

A. P. SEVA AND ERNESTO J. SEVA, PLAINTIFFS AND APPELLEES, VS. SOCORBO NOLAN AND CUSTOWO ARIMAS, DEFENDANTS. CUSTODIO ARIMAS, APPELLANT.

G. R. No. 45024. June 25, 1937

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The questions of law involved in this appeal are two, to wit: (1) Whether or not the fees of the attorneys, who have defended a married woman in a criminal action for the crime of adultery brought by her husband, of which she was acquitted by the court, are chargeable to the conjugal partnership, and (2) whether or not a certificate of title, issued under the Torrens system of registration in favor of a married woman, covering a parcel of land sold by her without the permission of her husband, may be annulled to the prejudice of a purchaser in good faith, upon subsequent evidence presented by said husband to the effect that said property was acquired at the expense of the common fund of their conjugal partnership.

In the Court of First Instance of Occidental Negros, where civil case No. 6627 was prosecuted, the parties submitted a stipulation of facts wherein it is admitted that in July, 1934, the defendant Custodio Arimas filed a complaint for adultery against the defendant Socorro Nolan and one Cipriano Villanueva in the justice of the peace court of Murcia, the case having been forwarded to the Court of First Instance where it was tried in the month of October, 1934. Prior to the trial, the defendant Socorro Nolan engaged the attorneys, plaintiffs herein, to defend her before said court in the above stated case, having bound herself to pay for their professional services the amount of three thousand five hundred pesos, on account of which she paid the sum of one hundred pesos and executed in favor of the plaintiffs a deed of sale with pacto de retro for the sum of three hundred pesos, of a certain parcel of land exclusively belonging to her, with a Torrens title issued in her favor. In the deed of sale with pacto de retro executed on July 23, 1934, the defendant reserved the right to repurchase the parcel of land in question on or before September 24, 1934.

It is likewise admitted by the parties that the plaintiffs herein capably rendered their professional services to the defendant Socorro Nolan for several weeks, having had to cope with several well known attorneys, resulting in Socorro Nolan's acquittal of the criminal charge of adultery preferred against her.

Inasmuch as the defendant Socorro Nolan failed to pay the balance of the plaintiffs' fees and to repurchase the aforesaid parcel of land, a complaint was filed against her and her husband, the defendant Custodio Arimas, for the recovery of the sum of three thousand one hundred pesos and to compel said defendant Custodio Arimas to deliver to the plaintiffs the certificate of title of lot No. 60 of Murcia, Occidental Negros. The defendant Socorro Nolan acquiesced in the complaint but her husband denied it in all its parts.

Upon consideration of the foregoing facts and of the failure of the defendant Custodio Arimas to question the amount of the fees claimed by the plaintiffs or even to allege, according to the court, that said fees are unreasonable, and there being evidence of record clearly showing that the fees claimed in the complaint are

entirely reasonable, the court rendered judgment as prayed for in the complaint ordering the defendant Custodio Arimas, in accordance with a motion filed by the plaintiffs, to deliver to the plaintiffs or to any of them, within the period of five days from the date the judgment becomes final, the certificate of title of lot No. 60 of the Cadastre of Murcia, Occidental Negros, to enable the plaintiffs to annotate thereon the deed of sale with pacto de retro in their favor, and sentencing the defendants to pay to the plaintiffs the sum of three thousand one hundred pesos, the balance of their fees, with legal interest thereon from the date of the filing of the complaint until fully paid, said payment to be made within the period of ten days from receipt of notice of the decision, otherwise the clerk of court, upon petition of the plaintiffs, shall issue a writ of execution against the defendant Arimas, unless he files a bond to secure the amount of the judgment in case he should appeal therefrom. The defendant Arimas was likewise ordered to pay the costs of the trial.

Said defendant Custodio Arimas appealed from the judgment after the denial of his motion for a new trial, to which he excepted.

One of the assignments of error made by the defendant-appellant consists in that the court, according to him, erred in not declaring null and void the contract entered into by the defendant Socorro Nolan and the plaintiffs-appellees relative to the latter's professional fees, in so far as it is sought to affect thereby the property of the conjugal partnership of Socorro Nolan and the defendant Custodio Arimas.

Article 1408 of the Civil Code reads:

"The conjugal partnership shall be liable for:

"1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in the cases in which she can legally bind the partnership."

The Supreme Court of Spain, interpreting the foregoing provision in its decision of April 15, 1896, stated as follows:

"* * * In accordance with this principle and with the general meaning of all the provisions establishing and governing the respective rights and obligations of the spouses, the husband is bound to answer to the wife for the amount of the expenses incurred by her in suits which she is compelled to maintain against her husband, in defense of her rights." (Underscoring ours.) (9 Manresa, 3d edition, 650.)

In support of the proposition that the husband is bound to defray the expenses incurred by his wife in suits between her and her husband, said commentator, in the above-cited volume, pages 651 and 652, cites other decisions of the Supreme Court of Spain, as those of January 26, 1897, October 14, 1905, and November 12, 1905, all of which interpret the true meaning of the principle contained in article 1408, paragraph 1, of the Civil Code, providing that the conjugal partnership shall also be liable for all the debts and obligations contracted by the wife in the cases in which she can legally bind the partnership. One of those cases is the obligation to pay litigation expenses in suits between her and her husband. Said decisions cite article 60 of the Civil Code, in accordance with which the wife may appear at the trial without her husband's permission to defend herself in a criminal proceeding or in any action between her and her husband. Now then: with respect to article 60 of the Civil Code, cited in said decisions of the Supreme Court of Spain in connection with article 1408, it should be stated that even if said article 60 is not in force in the Philippines, being embraced among those the operation of which was suspended by the decree of December 29, 1889 (*Ibanzez vs. Ortiz*, 5 Phil., 325; *Sy Joe Lieng vs. Encarnacion*, 16 Phil., 137; *Del Prado vs. De la Fuente*, 28 Phil., 23; and *Goitia vs. Campos Rueda*, 35 Phil., 252), the above-cited decisions of the Supreme Court of Spain do not thereby lose their force and authority, inasmuch as we have section 115, No. 2, of the Code of Civil Procedure, substantially analogous to article 60 of the Civil Code, which reads: "When a married woman is a party, her husband must be joined with her, except

when the action is between herself and her husband." (Underscoring ours.) This means that the wife may by herself maintain an action without her husband's intervention when she is compelled to litigate with him.

Under the above-cited legal provisions and decisions, and the recent ruling of this court in the case of Arroyo vs. Barrios and Vasquez (G. R. No. 45408, March 13 and June 5, 1937, it may be laid down as a clearly established doctrine that, for the protection of a married woman in society, in cases where she is compelled by necessity to resort to the courts to defend her rights in actions brought against her by her husband, she may bind the property of the conjugal partnership administered by her husband to pay for her attorneys' fees for professional services rendered in her defense.

Based upon the same principles of protection of the wife, it has been held in the case of Conant vs. Burnham (133 Mass., 503), that:

"A husband is liable for legal services rendered to his wife in successfully defending her against a complaint instituted against her by him for being a common drunkard."

In the case of Porter & Moir vs. Briggs (38 Iowa, 167-171), it was stated:

"The question presented for our decision in the case before us is this: Is the husband liable for services rendered by an attorney-at-law in establishing the innocence of the wife upon a charge of adultery, made by the husband himself in an action for divorce? In our opinion he is liable for such services upon an implied promise, which the law raises, to pay therefor as necessities for the wife."

The same decision further reads:

"What then is the foundation of the right?

"We conceive it to be as follows: That inasmuch as ordinarily the husband possesses and controls their joint earnings, and the, wife, without pecuniary means would be utterly powerless in a litigation with the husband, the law, from a sense of propriety and justice, implies a promise of the husband to pay the fees of the attorneys necessary to the protection of the interests of the wife."

As may be seen, the foregoing case is on all fours with the case at bar. In the former, as here, the wife was charged with adultery by the husband. The wife was acquitted of the charge and it was held that the husband must pay the fees of her attorney.

The defendant-appellant contends that the expenses of litigation referred to in the above-cited decisions of the Supreme Court of Spain were incidental to the actions instituted by the wife for the civil purposes of her juridical relations with her husband in defense of her rights; as for instance, in an action for support it was held that in addition to the amount to be paid by him for the support of his wife, he should pay another sum for expenses of litigation. "In this manner," says the appellant, "only in such actions may the court consider and appreciate the necessity of the judicial expenses in defense of the wife's rights and the nature and extent of the obligations that, as such, should legally affect the property of the conjugal partnership." To refute these arguments, it would be sufficient to call attention to the fact that according to the above-cited decision of the Supreme Court of Spain of November 12, 1905, "it is well settled, interpreting article 1408 of the Civil Code, that such obligation (the payment of the expenses of litigation) extends to all actions in which the wife has or may have had to maintain her rights, with no other limitation than the judgment of the courts relative to the necessity of upholding the same." This court is of the opinion that the defendant's defense of herself in a criminal action for the alleged crime of adultery brought by her husband against her, was as necessary as a claim for support, inasmuch as the right to a good name and reputation and the right to personal liberty are, at least, as vital and deserving of protection as the right to existence which is, in the last analysis, the meaning of the right to support.

The defendant-appellant, furthermore, contends "that the plaintiffs' defense of Socorro Nolan in this case, for which the latter bound herself to pay their fees in question, was unnecessary in the sense that without it there would be committed a real denial of justice to said Socorro Nolan, because section 17 of our Code of Criminal Procedure, that is, General Orders, No. 58, confers upon her the right to have counsel de oficio if she were unable to employ counsel * * *." (Underscoring ours.) This argument is self-answering because it presumes the condition that the defendant Socorro Nolan is unable to employ counsel, in which case the law confers upon her the right to have counsel de oficio. However, as she has the right to pay for her defense with the property of her conjugal partnership, it would have been unlawful for her to ask for counsel de oficio. Furthermore, it would have been highly unjust to deprive her of the right to have her own counsel, as her husband has had well known attorneys, in the criminal action for adultery brought against her, according to the above-stated stipulation of facts.

Another error attributed to the court a quo is, according to the defendant-appellant, that of not having declared null and void the deed of sale with pacto de retro executed by the defendant Socorro Nolan in favor of the plaintiffs.

It is an established fact that the parcel of land, which is the subject matter of the sale, is registered in the name of said defendant Socorro Nolan to whom the certificate of title thereof was issued as a result of the cadastral proceedings of Murcia, Occidental Negros. The defendant-appellant contends, however, that the land in question was acquired during his marriage to the defendant Socorro Nolan, at the expense of the common fund. He concludes that said parcel of land belongs to the conjugal partnership and the husband alone, not the wife even with the permission of the husband, can alienate it in accordance with the resolution of the Direccion General de los Registros de Espana (General Directorate of Registries of Spain) of May 13, 1911, cited by Manresa in his Commentaries, vol. 9, 3d edition, page 703.

It is true that according to article 1401, No. 1, of the Civil Code, to the conjugal partnership belongs property acquired for a valuable consideration during the marriage at the expense of the common fund, whether the acquisition is made for the partnership or for one of the spouses only. However, we should not lose sight of the fact that by virtue of the principles underlying the Torrens system of registration under which the ownership of the parcel of land in question was registered, the provisions of article 1401, No. 1, of the Civil Code are without legal effect when, as in this case, a purchaser in good faith has acquired said parcel of land registered in the registry in the name (of the defendant Socorro Nolan. The plaintiffs, confident that it appears from the certificate of registration that lot No. 60 of Murcia belongs to the defendant Socorro Nolan, did not need to inquire whether said lot had been acquired by her with money exclusively belonging to her, or at the expense of the common fund of her conjugal partnership with the defendant Custodio Arimas. To the plaintiffs, the only legal truth upon which they had to rely was that the land is registered in the name of the defendant Socorro Nolan and that her title, under the law, is absolute and indefeasable (Maloles and Malvar vs. Director of Lands, 25 Phil., 548; Legarda and Prieto vs. Saleeby, 31 Phil., 590; Government of the Philippine Islands vs. Avila, 38 Phil., 383; and Government of the Philippine Islands vs. Abural, 39 Phil., 996).

Furthermore, according to Act No. 3922 amending article 1387 of the Civil Code, the defendant Socorro Nolan had the right to alienate, encumber or mortgage or otherwise dispose of the parcel of land in question and appear in court to litigate with regard to the same, without necessity of the permission or presence of the husband. It necessarily follows from all the foregoing that the deed of sale with pacto de retro executed by the defendant Socorro Nolan in favor of the plaintiffs is perfectly valid and legal and may not be annulled upon evidence to the effect that the money with which the parcel of land sold was acquired, belonged to the appellant's conjugal partnership.

Wherefore, the appealed judgment should be, as it is hereby affirmed, with the sole modification that the

defendant-appellant, as administrator of his conjugal partnership with the defendant Socorro Nolan, be as it is hereby ordered to pay the sum of three thousand one hundred pesos (P3,100) to the plaintiffs within the period fixed in the appealed judgment, with costs. So ordered.

Avancena, C J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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