

VICENTE SISON ET AL., PLAINTIFFS AND APPELLANTS, VS. JULIAN AMBALADA, DEFENDANT AND APPELLANT.*G.R. No. 9943. March 18, 1915*

Ponente: ARELLANO, C.J.

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Julian Ambalada and Modesta Afable lived together as husband and wife from 1870 until July 30, 1886, when Modesta Afable died. During their union, as Ambalada himself testified at the trial, eight children were born to them, of whom Maria Ambalada alone survived her mother. This Maria married Sancho Sison on September 19, 1890, having three children, Vicente, Maria Consolation, and Conrado, all surnamed Sison.

These three grandchildren of Ambalada and Afable have instituted the present suit against Julian Ambalada seeking liquidation of the estate belonging to the conjugal partnership between Julian Ambalada and Modesta Afable, and partition of the property constituting it, so that to them might be adjudicated the half of its products belonging to the portion of the spouse who died first, Modesta Afable. For this purpose the plaintiffs enumerate in their complaint six parcels of land as constituting the conjugal partnership property mentioned.

The defendant Julian Ambalada denies the existence of the conjugal partnership he is said to have had with Modesta Afable, to whom, he avers, he was never legally married. He acknowledges in his written answer that he had had by Modesta Afable among other children (four altogether enumerated in the instrument) Maria Ambalada, who, he says was born on September 11, 1875, and died on November 12, 1902, leaving the plaintiffs as her sole descendants.

With respect to the property enumerated in the complaint, he says; (1) That he has never possessed the lot indicated as No. 6, because it belongs to Martina Ambalada; (2) that those indicated as Nos. 1, 2, 3, 4, and 5 belonged to Father Gavino de los Reyes, for whom during his lifetime he acted as a mere agent; (3) that those indicated as Nos. 2, 4, and 5, Father Gabino de los Reyes had ceded during his lifetime to Victorino Buhay; and (4) that those designated as Nos. 1 and 3 he had inherited from Father Gabino de los Reyes when the latter died in 1897.

The Court of First Instance of Batangas, which tried the case, found (1) with respect to the conjugal partnership, that it existed, and that in 1870 Julian Ambalada had entered into a religious marriage with Modesta Afable, by whom he had six children, among them Maria Ambalada; and (2), with reference to the property sought as belonging to such conjugal partnership, that said property did not partake of the nature of partnership property, because it had never belonged to said conjugal partnership; absolving the defendant from the complaint, without special finding as to costs.

Both parties appealed and submitted bills of exception to this higher court, with right to a review of the evidence.

The defendant appealed from the first finding in the judgment, which is adverse to him. He bases his assignment of error to the judgment solely on the absence of the parish certificate of performance of the marriage ceremony,

which was not presented, and on the critical examination he makes of the subsidiary parol evidence presented at the trial by the plaintiff's, without making any allegation regarding the documentary.

But the proof whereby the trial court has held the fact to be fully proven—that is, the marriage—is irrefragable. It consists of documentary and parol evidence.

Among the parol evidence, the defendant's testimony is prominent, despite his endeavor to deny that fundamental allegation of the complaint. Replying to questions from his own counsel, he said:

"I knew Modesta Afable from 1869; we were to have been married, but it (the marriage) was not carried out. I am ashamed of the fact that we were never really married. The banns were published in Silang and Balayan. I spoke to Agustin Apacible and Marcela Tianco about being our godfathers, and when the time for our marriage drew near, Modesta did not want to get married in the daytime because she was seven months pregnant, and I, furthermore, was courting a prettier girl than Modesta, which was Marcela Asuncion, who was unwilling to accept me as a suitor because she was a relative of Modesta's. Father Gabino was in Balayan, and he became angry because Modesta did not want to get married in the daytime, reproaching her with being ashamed in the presence of men but not in the presence of God. He went away to Silang, but, returned after a fortnight, and as we were already united, our mother told the priest that we were then married, for we were living together."

Replying to cross-examination he came to the point of saying that as he was in love with another girl he wanted to run away in order not to carry out his promise to marry Modesta, but then he saw that the latter was pregnant and became ashamed.

"Q. How do you explain your conduct at that time? Were you determined to marry her or were you merely trying to deceive her?—A. I am now perplexed by those questions, because I have already told the truth. I recall now that I have grandchildren without a grandfather and there are grandfathers without grandchildren.

"Q. And you made Father Gabino de los Reyes believe that you were married?—A. Yes, sir.

"Q. Your parents made Father Gabino believe the same?—A. Yes, sir.

"Q. You have had various children by Modesta?—A. Yes, sir; eight children.

"Q. All those children were baptized in Balayan?—A. Yes, sir.

"Q. And you know that as a general rule all those baptisms had to be registered in the church?—A. Yes, sir.

"Q. But you know that every one of those baptisms had to be entered in the registry?—A. Yes, sir.

"Q. Did those eight children of yours bear your surname?—A. Yes, sir.

"Q. They were regarded by everybody as your children?—A. Yes, sir.

"Q. And you and Modesta lived as husband and wife?—A. Yes, sir; so many have seen.

"Q. And Father Gabino, the same as your parents, considered that you were husband and wife?—A. Yes, sir."

In this way he went on admitting that as he was capitan municipal Modesta Afable was called capitana, because she was publicly accepted in that town as was his lawful wife, and when after Modesta's death he tried to get married in Navotas he represented himself to be a widower, and in his personal cedula he was stated to be married when he sought title to the land indicated as No. 2.

The other parol evidence is the testimony of the witnesses Manuel Consul, Eugenio Tolentino, and Telesforo Castigador, the former and the latter having been eyewitnesses to the marriage.

Consul testifies that at daybreak one morning his mother awakened him and had him take to the church a head

wrap which he delivered to the sacristan, and after the curate had celebrated the mass (the coadjutor, who was the priest Antonio Medina, others say) he married Julian Ambalada and Modesta Afable, about 4 o'clock in the morning, and this was one day about the year 1869 or 1870. It is the custom in Balayan, says Eugenio Tolentino, to ascribe the ringing of bells at daybreak to a wedding; the witness heard at daybreak the sound of bells summoning worshipers to mass, at the close of which he saw the bridal couple Julian Ambalada and Modesta Afable in the customary ceremonial dress in the house of Serapio Afable, brother of the bride, wherein had gathered quite a crowd who received the bridal couple at the door, the function having been attended with music from the church. Telesforo Castigador, 63 years of age, testifies that his house is near the church; that the bells rang for mass at daybreak; he went to attend it, and saw the marriage between Julian Ambalada and Modesta Afable celebrated; that marriages at daybreak were frequent, if the curate were paid; that a nephew of his paid 6 pesos to the curate and was married at daybreak.

Timoteo Martinez, merchant, who was born in 1872, says that he went to get his baptismal certificate and did not find it in the books of the parish of Balayan, which he himself had searched through. Sancho Sison says that he also did not find the baptismal certificates of any of Julian Ambalada's children, nor the certificate of the death of another daughter of theirs, also named Maria Ambalada.

Rafael Apacible, who has kept the parish records since 1896, testifies that at the request of Modesta Toribio, Isidro Apacible, Severa Apacible, and others, he sought for their baptismal records and did not find them, nor the record of the marriage of Julian Ambalada and Modesta Afable.

Then appear as evidence certain parish certificates of baptism, in no way impugned by the defendant, in all of which it is certified that the boys and girls baptized are all legitimate issue of the lawful marriage of Julian Ambalada and Modesta Afable; some of these certificates are attested by Father Gabino de los Reyes as the parish priest of Balayan. These are precisely those of the two daughters, both named Maria Ambalada. In the parish burial certificates of Modesta Afable and various children of hers by Julian Ambalada, it is stated: In the first, "Dona Modesta Afable, married to Don Julian Ambalada;" and in the last two, "children of Don Julian and Dona Modesta Afable."

In the marriage certificate of Sancho Sison with Maria Ambalada she is stated to be the daughter of Don Julian and Dona Modesta Afable. In the baptismal certificates of the three children of Sancho Sison it is stated that "their maternal grandparents are Don Julian and Dona Modesta Afable."

In the inscription of the property title of the land in the sitio of Tuyuntuyon (Exhibit N), Julian Ambalada, in a document of his own and unimpeachable by him, is described as married in 1893, when he applied for said title, and as he was then living with Modesta Afable, it would not be understood that he was married to any one else than Modesta Afable.

From all this evidence, held by the trial judge to be conclusive, it is a fact that Julian Ambalada and Modesta Afable were united in lawful canonical marriage.

The legal presumption is that a man and woman living together as husband and wife have entered into a lawful contract of marriage (Code Civ. Proc, sec. 334, No. 28.) ; but presumptions established by law may be destroyed by proof to the contrary (Civil Code, art. 1251). Proof to the contrary rests upon the defendant, and he has adduced none whatever, for proof to overcome the legal presumption is not constituted by absence of the marriage certificate in the books of the parish of Balayan, wherein it is seen that other entries as important as that of the marriage in question are lacking. Lack of record of an act or fact in certain books of registry is not per se proof of the non-existence of the fact or act, outside of the cases where the laws specifically requires as essential evidence the record itself or the inscription of the fact or act to be proven. A particular point in this instance in support of

the presumption established by law is that Julian Ambalada earnestly insists on his averment that from his infancy he always lived with Father Gabino de los Reyes until the death of the latter, who was the parish priest of Balayan. It has been proven in an efficacious manner, and is a fact admitted by the litigating parties, that Father Gabino de los Reyes was a priest of acknowledged probity, and as such parish priest of Balayan would not have falsely attested the entry in the church records of his parish of the baptism of the two daughters of Julian Ambalada and Modesta Afafe, both named Maria Ambalada, one born in 1873 and the other in 1875, by registering them 'as legitimate daughters and issue from the legitimate marriage of Julian Ambalada and Modesta Afafe. (Exhibits A and D.) From his own knowledge, according to the previous facts established by the defendant himself, and convinced in his own mind, he must have made those entries, which in assuring the legitimacy of such daughters took for granted at the same time the legitimacy of their parents' marriage.

Whatever may have been the reason for the absence of record, the facts established herein all conclusively support the marriage affirmed in the judgment appealed from.

The plaintiffs have objected to the second finding therein because the character of partnership property has been denied to the property claimed in paragraph 10 of the complaint.

One of these pieces of property is that indicated in the complaint as No. 1, a tract of land situated in Talon, municipality of Tuy, with an area of 97 hectares, 64 ares, and 68, centares, and with the boundaries as set forth in the complaint. Title of ownership to this tract is inscribed in the registry of the Province of Batangas. The inscription reads:

"Don Julian Ambalada, resident of Tuy, applied for composition with the State for this property and by decree of the Direction General de Administration Civil on June 13, 1882, said property was gratuitously adjudicated to him in accordance with the Royal Decree of June 25, 1880. On November 6, 1882, the Director General de Administration Civil of these Islands, Don Manuel Liana, issued in Manila title of ownership to this property in favor of the grantee, which title was signed also by the Inspector General de Monies, Don Luis de la Escosura, and record of the same was made on the same day in the Inspection General de Monies at Manila." (Exhibit O.)

Another is that designated as No. 2, a tract of land sit uate in Tuyuntuyon of the municipality of Tuy, of GS hectares, 20 ares, and 63 centares, with the boundaries as set forth in the petition. The title of ownership is inscribed in the registry of the Province of Batangas. The inscription read thus:

"Don Julian Ambalada y de los Reyes, 47 years of age, married, and resident of Tuy, is the owner of the property, according to the composition title issued in his name at Manila on February 15, 1883, by the Director General de Administration Civil of these Islands, Don Manuel Liana, etc." (Exhibit N.)

In the judgment appealed from, it is held that Julian Ambalada inherited parcel No. 1 from Father Gabino de los Reyes; but as this latter died in 1896 (1897, his nephew Rufino de los Reyes says) and Modesta Afafe died in 1886, it could not be understood to have been acquired during the conjugal partnership, and furthermore even if it had been acquired during the conjugal partnership it could not be regarded as partnership property, because its acquisition was by gratuitous title, that is, inheritance.

But there is no evidence in the record of the title by inheritance alleged by the defendant. The deposition of Rufina de los Reyes, sister of Father Gabino de los Reyes, was submitted in the effort thereby to prove this transfer of title by inheritance; but such design did not succeed. This question was addressed to the deponent: "Do you know to whom were granted Father Gabino's properties in Tuy and Halayan?" Hut the court sustained the objection made by counsel for the plaintiffs on the grounds he alleged, and the answer given to this question is the same as if it had not been made.

Title by inheritance, especially when voluntary in the collateral line, is proven either by a will or by a sworn declaration in a special proceeding, and not by the declaration of a witness, when, as in this case, there is contradiction and opposition.

Title of ownership inscribed in the property registry in the name of one person in his own right, and not derived from another, cannot be invalidated by the declaration of a witness who ascribes the ownership to a different person and makes it appear to be derived from such person.

With respect to the parcels of realty Nos. 2, 4 and 5 of paragraph 10 of the complaint, the court held that Father Gabino de los Reyes had given them in his lifetime to Victorino Buhay in payment of a debt of 11,111 pesos. (B. of E., 19.)

It has already been stated that No. 2 is a tract of land in the sitio of Tuyuntuyon, municipality of Tuy, inscribed in the property registry of Batangas as belonging to Julian Ambalada. No. 4 is a lot in the municipality of Tuy. No. 5 is also a lot in the municipality of Balayan, with a building of strong materials.

No. 2, according to the registry, was acquired by Julian Ambalada under title of composition with the State on February 15, 1883. The party who applied for inscription of this composition title in the registry was Victorino Buhay, who on March 12, 1895, inscribed the public instrument recording the sale he had made of said land to Julian Ambalada on January 24 of the same year, 1895. There is no evidence that this land belonged to Father Gabino; nor is there any that Father Gabino de los Reyes ceded it to Victorino Buhay in payment of a debt of 11,111 pesos. What is proven in an irrefutable manner is that it belonged to the conjugal property of the marriage as having been acquired by Julian Ambalada on February 15, 1883, while his wife Modesta Afaible was still living. (Civil Code, art. 1401, par. 1.) And it appears in the registry that the party who sold this land to Buhay was Julian Ambalada, and that the price was 3,500 pesos, not 11,111 pesos.

Nor is there any evidence that the lots 4 and 5, the latter situated in the municipality of Balayan with a building of strong materials, and the former in the municipality of Tuy, belonged to Father Gabino de los Reyes and that they had been ceded to Victorino Buhay for the debt stated. What appears in Exhibit Z, presented by the defendant, an instrument executed before the gobernadorcillo of Balayan, his witnesses who were present and those who signed the instrument, is that Julian Ambalada on August 6, 1891, sold to Victorino Buhay said lots and a building with an iron roof, together with the tract No. 2 of Tuyuntuyon of 68 and a fraction hectares for the price of 11,661 pesos; but they were not so inscribed in the registry, only the tract No. 2 of Tuyuntuyon for the price of 3,500 pesos, and the instrument of sale was not executed in Balayan on August 6, 1891, but before the capitan municipal of Tuy on January 24, 1895, as has been stated.

The trial court found that the lot No. 6 of paragraph 10 of the complaint had been donated by Father Gabino de los Reyes to Martina Ambalada, sister of the defendant. But there is no proof of the ownership of Father Gabino de los Reyes, nor of the donation said to have been made, which to be valid must have been made in a public instrument. (Civil Code, art. 633.) On the other hand, the plaintiffs have proven by their witnesses Manuel Consul and Timoteo Martinez, that the Ambalada couple acquired lots Nos. 5 and 6 of paragraph 10 of the complaint.

With reference to the parcels of realty Nos. 1 and 3 of paragraph 10 of the complaint, the lower court held that they had been donated by Father Gabino de los Reyes in his lifetime to the defendant. But there is no proof either of Gabino's ownership or of his donation. Rather, on the contrary, it has already been stated that the tract No. 1 is inscribed in the property registry in the name of the defendant, who is on record as having acquired it by composition with the State in the lifetime of his wife, Modesta Afaible.

"All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife." (Civil Code, art. 1407.)

In his written reply, the defendant says that half of tract No. 1 was sold to Lorenzo Ermita in order to pay with its proceeds a debt that drew interest in favor of Ignacio Ilagan.

There is no ground in this case for making any finding or rendering any judgment with regard to this sale and that which appears to have been made to Victorino Buhay: (1) Because they are not the object of the action prosecuted; (2) because the persons said to be the purchasers are not parties to this suit; and (3) because there are provisions in the law regarding said conveyances, when once liquidation of the partnership property has been declared to be proper.

The judgment appealed from is affirmed in so far as it declares that there was a legal marriage between Julian Ambalada and Modesta Afable; and it is reversed in so far as it declares that the property set forth in paragraph 10 of the complaint is not partnership property. It is held on the contrary that said property is such, and that it is proper to proceed to liquidate such partnership property in accordance with the provisions of section 7, chapter 5, title 3, book 4, of the Civil Code; without special finding as to the costs in this instance. So ordered.

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

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