

QUINTILLANA SAMSON, PETITIONER AND APPELLEE, VS. MANUEL CARRATALA, RESPONDENT AND APPELLANT.*G.R. No. 27143. September 10, 1927*

Ponente: JOHNS, J.

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May 18, 1926, Quintillana Samson presented a petition in the Court of First Instance of Manila, alleging that she was married and a resident of the City of Manila. That she has lived separate and apart from her husband for more than fifteen years, and that she was convicted of the crime of bigamy on July 20, 1922. That there is no chance for a reconciliation between she and her husband, because outside of her conviction of bigamy, she has had a son during her second marriage, which was declared illegal, and that her husband is a leper, who at first went abroad and afterwards returned and was confined in the San Lazaro Hospital. That not long ago, she was the exclusive owner, inherited from her deceased parents, of a lot with its improvements in the City of Cebu more particularly described in the original certificate of title No. 681 of the cadastral survey of that province. That a few days ago the petitioner sold and conveyed her paraphernal property to Vicente Sotto for P12,340, for which she executed the corresponding deed of sale. That the register of deeds of Cebu refused to issue the new title to the purchaser upon the ground that it did not appear that she had the marital consent of her husband. That being separated from her husband, who is a leper, and without authority to dispose of her property, to contract obligations or to make contracts, it is impossible for her to live, unless she is obliged to depend upon public charity or stay in an asylum. She prays that the court give her a judicial license to dispose of her own property and to make contracts without marital consent.

The first appearance of the husband, Manuel Carratala, was by the filing of a demurrer on the ground that "there is another petition pending between the same parties for the same cause in the Court of First Instance of Cebu," which was apparently overruled, and to which no exception was taken, and judgment was rendered for the petitioner.

July 2, 1926, the husband filed a motion for reconsideration upon the following grounds:

1. That the case was tried without giving the husband an opportunity to be heard;
2. That the decision was rendered without waiting for him to demur or file his answer;
3. That the case was originally set for trial on May 28 and June 4, 1926, which gave the husband only three or four days to prepare for trial, while he was a resident in the City of Cebu, and the case was pending in the Court of First Instance of Manila;
4. That at the time of the filing of the petition, she knew that there was another petition for the same thing pending in the Court of First Instance of Cebu;
5. That although the petitioner filed a motion to have the Court of First Instance of Cebu dismiss her original

petition, it was not filed after the present petition was presented in the Court of First Instance of Manila;

6. That the petitioner went to Manila for the sole purpose of obtaining relief in the court there that she could not obtain in the Court of First Instance of Cebu;

7. That the alleged residence of the petitioner is false and fictitious;

8. That such alleged residence is the law office of her attorney Vicente Sotto, who is the real petitioner behind the scene in this case;

9. That she has no other property, and that the alleged deed was without consideration, and the only person that would reap any benefit from the granting of the petition would be Vicente Sotto;

10. That in case No. 6528 pending in the Court of First Instance of Cebu, a preliminary injunction had been issued and was then in force against the petitioner, Vicente Sotto, and the register of deeds, enjoining the petitioner from selling, and Vicente Sotto from taking possession of the property; and

11. That there is pending before sala No. 4 of this court, a "consulta" regarding the registration in the office of the registry of titles in Cebu of the said deed of sale in favor of Vicente Sotto, and the husband prays that in the interest of justice and equity, the court set aside its order of June 16, 1926, and that he be given an opportunity to contest the petition.

The lower court granted this petition. The husband then filed an answer, alleging and reiterating as a defense the grounds stated in his motion for reconsideration.

Testimony was taken upon such issues, and the lower court rendered judgment for the plaintiff as prayed for in her petition. On appeal the husband contends that the trial court erred:

"1. In holding that it had jurisdiction over the persons of the parties.

"2. In holding that it had jurisdiction over the subject-matter of the case.

"3. In granting the judicial authority prayed for in the petition."

JOHNS, J.:

Among other things, section 377 of the Code of Civil Procedure provides:

"The failure of a defendant to object to the venue of the action at the time of entering his appearance in the action shall be deemed a waiver on his part of all objection to the place or tribunal in which the action is brought, except in the actions referred to in the first sixteen lines of this section relating to real estate, and actions against executors, administrators, and guardians, and for the distribution of estates and payment of legacies."

It is very apparent that at the time the petitioner filed her petition in the instant case in the Court of First Instance of Manila, she was not a resident of Manila, within the meaning of that section, and that the filing of such petition was not only a fraud upon the Court of First Instance of Cebu, but it was a fraud upon the Court of First Instance of Manila. If that question had been timely raised and presented by a proper motion, it would have to be sustained. That was not done. The first appearance which the defendant made was to file a demurrer upon the grounds stated, and no exception was taken to the overruling of that demurrer.

Later, the defendant filed an answer and went to trial on the merits, the legal effect of which was to waive the question of venue, and to give the Court of First Instance of Manila jurisdiction not only over the person of the petitioner, but the subject-matter of the petition.

It may be that, so long as a like petition for the same purpose was pending in the Court of First Instance of Cebu, the petitioner had no legal right to file another petition for the same purpose in the Court of First Instance of Manila. In any event, the ruling of the court on that question is not assigned as error, and cannot be considered on appeal. Again, such a defense is in the nature of a plea in bar, and would not go to the jurisdiction of the court.

The remaining assignment is that the court erred "in granting the judicial authority prayed for in the petition."

Among other things, article 1444 of the Civil Code provides:

"While the marriage subsists the wife, without judicial authorization, cannot alienate or encumber any real property which may have been allotted to her in case of a separation, or any real property the management of which may have been transferred to her.

"The authorization shall be granted whenever the advisability or necessity of the alienation has been proved."

In a former case between the same parties, this court held:

"A married woman cannot legally, without the permission or authorization of her husband, alienate her property or bind herself except in the cases and within the limitations established by law.

"The policy of the law forbids all dealings with a feme covert, unless conducted in the manner prescribed by statute, and it throws the risk in every case on the party that knowingly deals with her." (Carratala vs. Samson, 43 Phil., 751.)

Article 1444 comes under the provisions, and is a part of, Chapter VI, Title III, of the Civil Code, which specifically relates to the "Separation of the Property of the Spouses and its Management by the Wife during the Marriage," and is the only one cited and relied upon in the opinion of the lower court, and the briefs of opposing counsel in this court. Chapter IV, Title III, of the Civil Code, relates to "Paraphernal Property," and article 1387 of that chapter provides:

"The wife cannot alienate, encumber or mortgage the paraphernal property without the permission of the husband, or appear in court to litigate with regard to the same, unless she has been judicially authorized to do so."

In the instant case, during her marriage with the defendant, the wife inherited the property in question from her parents; hence, it is paraphernal property. For such reason, it is very probable that article 1387 is the one which governs this case.

Among others things, in its opinion, the trial court says:

"Things have reached such a point as to make it necessary to provide for a provisional remedy to the hard situation of the wife, who however guilty she may be has the right to live and to procure the necessary means for the purpose. If, for such reason, she has contracted debts and is in need of her own property, in order to pay her obligations, it is not just that she should be prevented from doing so, only because her husband, who has indeed reason for abhorring her, should refuse to give the proper marital consent, for the absence of said consent may be supplied by judicial license such as is provided in article 1444 of the Civil Code."

That finding is not sustained by the evidence. The "advisability" or "necessity" of authorizing and confirming the deed in question to Vicente Sotto has not been proved, and in truth and in fact, it appears to be against the best interest of the petitioner.

Although it is true that the husband has the sad misfortune to be a leper, yet it appears that he became one without any fault of his own after his marriage with the petitioner. He ought not to be blamed or criticised for that.

Neither is he responsible for the fact that his wife committed bigamy, or that she now has a son as a result of the bigamous marriage. That was her fault. Notwithstanding that fact, it appears from the record that the husband now has and feels an interest in the welfare of his wife, and for such reason he resists the petition.

The property in question is in Cebu, which is the legal residence of both the husband and the wife. In that situation, there is a special reason why a proceeding of this nature should be tried and decided where the parties reside and the property is situate.

In the instant case, it follows that, under the provisions of either article 1387 or article 1444 of the Civil Code, the judgment of the lower court is not sustained by the evidence.

The judgment of the lower court is reversed and the complaint dismissed, with costs in favor of the appellant. So ordered.

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

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