

AGUEDA BENEDICTO DE LA RAMA, PLAINTIFF AND APPELLANT, VS. ESTEBAN DE LA RAMA, DEFENDANT AND APPELLANT.

G.R. No. 7476. October 09, 1913

Ponente: CARSON, J.

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CARSON, J.:

The plaintiff in this action charged her husband with adultery and prayed for a divorce, the division of the conjugal property, and alimony pendente lite. Defendant in his answer denied the adultery charged against him, charged his wife with adultery, and alleged that his only income was a salary of p450 per month received as manager of the firm "Hijos de I. de la Rama." Judgment was rendered against the defendant by the trial court granting a divorce, dissolving the conjugal partnership, and allowing plaintiff the sum of P81,042.76 as her share of the conjugal property, and P3,200 as alimony.

From this judgment the defendant appealed to this court, which reversed the judgment of the trial court, being of opinion that the evidence showed that both plaintiff and defendant had committed adultery and that neither was entitled to a divorce.

Thereafter plaintiff appealed to the Supreme Court of the United States, which reversed the judgment of this court (*De la Rama vs. De la Rama*, 201 U. S. 303; 11 Phil. Rep., 746). The opinion of that court concluded as follows:

"We have reached the conclusion that there is no such preponderance of evidence in favor of the theory of plaintiff's guilt as authorized the Supreme Court to set aside the conclusions of the court below upon the ground that these findings were plainly and manifestly against the weight of the evidence. In this connection it is proper to bear in mind that the trial judge had all these witnesses before him and doubtless formed his conclusions largely from their appearance on the stand, their manner of giving testimony, and their apparent credibility. Under the circumstances we think the Supreme Court should have affirmed rather than reversed the action of the lower court.

"While the right of the plaintiff to her proportion of the conjugal property, to alimony pending suit, and to other allowances claimed is the basis of our jurisdiction, the decree of the Supreme Court in dismissing plaintiff's petition renders it unnecessary to review the action of the Court of First Instance in fixing the amount that it held plaintiff was entitled to recover. We are, therefore, of the opinion that the decree of the Supreme Court dismissing the petition must be reversed and the cause remanded to that court for further proceedings not inconsistent with this opinion."

After the case had been remanded to this court, plaintiff moved that the original judgment of the Court of First Instance be affirmed. The ruling of this court upon that motion was in part as follows (7 Phil. Rep., 745):

"Upon the defendant's appeal from the Court of First Instance to this court, eight errors were assigned by him. The first four relate to the question of adultery. This court sustained those assignments and said;

" 'Our conclusion is that neither one of the parties is entitled to a divorce. The result makes it unnecessary to consider that part of the judgment which relates to the settlement of the conjugal partnership.'"

"The action of this court upon those four assignments of error relating to adultery was reversed by the Supreme Court of the United States, and by the decision of that court they were definitely disposed of. The other assignments of error relate to that part of the decision of the Court of First Instance which treats of the division of the conjugal property, the allowance of alimony, and the order of the court below that the case be referred to the fiscal for criminal proceedings against the defendant. As has been said, these assignments of error were not considered by this court in view of the result which it reached upon the other assignments. Nor were they discussed by the Supreme Court of the United States.

"The claim of the appellant now is, however, that the whole case was finally disposed of by the decision of the latter court, and that the only thing remaining for this court to do is to affirm the judgment of the Court of First Instance in its entirety.

"With this view we cannot agree. The only thing considered by the Supreme Court of the United States was that part of the decision of the Court of First Instance which related to the right of the plaintiff to a divorce. It did not pass upon the division of the conjugal property. Its order was that the case be remanded to this court for further proceedings not inconsistent with its opinion. If the contention of the plaintiff is true, it seems that the order of that court would have been one reversing the judgment of this court and affirming that of the Court of First Instance. By remanding the case to this court for further proceedings not inconsistent with the opinion of the Supreme Court, it seems to have been the intention of that court that this court should dispose of the assignments of error not already disposed of.

* * * * *

"The sixth assignment of error was as follows:

" 'Error was incurred in fixing the amount of the half of said alleged conjugal property at P81,042.75, without having examined the necessary antecedents and data, and, moreover, without having taken into account the losses suffered and the debts contracted by the firm of Hijos de I. de la Rama.'

"This assignment of error not having been considered either by the Supreme Court of the United States or by this court, is now open to consideration by us, and must, we think, be sustained. The Civil Code states in detail the manner in which the affairs of a conjugal partnership shall be settled after the same has been dissolved. Article 1418 provides, except in certain cases not here important, that an inventory shall at once be made. We have held in the case of *Alfonso vs. Natividad* (6 Phil. Rep., 240), that when the partnership is dissolved by the death of the husband this inventory must be made in the proceedings for the settlement of his estate. And in the case of *Prado vs. Lagera* (7 Phil. Rep., 395), that the inventory thus formed must include the bienes parafernales of the wife. It is very evident from the provisions of the Civil Code that the inventory includes the capital of the husband, the dowry of the wife, the bienes parafernales of the wife, and all the property acquired by the partnership during its existence. After this inventory has been made it is provided by article 1421 that there shall be first paid the dowry of the wife, in the second place the bienes parafernales of the wife, in the third place the debts and obligations of the conjugal partnership, and in the fourth place the capital of the husband. Articles 1424 and 1426 then provide as follows;

" 'Art. 1424. After the deductions from the inventoried estate specified in the three preceding articles have been made, the remainder of the same estate shall constitute the assets of the conjugal partnership.'

" 'Art. 1426. The net remainder of the partnership property shall be divided, share and share alike, between the husband and the wife, or their respective heirs.'

"It is thus seen that the conjugal property which is to be divided when the partnership is dissolved is determined not with reference to the income or profits which may have been received during the partnership by the spouses, but rather by the amount of the actual property possessed by them at such dissolution after making the deductions and payments aforesaid. This is positively provided by article 1424.

"An examination of the decision of the Court of First Instance shows that no attempt was made to comply with any one of these statutory provisions. No inventory of the partnership property existing at the time of the trial, at which the liquidation was made, was ever formed. No provision was made for paying to the wife the sum of 2,000 pesos, which was either the dowry or bienes parafernales of the wife. No provision was made for returning to the husband his capital in the partnership, which amounted to at least one-third of the assets of the firm of Hijos de I. de la Rama, which assets, according to the inventory made January 30, 1901, amounted to 1,130,568 pesos. The court below rejected entirely the method prescribed by the Civil Code for the liquidation of this partnership and in fact liquidated it, as appears from the decision, upon an entirely different basis. He determined in the first place the income which each person had received from his or her property during the partnership, finding that the wife during that time had received from her property 345 pesos as income and that the husband had received 162,430.53 pesos. He then says:

" 'The total value, therefore, of the conjugal partnership existing between the plaintiff and the defendant in the present case amounts to 162,775.53 pesos. The words of the statute say that the same must be divided share and share alike. This mean& that each should have 81,387.76 pesos. The wife already having in her possession 345 pesos of this sum, she is entitled to receive from the husband 81,042.76 pesos as being the sum necessary to equalize the holdings of the property which, according to the statute, must be regarded as belonging to the conjugal partnership.'

"It needs no argument to show that this manner of liquidating the affairs of the conjugal partnership is entirely unwarranted by the law. The theory of the Civil Code is that the conjugal property is the actual property which is left at the dissolution of the partnership. It can, therefore, never be determined by adding up the profits, which had been made each year during its existence, and then saying that that result is the conjugal property. The difference between the two system of liquidation is well illustrated in this case. The court below found that the profits of the partnership of Hijos de I. de la Rama from the time of its organization up to June 30, 1901, amounted to 290,101.31 pesos. The evidence in the case shows, however, that the capital with which the firm started was 1,058,192 pesos, and that on June 30, 1901, the value of its entire property was 1,130,568 pesos, an increase of only 72,376 pesos. Taking the method adopted by the court below, if the conjugal partnership had been dissolved on June 30, 1901, it would have had as an asset one-fourth of this sum of 290,101.31 pesos, but following the rule laid down by the Civil Code it would have only had one-fourth of 72,376 pesos, the difference between the value of the property of said firm when it was organized and its value on the 30th of June, 1901.

"The other assignments of error were not urged in the last brief presented by the appellant and in any event we do not think they can be sustained.

"The result is that that part of the judgment of the Court of First Instance ordering the divorce, ordering the payment of 3,200 pesos Mexican currency by the defendant to the plaintiff, and the costs of the action, is affirmed. That part of it ordering the payment by the defendant to the plaintiff of 81,042.76 pesos Mexican currency is set aside, and the case is remanded to the court below for the purpose of liquidating in this action the affairs of the conjugal partnership (considering the same to have been dissolved on the 5th of July, 1902) in accordance with the rules laid down in the Civil Code, and a judgment will be entered in that court for the amount which appears from such liquidation to be due from the defendant to the plaintiff."

To the judgment of this court overruling the motion and sending the case back to the Court of First Instance for a new trial, plaintiff duly saved her exception.

Upon the new trial in the court below, judgment was rendered in favor of the plaintiff for the sum of P58,543.37, with interest at the rate of 6 per cent per annum from July 5, 1902, the date of the original judgment decreeing the divorce.

From this judgment both plaintiff and defendant appealed, and the case is once again before us upon their bills of

exceptions.

Plaintiff on this appeal adheres to her contentions set up in the motion to affirm the original judgment of the Court of First Instance submitted after the case had been remanded to this court from the Supreme Court of the United States and insists that:

"This court was without jurisdiction to review the evidence taken in the court below at the first trial, or retry the questions of fact, because the defendant failed to file in the Court of First Instance a motion for a new trial, upon the ground that the findings of fact were plainly and manifestly against the weight of evidence.

"The action of this court of January 23, 1907, in holding that the motion for a new trial in the Court of First Instance on the ground that the conclusions which in said decision had been deduced from the facts are contradictory to what the evidence filed in the case has shown is a compliance with section 497, paragraph 3, of the Code of Civil Procedure, is inconsistent with and contrary to the unanimous opinion of the Supreme Court of the United States expressed in the decision of that court on said identical motion then under consideration by said court in this cause on appeal, and such ruling, therefore, is a failure to comply with the mandate of the said United States Supreme Court.

"In any event, the findings of the Court of First Instance were not so 'plainly and manifestly against the weight of evidence,' as to authorize this court to set aside said findings of fact and set aside and annul the judgment rendered by the trial court based on said findings of fact."

All of the contentions of plaintiff-appellant in support of these assignments of error were disposed of in the opinion filed upon her motion in 1906 in *De la Rama vs. De la Rama* (7 Phil. Rep., 745), as appears from the extracts therefrom hereinbefore set forth; and the court is of opinion that it should adhere to the position taken at that time.

The contentions of the defendant-appellant on this appeal are, substantially, that the trial court erred in its findings of fact as to the value of the conjugal property, and in the mode of procedure adopted in liquidating the partnership assets.

After a careful review of the entire record, we think that the findings of fact by the trial judge are fully sustained by the evidence, and that the method adopted by him in liquidating the assets of the conjugal partnership was substantially in accord with the method prescribed in the code and indicated in our opinion filed with our judgment remanding the case for a new trial. (*De la Rama vs. De la Rama*, 7 Phil. Rep., 745.)

The principal contention of defendant-appellant on this appeal is that the trial court erred in failing to deduct from the amount allowed to the plaintiff-appellant the sum of P45,567, that being the amount of conjugal property which defendant claims "had accumulated and come into plaintiff's possession" at the time when the divorce was granted.

We agree with the trial judge that the evidence of record fails utterly to sustain this extraordinary contention. Discussing the defendant's claim in this regard the trial court said: "The testimony presented by defendant to establish his claim that plaintiff had accumulated and was in possession of P45,567 of conjugal property is very uncertain and unsatisfactory and much of it is not pertinent and cannot be considered. Much of it relates to transactions carried on by her in the purchase of nipa and palay some considerable period prior to July 5, 1902, and to personal and real property that came into her possession by gift or purchase (and partly on borrowed funds) some years after that period. The testimony presented on her behalf in the most material parts is in flat contradiction of that on behalf of the defendant, and it appears the more reasonable, and in conformity with her mode and manner of living. It is the opinion of this court that the evidence does not show that on July 5, 1902, the plaintiff was possessed, in the concept of owner, of property in excess of value over the P2,000 inherited from her

father and her individual loans and indebtedness."

And elsewhere in his opinion the trial judge, commenting upon defendant's claim, made use of the following language: "His reason for insisting that she is only entitled to recover from him less than P1,000 is that he contends that the testimony presented by him shows that his wife, since her separation from him in 1892 and up to July 5, 1902, had accumulated by her own efforts and with no other capital than the P2,000 left her in 1899, the amount of P45,567 of conjugal property.

"That is, the defendant contends that while he, as manager of a firm of over a million pesos capital, drawing a large salary with other perquisites, and having a one-fourth and sometimes a one-third interest as a copartner, has only succeeded in acquiring some P50,000 of conjugal property—while his wife, a girl only fifteen years old at the time of their separation, has supported herself and with only P2,000, left her in 1899, has by her sole efforts accumulated P45,000 of conjugal property in the same period of time."

In so far as defendant-appellant's assignments of error are based on the action of the trial court in refusing to accept as true the contents of the document described as Exhibit 1, it might be sufficient to say that we are of opinion that the reasons for doing so set forth by the trial judge himself in his opinion are a sufficient refutation of defendant-appellant's contentions in this regard. Exhibit 1 purports to be an inventory of the property of the firm of "Hijos de I. de la Rama" as of July 5, 1902. The bulk of the conjugal property consisted of an undivided share of this property. As pointed out by the trial judge, this inventory appears to have been prepared by or for the defendant for the purposes of this action; and in any event it was prepared after this action was originally instituted, and under conditions which justified the trial judge in believing that the defendant had every opportunity to intervene in its preparation and to use his personal influence to have the document speak favorably to his contentions. Granting that it is true, as contended by defendant, that this document was admitted in evidence without objection, it by no means follows that the trial judge was bound to accept its contents as true where other evidence of record disclosed its inaccuracies and its failure correctly to list the properties in question. It was admitted for what it was worth as evidence, but in the very nature of things, it should not be held as conclusive of the truth of its contents. We think that the trial judge is fully sustained by the evidence of record in his findings that this inventory failed to set forth the true status of the affairs of the company, and we are of opinion, and so hold, that there was no error in his findings as to the true value of the property in question.

What has been said sufficiently disposes of all the errors assigned. We are of opinion, therefore, that there is nothing in the record which would justify us in sustaining the contentions of the defendant-appellant as to error in the findings of fact or in the conclusions drawn therefrom in the opinion filed by the trial judge.

The judgment entered in the court below should be and is hereby affirmed, without costs to either party.

Arellano, C. J., Torres, Mapa, Johnson, and Trent, JJ., concur.

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