

IN RE TESTATE ESTATE OF NARCISO A. PADILLA. CONCEPCION PATERNO VDA. DB PADILLA, WIDOW AND APPELLEE, VS. ISABEL BIBBY VDA. DE PADILLA, EXECUTRIX AND APPELLANT

G.R. No. 48137. October 04, 1943

Ponente: BOCOBO, J.

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BOCOBO, J.:

This case is an incident of the settlement of the testate estate of the late Narciso A. Padilla. In order that his property may be divided according to his last will and testament, it is necessary first to liquidate the conjugal partnership. It was in connection with such liquidation that the widow, Concepcion Paterno Vda. de Padilla, commenced the instant proceedings by filing a petition wherein she prayed, inter alia, that her paraphernal property be segregated from the inventoried estate and delivered to her together with the corresponding reimbursements and indemnities; that she be given one-half of the conjugal partnership property; and that her usufructuary right over one-half of the portion pertaining to the heir instituted in the will be recognized. The Court of First Instance of Manila rendered judgment declaring certain pieces of real estate and jewelry as well as certain sums of money to be paraphernal, and ordering the same to be delivered to the widow (appellee herein). The trial court's judgment, as amended, reads:

"En vista de los hechos y consideraciones que preceden, el Juzgado dicta sentencia y declara:

"(a) Que todos los bienes que constan en el inventario, y sobre los cuales no se ha suscitado controversia por las partes, son bienes gananciales;

"(b) Que se nombran tres (3) Comisionados, uno a recomendacion de la heredera instituida en el testamento, otro a recomendacion de Da. Concepcion Paterno Vda. de Padilla, y el tercero por el Juzgado, para que se hagan cargo de avaluar las fincas o partes de fincas que se deben justipreciar de conformidad con las conclusiones sentadas en esta decision hagan las computaciones correspondientes a fin de determinar el remanente liquido de la sociedad de gananciales, tomando por base los precios calculados y valuados sobre dichos bienes, y dividan por mitad el remanente liquido entre Da. Concepcion Paterno Vda. de Padilla, y la heredera testamentaria Da. Isabel Bibby Vda. de Padilla, especificando los bienes que a cada una debe corresponder;

"(c) Que pagadas todas las deudas de la sociedad de gananciales, dichos comisionados procederan a dividir en tres partes los bienes que deben corresponder al difunto, a fin de que las dos terceras partes sean adjudicadas a la heredera testamentaria en pleno dominio, y la otra tercera parte en nuda propiedad a la misma heredera testamentaria y en usufructo a la viuda Concepcion Paterno mientras ella viva.

"(d) Que los gastos en que incurra esta Testamentaria por los servicios de los Comisionados se paguen por ambas partes, por mitad."

From the foregoing judgment the testator's mother and instituted heir, Isabel Bibby Vda. de Padilla, appeals.

I

The value in controversy being over P50,000, we have reviewed the evidence. After a careful examination of the oral and documentary proof, we find no error in the findings of fact made by the trial court. From the evidence it appears that Narciso A. Padilla and Conception Paterno were married on December 12, 1912. The husband, who was a medical student, contributed a small capital to the conjugal partnership at the time of the marriage. The wife, on the other hand, brought to the marriage considerable property in real estate, jewelry and cash. Practically all of the conjugal partnership property came from the fruits of the paraphernal property. The conjugal partnership lasted twenty-one years, the husband having died on February 12, 1934. (The wife also died recently, during the pendency of this appeal, but in this decision she is referred to as if still living.) The common fortune, consisting of real and personal property, is fairly large. The husband, who left no children, executed a will giving his whole estate to his mother, Isabel Bibby Vda. de Padilla, appellant herein. The property included in the inventory is appraised at P261,000. Seven pieces of real estate are in controversy in this case. The remaining ten real properties left by the deceased husband admittedly pertain to the conjugal partnership.

A thorough study of the evidence convinces us that the trial court was right in finding that the following properties in Manila are paraphernal: (1) the lot at 305 Arquiza Street and the demolished improvements; (2) the lot at 1393-1409 Juan Luna Street and the improvements that had been torn down; (3) the lot and improvements (except the building constructed during the marriage for P4,000) at 401-407 Camba Street; (4) the lot at 613-631 and 634-636 Martin Ocampo Street, with the original "accesorias" and a camarin which was destroyed in order that new "accesorias" might be constructed, these new "accesorias" being of the conjugal partnership; (5) the property at 620- A-H Callejon De la Fe; (6) one-half of the property at 631 Regidor Street; and (7) nine twenty-ninths (9/29) of the property at 302-306 R. Hidalgo Street.

We also agree with the finding of the lower court that certain jewels, namely: two pairs of ear-rings, a bracelet, and a gold watch, belong to the widow.

In like manner, we see no error in the following findings of the trial court: (1) that the husband borrowed P7,000 from the wife to meet his personal obligations; and (2) that the amount of P21,046.52 (the remainder of P66,-046.52) received by the wife during the marriage was commingled with the conjugal partnership funds.

II

Several questions of law are raised in the present appeal. We shall discuss them one by one.

1. The first legal controversy is on a sort of no-man's land where many a legal battle has been fought. The issue is, How far is a Torrens title conclusive and incontestable? Various manifestations of this legal question have been decided by the courts, and while certain of its aspects may still be doubtful, we are persuaded, however, that there can be no doubt, as will presently be shown, that what appears in the Torrens certificates in this case is neither final nor incontrovertible.

Appellant contends that because certain of these real estates (on Camba, Martin Ocampo and Regidor Streets) have been registered in the names of both spouses, Narciso Padilla and Concepcion Paterno de Padilla, and considering the presumption in Art. 1407 of the Civil Code, these properties must be held to be of the conjugal partnership. The trial court, however, found that the whole purchase price of the Camba and Martin Ocampo properties, and one-half of the purchase price of the Regidor property, were from the wife's exclusive funds, and therefore the whole of the original Camba and Ocampo estates and one-half of the Regidor realty must be adjudged paraphernal, in spite of the fact that the certificates of title are in the names of both spouses.

There is nothing sacrosanct and definitive in the certificate of title when the conjugal partnership is liquidated. The true and real owner may be shown—whether it be the husband, or the wife, or both. Thus, in *Flores vs. Flores*, 48 Phil. 288, this Court held that property acquired during the marriage but registered in the husband's name still belonged to the conjugal partnership. A similar ruling was announced when the real estate was registered in the wife's name. *Romero vs. Sheriff*, 53 Phil., 51. But the appellant maintains that the converse is not true; and that even if evidence is admissible to alter the conjugal character of the property, such evidence must be clear, strong and convincing (citing Art. 1407, Civil Code, and *Ahern vs. Julian*, 39 Phil, 607).

We are of the opinion that an exception should in no wise be made when the property is registered in the names of both spouses. In such instances, the property may be shown to be really of either spouse, though recorded in the names of both. The underlying reason is the same in all cases, which is the confidential relation between husband and wife. Because of the feelings of trust existing between the spouses, certificates of title are often secured in the name of both, or of either, regardless of the true ownership of the property, and regardless of the source of the purchase money. It is thus but fair that on liquidation of the partnership, the trust should be recognized and enforced, so that the real ownership of the property may be established. The principle that a trustee who takes a Torrens title in his name cannot repudiate the trust by relying on the registration, is one of the well-known limitations upon the finality of a decree of title. (See *Severino vs. Severino*, 44 Phil., 343). It is because a certificate of title under the Torrens system should not be turned into -an instrument for deprivation of ownership. The Torrens plan, created to protect dominion, is not a Frankenstein that destroys this very dominion. A trust, deriving its strength from confidence, which runs through with the woof and warp of the social fabric, does not lose that character on the plea that a Torrens certificate of title is conclusive. It is meet and seemly that this should be so, for any rule that permits the violation of a fiduciary duty would be a reproach to any legal system. These observations apply with peculiar force to the relations between husband and wife. In a normal marriage, the spouses trust each other so implicitly that they attach little or no importance to what appears in legal documents, fully and unreservedly believing that no technicality would be availed of to claim what in very truth pertains to one or the other. Things would indeed come to a sorry pass if the jurisprudence of this country should harbor any theory which would impair this intimate reliance, this unquestioning loyalty, this befitting faith between husband and Wife.

There is another reason why evidence of the nature of any property as paraphernal should be allowed, despite the Torrens certificate. It is this: the manager of the conjugal partnership is the husband. He may, without let or hindrance, deal with and dispose of any property appearing in the names of both spouses, even if the property should really be paraphernal. In the course of years, any such property may have been sold, transformed or substituted. Upon liquidation of the conjugal partnership, to forbid an investigation of the true source of the purchase price of the original property, after many years of marriage, would make liquidation a mockery, for it would be well nigh impossible to trace and identify the paraphernal property. The law positively ordains that the wife's property (dowry and paraphernal) should be returned, even before the payment of the debts of the conjugal partnership (Arts. 1421 and 1422, Civil Code). But how can this mandate of the law be complied with when the means to that end are withheld and forbidden?

As for the appellant's proposition that the evidence to rebut the Torrens certificates and the legal presumption in favor of the conjugal partnership (Art. 1407) should be clear, strong and convincing, we find that the proof, both oral and documentary, in the record is more than sufficient to offset and counteract the certificates of title and the presumption of law.

2. The second legal inquiry is the interpretation of Article 1404, par. 2, Civil Code: whether the value of the paraphernal land to be reimbursed to the wife is that obtaining at the time of the construction of the building, or

the value at the time of the liquidation of the conjugal partnership. With conjugal funds the husband constructed buildings on the wife's lots on Arquiza, Juan Luna, Camba and Martin Ocampo streets. The court a quo ordered that the value of the lots occupied by these constructions, to be paid to the widow, should be that prevailing at the time of the liquidation of the conjugal partnership.

Appellant claims such pronouncement of the trial court to be erroneous because from the time of the construction of the buildings, the conjugal partnership became the owner of the whole property (lot and building) in each instance, and therefore the subsequent increase in value should accrue to the conjugal partnership, and any depreciation should be suffered by the partnership.

Article 1404, Civil Code, provides:

"Las expensas utiles hechas en los bienes peculiares de cualquiera de los conyuges mediante anticipaciones de la sociedad o por la industria dei marido o de la mujer, son gananciales.

"Lo seran tambien los ediflcios construidos durante el matrimonio en suelo propio de uno de los conyuges, abonandose el valor del suelo al conyuge a quien pertenezca."

Appellant's theory is untenable. The ownership of the land is retained by the wife until she is paid the value of the lot, as a result of the liquidation of the conjugal partnership. The mere construction of a building from common funds 'does not automatically convey the ownership of the wife's land to the conjugal partnership. Such a mode of using the land, namely, by erecting a building thereon, is simply an exercise of the right of usufruct pertaining to the conjugal partnership over the wife's land. As Manresa says, "la sociedad de gananciales es realmente la usufructuaria de los bienes privativos de cada conyuge." (Comment on Art. 1408.) In consequence of this usufructuary right, the conjugal partnership is not bound to pay any rent during the occupation of the wife's land because if the lot were leased to a, third person, instead of being occupied by the new construction from partnership funds, the rent from the third person would belong to the conjugal partnership. Therefore, before payment of the value of the land is made from the common funds, inasmuch as the owner of the land is the wife, all the increase or decrease in its value must be for her benefit or loss. And when may she demand payment? Not until the liquidation of the conjugal partnership because up to that time, it is neither necessary nor appropriate to transfer to the partnership the dominion over the land, which is lawfully held in usufruct by the conjugal partnership during the marriage.

The foregoing finds support, by analogy, in Article 361, Civil Code, which reads:

"Art. 361. El dueño del terreno en que se edificar, sembrar o plantar de buena fe, tendra derecho a hacer suya la obra, siembra o plantation, previa la indemnizacion establecida en los arts. 453 y 454, o a obligar al que fabrico o planto a pagarle el precio del terreno, y al que sembro, la renta correspondiente." (Italics supplied.)

In the instant case, no reimbursement for the value of the lots was made from the common funds during the marriage.

Moreover, Sanchez Roman declares:

"Los derechos de la mujer en la sociedad legal de gananciales se remiten todos a la epoca de su disolucion y liquidation, cuando se trata de la existencia normal de la sociedad legal de gananciales." (Italics supplied.)

And Manresa states:

"El valor fijado a los bienes debe ser el que realmente tengan el dia de la disolucion de la sociedad, con las necesarias aclaraciones, para conocer lo que pueda tener caracter propio o ganancial." (Italics supplied.)

Furthermore, the wife should not be allowed to demand payment of the lot during the marriage and before

liquidation because this would unduly disturb the husband's management of the conjugal partnership. The scheme of the Civil Code is that in the interest of successful administration of the common property, the wife should not interfere with the husband's way of directing the affairs of the partnership. Besides, such premature requirement of the value of the land by the wife may dissuade the husband from making improvements, whereas article 1404, par. 2, has for its purpose the encouragement of construction by the husband. (Manresa's comment on Art. 1404.) On the other hand, if the payment for the lot is deferred till the liquidation of the conjugal partnership, the initial outlay for the erection of the building would be less, and consequently the construction would be facilitated.

3. The next question of law is whether the value of the paraphernal buildings which were demolished to make possible the construction of new ones, at the expense of the conjugal partnership, should be reimbursed to the wife. Such tearing down of buildings was done with regard to the Arquiza, Juan Luna and Martin Ocampo properties. Appellant maintains that it is doubtful if these buildings had any value at the time they were destroyed, and that there is no evidence that the conjugal partnership realized any benefit therefrom. However, we are certain these old buildings had some value, though small, and it will be the duty of the commissioners mentioned in the judgment appealed from, to assess that value. We entertain no manner of doubt that the conjugal partnership derived a positive advantage from the demolition, which made it possible to erect new constructions for the partnership. It is but just, therefore, that the value of the old buildings at the time they were torn down should be paid to the wife. We dismiss, as without any merit whatever, the appellant's contention that because article 1404, par. 2, of the Civil Code does not provide for the reimbursement of the value of demolished improvements, the wife should not be indemnified. Suffice it to mention the ancient maxim of the Roman law, "Jure naturae aequum est, meminem cum alterius detrimento et injuria fieri locupletiores" which was restated by the Partidas in these terms: "Ninguno non deve enriquecerse tortizadamente con dano de otro." When the statutes are silent or ambiguous, this is one of those fundamental principles which the courts invoke in order to arrive at a solution that would respond to the vehement urge of conscience.

4. Then, there is the total amount of P7,000 borrowed by the husband from the wife, thus itemized: (1) P3,000 lost in horse-races and in poker; (2) P3,000 spent for pastime ("diversion"); and (3) P1,000 to pay a personal debt of the husband. The trial court applied article 1386 of the Civil Code, and ordered that said amount of P7,000 be deducted from the husband's share. But appellant's theory is that articles 1408 (par. 1) and 1411 should govern, so that the amount is chargeable against the conjugal partnership. These provisions read thus:

"Art. 1386. Las obligaciones personales del marido no podran hacerse efectivas sobre los frutos de los bienes parafernales, a menos que se pruebe que redundaron en provecho de la familia."

"Art. 1408. Seran de cargo de la sociedad de gananciales:

"l.o. Todas las deudas y obligaciones contraidas durante el matrimonio por el marido, y tambien las que contrajere la mujer en los casos en que pueda legalmente obligar a la sociedad. * * *"

"Art. 1411. Lo perdido y pagado durante el matrimonio por alguno de los conyuges en cualquier clase de juego, no disminuira su parte respectiva de los gananciales. * * *"

It is true that article 1385 ordains that the fruits of the paraphernal property form part of the conjugal partnership and are subject to the payment of the charges against the marriage. But as Manresa says, article 1386 contains a limitation on the first part (just cited) of article 1385.

It is likewise true that under article 1408, par. 1, all debts and obligations contracted by the husband during the marriage are chargeable against the conjugal partnership, but article 1386 is an exception to the rule, and exempts the fruits of the paraphernal property from the payment of the personal obligations of the husband, unless there is proof that they redounded to the benefit of the family. It is self-evident that the amounts in question did not

benefit the family. Hence, they cannot be charged against the fruits of the paraphernal property. They should be paid from the husband's funds. We quote from Manresa's comment on article 1386:

"No hay, desde luego, contradiccion entre los preceptos de los articulos 1408 y 1386; hay solo una regla general contenida en aquel, y una excepcion contenida en este. El articulo 1386, como especial, modifica la regla, y ha de aplicarse siempre que las obligaciones personales contraidas por el marido quieren hacerse efectivas en frutos o rentas de los bienes parafernales de la mujer.

"La frase 'obligaciones personales', se reduce a deudas u obligaciones contraidas privativamente por el marido, deudas y obligaciones que son desde luego propiamente personales o no reales, pues si se reclamase contra bienes o derechos especial y legalmente efectos al cumplimiento de la obligacion, no podria haber inconveniente para que esta se hiciese efectiva. Por lo demas, el espiritu del precepto es que el marido no puede aprovecharse en interes propio o para atenciones privativas o personales suyas, de los frutos de los bienes parafernales; que estos se destinan a las verdaderas necesidades y cargas de la sociedad conyugal, y, por tanto, se empleen, como deben, en beneficio de la familia."

Valverde in his "Tratado de Derecho Civil Español," Vol. 4, pp. 347-348, says:

"Consecuencia natural de esta especie de separacion de responsabilidades y de patrimonios, es que elCodigo ordene que 'las obligaciones personales del marido no podran hacerse efectivas sobre los frutos de los bienes parafernales, a menos que se pruebe que redundaron en provecho de la familia'. En efecto, el marido, como administrador de la sociedad legal, obliga a esta con sus actos, y por eso los gananciales responden de las deudas y obligaciones contraidas por el marido durante el matrimonio, presumiendose hechos en interes de la sociedad, a no ser que se pruebe lo contrario, pero como caso de excepcion, si los gananciales son frutos de bienes parafernales, entonces, para que respondan tales frutos de las obligaciones del marido, es preciso que pruebe este que las dichas obligaciones redundaron en provecho de la familia, pues por el precepto del codigo, si los frutos de los parafernales son gananciales, cuando de las deudas del marido se trata, solo son responsables esos frutos en el caso que se demuestre que redundaron en provecho de aquella." (Italics supplied.)

Oyuelos, in his work, "Digesto: Principios, Doctrina y Jurisprudencia Referentes alCodigo Civil Espanol" (Vol. 6, pp. 79-80), has this to say:

"(c) Fundamento de la exencion de los frutos.—El articulo 1386 es un complemento de los articulos 1385, 1408, 1413, 1417, 1433 y 1434, y se inspira en los mismos principios economicos de la familia, porque si los frutos de los parafernales forman parte de la sociedad conyugal, que subsiste mientras no se disuelva el matrimonio o se decrete la separacion de bienes, y si a cargo de la misma corre el sostenimiento de la familia, la educacion de los hijos y las deudas que el marido contraiga como jefe de ella, es logico concluir, sobre todo teniendo presente el articulo 1385, que aun prescindiendo del texto claro y termnante del articulo 1386, las responsabilidades del marido en tanto puedan hacerse efectivas con los productos de dichos bienes en cuanto se hubiesen contraido en provecho de la familia; no existiendo contradiccion entre los articulos 1386 y 1408, numero 1.o (alegada en el concepto de que el articulo 1386 no puede aplicarse al caso de subsistencia del matrimonio), por cuanto la esfera de actuacion del 1386 no se contrae al estado de derecho consiguiente a la separacion de bienes de los respectivos esposos."

Is the amount under consideration, P7,000, being enforced against the fruits of the paraphernal property? Yes, because practically all of the conjugal partnership assets have been derived from the fruits of the wife's exclusive property.

In the case of Fidelity and Surety Co. vs. Ansaldo, 37 Off. Gaz., 1164, (promulgated November 26, 1938), this Court held:

Article 1386 of the Civil Code provides that the personal obligations of the husband may not be paid out of the

fruits of the paraphernal property, unless it be proved that such obligations redounded to the benefit of the family. If, as contended by the appellant, the properties levied upon in Civil Case No. 33923 of the Court of First Instance of Manila, entitled 'Fidelity & Surety Company of the Philippine Islands vs. Romarico Agcaoili and Angel A. Ansaldo' were acquired with the fruits of the paraphernal properties belonging to Margarita Quintos, said properties, although conjugal (art. 1385, par. 1 and art. 1408, Civil Code; *Mirasol vs. Lim*, 59 Phil., 701, 709) are not liable for the personal obligations of the husband, unless said obligations redounded to the benefit of the family. Paragraph 1 of article 1408 of the Civil Code makes all debts and obligations contracted during the marriage by the husband chargeable against the conjugal partnership, as a general rule. Article 1386, however, lays down an exception to the general rule, that is to say, although the fruits of the paraphernal property of the wife are conjugal, they do not respond for the personal obligations of the latter unless said obligations have redounded to the benefit of the family."

In the sentence of January 15, 1917, of the Supreme Tribunal of Spain, the following doctrine is enunciated:

"Considerando a mayor abundamiento que si bien en orden al regimen familiar y conforme a la doctrina legal establecida por el Tribunal Supremo, interpretando el art. 1385 del expresado Codigo, al marido incumbe exclusivamente la administration de los frutos de los bienes parafernales como parte del haber de la sociedad conyugal, esta potestad esta condicionada y regulada por el 1386, al prohibir al esposo el aprovechamiento de tales rendimientos en beneficio prom'o o sea de sus obligaciones personales, imponiendole por modo expreso, el deber de aplicarlos al levantamiento de las cargas matrimoniales, pues de otra forma se desnaturalizaria la reserva y privilegio que constituye el concepto del patrimonio parafernial, con riesgo de infringir la disposition legal que precede invocada." (Italics supplied.)

In the instant case, it is quite plain that if the amount of P7,000.00 under review should be charged against the conjugal partnership property which came almost exclusively from the fruits of the paraphernal property, the reservation and privilege established by law on behalf of the paraphernal patrimony would be encroached upon and tempered with.

There are just and sound reasons for article 1386. The wife contributes the fruits, interests, and rents of her paraphernal property to help bear the expenses of the family. When the husband contracts any debt in his own name, it is chargeable against the conjugal partnership as a general rule (article 1408, par. 1) because it is presumed that the debt is beneficial to the family. But when such a debt is enforced against the fruits of the paraphernal property, such a presumption no longer applies, considering article 1386. On the contrary, it must be proved that the purpose for which the wife contributes the fruits of her paraphernal property has been accomplished through such personal debt of the husband.

Appellant relies on article 1411 which reads:

"Lo perdido y pagado durante el matrimonio por alguno de los conyuges en cualquier clase de juego, no disminuira su parte respectiva de los gananciales.

"Lo perdido y no pagado por alguno de los conyuges en juego licito, sera a cargo de la sociedad de gananciales." But this provision should be applied only when the debt is not being charged against the fruits of the paraphernal property. If the conjugal partnership assets are derived almost entirely, if not entirely, from the fruits of the paraphernal property, as in this case, it is neither lawful nor equitable to apply article 1411 because by so doing, the fruits of the paraphernal property would in reality be the only kind of property to bear the husband's gambling losses. In other words, what the husband loses in gambling should be shouldered by him and not by the conjugal partnership if the latter's assets come solely from the fruits of the paraphernal property. This is but just, because gambling losses of the husband cannot by any process of reasoning be considered beneficial to the family. By the same token, to charge the gambling losses against the conjugal partnership in such a situation would fly in the

case of the stern prohibition of article 1386, which protects the fruits of the paraphernal property precisely against expenses of the husband that are of no help to the family.

We are satisfied that the foregoing is by and large a fair and rational interpretation of articles 1408 and 1411, which must be read in the light of article 1386. If such a qualification of articles 1408 and 1411 is not made, article 1386 becomes nugatory.

5. The next question is whether interest should be paid by the widow on the amount of P9,229.48 withdrawn by her from the Monte de Piedad savings account No. 3317 of the conjugal partnership. There is no question that the principal should be credited to the partnership as the appellee's counsel does not dispute this point. The withdrawal of said amount was made on April 7, 1934, about two months after the husband's death, and while the widow was a special administratrix. There being no evidence in the record as to the purpose for which this amount was used, although counsel for appellee suggests the possibility that the same might have been disbursed for funeral and similar expenses, we believe she should pay such interest, if any, as the Monte de Piedad would have paid on the amount aforesaid, had not the same been withdrawn by the widow.

Wherefore, with the modification that the appellee shall pay such interest, if any, on P9,229.48 as the Monte de Piedad would have paid if the amount had not been withdrawn, the judgment appealed from should be and is hereby affirmed, with costs against the appellant. So ordered.

Yulo, C. J., Moran, Ozaeta, and Paras, JJ., concur.

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