

JUANA AGAPITO, PLAINTIFF AND APPELLEE, VS. CANDIDO MOLO, DEFENDANT AND APPELLANT.

G.R. No. 27120. September 28, 1927

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

Candido Molo appeals to this court from a judgment of the Court of First Instance of Manila, making permanent the preliminary injunction issued in the case and empowering the plaintiff to retain all that remains of the rents produced by her paraphernal property after deducting therefrom all the expenses of administration, in lieu of the maintenance which she is entitled to receive from the defendant, granting said plaintiff exclusive authority to administer and manage all of her said property without the intervention of the defendant.

In support of his appeal, the appellant assigns three alleged errors as committed by the trial court in its judgment, to wit: (1) The trial court erred in issuing the preliminary injunction prayed for by the appellee; (2) the trial court erred in dismissing the cross-complaint of the appellant; and (3) the trial court erred in denying the motion for a new trial filed by the appellant.

There is no doubt that the property here in question is the paraphernal property of the plaintiff-appellee, and, in accordance with the provisions of article 1384 of the Civil Code, she is entitled to administer said property, not having delivered the same to her husband, in accordance with the requirements of the law, for its management. The fact that, according to article 1401 of the Civil Code, the fruits, income or interest received or accrued during the marriage, derived from the paraphernal property belongs to the conjugal partnership, and that in accordance with article 1412 of the same Code, the husband is the administrator of the conjugal property, does not authorize him to collect and receive said income, because it is conjugal property only when it is not necessary to defray the administration expenses, and constitutes net income. Inasmuch as the plaintiff is entitled to receive maintenance from the defendant and this maintenance must be gotten from the personal property of the husband or from the conjugal property, her retention of the net remainder of the income from the rents, after deducting the administration expenses, not being excessive, constitutes the alimony that the husband must pay his wife, notwithstanding that it appears they are living apart. (*Goitia vs. Campos Rueda*, 35 Phil., 252.)

By virtue of the above and finding no error of fact or of law in the judgment appealed from, the same is affirmed in all its parts, with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

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