

JUAN SUMULONG, ADMINISTRATOR AND APPELLANT, VS. CONCEPCION CEMBRANO, OPPONENT AND APPELLEE.

G.R. No. 27879. March 15, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

A scheme for the liquidation of the conjugal partnership of the deceased Trinidad H. Pardo de Tavera and his surviving spouse Concepcion Cembrano, having been presented by the administrator of the estate, to the Court of First Instance of Manila, the latter, on March 15, 1927, decreed the following:

"Wherefore, the inventories filed by the administrator are approved after the correction of the clerical error in item 11 of the first inventory substituting 50 for 30 so that 50 obligations of the Ice Factory appear instead of 30, and also the accounts rendered by the administrator to date; the administrator's motion of November 18, 1926, to include the fruits and rents of the property at Nos. 77 and 33 San Vicente St., Binondo, Manila, is denied; the scheme for the liquidation of the conjugal partnerships-presented by the administrator is disapproved and he is ordered to liquidate the conjugal partnership in the manner indicated herein, in pursuance whereof, he shall present the due liquidation and partition of the conjugal property at the time of the decedent's decease within the period of fifteen days, including therein the fruits or income of said property from his death, and the collation which each of the afore mentioned children is bound to make."

Dissatisfied with said decree, the administrator appealed therefrom, alleging that the trial court erred:

"(1) In holding that Concepcion Cembrano, Tavera's widow, was entitled to an allowance for subsistence from the conjugal partnership from 1913 to 1925, in spite of the fact that during that time she lived away from the conjugal dwelling against her husband's will and without judicial sanction.

"(2) In holding that such allowance amounted to eight hundred pesos (P800) a month.

"(3) In holding that during said separation the late husband, Dr. T. H. Pardo de Tavera, managed his wife's paraphernal property and ordered the payment of an allowance for subsistence to her.

"(4) In failing to find that any rigjit the wife may have had to a claim for support from the conjugal partnership has already prescribed.

"(5) In failing to hold that the rents from the wife's paraphernal property received by her during the separation must be returned to the conjugal partnership.

"(6) In failing to hold that the rents from said paraphernal property, even after the husband's death, should continue to go to the conjugal partnership until the liquidation is finally effected.

"(7) In failing to require Concepcion Cemibrano to reimburse the conjugal partnership in the sum of P3,660.71, which was delivered to her by Jose V. Ramirez from the partnership funds, in excess of the income of her paraphernal property.

"(8) In holding that Dr. Tavera's children, Carlos, Alfredo, and Carman, must reimburse the conjugal

partnership, various sums delivered to them by the said decedent, totalling P31,952.97.

"(9) In disapproving the liquidation presented by the appellant administrator.

"(10) In issuing its appealed order of March 15, 1927, setting a new basis for the liquidation, and awarding Concepcion Cembrano a participation in the partnership property greater than that given to the husband or heirs by P53,313.77."

In 1884 Dr. Trinidad H. Pardo de Tavera and Concepcion Cembrano contracted marriage, each having property. Three children were born of this union Carlos, Alfredo, and Carmen. During a part of Doctor Tavera's life, his wife left the conjugal roof, but the regime of the legal conjugal partnership to which the spouses had submitted was not altered, nor was there a separation of property. With the marriage subsisting, he died on March 26, 1925, survived by her and their three children.

The first question raised is whether while living, as we have said, away from the conjugal roof, the wife was entitled to support chargeable to the conjugal partnership.

Paragraph 5, article 1408 of the Civil Code says that the support of the family is chargeable to the conjugal partnership. Here is what Manresa says in explaining the reason for this provision, its scope and those included in this family support.

"The support of the family includes the satisfaction of all its needs, the duty to supply food or sustenance, dwelling, clothing and medical attendance as provided in article 142. Mutual help and assistance is as much a duty of and between the spouses, as it is a duty of parents to support and educate their children. It is but logical and natural that the products of the labor and the fruits of the property, of the conjugal partnership be applied to the fulfillment of these obligations.

"This is the most sacred and important of all the obligations imposed in article 1408. The others may some times fail, this one, never. It does not matter that the children may or may not have property the usufruct where of may appertain to the parents, just as it matters not whether one of the spouses has any private property. The duty to support the family and provide for the education of the children is absolutely indispensable and is imposed upon the parents with overwhelming reality." (Italics ours.) (9 Manresa, Civil Code, 627, 628, Second Edition.)

While the marriage and the legal conjugal partnership subsist, the support of the spouses is a charge against the partnership, "the most sacred and important of all the obligations imposed in article 1408," to use Manresa's language.

The rights established in said article of the Civil Code must be acknowledged and respected, unless the law provides otherwise.

The mere fact of living away from the conjugal roof which cannot be presumed culpable when, as in the instant case, there is no evidence of any fault or guilt on the part of the one who so lived, does not constitute a reason for annulling the right to support granted in the aforementioned article 1408 of the Civil Code.

Even with respect to the support which the spouses owe each other, provided elsewhere in the said Code (art. 143), the fact of living apart, when it is not proved to be culpable does not extinguish the obligation to support (art. 152, do., and correlative articles).

But we are not here concerned with the personal obligation of one spouse to support the other. We are concerned with a wife's right enshrined by article 1408 of the Civil Code to receive support chargeable to the conjugal partnership while the marriage subsists and the legal regime of the conjugal partnership prevails.

It is an undisputed fact of record that while, during her husband's lifetime, Concepcion Cembrano did not live under the conjugal roof their marriage subsisted and the legal regime of the conjugal partnership prevailed.

The fact of not living under the conjugal roof is not one of the cases where the law relieves the conjugal partnership from the obligations imposed in article 1408 of the Civil Code, as may be seen from an examination of the different provisions contained in said fourth section (where the said art. 1408 is), Chapter V, Title III, Book IV of the Civil Code, which deals with charges and obligations of the conjugal partnership, and includes the articles from 1408 to 1411, inclusive.

Doctor Tavera must so have understood it when, at the time that his wife was already living away from their conjugal dwelling, he himself, as shown by the record, willed that a monthly allowance be paid to her, as in fact it was paid.

It is true that at first this monthly allowance was paid out of the appellee's paraphernal property but when those funds ran short, the other funds under administration were drawn upon, "to continue giving the monthly sum," as Mr. Ramirez said (p. 38, t. s. n.). So much so that, as the management of the paraphernal property was carried in a separate account, a time came when said account showed a debit balance, which indicates Doctor Tavera's resolute intention that his wife's monthly allowance should never fail. The fact that the amount of the allowance was sometimes reduced by order of Doctor Tavera in order the better to regulate the management of the conjugal partnership, does not in the least constitute a proof against his resolution carried into effect to pay Concepcion Cembrano a monthly allowance for the latter's expenses.

This act of Doctor Tavera's constitutes a recognition of the appellee's right to receive support chargeable to the conjugal partnership, and as such is a bar to the prescription alleged by the appellant (art. 1948, Civil Code; sec. 50, Code of Civil Procedure). Besides, in regard to the argument of prescription, it must be considered, as counsel for Concepcion Cembrano observes, this is not, an action for support not paid, but for the compensation thereof with the amounts paid to her as fruits and rents of her paraphernal property.

It has not been proved that Doctor Tavera discontinued managing his wife's paraphernal property. The terms of document Exhibit A do not lead to this conclusion. The fact that a separate account was opened for said property at Doctor Tavera's direction in 1915, does not signify that he stopped managing it.

The lower court did not err, in our opinion, when it held that Concepcion Cembrano was entitled to receive support from the conjugal partnership from the year 1913 to the year 1925. And considering the social position of said family and the amount of the funds of the conjugal partnership, we find no sufficient reason to change the amount fixed by the trial court as a reasonable monthly allowance for the maintenance, dwelling, clothing and medical attendance of the appellee.

Passing now to the sums advanced to the three children of said marriage, Carlos, Alfredo, and Carmen it appears from summaries K, L, and M admitted as evidence that they are found in the private account of the late Doctor Tavera. As is pointed out in the appellant's brief (p. 61.) it does not appear that said sums were taken from the conjugal partnership funds, and that according to said summaries, we must infer that the aforementioned sums were taken, not from the partnership property of the spouses, but from the private funds of the said deceased.

Therefore, these three children cannot be required to bring into collation the respective sums they received which are detailed in said summaries Exhibits E, L, and M.

We find no merit in the appellant's assignments of error except in the eighth, which we find to be well taken, referring to the sums received from the deceased by his three children.

Wherefore, with the modification of the order appealed from that the three children shall not be required to bring the P31,952.97 referred to in said judgment into collation, the same is hereby affirmed in all other respects, without costs. So ordered.

Johnson, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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