

FRANCISCA GONZALEZ AND HER HUSBAND FERNANDO FUSTER FABRA, PLAINTIFFS AND APPELLANTS, VS. JOAQUIN GONZALEZ MONDRAGON, DEFENDANT AND APPELLANT.

G.R. No. 8883. October 20, 1916

Ponente: TORRES, J.

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TORRES, J.:

An appeal raised by both plaintiff and defendant parties from the judgment of March 17, 1910, whereby the trial judge reduced to P50 per month the revenue and income which the plaintiffs should collect on account of the dowry allowed Francisca Gonzalez de Fuster by her father, the defendant Joaquin Gonzalez Mondragon, and in consequence thereof ordered the latter to pay to the plaintiff spouses the sum of P800, corresponding to the revenue from the dowry for the period of sixteen months, from May, 1910, to August, 1911, with interest at the rate of 6 per cent per annum, and after this date to pay to the plaintiff spouses P50 at the end of each month as revenue from the said dowry; without special finding as to costs.

In the written complaint of August 29, 1910, filed in the Court of First Instance of Manila, counsel for Francisca Gonzalez, the latter assisted by her husband Fernando Fuster y Fabra, set forth that, by reason of the plaintiff's having contracted marriage with her present husband, Fuster Fabra, on March 20, 1909, her father, the defendant Joaquin Gonzalez, on December 24, 1909, settled on her a dowry of P14,000, demandable at his death; that the donor agreed to pay to the said spouses during his lifetime, as revenue and interest from the said dowry, an annual income of 1P1,200, payable in advance in monthly installments of P100, from and after January 1, 1910; that the defendant had paid the installments pertaining to the months of January, February, March, and April, 1910, but that he had failed to pay those which fell due thereafter and which on the date of the complaint amounted to P1,600. Said counsel therefore prayed the court to order the defendant to pay to the plaintiffs the sum of P1,600, with the legal interest thereon, and, in addition, the monthly installments of P100, in conformity with his agreement, and also to pay the costs of the trial.

The defendant answered the foregoing complaint, denying generally and specifically each and all of the allegations therein contained. In special defense he alleged that in allowing his daughter the dowry mentioned in the complaint he had made the mistake of giving her a larger dowry than he should have given, to the prejudice of his other children, wherefore the said dowry and pension were inofficious, null and void, in so far as they were excessive; that for this reason, he had proposed to his daughter and son-in-law to reduce the said dowry and pension to an amount compatible with his fortune and equal to those he had granted to his other daughters. Otherwise prejudice would be caused to the lawful portions of his other fifteen children, five of whom, besides his daughter the plaintiff, begotten by his first wife, were already married and the remaining ten, born of his second wife, were all unmarried and he was obliged to support them.

After a trial at which evidence was introduced by both parties, the court rendered the judgment aforementioned, to which both the plaintiffs and the defendant excepted and in writing moved for a reopening of the case and a new

trial. These motions were overruled, exception was taken by the petitioners, and, upon the filing of the bill of exceptions stipulated between the parties, the same was approved and transmitted to the clerk of this court.

The question to be decided in these proceedings is whether the plaintiff spouses are or are not entitled to compel their father-in-law, Joaquin Gonzalez, to pay them during his lifetime the stipulated income from or interest on the sum of P14,000 which he gave them as a dowry nine months after the plaintiffs' marriage.

The record shows that on March 20, 1909, Francisca Gonzalez, the defendant's daughter by his first wife, married Fernando Fuster y Fabra (complaint, par. 3), and that nine months afterwards, that is, on December 24 of the same year, 1909, as the husband Fuster desired to show his relatives in Spain that he had not made a bad choice in marrying Fany Gonzalez, her father Joaquin Gonzalez Mondragon executed the following document, Exhibit A, whereby he endowed his said daughter in the sum of P14,000:

"Know all men by these presents:

"That I, Joaquin Gonzalez Mondragon, married in second wedlock to Dona Nieves Balmori y Rivera and a property owner and resident of the municipality of Bautista, Province of Pangasinan, Philippine Islands, do hereby freely and voluntarily declare and set forth:

"First. That on March 20, 1909, my daughter Francisca, had by my first marriage to Sra. Rosario Gonzalez, contracted marriage with Sr. Dn. Fernando Fuster Fabra, and that both said persons now reside on Calle Herran of the district of Malate, city of Manila.

"Second. This marriage was arranged and contracted with my consent and approval, and as my personal fortune allows me to perform an act of liberality in behalf of my said daughter without thereby causing any detriment whatever to my own interests nor to those of my other children or of my second wife, and without exceeding what I might by will give to or dispose of in favor of my said daughter, by these presents I hereby solemnly declare:

"That, by reason of the said marriage, and as proof of the pleasure with which I have witnessed and welcomed its celebration, and of the fatherly affection which both husband and wife inspire in me, I give to my said daughter Dona Francisca Gonzalez, wife of Don Fernando Fuster Fabra, the sum of fourteen thousand pesos (P14,000) as a dowry, in which sum I desire and it is my will to make her a participant, as a legitimate daughter, in the property of my exclusive ownership which I may leave at my death, in so far as it may be contained within the one-third which, as a strict legal portion, the law provides for legitimate children, and within the other one-third which, while also forming a part of the legal portion of the legitimate children, is set aside for betterments; and by this it shall not be understood that from the present time there shall be any reduction or diminution in the share which by law should pertain to her in the actual estate I may leave at my death.

"The grant of this dowry is, however, subject to the condition that it shall not be claimed or demanded until after my death; but meanwhile I will pay to my said daughter, as revenue from or interest upon the said capital of P14,000, an annual income of P1,200, payable in advance in monthly installments from the first of January, 1900, at the rate of P100 per month; and as a guarantee of the conservation of the capital set aside as dowry and of the payment of the income assigned, I shall place an express and special mortgage on a part of the lands I possess in the Provinces of Pangasinan and Nueva Ecija, as soon as the Court of Land Registration issue the certificate of title which I have applied for.

"In witness whereof I sign this document, in triplicate, each of the same tenor, this 24th day of December, 1909.

(Sgd.) Joaquin Gonzalez.

Signed in the presence of:

(Sgd.) M. Aman.

(Sgd.) Petronilo Quibote."

The donation made in the preinserted document was duly accepted by F. Fuster and Fany G. de Fuster on January 11, 1910, by a notarial instrument attached thereto.

Now then, Joaquin Gonzalez Mondragon, testifying as a witness with his own behalf, stated that he had not endowed his daughter on her marriage because it was not the custom of his family to do so, but that after the marriage, his son-in-law Fuster, through his wife (witness' daughter), induced him to grant her a dowry on the ground that Fuster's father would be vexed at learning of his son's marriage and could be appeased only by settling a dowry on the bride; that the defendant at first objected to this, but in order that the recently married couple might be well received by their relatives in Spain and afterwards as it became urgently necessary to reply to a letter from Fuster's father in which information was requested as to whether the marriage of his son to Francisca was an advantageous one, the defendant endowed her in the amount stated in the document Exhibit A, that subsequently, on thinking over the matter carefully, he came to the conclusion that the monthly allowance was excessive, wherefore, from May, 1910, he ceased to pay the agreed income of P100 per month and tried to reduce the amount of the dowry; that when his first daughter Rosario married, he did not settle any dowry on her, and did not do so until after the marriage when he gave her as a dowry the sum of P2,150 (rec, p. 18), this sum being adequate in view of his income and other circumstances of his financial status, for his income only amounted to eight or nine thousand pesos per annum (rec., p. 14); moreover, he had to share this amount with his father who was still living, and the remaining half thereof was insufficient for the support of his family. The defendant added that his property was worth all told about P170,000 (rec, p. 26), with the revenue from which he was supporting ten children had by his second wife, besides the children, now married, of his first wife, whom, with their respective families, he was supporting and on this account had been spending more than he derived from his revenues and was obliged to sell a parcel of land for P60,000 to pay his debts.

Finally, the defendant presented in evidence the document Exhibit 1, by which on August 31, 1911, he bestowed a dowry of P2,150 upon his daughter Rosario Gonzalez, who, on October 27, 1906, had contracted marriage with Joaquin Balmori, and he did this to show that in comparison with that given to Rosario, the dowry of P14,000 granted to his daughter Francisca de Fuster in 1909 was excessive and disproportionate to his means.

In rebuttal the plaintiffs presented the 1912 tax receipts of the defendant's properties, issued by the provincial treasurer of Pangasinan, marked as Exhibits B to G, inclusive, and which show that the property belonging to Joaquin Gonzalez situated in the Province of Pangasinan is assessed at P189,610 (rec, pp. 34-39), the defendant having, besides, two building lots in Manila which, according to his statement, were worth only P10,000 (rec, p. 23).

Article 1339 of the Civil Code provides that a dowry created by the parents after marriage shall be governed by the rules for ordinary gifts. This is because it is not a dowry given by reason of the marriage, although the most important source and the origin of the dowry is a gift. Therefore, the provision of the last part of the said article does not imply that the rules of the chapter relating to dowry are not applicable to the case of a dowry created subsequent to the marriage.

The dowries created by the defendant Joaquin Gonzalez, in the said notarial instrument, are of two kinds, and for the very reason that the dowry created subsequent to the marriage of the donee must be governed by the rules of

ordinary gifts, it is logical that the dowry of P14,000, which cannot be claimed by the donee until after the death of the donor, should partake of the nature of the provisions of a last will and be governed by the laws established for testamentary succession, as prescribed by article 620 of the Civil Code. We shall not concern ourselves in this decision with this dowry, which is equivalent to a gift that is to become effective after the donor's death.

The claim submitted to this court is restricted to the other kind of dowry contained in the notarial instrument Exhibit A, the obligation on the part of the donor to pay P100 per month, counting from January 1, 1910. This dowry is equivalent to a gift that is to produce its effects during the lifetime of both the donor and the donee, pursuant to article 621 of the Civil Code.

For this reason, and particularly as it is a matter of a dowry that is to be paid out of the products or revenues from the donor's property, in order to adjudicate the defendant's claim that the dotal pension should be reduced to an amount proportionate to his income so as to avert prejudice to himself, to his wife, and to his other fifteen children, account must be taken of the provisions contained in the following article 634 of the Civil Code, notwithstanding the obligation undertaken in Exhibit A:

"A gift may include all the actual property of the donor or a part thereof, provided the latter reserves, by legal title or in usufruct, what is required for his support in a condition corresponding to his circumstances."

It is not here a question of the gift of all or of a part of the defendant's property, but only of the obligation contracted by him to pay to the donee as a dowry after her marriage the sum of P100 per month. If this amount exceeds that which corresponds to the donee as the donor's daughter and is a burden upon the portion which the defendant needs for his own support and that of his numerous family, as the trial court in the judgment appealed from opined that it was, the provisions of the above-cited article 634 of the Civil Code should be applied by recognizing the right that lies in behalf of the defendant donor, the father of a numerous family, to reserve what is required for his support in a condition corresponding to his circumstances; after taking due account of the net revenue collected by him.

Considering the dowry of P100 per month as being equivalent to a gift inter vivos, as it was created subsequent to the donee's marriage, it must be regarded as an inofficious gift in so far as it exceeds the amount that corresponds to her proportionate share, in view of the need which the defendant had and has to meet his obligations with respect to himself, his wife, and his fifteen children; and as the legal provisions which regulate gifts are also at the same time applicable to the rules relative to dowry, the court in accordance with its prudent judgment and in the use of its reasonable discretion is empowered to fix the equitable amount which may and should be paid to the donee by her father the donor in fulfilment of his obligation contained in the instrument Exhibit A.

The trial judge fixed the amount which the donee is reasonably entitled to collect, at P50 per month, and held the remainder of the sum of P100 to be inofficious. The amount fixed is owing from the time of the expiration of the four months when its payment was stopped, that is, from May, 1910, with legal interest thereon at the rate of 6 per cent on the total amount yet unpaid.

Accepting the other grounds of the judgment appealed from, and deeming the errors assigned thereto as having been refuted, the said judgment should be affirmed. It is understood, however, that the defendant is obliged to pay to the donee all the sums that he is owing her at the rate of P50 per month from the month of May, 1910, with interest thereon at the rate of 6 per cent per annum. No special finding is made with respect to costs. So ordered.

Johnson, Carson, and Trent, JJ., concur.

Moreland, J., dissents.

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