

CIPRIANA GARCIA, PLAINTIFF AND APPELLANT, VS. ISABELO SANTIAGO AND ALEJO SANTIAGO, DEFENDANTS AND APPELLEES.*G.R. No. 28904. December 29, 1928*

Ponente: OSTRAND, J.

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This is an appeal by the plaintiff from a judgment of the Court of First Instance of Nueva Ecija dismissing the complaint.

In her complaint the plaintiff alleges that she was married to the defendant Isabelo Santiago on April 8, 1910, and that from that date they lived together as husband and wife, until continued family dissensions compelled her to leave the conjugal dwelling on February 3, 1925; that defendant Alejo Santiago is a son of Isabelo Santiago by his first wife, and Prisca Aurelio is a daughter of plaintiff by her first husband; that said Alejo Santiago seduced Prisca Aurelio, and the latter gave birth to a child; and that the other defendant Isabelo Santiago, instead of seeing to the vindication of the honor of plaintiff's daughter by requiring his son to marry her, has refused to have anything to do with the matter, thus seemingly countenancing the illicit relations between them; that with a view to favoring materially the said Alejo Santiago and fostering his whims and caprices, defendant Isabelo Santiago has been conveying, and is attempting to convey, to said Alejo Santiago property belonging to their conjugal partnership, to the damage and prejudice of plaintiff's rights; that, among the property that defendant has conveyed or is attempting to convey to Alejo Santiago, the lands specifically described in the complaint are the most important ones, which, with others, had been acquired by plaintiff and defendant Isabelo Santiago during their married life with money belonging to the conjugal partnership, and with the products and fruits of the property of the conjugal partnership, or through the industry of the two; that said property produces annually around the neighborhood of 4,500 cavanese of palay at P4 per cavan; that by reason of the attitude of defendant Isabelo Santiago, respecting the illicit relations of his son and Prisca Aurelio, and his fraudulent acts conveying to said Alejo Santiago property belonging to the conjugal partnership, plaintiff and Isabelo Santiago have had several discussions and quarrels, which culminated in their separation on February 3, 1925, which separation became necessary in order to avoid personal violence; that notwithstanding plaintiff's repeated demands, defendant Isabelo Santiago has continually refused to provide for her support, and plaintiff could not live in their conjugal dwelling, because of the illicit relations between Alejo Santiago and Prisca Aurelio, countenanced by the other defendant Isabelo Santiago; that taking into consideration the actual financial conditions of the conjugal partnership, plaintiff is entitled to a monthly pension of P500 pendente lite; and that in the meanwhile, the court should restrain defendant Isabelo Santiago from conveying or attempting to convey any property of the conjugal partnership; that defendant Isabelo Santiago has publicly maintained illicit relations with a woman by the name of Geronima Yap; and that by said immoral conduct and acts, defendant Isabelo Santiago has shown himself unfit to administer the property of the conjugal partnership, and the court should therefore order that its administration be placed in the hands of plaintiff. The defendants' answer to the complaint was a general denial.

The appellant makes the following assignments of error:

- (1) The court erred in declaring her separation from the defendant Isabelo Santiago unjustified.
- (2) The court erred in dissolving the preliminary injunction and refusing to set aside the transfer of title made by Isabelo Santiago in favor of Alejo Santiago.
- (3) The court erred in not granting the plaintiff maintenance in the sum of P500 monthly.
- (4) The court erred in not granting the plaintiff the right to administer the conjugal property.
- (5) The court erred in not granting the other remedies prayed for in the complaint.

The second and fourth assignments of error are entirely without merit. The plaintiff has failed to prove that the property conveyed to Alejo Santiago is community property; on the contrary, it is shown by documentary evidence that the land was acquired by Isabelo Santiago previously to his marriage to the plaintiff. Neither can we find any sufficient reason for depriving the husband of his right to administer such conjugal property as may exist.

The first and third assignments of error deserve some consideration. It clearly appears that the spouses led a rather stormy life subsequent to the dishonor of the plaintiff's daughter, Prisca, and that quarrels were frequent. In the last of these quarrels, the husband, according to the plaintiff's testimony, went so far as to order her to leave his house and threatened to illtreat her if she returned. It also appears that, aside from the quarrels, she had very unpleasant experiences in other respects. Her young daughter was, and still is, under her care, and her assertion that her husband's son was the cause of her daughter's pregnancy is probably not unfounded. It requires no stretch of the imagination to conclude that to keep the two young people under the same roof with the opportunity to continue their illicit relations would create a very embarrassing situation for the girl's mother.

Taking into consideration the facts stated, we do not think that the plaintiff's separation from the husband is unjustified. Ordinarily, it is not the fault of one that two quarrel, and, in all probability, the plaintiff is not free from blame, but she was virtually driven out of their home by her husband and threatened with violence if she should return. Under these circumstances, to compel the plaintiff to cohabit with her husband can only lead to further quarrels and would probably be unfortunate for both parties. The separation therefore seems necessary.

As to the plaintiff's maintenance allowance, it is evident that the sum of P500 monthly is much too large and that an allowance of P50 per month is all that ought be granted at present.

The fifth assignment of error relates principally to the plaintiff's prayer for an allowance of attorney's fees. Under the circumstances of the case, we do not think that the court below erred in refusing to grant such allowance.

The judgment appealed from is therefore modified, and it is ordered that the defendant, Isabelo Santiago, pay to the plaintiff the sum of P50 per month for her maintenance and that such payments be made within the first ten days of each month. No costs will be allowed. So ordered.

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

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