

MODESTO MONTERDERAMOS, PLAINTIFF AND APPELLEE, VS. CATALINA YNONOY ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 33758. January 15, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants, Catalina Ynonoy et al., from the judgment of the Court of First Instance of Oriental Negros, the dispositive part of which reads as follows:

"Wherefore, the court finds that the preponderance of the evidence is in favor of the plaintiff, Modesto Montederamos, and therefore declares the deed of sale executed by Timotea Vendiola to Anastacio Amil on October 10, 1925, and ratified before the notary public, Mr. Dorado on the same day, to be null and void. Let the defendants restore the land conveyed through said deed, to the plaintiff, and pay the costs. So ordered."

In support of their appeal, the appellants assign the following alleged errors as committed by the trial court in its judgment:

"1. The lower court erred in holding that the husband's consent to the sale by the wife of her paraphernal property must be in writing and in a public instrument.

"2. The lower court erred in not holding that the plaintiff-appellee gave his express consent to the sale by his wife of the land in question, belonging to her, to Anastacio Amil, defendant's predecessor in interest.

"3. The lower court erred in declaring the sale, Exhibit C, avoided."

The plaintiff-appellee, Modesto Montederamos commenced this action to annul the deed of sale whereby his wife, Timotea Vendiola, sold a parcel of land, her paraphernal property, to Anastacio Amil, the defendants' predecessor-in-interest, alleging that she did so without his consent.

The defendants answer alleging that the sale was made with the knowledge and consent of the vendor's husband.

The preponderance of the evidence shows that on October 10, 1925, Modesto Montederamos and his wife Timotea Vendiola went to Anastacio Amil's house, offering to sell him a part of Timotea Vendiola's paraphernal property containing in all seventy-eight coconut trees, which part contained eighteen coconut trees of two years' growth, for P400; that Anastacio Amil accepted the offer and told one of his sons to get the money and count it in the presence of Modesto Montederamos, who counted it also and then wrapped it up in a handkerchief; that Timotea Vendiola then suggested their going to the municipality of Dumaguete to have the deed of sale drawn up, and they did so, but the plaintiff, Modesto Montederamos, remained at home to take care of the children; that upon arriving at the municipality, Timotea Vendiola had one Geronimo Marino prepare the proper deed of sale, and then they went to the house of the notary, Aniceto B. Dorado, to have it executed and ratified; that before ratifying the deed, the notary demanded that Modesto Montederamos be present in order to sign it, but Timotea Vendiola told him that her husband has remained at home to take care of the children, and would sign the deed later; that since she insisted upon it, the notary ratified the deed in the absence of Modesto Montederamos.

The plaintiff attempted to show that in the year 1924, he mortgaged all his wife's paraphernal property to one Bruno Alabastro for the sum of P918, although the mortgage deed was not formally executed until December, 1925; that on October 10, 1925, Timotea Vendiola went to the municipality of Dumaguete to purchase some rice, and upon her return told him that she had sold the parcel of land here in question to one Anastacio Amil for the sum of P400; that when Modesto Montederos learned of the transaction, he disapproved it and reprimanded his wife for having made the sale knowing that the property was mortgaged for P918; that on the following day, the plaintiff went to Anastacio Amil's house to return the sum of P400, but the latter refused to receive the money; that in April, 1926, Bruno Alabastro filed a complaint for forcible entry and detainer against Anastacio Amil in the justice of the peace court for the municipality of Bacong, Oriental Negros, alleging that he had a preferential right to the possession of the land in question, by virtue of a mortgage he held upon executed by Modesto Montederos and his wife, Timotea Vendiola.

In the course of her testimony in this case, Timotea Vendiola stated in her husband's presence that the sale had been made to Anastacio Amil with his knowledge and consent, and that both of them had invested the P400 in some business (Exhibit 1).

Since it has been proved by a preponderance of the evidence that the plaintiff-appellee Modesto Montederos was cognizant of the sale made by his wife, that he gave his consent to it and used the proceeds of it, the question arises: Is such consent valid, in view of article 1387 of the Civil Code, which reads as follows:

"ART. 1387. 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." Manresa, commenting upon article 61 of the Civil Code, prohibiting the wife from alienating her property without authority or consent of her husband, says in Vol. I, page 324, 3d Edition, of his Commentaries upon the Spanish Civil Code, the following:

"The cases decided by the Supreme Court- prior to the Civil Code, which must be deemed applicable even after the latter went into effect, inasmuch as the law has not been modified in this respect, held that the husband's permission enabling his wife to enter into a contract, might be given in any manner, provided it was shown that he had consented and approved of the obligations which his wife contracted, and that only the husband could ask for the annulment of such acts and contracts as his wife may have undertaken without his intervention or permission; wherefore, such acts cannot be deemed null and void, but merely voidable as may be seen by looking up the decisions of October 10, 1861, November 14, 1862, June 20, 1863, June 27, 1866, October 9, 1868, January 30, 1872, June 22, 1880, and a number of others."

According to the legal provision quoted above, and the ruling of the Spanish Supreme Court, the husband's permission or consent to his wife's valid alienation of her paraphernal property need not be explicit or set forth in a document of any kind, so long as it may be inferred beyond all doubt from some acts of his, that he consented and approved of the obligations contracted by his wife.

In the case before us, nothing else is to be inferred from Modesto Montederos' accompanying his wife to Amil's house for the purpose of offering to sell him the land in litigation; his receipt and investment of the price in a business of his own; and his making no objection to his wife's testifying before him in another case involving the same sale, that he had given his consent to it, than that he had in fact done so. After having made the vendee Anastacio Amil understand by his presence and act that he consented, at least tacitly, to the sale of the land in litigation that his wife was about to realize, which was indeed realized, after having himself used the money so obtained, he cannot now seek the annulment of the contract thereunto executed, on the ground that he did not sign it, and did not expressly give his consent either orally or in any document.

Wherefore, we are of opinion and so hold that article 1387 of the Civil Code does not require the husband's

consent, which is indispensable to the validity of contracts entered into by his wife, to be expressly given, or that it be set down in any document; but such consent may be manifested by means of acts giving rise to the conclusion that the husband consented to and approved of the obligations contracted by his wife.

By virtue whereof, the judgment appealed from is reversed and the defendants are absolved from the complaint, which is hereby dismissed, with costs against the appellee.

So ordered.

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

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