

IDONAH SLADE PERKINS, PLAINTIFF AND APPELLANT, VS. EUGENE ARTHUR PERKINS, DEFENDANT AND APPELLEE.*G. R. Nos. 35470, 35658. September 12, 1932*

Ponente: HULL, J.

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The parties to this action were married in the City of Manila, January 3, 1914, and from that marriage, one daughter was born on the 16th of October 1914, at Spokane, Washington.

The parties lived together as man and wife in happiness and comity until the latter part of the year 1929, When family disputes originating over money destroyed the peace of the home. For several months negotiations between the parties were conducted with a view to an amicable settlement and division of the properties which had been acquired since their marriage in 1914. In connection with these negotiations, the wife consulted with a number of the leading attorneys of the City of Manila, and at various times was represented in the negotiations by different lawyers of standing. These negotiations being unsuccessful she discharged her former attorneys and hired as her attorney, Vicente Sotto who has had a number of years of active practice in the City of Manila.

On June 30, 1930 through this attorney she commenced an action in the Court of First Instance of Manila seeking relief of various kinds against her husband. In this complaint she recited the properties which had been acquired by the parties since their marriage, set them forth as conjugal property, and prayed for the liquidation of the properties of the conjugal partnership, and that one-half of the net proceeds of that partnership be given to the plaintiff. The defendant, in his answer, alleged that all property set forth in paragraph seven of the complaint belonged to the conjugal partnership, and presented a counterclaim and cross-complaint against plaintiff in which defendant alleged that the plaintiff was illegally depriving him of the possession and administration conferred upon him by law, with respect to a large part of the property belonging to the conjugal partnership, and prayed that the plaintiff should render him an accounting of the conjugal property in her possession or under her control and also that she transfer and deliver to him all said property which might be found. Then followed a period of feverish action and at least ten suits with innumerable motions were filed within a period of thirty days. The defendant, through a search warrant, discovered in a safety deposit vault, which had been taken out by plaintiff in her maiden name, a package of old love letters, written to her in 1921 by a young man then living in England. The plaintiff immediately instituted proceedings for the recovery of their possession. The defendant had them covered by a subpoena duces tecum and the judge of the Court of First Instance refused to turn the letters over to the plaintiff. Shortly thereafter plaintiff dismissed her attorney, Sotto, filed formal withdrawals of all her numerous actions pending against her husband and in this case she executed a petition which was filed in court on June 26, 1930, asking;

"(a) That she be permitted to withdraw her complaint, and

"(b) That judgment be entered in favor of defendant upon his cross-complaint as prayed for therein in these proceedings, all, however, without prejudice to a proper disposition by the court upon the merits of any motions pending before it for determination."

According to the petitions of the parties, the trial court on August 4, 1930 decided the case, saying:

"(Translation) * * * dismissing plaintiff's complaint, authorizing the plaintiff to withdraw her complaint, and condemning the plaintiff to render an accounting to the defendant of all the conjugal property now in her possession or under her control; condemning the plaintiff to convey, transfer and deliver to the defendant all such conjugal property as may result from said accounting, and to execute in favor of the defendant all such deeds and documents as may be necessary in order that defendant's title to such property may legally appear."

Notice of judgment was served on plaintiff on August 6, 1930. When the period of thirty days from the date of notification of the judgment had elapsed and no movement had been made by Mrs. Perkins to comply with the orders of the court, the defendant, on September 17, 1930 filed a petition praying for an order directing the plaintiff to appear and show cause why she should not be punished for contempt for failure to obey the judgment. On September 23, 1930 she filed a demurrer to defendant's petition which was overruled on September 25, 1930. On September 29, 1930 she filed a reply to the petition setting forth a number of alleged reasons why she should not be punished for contempt. The reply was amended later, on March 9, 1931. On December 26, 1930 she commenced in the Court of First Instance of Manila, an independent action against her husband for separate maintenance. On January 15, 1931, five months and eleven days after the rendition of the judgment in the first case, she filed therein an "application to set aside judgment" based upon all four of the statutory grounds in section 113 of the Code of Civil Procedure, which reads:

"Upon such terms as may be just the court may relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect: Provided, That application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken." On March 6, 1931 the trial court entered an order denying plaintiff's petition to have the judgment of August 4, 1930 set aside and on March 30, 1931 it entered an order in the contempt proceedings finding the plaintiff guilty of contempt and directing that she be lodged in jail and kept there until she complied with the orders contained in the judgment of August 4th. From these two orders the plaintiff has appealed to this court.

The trial court held the appellant guilty of laches in the presentation of her motion to set aside the judgment as it was not made within a reasonable length of time; that her allegations in her application as to the fraud and deceit practiced upon her by her husband were untrue; that to grant appellant's application would amount to permitting her to change her cause of action; that to grant the motion of appellant would amount to permitting her to change the theory of her action; that the allegation of error on the part of her former attorney forms no basis to the granting of the said motion; and that the judgment of August 4, 1930 not being appealed from, said judgment had become final and therefore the trial court denied the motion. These findings and actions of the trial court are assigned by appellant as the errors which she desires this court to review.

Examination of the record shows that the findings made by the trial court are in strict accord with the evidence presented and the conclusions of law of the trial court above set out are so obviously correct that a detailed discussion would serve no useful purpose. This litigation was not entered upon suddenly and thoughtlessly, but on the contrary after months of consideration and after receiving the advice of many attorneys. It is therefore no hardship on the plaintiff that she be held to the facts which she swore to be true in submitting her original complaint and not now be permitted to start an entirely new action based upon her now swearing that the facts are not as formerly recited, but that an entirely different and repugnant state of facts actually exists. To permit such a practice would destroy all usefulness of courts by permitting litigation to be ended only upon the exhaustion of the parties.

In her application to set aside and annul the original decision in this case, appellant, for the first time, alleged that

her husband was a citizen of the State of New York, and therefore under article 10 of the Civil Code, which provides: "Personal property is subject to the laws of the nation of the owner thereof; * * *", the trial court should have decided her rights to personal property in accordance with the laws of the State of New York. Sections 300, 301, and 302, of the Code of Civil Procedure indicate the nature and methods by which laws of one of the states of the United States may be established. The court was without power, due to lack of allegation and proof, to give effect, even if the same was applicable to the real facts, to the provisions of article 10 of the Civil Code. The mere allegation of the existence of such rights do not constitute such grounds for re-opening as to make the trial court's refusal to grant such motion reversible error.

It may be suggested that on account of the marital relations of the parties, the trial court had no authority to approve of appellant's petition of June 26, 1930, and to enter the decision of the court which it did on August 4, 1930. We deem it sufficient to say at this time, that this question was not presented in the briefs, and in our opinion, the court had jurisdiction of the parties, and of the subject matter of the dispute.

The appellant alleges that the trial court erred in finding appellant guilty of contempt because the orders of the court were indefinite and uncertain and further that the appellant was not guilty of contempt in any event. Both in the testimony and in the brief, a pretension is made that many of the items set forth in paragraph seven of her original complaint are her personal property, and not conjugal property as sworn to by her at that time and as found by the trial court in its judgment of August 4, 1930. Only when the pretensions of plaintiff are followed instead of the facts as found by the court is there any uncertainty as to the meaning of the trial court's orders. The claim of uncertainty being predicated upon an improper foundation can not be allowed. When asked specifically in court whether or not she was now willing to deliver to her husband such parts of that property which had been held to be conjugal property as might then be in her possession, or under her control, answered: "No, I will not turn it over." It is hard to see how a contempt can be more clearly stated. The orders appealed from are affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, and Imperial, JJ., concur.

DISSENTING

BUTTE, J.,

So far as I have been able to find-and my brethren cite no precedents-this decision is unparalleled in the history of jurisprudence. It is the first time a husband succeeded in using the civil courts as an instrumentality for sending his wife (living in the same house with him) to prison because of a dispute between them over a mere property right. The same remedy, by parity of reasoning, will now be available to wives against their husbands for the preservation of their paraphernal property.

I think this is a dangerous perversion of the power of the courts; and, if generally used, will be fraught with grave consequences to the integrity and peace of the family life and to the administration of justice in these Islands.

I dissent from the opinion of my brethren that the court below had jurisdiction to make the order, herein under review, directing that the wife should be imprisoned until she sees fit to comply with the judgment of the court of August 4, 1930.

On June 30, 1930, Idonah Slade Perkins filed in the Court of First Instance of Manila a petition Which makes a list of the conjugal property acquired during her marriage with the defendant of the total value of P817,163.24. After alleging various acts on the part of the defendant, the petition prays that the court decree the separation of the spouses and the liquidation of their conjugal property. The answer denied that the court had the jurisdiction to grant the remedy prayed for in the petition and alleged that the petition did not state facts constituting a cause of action. Paragraph XIV of the answer sets up the following reconvention and counter-demand :

"Que la demandante ha privado ilegalmente al demandado de la posesion y del derecho de administracion que la ley le ha conferido, y continua privando a dicho demandado de la referida posesion y derecho de administracion, sobre una gran parte de los bienes de la sociedad legal de gananciales entre" dichos demandante y demandado, a saber:

"Muebles, enseres, adornos y equipo del domicilio conyugal, que la demandante, el 24 de junio de 1930, de manera subrepticia, sustrajo de dicho domicilio, los cuales valen de P6,000 a P10,000, moneda filipina, o un valor razonable de P8,000 como termino medio, los cuales forman parte de los muebles, enseres, adornos y-equipo mencionados en el parrafo VII, subparrafo 6, de la demanda J asi como los certificados de veinticuatro mil (24,000) acciones de la Benguet Consolidated Mining Co., qup razonablemente valen P117,500, mencionados en el parrafo VII, subparrafo d de la demanda; y todos los bienes descritos en el parrafo VII, subparrafos h, k, I y m de la demanda, todos los cuales estan escondidos o sustraídos de la posesi6n del demandado, o los documentos o titulos sobre los mismos, los cuales bienes valfan razonablemente, al tiempo del inventario que aparece en la demanda, la suma de P143,500, y la totalidad de dichos bienes conyugales sacados, escondidos o sustraídos de la posesion del demandado, como se ha dicho, valen razonablemente la suma de P259,000, moneda filipina.

"Por todo lo expuesto, el demandado respetuosamente pide se dicte sentencia:

"(1) Declarando que la demandante nada tiene derecho a recobrar del demandado bajo su demanda;

"(2) Obligando a la demandante a que rinda cuenta al demandado de todos los bienes conyugales que se hallen en su poder o bajo su control;

"(3) Obligando a la demandante a ceder, transferir y entregar al demandado todos los bienes conyugales que resulten de dicha rendici6n de cuentas, y ordenando a la demandante a que otorgue a favor del demandado todos los documentos y escrituras que fuesen necesarios para la debida constancia del titulo legal del demandado sobre dichos bienes; y

"(4) Que se declare que la demandante debe obediencia al demandado, como esposa que es de este, y que no debe ejecutar en adelante ningun acto que tienda a obstruir o embarazar el ejercicio por el demandado de los derechos que la ley le confiere sobre bienes de la sociedad conyugal.

"(5) Otorgando al demandado cualquier otro remedio que el Juzgado estime justo y equitativo.

"Manila, I. F., 7 de julio de 1930."

On July 26, 1930, the plaintiff filed the following petition:

"Now comes the undersigned, Idonah Slade Perkinsr plaintiff, in the above entitled cause of action, and manifests to the court:

"1. That she has dismissed her lawyer, Vicente Sotto, in accordance with her letter to him of even date herewith, a copy of which is attached hereto and made part hereof, and which she hereby ratifies and confirms.

"2. That the above entitled proceedings were instigated by her said lawyer, Vicente Sotto, having given the undersigned to believe that he could secure for her all of the relief sought in. the complaint in these

proceedings, as well as in the various motions filed by him in her behalf.

"3. That the allegations in said complaint and in said motions, in so far as they reflect upon her husband, the defendant in these proceedings, are unfair, and are in fact untrue.

"4. That she now realizes that she was without probable cause at the time her aforementioned attorney filed said complaint and in causing her to ratify the same and the motions subsequently filed, the same were either imperfectly or incorrectly explained and translated to her, and as a consequence she now desires to withdraw said complaint.

"Wherefore, it is respectfully prayed:

"(a) That she be permitted to withdraw her complaint, and

"(b) That judgment be entered in favor of defendant upon his cross-complaint as prayed for therein in these proceedings, all, however, without prejudice to a proper disposition by the court upon the merits of any motions pending before it for determination. "Manila, P. I., July 25, 1930.

(Sgd. "IDONAH SLADE PERKINS"

On August 4, 1930, the court below rendered a decision upon the last mentioned petition of the plaintiff which concludes as follows:

"Por las consideraciones expuestas, se dicta sentencia ordenando el sobreseimiento de la demanda, autorizando a la demandante a retirar su demanda, y condenando a la demandante a que rinda cuenta al demandado de los bienes conyugales que se hallan en posesion o bajo el control de la demandante; condenando a la demandante a ceder, transferir y entregar al demandado todos los bienes conyugales que resultaren de dicha rendition de cuentas, y a que otorgue a favor del demandado todos los documentos y escrituras que fuesen necesarios para la constancia del titulo legal del demandado sobre dichos bienes. Sin costas.

"Manila, I. F., 4 de agosto de 1930."

It is for refusal to comply with the dispositive provisions of the decision above quoted that the appellant has been held in contempt of court and ordered to be sent to prison until she complies with the said judgment of the court.

I submit that Idonah Slade Perkins had no legal power to agree, as she did in her petition of July 26, 1930, that judgment should be entered against her and in favor of her husband upon his cross-complaint, and that the court below was without jurisdiction, although the parties agreed thereto, to make the decision and order of August 4, 1930, above quoted.

When the original petition was dismissed, the answer and counter-demand fell with it, unless the counter-demand could legally stand as an independent cause of action and could have been brought as an original proceeding.

For reasons of public policy, the general rule is that during the subsistence of a marriage the civil courts will give neither spouse a remedy against the other. They cannot contract with each other, nor can one be held liable for a tort against the other. As to their respective conjugal property rights, it has heretofore been regarded as settled law that no determination can be made except upon the dissolution of the marriage by death, or divorce, or annulment, accompanied by a proper inventory and liquidation. The counter-demand in this case, upon which judgment was entered against the wife, has no relation to the dissolution of the marriage or to the liquidation of the conjugal property.

It does not appear upon what statutory provisions or precedents in this court the jurisdiction to render judgment on the counter-demand in this case can be sustained in contravention to the general policy that confines causes of action which one spouse may bring against the other to a certain limited class, chiefly relating to, or connected

with, the dissolution of the marriage partnership. To say that the court has jurisdiction over the parties seems to me to beg the question. Likewise, to say that the court has jurisdiction over the subject matter seems to me to ignore what is in reality the subject matter of the counter-demand. It seems to be assumed that the subject matter is the power which the law vests in the husband exclusively to administer and dispose of the conjugal property. That assumption overlooks the fact that it is legally impossible for the wife to deprive the husband of that power. In this case I donah Slade Perkins, a married woman (and all the world is by law charged with notice of that fact), cannot administer or dispose of the conjugal property. The utmost she could hold would be the naked physical possession of the conjugal property referred to in the counter-demand; and her husband may take that from her by duress, or stealth, or stratagem, or even vi et armis, and the law would give her no remedy against him. She has no right of possession as against her husband. Her possession of the conjugal property is his possession during the subsistence of the marriage. The cause of action attempted to be stated in the counter-demand is that the wife "has illegally deprived" the husband "of the possession" and right of administration which the law confers upon him * * * over a large part of the conjugal property." This is clearly a demurrable allegation and cannot be the foundation of a judgment against the wife. The fact that the wife agreed that the judgment of August 4, 1930, should be entered against her cannot, of course, confer jurisdiction upon the court, for jurisdiction cannot be conferred by consent.

It appears from the record that the wife's petition to have this judgment entered against her was part of a reconciliation that was effected between the husband and the wife. It is a striking commentary on this judgment that it continued to hang over the head of the wife like the sword of Damocles ready to drop whenever the husband chose to pull the cord; and the record shows that instead of effecting harmony this judgment figured as a prominent cause in the subsequent disruption of the reconstituted home.

Marriage is the most comprehensive and the most intimate and delicately adjusted of all partnerships. And yet this court is giving the husband a weapon against the wife, which it would not think of giving one partner against another in an ordinary commercial partnership.

I cannot vote to introduce into our jurisprudence the doctrine that a husband may use the courts as an agency to send his wife to prison-I care not how foolish and vixenish she may be-when only a property right is in dispute.

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