

IN THE MATTER OF THE ESTATE OF MANUELA AMANCIO.-TOMAS AMANCIO ET AL., APPELLANTS, VS. JORGE PARDO, APPELLEE.

G.R. No. 5008. March 25, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

It appears from the record that Manuela Amancio and the appellee, Jorge Pardo, were husband and wife, and that the wife died at some date not mentioned, but prior to January, 1907. Her death dissolved the conjugal partnership theretofore existing between herself and her husband. The practice that should be followed in such a case for the settlement of the affairs of the conjugal partnership has been settled by the decisions of this court. When the partnership is dissolved by the death of the husband, the affairs of the conjugal partnership are settled in the judicial proceedings for the settlement of the estate of the deceased husband. (Alfonso vs. Natividad, 6 Phil. Rep., 240; Prado vs. Lagera, 7 Phil. Rep., 395; De la Rama vs. De la Rama, 7 Phil. Rep., 745.)

But, when the partnership is dissolved by the death of the wife, its affairs are not settled in the judicial proceedings for the settlement of the wife's estate. In the case of Enriquez vs. Victoria (10 Phil. Rep., 10), the court said (p. 16):

"In the case of Alfonso vs. Natividad the court said (p. 245) :

"'The question whether or not this rule for the settlement of the affairs of the conjugal partnership, when it is dissolved by the death of the husband, is equally applicable when the partnership is dissolved by the death of the wife, we do not consider.'

"It is necessary now, however, to resolve that question.

"The husband is by law the manager of the conjugal partnership. (Art. 1412, Civil Code.) His debts, contracted during marriage, are its debts. (Art. 1408.) Upon the death of the wife he becomes the surviving partner, and we do not doubt that he is the person called upon to settle the affairs of the partnership. It could not have been intended that, upon the death of the wife, leaving the husband surviving, the property which the husband had administered and in which he was directly interested, should be taken out of his hands and delivered over to an administrator appointed in proceedings for the settlement of his wife's estate, and we hold that, where a conjugal partnership is dissolved by the death of the wife, the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated."

When an ordinary commercial partnership is dissolved by the death of one of the partners, the administrator of the deceased partner is not the person who has the right to settle the affairs of the partnership. On the contrary, its affairs must be settled by the surviving partner or partners, and certain of the rights of the executor or administrator and the surviving partner in such case are defined in section 664 of the Code of Civil Procedure.

For the purpose of settling the affairs of a dissolved partnership the surviving husband is entitled to the possession not only of all the property belonging to the partnership, but also to the bienes parafernales of the wife. (Prado vs. Lagera, 7 Phil. Rep., 395; De la Rama vs. De la Rama, 7 Phil. Rep., 745.)

In the present case, therefore, the person entitled to the possession of all of this property was the appellee Jorge Pardo, and the administrator appointed in the judicial proceeding for the settlement of the estate of the deceased wife was not entitled to the possession of any of it until the partnership affairs had been liquidated. The proceeding for the settlement of the estate of the wife could not be terminated until the husband had liquidated the affairs of the partnership and delivered to the administrator of the wife's estate the part belonging to it, all in accordance with articles 1418 to 1426 of the Civil Code, and section 685 of the Code of Civil Procedure.

The practice indicated in these decisions does not seem to have been followed in this proceeding for the settlement of the estate of the deceased wife. It appears that an administrator was appointed in such special proceeding, and on the 26th day of January, 1907, the court in that said proceeding made an order reciting that some of the property included in the inventory which had been made therein was the separate property of the surviving husband, and other property was the separate property of the deceased wife, and he ordered certain specific property, consisting apparently of jewels, turned over to the heirs of the deceased Doña Manuela. The same order directed the settlement of the affairs of the conjugal partnership in this special proceeding, and after the payment of the debts thereof, the delivery of one-half of what remained to the appellee, the husband, and the other half to the heirs of the deceased wife.

On the 20th day of December, 1907, nearly a year afterwards, the appellee, Jorge Pardo, presented a motion to the court below in this special proceeding relating to the settlement of the estate of his deceased wife, wherein he stated that in the order of January 26, 1907, the court had made a mistake in regard to one certain jewel, saying that that jewel, so far from being the separate property of his deceased wife, belonged to the conjugal partnership, and he asked that the order be corrected so as to state that that jewel was part of the conjugal property. On the 22d of June, 1908, the court made an order in conformity with the prayer of this petition, relieving him of the obligation of turning that particular jewel over to the heirs of his deceased wife. From that order the heirs of the deceased wife, Tomas Amancio and Honorata Losada, have appealed.

It will be seen from what has been stated that the court below erred in settling the affairs of the conjugal partnership in the proceeding for the settlement of the estate of the deceased wife. In entering orders looking to that end, error was committed, as the court had no authority to make such a settlement in that proceeding. The order of the 26th of January, was, therefore, erroneous. But it is said by the appellant here that, if erroneous, the appellee Pardo should have appealed from the order; that he did not do so, but on the contrary allowed nearly a year to elapse before making any motion to have the order amended, and that the court, after such a lapse of time, had no authority to entertain such a petition.

If the court had no authority in that special proceeding to make the order of the 26th of January, 1907, the appellee was under no obligation to appeal therefrom. Whether he would be under such obligation if he had appeared in the proceeding and voluntarily submitted to the court his right to the ownership of this jewel, is a question we are not called upon to decide, because there is nothing in the case to show that he ever took any part in the proceeding for the settlement of his wife's estate until he presented, on the 20th of December, 1907, his motion asking for an amendment of the order of the 26th of January of that year. (*Franco vs. O'Brien*,^[1] No. 5074, decided March 27, 1909). Our opinion is that both of the orders above mentioned were made by the court without authority, and the one made on the 22d of June, 1908, amending the order of the 26th of January, 1907, having been appealed from, should be set aside. It does not follow, however, from the setting aside of this order, that the order of the 26th of January, 1907, should be reinstated. It appears, from the last order made in the proceeding, that the jewel in question is in the possession of the appellee. As has been stated before, he, being the surviving partner of the conjugal society, is entitled to the possession of the jewel, whether it was property of the partnership or the private property of the deceased wife. The order of January 26, 1907, having been made in a

proceeding to which the appellee was not a party, can not prejudice his right of possession. That right rests not upon that order but upon the general principles of law above referred to.

It is, therefore, ordered that the order of the 22d of June, 1908, be set aside, and it is declared that the appellee is entitled to the possession of the jewel until the question of its ownership is decided in proper proceedings. No costs will be allowed to either party in this court.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur. Johnson, J., concurs in the result.

[1] Page 359, post.

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