

EPIFANIA MAGALLON, PETITIONER, VS. HON. ROSALINA L. MONTEJO, IN HER OFFICIAL CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF DAVAO DEL SUR, BRANCH XXI, CONCEPCION LACERNA...

G.R. No. 73733. December 16, 1986

Ponente: NARVASA, J.

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NARVASA, J.:

The petition before this Court seeks the annulment of a writ of execution issued by the respondent Judge in Civil Case No. 727 of her court (RTC Davao del Sur). Said case was instituted by the plaintiffs (private respondents herein) against Martin Lacerna to compel partition of parcel of land located in Barrio Kasuga, Municipality of Magsaysay, Davao del Sur, to which said defendant had perfected a claim by homestead. The plaintiffs, claiming to be the common children of Martin Lacerna and his wife, Eustaquia Pichan, who died in 1953, asserted a right to one-half of the land as their mother's share in her conjugal partnership with Martin. While said defendant denied having contracted marriage with Eustaquia Pichan -- although he admitted living with her without benefit of marriage until she allegedly abandoned him -- as well as paternity of two of the plaintiffs who, he claimed, were fathered by other men, the Trial Court gave his denials no credence. Said Court, on the basis of the evidence presented to it, found that Martin had in fact been married to Eustaquia, and that the plaintiffs were his children with her. The Trial Court further found that Martin had begun working the homestead, and his right to a patent to the land accrued, during his coverture with Eustaquia. On the basis of these findings, the plaintiffs were declared entitled to the half of the land claimed by them.[1]

Martin Lacerna appealed to the Intermediate Appellate Court (AC-G.R. No. 59900-R). That Court affirmed, in a Decision promulgated on August 31, 1984 which has since become final.[2]

It appears that at the time the case was brought, and while it was being heard in the Trial Court, no certificate of title to the land had yet been issued to Martin Lacerna, although he had already complied with all the conditions necessary to a grant thereof. Original Certificate of Title No. P-11568 (issued on the basis of Homestead Patent No. 148868) was issued only on November 22, 1978, while Lacerna's appeal was pending in the Intermediate Appellate Court. While it is not disputed that said certificate of title refers to the same land homesteaded by Lacerna during his coverture with Eustaquia Pichan, for reasons to which the record before the Court offers no clear clue, it states on its face that it is issued in the name of "x x x MARTIN LACERNA, Filipino, of legal age, married to Epifania Magallon x x x," the latter being the present petitioner.[3]

It appears further that on November 26, 1985, after the confirmative Decision of the Intermediate Appellate Court had become final and executory, the respondent Judge, on motion of the plaintiffs issued an alias writ of execution commanding the Provincial Sheriff:

"x x x to order the defendant Martin Lacerna to divide and partition the property located at Casuga, Magsaysay, Davao del Sur, consisting of 10 hectares designated as Lot No. 5098 Cad. No. 275 covered by

H.A. No. 20-13378 (E-20-12748), ½ of which is the share of Eustaquia Pichan in the conjugal property, and plaintiffs being Pichan's children are also entitled thereto; and deliver portion of 5 hectares of the afore-described lot to the plaintiffs as their share to satisfy the said judgment and your fees thereon."[4]

Apparently, said writ was served on both Martin Lacerna and petitioner herein, for on December 17, 1985, the latter filed with the Trial Court a "Motion for Intervention and to Stay Execution" alleging that the land subject of the writ was conjugal property of herself and Martin Lacerna under a certificate of title (OCT No. P-11568) "x x x issued way back 1978 (sic) without legal impediments, and x x x now incontestable," as well as "x x x valid, binding and legal, unless declared otherwise in an independent proceedings, x x x" and praying that "x x x the property of herein intervenor be excluded from the enforcement of the writ of execution." [5] Said motion was denied, as also was a motion for reconsideration of the order of denial. Hence, the present petition.

The facts found by the lower courts which, in view of the finality of the latter's decisions, are binding upon this Court and can no longer be controverted, as well as the pertinent allegations of the petition, leave no doubt that the land in question, which rightfully pertained to the conjugal partnership of Martin Lacerna and Eustaquia Pichan, the plaintiffs' mother, and should have been titled in the names of said spouses, was, through fraud or mistake, registered in the names of Martin Lacerna and petitioner herein, Epifania Magallon. In such a situation, the property should be regarded as impressed with an implied, or a constructive, trust for the party rightfully entitled thereto.

The Civil Code provides that:

"If property is acquired through mistake or fraud, the persons obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." [6]

The provision restates one of the principles upon which the general law of trust is founded, expressed in equity jurisprudence thus:

"A constructive trust is a creature of equity, defined supra (sec. 15) as a remedial device by which the holder of legal title is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest. So, the doctrine of constructive trust is an instrument of equity for the maintenance of justice, good faith, and good conscience, resting on a sound public policy requiring that the law should not become the instrument of designing persons to be used for the purpose of fraud. In this respect constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done.

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"Where, through a mistake of fact, title to, and apparent ownership of, property rightfully belonging to one person is obtained by another, a constructive trust ordinarily arises in favor of the rightful owner of such property x x x.

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"It is a general principle that one who acquires land or other property by fraud, misrepresentation, imposition, or concealment, or under any such other circumstances as to render it inequitable for him to retain the property, is in equity to be regarded as a trustee ex maleficio thereof for a person who suffers by reason of the fraud or other wrong, and is equitably entitled to the property, even though such beneficiary may never have any legal estate therein. It is to be observed, however, that in the absence of equitable considerations or a fiduciary relationship, fraud alone, either actual or constructive, will not give rise to a trust, since as has been pointed out, if it were otherwise all persons claiming property under defective titles would be trustee for the 'true' owners. [7]

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"Under proper circumstances, mistake, although unconnected with fraud, will warrant relief under the Code providing that one who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act is, unless he has come better title thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it."[8]

"As stated by Justice Cardozo, a constructive trust is the formula through which the conscience of equity finds expression, and when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest; equity converts him into a trustee."[9]

In an early case in this jurisdiction, land of the plaintiff had, by mistake, been included in the title of an adjoining owner who was afterwards sued by his creditors, the latter obtaining writs of execution and procuring their annotation on said title. In an action by the plaintiff to enjoin the sale of his property, annul the levies thereon and secure a new title without those encumbrances, this Court affirmed judgment of the lower court in the plaintiff's favor, despite the fact that he had done nothing to protect his interests in the land during a period of almost six years following the issuance of the decree of registration in favor of the adjoining owner. The Court, noting that the titular (ostensible) owner had never laid claim to the property mistakenly registered in his name and that he had in fact acquiesced to judgment in a separate action declaring the plaintiff the real owner of the property, refused to apply the one-year limitation period for disputing the title and held that in the circumstances, the former merely held title to the property in trust for the plaintiff.[10]

In *Bueno vs. Reyes*,[11] where property belonging to an ancestor of whom plaintiffs' parents were the intestate heirs was, through mistake or in bad faith, registered in cadastral proceedings in the name of other parties who had no right thereto, this Court reaffirmed the principles already cited, holding that:

"If any trust can be deduced at all from the foregoing facts it was an implied one, arising by operation of law not from any presumed intention of the parties but to satisfy the demands of justice and equity and as a protection against unfair dealing or downright fraud. Indeed, in this kind of implied trust, commonly denominated, constructive, as distinguished from resulting, trust, there exists a certain antagonism between the cestui que trust and the trustee. Thus, for instance, under Article 1456 of the Civil Code, 'if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.' In a number of cases this Court has held that registration of property by one person in his name, whether by mistake or fraud, the real owner being another person, impresses upon the title so acquired the character of a constructive trust for the real owner, which would justify an action for reconveyance."[12]

Clearly, therefore, the petitioner herein, as the trustee of a constructive trust, has an obligation to convey to the private respondents that part of the land in question to which she now claims an ostensible title, said portion rightfully pertaining to the respondents' deceased mother as her share in the conjugal partnership with Martin Lacerna.

The question is whether that obligation may be enforced by execution in the action at bar, which was brought and prosecuted to judgment against Martin Lacerna only, without impleading the petitioner.[13] Stated otherwise, is petitioner bound by final judgment rendered in an action to which she was not made a party?

There are no clear precedents on the matter in our law. Reference to American law for any persuasive ruling shows that even there the question seems to be an open one.

"The authorities are in conflict as to whether a wife, not a party to an action is bound by a judgment therein for or against her husband with respect to community or homestead property or property held as an estate in entirety.

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Community property. It has been held that a judgment against the husband in an action involving community property, is conclusive on the wife even if she is not a party, but it has also been held that a judgment against either husband or wife with respect to community property in an action to which the other spouse is not a party does not prevent the other spouse from subsequently having his or her day in court, although, of course, a judgment against both husband and wife is binding on both.

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Estate entirety. It has been both affirmed and denied that a wife is in such privity with her husband in respect of property held by them as an estate in entirety that a judgment for or against him respecting such property in a suit to which she is not a party is binding on her.

Homestead. A judgment affecting a homestead is, according to sane authorities, not binding on a spouse who is not a party to the action in which it is rendered, unless the homestead is community property or the homestead claim or interest would not defeat the action; but, according to other authorities, where the husband sets up and litigates a claim for the homestead, an adjudication for or against him is binding on the wife."^[14]

"As to her community interest in real property, a wife is in privity with her husband and is represented by him in an action as fully as though she had expressly been made a party thereto. *Cutting vs. Bryan*, 274 P. 326, 206 Cal. 254, certiorari denied 50 S. Ct. 16, 280 U.S. 556, 74 L. Ed. 611."^[15]

In the particular circumstances obtaining here, the Court can -- as it does -- in good conscience and without doing violence to doctrine, adopt the affirmative view and hold the petitioner bound by the judgment against Martin Lacerna, despite her not having in fact been impleaded in the action against the latter. This ruling presumes that petitioner is, as she claims, the legal wife of Lacerna though, as observed by the Intermediate Appellate Court, no marriage contract was presented by Lacerna to prove his marriage to the petitioner either before or after the death of Eustaquia Pichan. Indeed, it is clear that the petitioner cannot assert any claim to the land other than by virtue of her supposed marriage to Lacerna. As a mere mistress, she cannot pretend to any right thereto.

But whether the petitioner is a lawful wife or a mere "live-in" partner, the Court simply cannot believe that she never became aware of the litigation concerning the land until presented with the writ of execution. What is far more probable and credible is that she has known of the lawsuit since 1956 when Martin Lacerna "married" her.^[16] Her silence and inaction since then and until barely a year ago bespeak, more than anything else, a confession that she had and has no right to the land and no defense to offer to the action, either on her part or on the part of Martin Lacerna. Had she even the semblance of a right, there is no doubt she would have lost no time asserting it.

From the averments of the petition, it is evident that the petitioner relies mainly, if not solely, on the fact that the certificate of title to the land carries her name as the "wife" of the owner named therein, Martin Lacerna. As already observed, such entry on the certificate of title has been established by evidence no longer disputable as resulting from a mistake if, indeed, it was not procured through fraud. Moreover, on the authority of *Litam vs. Rivera*^[17] and *Stuart vs. Yatco*^[18], the phrase "married to Epifania Magallon" written after the name of Martin Lacerna in said certificate of title is merely descriptive of the civil status of Martin Lacerna, the registered owner, and does not necessarily prove that the land is "conjugal" property of Lacerna and petitioner herein. Neither can petitioner invoke the presumption established in Article 160 of the Civil Code that property acquired during the marriage belongs to the conjugal partnership, there being no proof of her alleged marriage to Martin Lacerna except that which arises by implication from the aforestated entry in the certificate of title and for the far more compelling reason that the homestead claim on the land was shown to have been perfected during Martin Lacerna's marriage to Eustaquia Pichan, mother of the private respondents. The ruling in *Maramba vs.*

Lozano[19] that the presumption does not operate where there is no showing as to when property alleged to be conjugal was acquired applies with even greater force here.

The writ of execution, however, must be set aside, though not for the reasons urged in the petition. The judgment of the respondent Trial Court which was affirmed by the Intermediate Appellate Court merely declared the private respondents entitled to one-half of the land in question, without specifically ordering partition and delivery to them of said half portion. A writ of execution cannot vary the terms of the judgment it is issued to satisfy, or afford relief different from, or not clearly included in, what is awarded by said judgment. Even if the judgment in question is construable as authorizing or directing a partition of the land, the mechanics of an actual partition should follow the procedure laid down in Rule 69 of the Rules of Court which does not contemplate or provide for the intervention of the sheriff in the manner prescribed in the writ complained of.

Both the Trial Court, in rendering the judgment in question, and the Intermediate Appellate Court, in affirming the same, appear to have overlooked the fact that the surviving spouse is the legal and compulsory heir of the deceased husband or wife; otherwise, consistent with the finding that the half portion of the land sued for pertained to the late Eustaquia Pichan as her share in the conjugal partnership with Martin Lacerna, they should have ruled that Martin Lacerna concurred with the three private respondents in the succession to said portion, each of them taking an equal share.[20] Unfortunately, said error is beyond review because Martin Lacerna allowed the judgment to become final and executory without raising that point of law, even on appeal.

WHEREFORE, the writ of execution complained of is set aside and annulled. Instead of enforcing said writ, the respondent Trial Court is ordered to effect the partition of the land in question in accordance with the terms of its now final and executory decision and the provisions of Rule 69 of the Rules of Court. No pronouncement as to costs in this instance.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, and Feliciano, JJ., concur.

[1] Annex A, Petition, pp. 10-23, Rollo.

[2] Annex B, Petition, pp. 24-29, Rollo.

[3] Annex C, Petition, p. 30, Rollo.

[4] Annex D, Petition, pp. 31-32, Rollo.

[5] Annex E, Petition, pp. 33-34, Rollo.

[6] Art. 1456.

[7] 89 C.J.S. pp. 1015-1020, 1029, 1031-1033.

[8] *Hewett v. Linstead*, 122 P. 2d 352, 49 Cal. App. 2d, 607.

[9] *Beatty v. Guggenheim Exploration Co.*, 225 NY 380, 122 NE 378, cited in 76 Am. Jur. 2d p. 446.

[10] *Laureano vs. Stevenson*, 45 Phil. 252.

[11] 27 SCRA 1179.

[12] Citing *De Ocampo v. Zaporteza*, 53 Phil. 442; *Gayondato vs. Treasurer of P.I.*, 49 Phil. 244; *Gemora, et al. vs. F. M. Yap Tico & Co., et al.*, 52 Phil. 616; and *Fabian vs. Fabian*, G.R. No. L-20449, January 29, 1968, 22 SCRA 231.

[13] At the time the action was filed no certificate of title to the land had been issued, and the plaintiffs (private respondents) could not have foreseen that it would later issue in the name of Martin Lacerna and the petitioner.

[14] 50 CJS 344-345. The term "homestead" in the citation appears to be used in the general sense of referring to the house and land constituting the family home, not in the restricted sense in which it is used in our Public Land Act as referring to public land to which a grant from the state may be acquired by occupation and cultivation for the prescribed period of time. Cases cited holding wife bound by judgment against husband include *Yearout v. American Pipe & Steel Corp.* App. 168 P. 2d 174; *Starr v. Schoelikopf Co.*, 113 S.W. 2d 1227, 131 Tex. 263; *Brokaw v. Collett, Com. App.*, 1 S.S. 2d 1090; *Hall v. Aloco Oil Co., Civ. App.*, 164 S.W. 2d 464; *Childress v. Robinson, Civ. App.* 161, S.W. 78; *Faust v. Carson*, 148 P. 2d 504, 158 Kan. 479; and others.

[15] *Id.*, Footnote at p. 344.

[16] As found by the Trial Court; Decision, p. 21, Rollo.

[17] 100 Phil. 364.

[18] 4 SCRA 1143.**[19] 20 SCRA 474.**

[20] Arts. 887 and 999, Civil Code.

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