

MARIANO VELOSO, PLAINTIFF AND APPELLANT, VS. LUCIA MARTINEZ, PERSONALLY AND AS ADMINISTRATRIX OF THE ESTATE OF DOMINGO FRANCO, DECEASED, DEFENDANT AND APPELLEE.

G.R. No. 8715. October 24, 1914

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 1st day of July, 1911, the plaintiff commenced an action in the Court of First Instance of the Province of Cebu to recover of the defendant, personally and as administratrix of the estate of Domingo Franco, deceased, the possession of a certain parcel of land particularly described in the second paragraph of the complaint, together with the sum of P125 per month, from the 1st day of June, 1911.

The defendant presented a demurrer to said complaint, which was overruled. No exception was taken to the ruling of the court upon the demurrer. Later the defendant answered, setting up a general denial and a special defense. The special defense consisted—

First. Of a counterclaim in the sum of P18,500 as attorney's fees for services rendered by the deceased, Domingo Franco, to the plaintiff; and, second, for the recovery of certain jewelry, of the value of P6,000, particularly described in the answer of the defendant, alleged to be in the possession of the plaintiff.

The first special defense, relating to attorney's fees, was later withdrawn by the defendant. The only questions left for litigation were:

First. Whether the plaintiff was entitled to the recovery of the parcel of land in question; and, second, whether the defendant was entitled to recover from the plaintiff the jewelry described in her answer.

After hearing the evidence, the Honorable Adolph Wislizenus, judge, in a carefully prepared opinion, found that the plaintiff was entitled to recover the possession of the land in question, together with the sum of P100 for each month from the month of June, 1911, until the possession of the land was returned to him.

The lower court further found that the defendant was entitled to the possession of said jewelry, and ordered the plaintiff to return the same to her and in case of the plaintiff's failure to return said jewelry to the defendant, then and in that case, he shall pay to the defendant, for such failure, the sum of P6,000.

From the judgment of the lower court, each of the parties, plaintiff and defendant, appealed to this court. Later the defendant withdrew her appeal, thereby allowing that part of the judgment relating to the plaintiff's right to the possession of the land in question, together with damages, to become final. The only question remaining, therefore, for this court to decide is as to the ownership and right of possession of said jewels. It is admitted that the jewels in question, before the possession of the same was given to the plaintiff, belonged to the defendant personally and that she had inherited the same from her mother. The defendant, Lucia Martinez, is the widow of Domingo Franco, and after the death of her husband she was appointed administratrix of his estate. The record further shows (Exhibit C) that a short time before the death of Domingo Franco he borrowed from the plaintiff the

sum of P4,500 and gave as security for the payment of said sum the jewelry described in the complaint. The money was borrowed on the 7th day of April, 1911, under promise to repay the same, with 12 per cent interest, on the 7th day of May, 1911. It is not clear whether or not the jewelry, at the time of the execution of said document (Exhibit C), was in fact delivered to the plaintiff. Said exhibit states that the jewelry was contained "dentrb de una caja que queda cerrada despues de demostradas las alhajas a D. Mariano Veloso" (in a box which remains closed after the jewels were shown to Mariano Veloso). The document further admits that "la Have quedara en poder de D. Domingo Franco" (the key shall remain in possession of Domingo Franco). After the death of Domingo Franco it appears that said jewelry was found in the same "caja" and that the key was in the possession of the defendant. It is very doubtful, indeed, under the facts, whether the plaintiff ever obtained the actual possession of the jewelry. His possession, however, seems to be admitted by the defendant in the present action. So far as the record shows the jewelry was in the same box where it was found at the time of the execution and delivery of said Exhibit C and that the defendant still has the key to said box.

During the trial of the cause the plaintiff attempted to show that the jewels in question were pawned to him by Domingo Franco, with the full knowledge and consent of the defendant. And not only that, the plaintiff further attempts to show that after the death of Domingo Franco, the defendant promised to pay the amount for which the said jewels were pawned. The defendant positively denies that she knew that heiHusband had pawned her jewels or that she promised to redeem the same by paying the amount due. No explanation is contained in the record why the jewels were placed in said box (presumably a money safe). In view of the fact, however, that the record shows that the jewels were the sole and separate property of the wife, acquired from her mother, and in the absence of further proof, we must presume that they constituted a part of her paraphernal property. As such paraphernal property she exercised dominion over the same. (Article 1382, Civil Code.) She had the exclusive contrqkand management of the same, until and unless she had delivered it to her husband, before a notary public, with the intent that her husband might administer it properly. (Article 1384, Civil Code.) There is no proof in the record that she had ever delivered the same to her husband, in any manner, or for any purpose. That being true, she could not be deprived of the same by any act of her husband, without her consent, and without compliance with the provisions of the Civil Code above cited.

For the foregoing reasons, we find that the defendant is entitled to the possession of said jewels, or to their value, amounting to P6,000.

The judgment of the lower court is therefore hereby affirmed, with costs.

Arellano, C. J., Torres, Carson, Moreland, Trent, and Araullo, JJ., concur.

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