

MARCELA ALVARAN, PLAINTIFF AND APPELLEE, VS. BERNARDO MARQUEZ, DEFENDANT AND APPELLANT.*G.R. No. 4465. September 10, 1908*

Ponente: TORRES, J.

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On the 5th of March, 1906, Marcela Alvaran, the wife of Isabelo Reyes, filed a written complaint with the Court of First Instance of La Laguna, stating that her husband had no interest, nor could he have any right in the matter that she brought before the court of the attachment of a parcel of land that was exclusively and absolutely her property. The said land is situated in the barrio of San Gregorio, pueblo of San Pablo, and is bounded on the north by the property of Leon, Briones; on the east by the road leading to the barrio of Santa Maria; on the south by the properties of Mamerto Evangelist, Tranquilino Gapuno, and Rufino Calabia; and on the west by the properties of Maria Nieves Calabia and Leoncia Evangelista.

The said parcel of land was attached by the municipal sheriff on the 17th of February, 1906, at the request of Bernardo Marquez, as being the property of the said Marcela's husband, in conformity with the judgment entered against the latter in an oral action brought by said Marquez against Reyes, in the court of the justice of the peace, for the recovery of a certain sum of money. The creditor, Marquez, insisted upon maintaining the attachment, and furnished the necessary bond in accordance with the provisions of section 451 of Act No. 190, notwithstanding the claim made by the plaintiff, and the fact that her title was entered in the registry of property in accordance with Act No. 496; therefore, she asked that judgment be rendered ordering the defendant to recognize the plaintiff as the sole owner of the land in question; that the attachment thereof be annulled, and that the defendant be sentenced to indemnify her for damages incurred and the costs of the proceedings, together with any other remedy that might be considered just and equitable.

The defendant, Bernardo Marquez, on the 29th of March, 1906, answered the complaint, and denied all and each of the facts stated in the same in so far as they did not agree with those in his answer: that in the execution of the judgment entered against Isabelo Reyes, the plaintiff's husband, the sheriff of San Pablo had not levied upon the property described in the complaint, and which does not belong to the plaintiff, since the land attached is situated in the barrio of San Gregorio, municipality of San Pablo, and is planted with 300 cocoanut trees, all of which bear more or less fruit, and the boundaries of which are: On the north, the lands of Damiana Briones and Lucio Evangelista; on the east the "Vecinal" street of said barrio ; on the west the land of Leon Briones, and on the south the lands of Mamerto Evangelista and Tranquilino Gapuno; that the land attached was the property of Isabelo Reyes, who was in the possession and enjoyment thereof; that the execution and attachment was limited to the property of Isabelo Reyes by virtue of the obligation contracted by him while united in marriage to the plaintiff; that the plaintiff was cognizant of said obligation; that at the time her husband contracted it the plaintiff intervened and verbally guaranteed the solvency of her husband, and assured the creditor that her husband was the owner of the said land with 300 cocoanut trees; that, owing to the fact that the complaint does, not set forth the title of dominion alleged by the plaintiff, the same does not contain facts sufficient to constitute a cause of action,

depriving the defendant of the power to answer and refute the supposed title of dominion. He therefore prayed that the complaint be dismissed with costs.

Evidence having been adduced by both parties, their exhibits were made of record. On the 22d of March, 1907, judgment was rendered by the court below annulling the attachment and the adjudication of the land in controversy to the defendant, Bernardo Marquez, and sentencing the latter to return the said land described in the complaint to its owner, the plaintiff Marcela Alvaran, to pay the latter P90, received for P4,500 cocoanuts, and the costs of the proceedings.

The defendant excepted to the above judgment and moved for a new trial; the motion was overruled on the 30 of April, 1907, and it does not appear that the petitioner excepted thereto.

Before dealing in this decision with the main points in controversy, it should be stated that as to the form, since the petitioner has not excepted to the order of the 30th of April, 1907, overruling the motion for a new trial, this court can not review the evidence nor examine the findings of the court below to see if they are in accordance with the law and the merits of the case; it must limit itself to deciding only the questions of law referred to in the bill of exceptions, contained in the assignment of errors set out in the appellant's brief. (Sec. 497 of Act No. 190, as amended by Act No. 1596.)

It is fully proven that the land in question is owned; exclusively by the plaintiff, Marcela Alvaran, as duly shown by the title issued by the Court of Land Registration, and produced in due course in this litigation. The plaintiff was in possession thereof for fifteen years prior to the time when it was claimed; that is, since she inherited it from her mother, Maria Banayo, she being then already married to her present husband, Isabelo Reyes.

Under these circumstances it is understood at once that the matter at issue refers to property of the wife, acquired by her during marriage, and brought into the conjugal partnership apart from the dowry and without being included therein, Said inheritance is included among the property that the law classifies as paraphernal. (Arts. 1381, 1396, No. 2, Civil Code.)

Article 1382 of the Civil Code reads:

"The wife retains the ownership of the paraphernal property."

So that, according to the provisions of article 1384 of the said code, even if the land in question was administered by Isabelo Reyes, his wife, Alvaran, has not lost her right of dominion thereto, nor can it be attached for a debt contracted by her husband at the instance of a creditor of the latter.

The doctrine has been established in the decision of the case of Lopez Villanueva vs. Alvarez Perez et al. (9 Phil. Rep., 28), and it is a settled rule that it is a legal condition in attachments of all kinds that the thing attached must be the property of the debtor, and from no provision of the Mortgage Law can a conclusion be derived contrary to such principle.

If the aforesaid estate was not the property of Reyes the husband, but of his wife, the plaintiff, as concluded by the court below in view of the evidence, in no manner could the same have been attached at the request of Bernardo Marquez, nor adjudicated to him, inasmuch as no legal reason existed whereby the plaintiff was obliged to make him any payment or loan; therefore, the proceedings from which it resulted that the plaintiff was unjustly deprived of her property on account of a debt for which she was not responsible are entirely null and void.

Inasmuch as in the case at bar no question has been set up relative to the nature and destination of the fruits obtained from the said land, nor in connection with the kind and the conditions of the indebtedness of Isabelo Reyes to the defendant Marquez, it is our opinion that we are not permitted to decide points of law denied by

articles 1385 and 1386 of the Civil Code outside or beyond what has been decided in the judgment appealed from with respect to the value of the cocoanuts harvested by the defendant.

Section 20 of the Rules of this Court provides that—

"No error not affecting the jurisdiction over the subject-matter will be considered unless stated in the assignment of errors and relied upon in the brief."

The defendant alleges that the plaintiff stood as surety for her husband, but, as the judgment appealed from rightly states, there is no evidence on record that such a bond, which would be an actual contract, was ever undertaken, and without the consent of the party supposed to be bound thereby its existence can not be conceived. Moreover, under article 1827 of the code security is not presumed; it must be expressed, and can not be inferred or presumed because of the existence of a contract or principal obligations. From mere presumption it is not possible to establish contractual relations and liens which presuppose a willingness to bind oneself. This requisite is not present in the case at bar, since it does not appear that Marcela Alvaran had voluntarily guaranteed the solvency of her husband, and therefore the attachment proceedings, the sale and adjudication of said land to the defendant, in payment of a debt to which the owner of the land is in no manner liable, are notoriously contrary to law.

For the above reasons and accepting the conclusions contained in the judgment appealed from, it is our opinion that the same should be affirmed with the costs against the appellant. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ.,

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