

ADOLFO AENLLE, APPLICANT AND APPELLANT, VS. CLEMENTINA MARIA BERTRAND RHEIMS, CLAIMANT AND APPELLEE. PHILIPPINE GUARANTY CO., INC., DEFENDANT AND APPELLANT.*G.R. No. 29168. December 29, 1928*

Ponente: STREET, J.

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This is an appeal from a decision of the Court of First Instance of Manila in cadastral expediente No. 43 (G. L. R. O. Record No. 204), whereby lots Nos. 16 and 17, block 1421, on Lamayan Street, district of Santa Ana, Manila, were declared to belong in undivided halves to Adolfo Aenlle and Clementina Maria Bertrand Rheims, in the character of conjugal property, and wherein it was further declared that the Philippine Guaranty Co., Inc., is the owner of a mortgage upon the undivided half pertaining to Aenlle in said property, with appropriate orders for the rectification of the Torrens certificate to conform with the declarations aforesaid. The appeal in this instance is prosecuted by the applicant, Adolfo Aenlle, from so much of said decision as declares said lots to pertain to the conjugal estate and as denies to him the exclusive ownership thereof, subject to the mortgage in favor of the Philippine Guaranty Co., Inc.; while the last named entity appeals from so much of the decision as declares that its mortgage constitutes a charge only upon the undivided half of Adolfo Aenlle.

We observe that the controversy now before us was mixed up in the trial court with civil case No. 26548, of the Court of First Instance of Manila, said cause having been heard in that court in conjunction with this. But the subject matter of the dispute in that case (a second mortgage on the same property in favor of Cesar de Larrazabal) has ceased to exist by reason of the satisfaction of said mortgage. Said civil case is therefore not before us on this appeal.

The facts necessary to an understanding of the case are briefly these: The principal litigants in the case, Adolfo Aenlle and Clementina Maria Bertrand, were married on November 22, 1886, in London, England. After living together for many years the pair separated; and on July 7, 1917, the wife procured a decree in the District Court of Washoe County, State of Nevada, U. S. A., purporting to divorce her from her husband. Returning to the Orient she contracted marriage, on February 10, 1919, with one George Rheims, at Victoria, Hongkong, China.

Among the properties which had been acquired by Aenlle and his wife during the time of their common marital life, were, according to the appealed decision, the two lots Nos. 16 and 17, which are the subject matter of the present appeal. In his brief as appellant Aenlle here assigns error to the finding of the trial court declaring said lots to pertain to the conjugal estate between himself and Clementina, but the proof so clearly predominates to this effect that there can, we think, be no question as to the correctness of the decision on this point. We therefore dispose at once of the appeal of the applicant by declaring his contention as appellant to be without merit.

The additional facts pertinent to the appeal of the Philippine Guaranty Co., Inc., are that, on March 15, 1922, Aenlle executed a mortgage in favor of said company for the purpose of securing a loan of P2,000, which Aenlle undertook to repay in ten years at the rate of P28.70, per month. This mortgage purports to cover the entire

property in the lots in controversy; and Clementina maintained successfully before the trial judge that, inasmuch as this mortgage was created subsequently to the date of the decree of divorce in the Nevada court, it could not have the effect of encumbering her undivided share in the lots. This point of view is, in our opinion, untenable; because, even assuming that the civil effects of the decree of divorce granted to Clementina might be such as the principals in that decree apparently attribute to it—which is doubtful—, the granting of said decree could not affect the lien of the Philippine Guaranty Co., Inc., which is a bona fide purchaser for value without notice. The idea underlying the appealed decision to the effect that, upon the granting of the Nevada divorce, the conjugal partnership was ipso facto dissolved, with the result that the husband's authority to bind the property as manager was terminated, is erroneous. Even supposing said divorce to have been valid, it could not affect a third party in the Philippine Islands, where the property was situated, without its being inscribed in the property registry (arts. 34 and 389 of Mortgage Law). No such inscription was effected in this case. We may add that the attorney for the appellee is not opposed to the modification of the appealed judgment to the extent of declaring the mortgage of the Philippine Guaranty Co., Inc., to be a charge upon her half as well as upon the half pertaining to Aenlle.

In conclusion we observe that the effect of this judgment is to convert the conjugal estate of Adolfo Aenlle and Clementina, so far as concerns this property, into an ordinary tenancy in common; and in view of the fact that an incurable separation has supervened between them, the propriety of severing their ganancial interest is manifest.

The appealed judgment will be modified to the extent of declaring the mortgage in favor of the Philippine Guaranty Co., Inc., to be a charge upon the entire property in the two lots, Nos. 16 and 17, including improvements. As thus modified the judgment is affirmed, without costs. So ordered.

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

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