

PAULINO JACINTO (IN REPRESENTATION OF HIS WIFE BENITA REYMUNDO), PLAINTIFF AND APPELLANT, VS. JULIANA SALVADOR ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 6651. March 28, 1912*

Ponente: TRENT, J.

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This case is entitled Paulino Jacinto in representation of his wife Benita Reymundo vs. Juliana Salvador et al. The plaintiff states that he instituted this action in the name and as the representative of his wife and alleges that she, by virtue of inheritance from her deceased mother, is the owner of the lands in question. Benita Reymundo is in no wise made a party to the action except in this manner. That Benita Reymundo is the real party in interest cannot be doubted. The first inquiry is whether the husband alone can maintain this action in the name and as the representative of his wife. The plaintiff is seeking to recover the paraphernal property of his wife as her legal representative. Upon their marriage, a conjugal partnership was formed and the husband became the administrator of this conjugal partnership, but not of his wife's paraphernal property. The ownership of such property always remains in the wife. (Arts. 1381, 1393, and 1412, Civil Code.) The husband cannot institute actions of any kind whatsoever with regard to the paraphernal property of his wife without her intervention or consent. (Idem, art. 1383.) The provisions of the above-named articles continue the ownership, control, and management of the wife's paraphernal property in her own hands. The new code makes no changes as to these matters. The wife cannot alienate, encumber, or mortgage the paraphernal property without the permission of her husband, nor appear in court to litigate with regard to the same, unless she has been judicially authorized for that purpose. (Idem, 1389.) That part of this article relating to the wife's appearance in court has been repealed by section 115 of the Code of Civil Procedure. (Bismorte vs. Aldecoa & Co. 17 Phil. Rep., 480.) The wife can now appear in court alone and litigate with regard to her property in which her husband has no interest.

Prior to the promulgation of the new Code of Civil Procedure, the husband was the legal representative of the wife and as such could, with her consent, institute and maintain actions and other legal proceedings for and on her behalf, and the orders, judgments, and decrees rendered in such actions and proceedings determined her rights therein. This he had a right to do under the law. Now, has this right been taken away by the provisions of Act No. 190? Section 114 of the new Code of Civil Procedure provides that every action must be prosecuted in the name of the real party in interest. But a person expressly authorized by law so to do may sue or be sued without joining with him the person for whose benefit the action is prosecuted or defended. Section 115 authorizes a married woman to sue or be sued alone when the action concerns her property in which her husband can have no interest or right. And section 122 requires the bringing in of other parties when a complete determination of the controversy cannot be had without them. It is important to note that the language used in the first part of section 114 relative to the real party in interest is imperative; while that in relation to a person expressly authorized by law to represent another is permissive. In the former, the word "must" is used; in the latter, the auxiliary "may." Again, it can hardly be said that the legislature intended to include the husband in the phrase "or a person

expressly authorized by law so to do," when, in the very next section, it took up the question of the relation of husband and wife with reference to when the husband must be joined when the wife is a party. Here the husband is not joined on account of his marital relations, but this joining of the husband results from the existence and nature of the common interest. And again, the first part of section 114 is general and imperative, while the persons included within the phrase "or a person expressly authorized by law so to do" are exceptions, and that phrase must be construed in connection with the section of which it forms a part. This phrase is found in the latter part of the section, and just before and after it, and in fact, the whole of that part of the section deals with persons appointed by a court, with the single exception of a trustee of an expressed trust; so it would appear that the legislature intended to limit the phrase "or a person expressly authorized by law so to do" to that class of persons dealt with in that part of the section. Prior to the enactment of these provisions, the husband, as we have said, was Authorized to institute and maintain certain actions for and on behalf of the wife, but such authority was conferred upon him by the procedural law and he cannot, therefore, claim to have acquired a vested right, as no person can claim a vested right in any particular mode of procedure for the enforcement or defense of rights.

Under the provisions of section 122 of the new code, the court must require that all the parties be brought in if a complete determination of the controversy cannot be had without their presence. There is a defect of parties plaintiff in the case at bar. Defect of parties as here used means too few and not too many. The wife of the plaintiff, being a real party in interest, must be brought in.

For these reasons the judgment appealed from is set aside and the case remanded for the purpose of making the plaintiff's wife a party to this suit. Here we desire to remark that this case was not by any means well tried in the court below. Little attempt was made to establish the rights, of the parties by means of witnesses in open court. Neither was there any real attempt made to establish the location and description of the land in question. The court and the parties practically relied upon the very imperfect report of a commissioner. On the new trial, it is hoped that the parties will make some attempt to try this cause according to the law. No costs will be allowed in this instance,

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

Mapa, J., concurs in the result.

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