On the other hand the defendant introduced Exhibits, 9, 10, 10-A and 11 to 15 inclusive with which he pretends to prove that the said cabaret was owned by Monico Salazar. We have carefully examined all this evidence and our conclusion is that the said cabaret known as La Costa Susana was the property of the defendant since the year 1915; wherefore it belongs to the conjugal partnership of himself and the predecessor in interest of the plaintiffs. In the deed of sale which he executed in favor of the National Amusement Co., Inc., the defendant clearly and unconditionally stated that he possessed the building covered by the sale, and that it belonged to him since 1915, when he had it built, according to the testimony that the very defendant gave in court in a case concerning the rental of the furniture existing in the said cabaret. After having admitted in court that he was the owner of said cabaret which he had constructed in 1915, he cannot now be heard to contradict his own testimony, by saying that the said cabaret belongs to Monico Salazar.

The defendant having admitted that he was the owner of the cabaret since 1915, the evidence presented by him to the effect that the said cabaret now belongs to Monico Salazar cannot have any weight so as to destroy the evidentiary value of his admission, which writers call the queen of evidence. It appearing from the record that he has sold to the National Amusement Co., Inc., the cabaret in question for the sum of P36,000, this amount must be included in the liquidation as a part of the property of the conjugal partnership acquired by him and the deceased

Cecilia Rivera.

Plaintiffs also claim that the value of the furniture in the cabaret belonged, at the time of the sale, to the conjugal partnership in question. For the same reason that the defendant has admitted that he was the owner of such furniture since 1915, and that the value thereof is P4,000, this amount must be included in the liquidation now in question. (See testimony of defendant attached to Exhibit Q.)

Another item that should be included in the liquidation is the amount of P800, the price of property No. 547 on Calle Sevilla, which amount is mentioned in the liquidation Exhibit 4 filed by the defendant and which may be seen at page 71 of the first part of the record. It, therefore, results from the foregoing that the amounts that must be included in the liquidation of the partnership of Cecilia Rivera and the defendant are: P800, P3,500 and P36,000, that is, a total of P40,300. Deducting from this amount the sum of P1,184.75, being' the expenses of support and education of the mother of the plaintiffs, Josefa Patricio, as shown by Exhibit 4, and also the amount of P2,000 that the defendant paid to the broker for selling the Costa Susana Cabaret, there remains a balance of P37,115.25, one-half of which or P18,557.62 belongs to the plaintiffs, and the other half to the defendant.

For all of the foregoing the judgment appealed from is affirmed in so far as is in harmony, and reversed in so far as in conflict, herewith, and it is ordered that the defendant Claro Patricio be and is hereby sentenced to pay plaintiffs the amount of P18,557.62 with legal interest thereon from the filing of the complaint without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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