

ALEIDA SAAVEDRA, PLAINTIFF AND APPELLANT, VS. CEFERINO YBAÑEZ ESTRADA, DEFENDANT AND APPELLEE.*G. R. No. 33795. September 04, 1931*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Cebu by Aleida Saavedra against her husband, Ceferino Ybañez Estrada. The purpose of the complaint is to secure a judgment for maintenance for the plaintiff and her children from the defendant, who is her husband, and to obtain an order requiring him to pay such maintenance not only in the future but for a period in the past, beginning in 1920, during which the defendant has contributed nothing for the support of his family. The petitory part of the complaint asks for other incidental relief consisting of an accounting, and a writ of injunction to prohibit the defendant, his attorneys, agents and representatives from selling, mortgaging, or in any manner transferring the property pertaining to the conjugal partnership, without express authorization from the court.

Upon hearing the cause the trial court entered an order requiring the defendant to pay to the plaintiff the sum of P200 per month beginning September, 1929, the date of the filing of this action, and ending with the month of March, 1930, when this decision was promulgated, after which he required the defendant to pay, in future installments, a monthly stipend of P200, and further to reimburse the plaintiff in the amount of P2,000 for attorneys' fees, and the costs of the action. From this judgment the plaintiff appealed.

The parties in this case are husband and wife, who were married in January, 1904, in Dumaguete, Oriental Negros. As a result of their marriage nine children have been born, three of whom are dead and six living. Two of the living children are already of age, namely, Manuel and Gabriela. The other four are still minors, living with their mother. In the course of their marriage a large amount of land has been acquired, consisting of over 400 hectares of land, which property was at the time of the institution of this action stocked with several hundred head of cattle,—all property of the conjugal partnership.

The married life of the spouses appears not to have been happy, owing to the loose morals and violent disposition of the defendant and his frequent and persistent mistreatment of his wife. In order to escape from his abuse, the plaintiff was compelled in 1914 to take refuge with all her children in the house of a neighbor. Upon promise upon the part of the husband to mend his ways, marital life was resumed towards the end of the same year. Four years later, while the plaintiff was enceinte with her ninth child, the defendant treated her with personal violence, and she was compelled to remove herself from contact with him by obtaining accommodations for herself and all her children in the San Jose asylum in Cebu. She there remained for some time under the care of the sisters of charity, giving birth to her last child. Finally, about September, 1920, the plaintiff was forced to present a civil action seeking an order requiring the defendant to supply maintenance for herself and children, but in 1926 the defendant prevailed upon her to dismiss said action upon his promise to supply her needs. This promise was not kept; and for more than a decade this woman has struggled alone maintaining her family as best she could by obtaining credit from strangers and sacrificing paraphernal property of her own.

Worst of all, from a marital point of view, the defendant has been in the habit of using the servant women around his place as mistresses, and he has a child by a woman who was his servant in years past. At the time this case was tried, he was in illicit relations with another servant. This course of conduct has made cohabitation between the plaintiff and defendant a moral impossibility.

The first error assigned by the appellant is directed to the failure of his Honor, the trial judge, to allow the amount of P330 per month for the plaintiff's expenses, from the date of the filing of the complaint, in taking care of herself and the four children who are dependent upon her. As already stated, only P200 per month was allowed for these expenses, and we are of the opinion that the estimate of the trial court was too conservative. The plaintiff specified in detail the items deemed absolutely necessary to defray her expenses, and these items are, in our opinion, within the bounds of strict economy. There is nothing claimed for luxuries or extravagances, such as automobile hire, salary of chauffeur, telephone rent, and the like. The ages of the children at the time this action was tried were between 10 and 16 or 17 years, that is to say, they were then arriving at the age when expenses for schooling, clothing, and other necessary items are beginning to make themselves felt in the family. On the other hand, the value of the community property is considerable, consisting of a large hacienda with many thousand coconut trees in bearing and several hundred head of cattle and carabao, worth all together around P100,000. We think that the allowance of the full amount claimed, or P330 per month, since the institution of this action, as well as for the future, is a proper allowance, and the judgment will be modified accordingly.

The second error is directed to the failure of the lower court to award judgment for past due maintenance accruing under a preliminary order in case No. 3335, effective September, 1920, and running until the present action was instituted. In this connection it appears that an order for maintenance pendente lite was entered by the trial court in that case, and nothing has ever been paid upon said account. Nevertheless it appears that, on May 21, 1926, the herein plaintiff, also plaintiff in case No. 3335, caused said action to be dismissed, in reliance upon the defendant's promises. The dismissal of said case necessarily had the effect of abrogating the order for maintenance pendente lite, and placed the plaintiff in a position where she is unable to enforce that order. An order pendente lite is in its very nature contingent, and the dismissal of the action had the effect of abrogating the order.

It appears, however, that as a result of the failure of the defendant to pay said maintenance under the order referred to, the present plaintiff has been compelled to incur debts for the maintenance of herself and family, and to pay these debts, so far as they have been paid, she has been compelled to sacrifice valuable paraphernal property under authority granted by the court. The amount which the plaintiff has been compelled to disburse in this way, and the value of the paraphernal property sacrificed, or obligations incurred, have not been proved; and while it is obvious that the defendant is under an obligation to reimburse the plaintiff for these outlays and sacrifices, we are not in a position to give her relief as to such items, under the prayer of the present complaint. But the order hereinafter made for the affirmance of the judgment in this respect will be made without prejudice to her right hereafter, by independent action, or in the ultimate liquidation of the conjugal estate, to be reimbursed as to the matters mentioned.

The third error is directed to the failure of the court to concede to the plaintiff an accounting of the income received by the defendant from the property of the conjugal partnership; and she seeks judgment for her share therein. We are unable to see the necessity for such an accounting, as it will be more appropriate in the liquidation of the conjugal estate.

The fourth assignment of the appellant is directed to the supposed error of the trial court in refusing to grant to the plaintiff an injunction to restrain him and his agents from alienating the conjugal property without the permission of the court. The proof undoubtedly shows a situation where the plaintiff and her children are in danger of being

embarrassed or defrauded by possible future acts of the defendant in alienating the conjugal property, unless some step is taken to protect their interest. The majority of the court, however, are of the opinion that the proper method to accomplish this is for the plaintiff to cause to be noted upon the registry of property, as she is hereby authorized to do, the fact that the conjugal property is subject to the rights of the plaintiff to future maintenance at the rate of P330 per month, payable out of said property or its proceeds (*Baello vs. Villanueva and Villanueva*, 54 Phil., 213) ; and although the record before us does not contain a description of the property sufficient to make the proper order here, the trial court will be directed to make the proper order for the annotation of this lien, upon proof, if necessary, to be submitted by the plaintiff.

It being understood, therefore, first, that the amount of maintenance accruing to the plaintiff from the date of the institution of this action is at the rate of P330 per month, amounting to P7,920, to the date of the promulgation of this decision, which amount the defendant is directed to pay to the plaintiff; secondly, that from and after this date she is entitled to recover the sum of P330 per month, which the defendant is ordered to pay into court on or before the 10th day of each month, beginning October, 1931; thirdly, that the plaintiff is entitled to have the encumbrance indicated in this right to maintenance inscribed on the registry of property; and, fourthly, that this judgment is without prejudice to the right of the plaintiff to be reimbursed for any amount, or amounts, which she may have expended from the proceeds of her paraphernal property, or for which she may have become indebted upon account of the necessary maintenance of herself and children prior to the bringing of this action, the judgment appealed from, as thus modified, is affirmed. So ordered, with costs against the appellee.

Avancena, C. J., Johnson, Malcolm, Villamor, Romualdez, Villa-Real, and Imperial, JJ., concur.

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