

PIO MERCADO, PLAINTIFF AND APPELLANT, VS. MARIA TAN-LINGCO, DEFENDANT AND APPELLEE.

G.R. No. 9124. March 25, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Bulacan entered upon an order sustaining a demurrer to a complaint and dismissing the cause upon the merits, with costs.

The plaintiff in his complaint alleges that he is the husband of Rita Raiz Mateo and was at all times mentioned in said complaint; that on July 19, 1909, the said Rita Raiz Mateo, being then duly and legally married to said plaintiff, mortgaged to Maria Tan-Lingco Gonzalez certain parcels of land described in the complaint.

The complaint further shows that said mortgage is illegal inasmuch as, under the Civil Code, a wife can not mortgage or alienate her separate property without the consent of her husband. It prays that said mortgage be set aside, canceled and annulled, and tenders to the defendant the sum of P2,500, which is the face of the mortgage, and interest.

The plaintiff incorporates in his complaint the mortgage in question in which the said wife executing the mortgage makes the following statement:

"That my husband, Pio Mercado, on the 15th of August, 1905, executed a power in my favor of the following tenor:

" 'I, Pio Mercado, a resident of the municipality of Baliwag, Province of Bulacan, Philippine Islands, by these presents declare: That in accordance with the provisions of articles 60 and 61 of the Civil Code, I hereby confer upon my wife, Dona Rita Raiz Mateo, the marital license necessary for her to appear in suit, by herself or by means of an attorney, and to perform whatever acts may be to her interest to perform, and finally for every purpose which, according to existing legislation, a married woman is prohibited from doing without the consent of her husband, hereby ratifying all her previous acts with regard to contracts since our marriage.'

"This consent was signed and acknowledged by my husband on the above-mentioned date before the notary public of the municipality of Baliwag, and I declare that it is not revoked but is in full force and effect in all its parts."

In said mortgage she further asserts that by virtue of said consent, above quoted, she executes the mortgage in question.

A demurrer was filed to the complaint upon the following grounds:

- "1. That the plaintiff has not legal capacity to sue.
- "2. That there is a defect or misjoinder of parties.
- "3. That the complaint does not state facts sufficient to constitute a cause of action.
- "4. That the complaint is ambiguous, unintelligible, and vague."

Upon the hearing upon the demurrer argument was confined by the demurrant to the third and fourth paragraphs of her demurrer.

Resolving the demurrer, the court held that the plaintiff, having included in his complaint the statement of the wife in the mortgage that the husband had given his consent to the acts complained of, and having later in the same complaint alleged that said acts were performed without his knowledge or consent, the complaint was uncertain, vague, and unintelligible, the court being unable to determine which allegation the plaintiff wanted the court to accept. Upon this ground the demurrer was sustained and the complaint dismissed after a refusal on the part of the plaintiff to amend.

We are of the opinion that the judgment must be reversed. The complaint is not vague in the sense in which, the learned court speaks. The fact that the mortgage, which is attached to and made a part of the complaint, recites certain facts which, if alleged in the complaint by the plaintiff would be in contradiction to other allegations of plaintiff in the same complaint, is not sufficient ground upon which to find that the complaint is vague and uncertain. Plaintiff is bound only by the allegations of the complaint unless the facts set out in the instrument itself as incorporated in the complaint, are contradictory of the allegations of the complaint. The recital made by the mortgagor relative to some act performed by a third person is not in reality a fact set out in the instrument, at least not in the sense in which the date of the instrument, the names of the parties thereto, the description of the land therein, and the amount of the debt secured are facts set out in the instrument. In other words, we do not understand that the recital of the wife in the mortgage relative to the husband's consent is, under the circumstances, an allegation of the complaint.

Article 61 of the Civil Code provides:

"Neither may the wife, without the permission or power of her husband, acquire property for a good or valuable consideration, alienate her property or bind herself, except in the cases and with the limitations established by law."

Article 1387 of the same Code reads as follows:

"The wife can not alienate, encumber, or mortgage the paraphernal property without the permission of the husband, nor appear in court to litigate with regard to the same, unless she has been judicially authorized for the purpose."

In the case of *Gavieres vs. Administrators* (13 Phil. Rep., 449), the court said:

"It being admitted by the defendant that the plaintiff and the said mortgagor, Luisa Pena, were husband and wife, then her right to dispose of the property either conjugal or paraphernal is governed by the provisions of the Civil Code, and her right to dispose of the property whether conjugal or paraphernal does not depend upon her capacity or incapacity, but upon the will of her husband. If it should be considered paraphernal property, then article 1387 of the Civil Code applies and she could not alienate, encumber, or mortgage it without the permission of her husband; if it be considered conjugal property, even then she was equally forbidden by law to dispose of the same without permission of her husband. (Art. 1416, Civil Code.)"

The court further says:

"And, moreover, suppose that, under article 7 of the Code of Commerce, it be presumed that the wife was carrying on the business with the knowledge of her husband, will the fact that she has authority to conduct a private business under said article by presumption be sufficient to justify her in mortgaging the property used in such private business? We think not, in view of the provisions of the Civil Code which absolutely prohibit her from selling or mortgaging, etc., either the paraphernal or the conjugal property. We do not believe that the power which is expressly forbidden by the law can be given by mere presumption in the absence of an express

provision of the law to that effect. The only exception to the absolute prohibition on the part of the wife to create liens against the paraphernal and conjugal property is that found in article 1408 of the Civil Code. The present case is not one of the exceptions mentioned in that article."

From the provisions of the Civil Code above quoted and the exposition made thereof by the Supreme Court in the case above cited, it is clear that the plaintiff, admitting the allegations of the complaint to be true, is entitled to have the mortgage set aside.

The judgment appealed from is reversed and the cause remanded to the court whence it came, that the same may be continued in the form and manner prescribed by law.

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

Judgment reversed; cause remanded.

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