

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. G. L. MARCELINO ET AL., DEFENDANTS. VALENTINA NACIANCENO AND PEDRO ANGULO, APPELLANTS.

G.R. No. 36806. March 01, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by two of the defendants, Valentina Nacianceno and Pedro Angulo, from a decision of Judge Mariano A. Albert of the Court of First Instance of Manila, the dispositive part of which is as follows:

"1.º Que con excepcion del traspaso, en virtud del cual el demandado Federico Ruperto adquirio el terreno descrito en el Certificado de Transferencia de Titulo No. 31652 (Exh. 104) todos los demas traspasos efectuados por todos y cada uno de los demandados entre si, segun aparecen de los exhibitos 90, 91, 92, 94 y 110 ó 45-Gonzaga son ficticios y fraudulentos y, por lo tanto, deben cancelarse los Certificados de Transferencia de Titulo Nos. 31606-31617 y cualquiera anotacion que se haya hecho ya en el Buro de Comercio e Industria, ya en el Registro de la Propiedad o en el Municipio de la Ciudad de Manila sobre cualesquiera de estos traspasos.

"2.º Que todos y cada uno de los demandados, con excepcion del demandado Federico Ruperto, son mancomunada y solidariamente responsables a la demandante por el pago de la suma de P59,970.17 alegada en la demanda, con sus intereses legales desde el 1.º de enero de 1928 hasta que se pague y por las costas de este juicio.

"3.º Que quedan sobreseidas todas las contrademandas de todos y cada uno de los demandados, por carecer de merito."

The other defendants did not appeal, and the decision has become final as to them.

The appellants Valentina Nacianceno and Pedro Angulo make the following assignments of errors:

Valentina Nacianceno—

"I. El Juzgado a quo erro al declarar que la demandada y apelante Valentina Nacianceno debia saber de donde procedian las cantidades con las cuales adquiria fincas y participaciones en negocios, porque constandole como le constaba el pequeño sueldo que ganaba su esposo, el dinero que le entregaba para la compra de terrenos y construccion de casas no podia proceder mas que de un origen criminoso.

"II. El Juzgado a quo erro al dar credito a la declaracion del testigo Hilario Carpiso, en contra de la declaracion de la demandada apelante.

"III. El Juzgado a quo erro al declarar que la demandada y apelante Valentina Nacianceno, juntamente con todos y cada uno de los demandados, con excepcion del demandado Federico Ruperto, es mancomunada y solidariamente responsable a la demandante por el pago de la suma de P59,970.17 alegada en la demanda de autos, con sus intereses legales desde el 1.º de enero de 1928 hasta que se pague, y por las costas del juicio, en

vez de absolver libremente a la misma concediendole la indemnizacion solicitada.

"IV. El Juzgado a quo erro al negar que la demandada-apelante tuviera fortuna personal propia y bienes personales propios, sobreseyendo la contrademanda por ella interpuesta, por carecer la misma de meritos, segun dicho Juzgado."

Pedro Angulo—

"I. El Juzgado inferior erro al haber permitido a Valentina Nacianceno declarar contra su marido Geminiano L. Marcelino y contra su codemandado Pedro Angulo durante la vista de este asunto; y al no permitir a Geminiano L. Marcelino declarar en la misma vista de esta causa sobre los puntos declarados por su esposa, despues de que esta ha sido permitida a declarar en la forma arriba expuesta con objecion de la representacion del apelante Pedro Angulo;

"II. El Juzgado a quo incurrio en error al declarar ficticio el traspaso hecho por Geminiano L. Marcelino de su participacion en la sociedad 'Pedro Angulo y Cia.', a favor de Pedro Angulo por la suma de P14,000 que consta en la escritura, Exhibit 1-Angulo;

"III. El Juzgado a quo tambien incurrio en error al declarar que dicho traspaso a que se contrae la escritura, Exhibit 1-Angulo, se hizo en fraude de acreedores especialmente de la demandante;

"IV. Erro asimismo al dar mas credito a la declaracion contradictoria, inverosimil e incongruente de Valentina Nacianceno (cuyo testimonio en otra parte de la misma decision se declara indigno de credito), que la declaracion del apelante Pedro Angulo sostenida por pruebas documentales presentadas en la vista de este asunto;

"V. El Juzgado inferior erro al no estimar concluyentemente probada la consideracion del contrato, Exhibit 1-Angulo y la buena fe del comprador Pedro Angulo en el referido contrato;

"VI. El Juzgado a quo incurrio en error al condenar al demandado Pedro Angulo a pagar solidaria y mancomunadamente con sus codemandados la cantidad de P59,970.17 no obstante la ausencia de toda alegacion y peticion respecto a este extremo en la demanda;

"VII. El Juzgado inferior erro al no haber sobreseido la demanda en cuanto al demandado Pedro Angulo por haber sido este declarado completamente liberado de toda clase de reclamaciones y obligaciones, previos los tramites legales en los procedimientos de insolvencia;

"VIII. El Juzgado inferior incurrio tambien en error al declarar que la presente accion en lo que respecta al apelante Pedro Angulo cae dentro de las excepciones contenidas en el articulo 68 de la Ley No. 1956;

"IX. El Juzgado inferior incurrio finalmente en error al no absolver libremente de la demanda al apelante Pedro Angulo, y al no condenar a la entidad demandante al pago de la cantidad reclamada en la reconvencion alegada y probada por el demandado Pedro Angulo."

It appears from the evidence that the defendants G. L. Marcelino and Victorino Gonzaga were employed in the shipping department of the plaintiff company. It was discovered that they had been misappropriating funds of the plaintiff, and three criminal actions were filed against them in the Court of First Instance of Manila. In cases Nos. 37524, 37525, and 37247 it was respectively alleged that they had misappropriated P20,719.77 in 1926, P45,828.83 in 1927, and P59,970.18 in 1928, making a total of P126,518.78.

Said defendants were found guilty of estafa, and in addition to the prison sentence were condemned to indemnify the offended party, the plaintiff herein, as follows:

In case No. 37524, G. L. Marcelino, P8,848.67, and Victorino Gonzaga, P14,210.02; in case No. 37525, G. L. Marcelino, P20,680.67, and Victorino Gonzaga, P24,176.15; and in case No. 37247, G. L. Marcelino, P13,869.24,

and Victorino Gonzaga, P22,330.63.

The decisions of the trial court were affirmed by this court (Exhibit 89).[1]

In the present civil action the plaintiff alleges that during the period from January 1 to October 24, 1928 the defendants G. L. Marcelino and Victorino Gonzaga misappropriated P59,970.18 belonging to the plaintiff, and to sustain that allegation the plaintiff submitted the evidence taken in the criminal cases. It will be noted that P59,970.18 is the amount which it was alleged that said defendants had misappropriated in 1928 according to criminal case No. 37247, but that according to the decision in that case G. L. Marcelino was ordered to indemnify the plaintiff in the sum of only P13,869.24 and Victorino Gonzaga in the sum of P22,330.63. Their liability was not declared to be joint and several.

In the case at bar, notwithstanding the fact that G. L. Marcelino and Victorino Gonzaga had already been sentenced to indemnify the plaintiff in the sum of P13,869.24 and P22,330.63 respectively, the court condemned each of them to pay the plaintiff the further sum of P59,970.18, and each of the other defendants except Federico Ruperto to pay the plaintiff the same amount. That was obviously error, but the only defendants that appealed were Valentina Nacianceno and Pedro Angulo.

We shall take up the case of Valentina Nacianceno first. She is the wife of G. L. Marcelino. They were married about 1906. It is alleged in the second amended complaint that in connivance with her husband she participated in and made use of the funds of the plaintiff misappropriated by her codefendants, and acquired therewith different properties, which she put in her own name the better to conceal the fraud committed against the interests of the plaintiff; that she has not repaid to the plaintiff any part of the sum of which the plaintiff was defrauded. Those are the only material allegations of the complaint referring to Valentina Nacianceno.

G. L. Marcelino and Valentina Nacianceno filed a joint answer. They denied all the allegations of the complaint except those relating to the employment of Marcelino by the plaintiff, and filed a cross-complaint, which is really a counterclaim, for P40,000, and alleged that in November, 1928, the plaintiff obtained an order for the attachment of the property of said defendants; that the sheriff of Manila attached all the properties of the said defendants described in the complaint and also the rents thereof;

That G. L. Marcelino had mortgaged to the Insular Life Assurance Co. for P9,000 the property described in transfer certificate No. 20422 in the office of the register of deeds for Manila; that he was the owner of the land and Valentina Nacianceno of the building; that because the plaintiff attached the rents of said property, said spouses could not pay the interest on the loan, and the mortgagee foreclosed the mortgage, and the property was sold at public auction on October 30, 1929 for P9,353.60;

That Valentina Nacianceno had mortgaged to the Philippine Guaranty Co. for P12,000 the real property described in transfer certificate of title No. 25528 in the office of the register of deeds for Manila, which belonged exclusively to her; that because the plaintiff attached the rents she was unable to pay the interest on the mortgage debt, and the mortgagee foreclosed the mortgage, and the property was sold at public auction on October 30, 1929 for P14,062.73;

That by the wrongful acts of the plaintiff, which caused the foreclosure of said mortgages, said defendants were damaged in the amount of P40,000.

The defendants G. L. Marcelino and Valentina Nacianceno prayed that the plaintiff be condemned to pay them said sum and the amount of the rents collected.

Taking up the cross-complaint first, we find no description in the complaint of any property belonging to G. L.

Marcelino and Valentina Nacianceno. It appears from the evidence, however, that certain real property claimed by Valentina Nacianceno, not mentioned in the cross-complaint, was attached, and that a piano and other furniture were attached and sold. The ownership of this property claimed by Valentina Nacianceno to belong to her exclusively was not raised by the pleadings and was therefore not decided by the trial court.

With respect to the two mortgaged properties mentioned in the cross-complaint, after considering the evidence, we agree with the trial judge that they were acquired with money furnished by the defendant G. L. Marcelino. They were therefore conjugal properties and subject to attachment and sale for the satisfaction of the obligation of said defendant, and the rents from said properties were likewise subject to attachment. There is therefore no merit in the cross-complaint.

The next question is whether or not the plaintiff is entitled to recover from Valentina Nacianceno P59,970.17 or any sum. As already indicated, the amount misappropriated by G. L. Marcelino, the husband of Valentina Nacianceno, during the period now in question was P13,869.24 (criminal case No. 37247). Although it is true that Marcelino misappropriated other sums prior to 1928, we must be governed by the complaint, and the only sum put in issue is that misappropriated by Marcelino in 1928, which was alleged by the plaintiff to be P59,970.17, but found by the court to be P13,869.24.

In the second place the evidence does not sustain the allegation that Valentina Nacianceno connived with her husband in the misappropriation of the funds belonging to the plaintiff, or the finding of the trial judge that she must have known that the money her husband gave her had a criminal origin. She was not a principal, accomplice, or accessory as to the crime for which her husband was convicted, and no judgment can be rendered against her merely because of the commission of the crime. If she acquired property with money received from her husband, that property is of course conjugal property and liable for the satisfaction of a judgment against the husband, regardless of whether the money was stolen by the husband from the plaintiff or won at gambling, but the plaintiff is not entitled to a judgment against her in that case for the money she received or the cost of the property.

If she sold the property thus acquired and appropriated the proceeds to her own use, she would be liable to the plaintiff therefor; but in the present case it appears that she or her husband mortgaged one house in order to build the other, and that she mortgaged the second property to secure funds for the defense of her husband in the criminal cases. Under those circumstances the plaintiff is not entitled to any money judgment against the defendant and appellant Valentina Nacianceno.

As to the other property attached by the plaintiff and claimed by Valentina Nacianceno, we cannot now decide, because there is no description of said property in the complaint or the cross-complaint. The right of Valentina Nacianceno to assert her claim thereto is reserved, and also her right to claim damages for the personal property already sold by the sheriff at the instance of the plaintiff.

As to the appellant Pedro Angulo, the judgment against him for P59,970.17 is also erroneous. G. L. Marcelino and Pedro Angulo were partners in the "firm of Pedro Angulo y Cia., doing business under the trade-name of Central Auto Supply Co. On October 23, 1928, shortly after the peculations of Marcelino and Victorino Gonzaga were discovered, Marcelino executed a document by which he purported to sell his interest in the partnership to Pedro Angulo for P14,000. A few months later Pedro Angulo was declared insolvent, and all the assets of the Central Auto Supply Co. were sold by the assignee, and in due course Pedro Angulo was discharged from all his debts. We agree with the trial judge that the alleged sale of the interest of Marcelino to Pedro Angulo was only a simulated sale, and that Pedro Angulo did not pay Marcelino P14,000 or any other sum; but we are utterly unable to see why that transaction gave the plaintiff the right to recover P59,970.17 from Pedro Angulo. There being no valid transfer of the interest of Marcelino to Pedro Angulo, but only a simulated sale, Pedro Angulo got nothing

thereby. The interest of Marcelino in the partnership remained the property of Marcelino. The next question is to what extent, if at all, was the plaintiff damaged by the transaction between Marcelino and Pedro Angulo. It appears from the evidence that Marcelino had invested P22,000 in the business of the partnership; that at the time of the transaction in question the partnership was heavily in debt, and that a few months later Pedro Angulo was declared insolvent because of the debts of this business. It is not proved what was the value of the interest of Marcelino in the partnership at the time of the simulated sale, or that it has any value whatever. It follows therefore that it is not proved that the plaintiff was damaged by the transaction between Marcelino and Pedro Angulo, and the judgment against the latter must be set aside.

With respect to the counterclaim of Pedro Angulo, there is no proof of the alleged damages by reason of the attachment.

For the foregoing reasons, the decision appealed from is modified as follows: The judgment against Valentina Nacianceno and Pedro Angulo jointly and severally for P59,970.17 is set aside; the right of Valentina Nacianceno to assert her claim to the furniture and piano and the real property attached but not included in this action is reserved to her. As thus modified, the decision is affirmed.

The plaintiff will pay the costs of this instance.

Villamor, Villa-Real, Hull, and Butte, JJ., concur.

[1] G. R. Nos. 33147-33149. People vs. Marcelino and Gonzaga, promulgated September 23, 1930, not reported.

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