

ALEJANDRA PALANCA, PLAINTIFF AND APPELLANT, VS. SMITH, BELL & CO. AND EMILIANO BONCAN, DEFENDANTS AND APPELLEES.*G.R. No. 3695. October 26, 1907*

Ponente: JOHNSON, J.

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On some date not mentioned in the record, Smith, Bell & Co., in case No. 4391, pending in the Court of First Instance of the city of Manila, obtained a judgment against the said Emiliano Boncan for a sum of money, the amount of which also does not appear of record in this case. Later the said Smith, Bell & Co. obtained an execution out of said court which was levied upon the property in question in this case, which property was known as No. 16, situated in an alley without name running toward the old Santa Mesa race track, upon property belonging to the hacienda of Tuason & Co.

After said execution was levied upon the property in question, the plaintiff and appellant herein commenced an action in the Court of First Instance of the city of Manila against the defendants herein, asking that said court dictate a sentence declaring her to be the only and exclusive owner of the property described in the complaint, with a right to the possession of the same, and that said attachment be dissolved. To this petition the defendants filed a general denial.

After hearing the evidence adduced during the trial of the cause, the lower court denied the prayer of the petition of the plaintiff and appellant, absolving the defendants therefrom and charged the plaintiff with the costs. From this decision the plaintiff appealed to this court and made the following assignment of errors:

"1. The court erred in not allowing as proven the transfer of property No. 16, above described, made on September 20, 1904, by Emiliano Boncan Yap in favor of his wife, Alexandra Palanca de Boncan, and in not finding that she is the sole and exclusive owner thereof, Emiliano Boncan Yap having no interest whatever in the property in question.

"2. In regarding Smith, Bell & Co. as an intervening party under the provisions of the Mortgage Law.

"3. In disregarding the effects of the; public document of transfer, exhibited by the plaintiff and dated September 20, 1904.

"4. In dismissing the complaint and absolving the defendants."

An examination of the evidence brought to this court shows that the said Alejandro Palanca was the owner of certain property in the city of Manila, which was given by the said Emiliano Boncan, with the consent of the said Alejandra Palanca, as a guaranty for the payment of the sum of P14,000, which Emiliano Boncan borrowed from the International Banking Corporation. With the money so borrowed the said Emiliano Boncan constructed the house in question, and later, by a public document executed on the 20th of September, 1904, conveyed the house in question to the plaintiff and appellant herein as a guaranty for the payment of the debt to the International

Banking Corporation, for the guaranty of the payment of which the said plaintiff and appellant had given her private property. This P14,000, borrowed by the said Emiliano Boncan upon the credit of the property of his wife, became conjugal property (paragraph 3, art. 1401, Civil Code), and when the same was reinvested in the construction of a house, the house became conjugal property and was liable for the payment of the debts of the husband. (Art. 1408, Civil Code.)

Believing that the foregoing conclusions in effect answer the assignments of error made by the appellant, and without discussing the same in detail, we are of the opinion, and so hold, that the judgment of the lower court should be affirmed, with costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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