

AGUSTIN GA. GAVIERES, PLAINTIFF AND APPELLANT, VS. THE ADMINISTRATORS OF THE ESTATE OF LUISA PEÑA, AND WILLIAM ROBINSON, DEFENDANTS AND APPELLEES.

G.R. No. 4992. April 02, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 27th day of February, 1907, the plaintiff commenced an action in the Court of First Instance against the defendants for the purpose of having declared null and void a certain mortgage executed and delivered by the wife of the plaintiff, Doña Luisa Peña, to the defendant William Robinson, which mortgage was executed and delivered upon the 29th day of December, 1906. To the complaint filed by the plaintiff, the defendant Robinson demurred, which demurrer was sustained by the lower court. The plaintiff refused to amend his pleadings and the lower court, upon the 24th day of April, 1907, rendered a final judgment in said cause, dismissing the complaint. The plaintiff duly excepted to the ruling of the court on the demurrer, as well as to the final judgment dismissing said cause and appealed to this court, which appeal was finally decided by the Supreme Court upon the 20th day of March, 1908.[1] The Supreme Court overruled the order of the lower court sustaining the demurrer and ordered the cause remanded to the lower court, giving the defendant the right to answer the complaint. The cause was duly remanded and the defendant, upon the 28th day of March, 1908, filed his answer in said cause.

The theory of the plaintiff upon which he prayed that the said mortgage be annulled was based upon the following facts:

First. That the said Luisa, Peña was his lawful wife, they having been legally married in the month of November, 1874.

Second. That the mortgage upon the personal property described in said mortgage was executed and delivered by the said Doña Luisa Peña to the defendant Robinson without his knowledge or consent.

Third. That the mortgage was executed and delivered by the said wife a few hours before her death at a time when she was mentally and physically incapacitated for executing and delivering such a document.

The defendant admitted that the plaintiff and the said Doña Luisa Peña had been legally married and at the time the said mortgage was executed and delivered were still husband and wife. The defendant alleged in his answer that there was a confusion of parties, and that the plaintiff was also one of the defendants, being the administrator of the estate of the deceased Luisa Peña, that he was, in other words, plaintiff in one capacity and defendant in another, alleging also that the wife, at the time she mortgaged the property in question, was managing the business of which the said property constituted a part and that she had lived, and was living at that time, separate and apart from her husband. No allegation, however, was made that the plaintiff and his wife had been legally separated, or that the wife had been given permission on the part of the husband to mortgage the property in question.

After hearing the evidence adduced, the trial court denied the prayer of the plaintiff's complaint, basing his

conclusions upon the following grounds: (a) That the evidence did not show that the deceased Luisa Peña was mentally incompetent to execute the instrument sought to be annulled, and (b) that the plaintiff was not entitled to maintain the action of annulment.

The lower court based the second conclusion, to wit, that the plaintiff was not the proper party to maintain the action of annulment, upon the provisions of articles 1302, 1303 and 1304 of the Civil Code.

From this decision of the lower court the plaintiff appealed, and made the following assignments of error:

"The Court of First Instance of Manila erred:

"1. In not setting forth, in the judgment appealed from, the conclusions regarding the essential facts admitted by the writings, and the essential facts in controversy which are admitted as proven, all contrary to law.

"2. In not declaring the nullity of the mortgage contract and of the document wherein such contract is set forth, as prayed in the complaint, and in rendering judgment against the appellant.

"3. In denying the motion for a new trial, asked for by the plaintiff."

With reference to the first-above assignment of error, to wit, that the facts stated in the decision of the lower court were not sufficient under the allegation of the parties to justify the conclusion that the plaintiff was not entitled to have said mortgage annulled, it appears that the decision of the court makes no finding whatever with reference to the allegation of the plaintiff that the said mortgage was executed and delivered without his consent and without his knowledge.

This allegation of the plaintiff constituted the very gist of his action. It being admitted by the defendant that the plaintiff and the said mortgagor, Luisa Peña, were husband and wife, then her right to dispose of the property either conjugal or paraphernal is governed by the provisions of the Civil Code, and her right to dispose of the property whether conjugal or paraphernal does not depend upon her capacity or incapacity, but upon the will of her husband. If it should be considered paraphernal property; then article 1387 of the Civil Code applies and she could not alienate, encumber, or mortgage it without the permission of her husband; if it be considered conjugal property, even then she was equally forbidden by law to dispose of the same without permission of her husband. (Art. 1416, Civil Code.)

In addition to the foregoing facts upon which the lower court based its conclusions, the said decision contains the further statements which may be regarded as findings of fact.

First. That the said mortgage was given to obtain a loan in order to renew the liquor license, the expiration of which would have rendered her business worthless.

Second. That the property mortgaged, or at least a part of it, was acquired by the wife alone.

Third. That the separate conduct of the business by the wife seems to have been with the knowledge of her husband, within the meaning of article 7 of the Code of Commerce.

Suppose, for the purpose of argument, that these facts be admitted as true, would they be sufficient, in addition to the facts upon which the conclusions of the lower court were based, to deny the petition of the plaintiff?

Granting that the wife had authority to carry on a private business, would this fact alone justify her in mortgaging conjugal property or paraphernal property without the consent of her husband? or granting that a part of the property used in the separate business had been acquired by the wife alone, in the absence of proof whether it had been acquired before or after marriage, would this fact be sufficient to justify her in mortgaging the same without the express consent of her husband? If the property had been acquired before marriage and had been brought to

the marriage, it would then be paraphernal property. If it had been acquired after marriage, then it would be conjugal property, and in either event she would not be permitted to mortgage it, or sell it, etc., without the consent of the husband. And, moreover, suppose that, under article 7 of the Code of Commerce, it be presumed that the wife was carrying on the business with the knowledge of her husband, will the fact that she has authority to conduct a private business under said article by presumption be sufficient to justify her in mortgaging the property used in such private business? We think not, in view of the provisions of the Civil Code which absolutely prohibit her from selling or mortgaging, etc., either the paraphernal or the conjugal property. We do not believe that the power which is expressly forbidden by the law can be given by mere presumption in the absence of an express provision of the law to that effect. The only exception to the absolute prohibition on the part of the wife to create liens against the paraphernal and conjugal property is that found in article 1408 of the Civil Code. The present case is not one of the exceptions mentioned in that article.

The evidence adduced during the trial in the lower court is not before us. Section 133 of the Code of Procedure in Civil Actions makes it necessary for the trial court to make a finding of the facts upon which he bases his conclusions. The parties have a right to know upon what facts the court bases its conclusions. (*Braga vs. Millora*, 8 Phil. Rep., 458; *Early vs. Sy-Giang*, 4 Phil. Rep., 727; *City of Manila vs. Insular Government*, 9 Phil. Rep., 71.) Not only have the parties litigant a right to know what were the facts upon which the judge based his conclusions, but they also have a right to have the questions submitted decided.

The plaintiff alleged that the property in question had been mortgaged by his wife without his knowledge or consent. This allegation constituted the very basis of his right to have the mortgage annulled. If any fact existed in the proof or in the record which showed either that he had given his consent, either expressly or impliedly, or that circumstances existed which gave the wife the right to mortgage such property without his consent, these facts should have been made to appear in the decision. If proof had been adduced during the trial in the lower court showing circumstances which relieved the wife of the necessity of obtaining the permission of her husband to mortgage the property in question, the appellee was entitled to bring the proof to this court under an exception to the judgment of the court below for the purpose of demonstrating that fact.

We make no finding upon the question presented by the appellee, to wit, that the plaintiff had no authority to bring an action in one capacity against himself and others in another capacity for the reason that the defendant did not appeal and that question is not presented here.

From a careful examination of the facts stated in the decision, it is clearly demonstrated that such facts are not sufficient to justify the conclusion that the plaintiff is not entitled to have the mortgage in question annulled. The facts contained in the decision are not decisive of the question of the issue presented by the plaintiff and accepted by the defendant. All of the facts stated in the decision might well be admitted by the plaintiff, and yet he would be entitled to have the said mortgage annulled.

For all of the foregoing reasons, the judgment of the lower court is hereby reversed and the cause is hereby remanded to the lower court with directions that a new trial be ordered, and without any special finding as to costs, it is so ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

[1] 10 Phil. Rep., 472.

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