34 Phil. 336

[G.R. No. 9984. March 23, 1916]

PETRONA JAVIER, PLAINTIFF AND APPELLEE, VS. LAZARO OSMEÑA, AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED TOMAS OSMENA, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:

Florentino Collantes, husband of Petrona Javier, became indebted to the estate of Tomas Osmena in the sum of ₱26,467.94. On June 15, 1913, judgment for this amount was rendered in behalf of the estate and the sheriff executed it by selling at public auction all the right, title, interest or share which the judgment debtor, Collantes, had or might have in two parcels of improved real estate situated in this city of Manila, and especially the usufructuary interest therein of Pascuala Santos, the surviving widow of Felix Javier y Sanchez, which interest was acquired by Petrona Javier, Collantes' wife, on March 20, 1911.

Petrona Javier, Collantes' wife; was the only daughter of Felix Javier and Matea Corunan, the latter of whom died in 1901, and the former in 1908. Felix Javier, after the death of his wife Matea Corunan, married Pascuala Santos. It was in the year 1890 that Florentino Collantes and Petrona Javier had contracted marriage. Felix Javier and his wife Matea Corunan left at their death, as an inheritance to their only daughter Petrona Javier, two urban properties situated one on Calle Carriedo, and the other on Calle San Sebastian. For the purpose of consolidating her full ownership in and to both properties, Petrona Javier acquired from her father's second wife, Pascuala Santos, the latter's usufructuary right in her deceased husband's estate for the sum of ₱3,000, which amount, it appears, Javier was obliged to borrow, giving as security for the loan a mortgage on the property she had inherited.

These properties that were inherited by Petrona Javier from her parents were those levied upon by the sheriff in the execution of the judgment against Florentino Collantes, and notwithstanding her protests the sale was carried out. The successful bidder therein was the

Osmena estate itself which paid ₱500 for each parcel of property, that is, ₱1,000 for Collantes' right in both parcels and in the usufructuary interest acquired by his wife from Pascuala Santos.

Inasmuch as Petrona Javier claimed that her husband Collantes had no rights whatever in said two pieces of property or in the usufructuary interest acquired by her, she filed claim of intervention in order to recover her ownership of the properties and her right of usufruct after the sheriff's sale should be annulled.

The defendant Osmena estate, in answer to the complaint, admitted plaintiff's exclusive right of ownership in the said two aforementioned parcels of real estate, subject to the usufructuary right of the second wife of plaintiff's father, and also admitted the purchase of this right by plaintiff. Defendant claimed, however, that the money with which said usufructuary interest was purchased belonged to the conjugal partnership and therefore that the right of usufruct so acquired belonged to the said conjugal partnership. Defendant concluded by praying that the court render judgment holding that the revenues from both properties are conjugal partnership property of the married couple Collantes and Javier; that said revenues be made liable for the payment of the judgment rendered in behalf of the Osmena estate; that for this purpose a receiver be appointed to take charge of said two properties and manage them with the object of applying the revenues obtained therefrom to the payment of the judgment obtained by the Osmena estate against Collantes.

The Court of First Instance of Manila rendered judgment annulling only the sale of the two properties and ordering the cancellation of their registration in the property registry, with the costs of the suit.

Defendant appealed.

The question raised in this appeal is whether the sum owed by the husband to the Osmena estate can and should be paid out of the fruits and revenues of the two aforementioned parcels of real estate that exclusively belong to the wife, the herein plaintiff, as prayed for by the appellant in his "written answer.

To decide this question the nature of the debt must be inquired into and defined. The appellee herself, in this instance, describes it thus:

> "A short while prior to 1892, Collantes was employed by appellee's father, Felix

> Javier, in a commission business which the latter conducted in Manila. In 1902, Felix Javier retired from the business and was succeeded therein by Collantes who, as a consequence, changed his commercial status as an employee of his father-in-law to that of an independent commission merchant, and continued that business for six years, or until 1908. One of the chief clients (principals) both of Javier and Collantes, was Tomas Osmena, a merchant of Cebu, whom Javier, and later Collantes, had represented as his agents in Manila for the sale of tobacco consigned to them by Osmena from Cebu and for the investment of the profits, in Osmena's name and as his agents in Manila, in merchandise which these agents consigned to him at Cebu (record, p. 2). When Javier retired from the commission business in 1902, it appears that he was indebted to Tomas Osmena in the sum of four or five thousand pesos, and that this debt was assumed by his successor Collantes. How this debt originated, the record does not show. In 1908, Collantes rendered a statement (they probably were accounts) to Osmena which showed that his debt to the latter amounted to fourteen or fifteen thousand pesos. No steps were taken by Osmena during his lifetime to collect this debt, but after his death a judgment for the same was obtained by the administrator of his estate in June, 1913. This judgment was founded on the statement made by Collantes in 1908 in which he admitted his debt, together with interest thereon at the rate of 12 per centum per annum.
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> "Although the appellee admits that the debt arose out of the business conducted by her father and subsequently by her husband, there is no evidence that throws any light on the particular transaction which was the cause of the indebtedness * * *. It must be observed that there is the natural presumption of fact that whatever he (Collantes) may have contributed toward defraying the expenses of his family, was contributed by him out of what he earned by the commission paid him for the services he rendered to his clients as a broker (as commission merchant). It has not been proven or alleged that any part of the debt to Osmena was originated by Collantes' having paid the family expenses as they are defined in paragraph 5 of article 1408 of the Civil Code." (Appellee's brief, pp. 3 and 4.)

The appellee herself having set forth the origin of the debt, which is none other than the balance against Collantes resulting from the accounts rendered by him as commission merchant to his principal Osmena; and the appellee also having set forth that "there is the natural presumption of fact that whatever Collantes contributed towards defraying the

family expenses was contributed by him out of what he earned by the commission paid him for the services he rendered to his clients as commission merchant," it is decisive and conclusive that the debt must be paid out of the community property of the marriage, since, as article 1408 of the Civil Code provides:

> "The conjugal partnership shall be liable for:
>
> > "1. All the debts and obligations contracted during the marriage by the husband, * * *.
> >
> > * * * * * * *
> >
> > "5. The support of the family * * *."

And inasmuch as "the fruits, revenue, or interest collected or accrued during the marriage coming from the partnership property, or from that which belongs to either one of the spouses," is community property, according to article 1401; and, furthermore, as the law expressly provides that "the fruits of the paraphernal property form a part of the assets of the conjugal partnership, and are liable for the payment of the marriage expenses" (art. 1385), hence it follows that the creditor of the husband may bring his action, not against the paraphernal property, but against the fruits and revenues of this private property of the wife.

This conclusion is not barred by the provision of article 1386, to wit, that "the personal obligation of the husband cannot be paid out of the fruits of the paraphernal property unless it be proven that they were incurred for the benefit of the family." It is chiefly upon this article that appellee's whole brief is based.

The antecedents of this article of the Civil Code are not only the laws embraced in some of the codes enacted prior thereto, but principally the numerous cases decided by the supreme court of Spain which interpret the old law which the appellee says is identical with article 1386 of the present Civil Code. Among the various decisions which might be cited, the most important is that of June 9, 1883, because it covers the entire question at issue in this case: Quirico Casanovas was a creditor of Jose Gimiso for the value of certain drafts protested for

nonpayment; he brought suit to recover and attached various properties belonging to the marriage partnership, for Gimiso was married, and also several parcels of real estate that belonged to the debtor's wife, Antonia Carruana. The latter tiled a third party claim and alleged that this real estate was her paraphernal property and that the fruits thereof were subject to the payment of the marriage expenses; that the husband could dispose of such fruits only after the payment of such expenses, among which his personal debts were not included; that this doctrine was sanctioned by the decisions of the supreme court of March 1, 1867, and June 20, 1879, which hold that the rights in the dowry and paraphernal fruits or revenue, granted by law to the husband as the head of the family and manager of the conjugal partnership, are understood to be subordinate to the preferred obligation of paying the marriage partnership expenses with such fruits or revenue. Casanovas answered the complaint alleging, among other reasons, that Gimiso's debt arose from shipments of paper and other articles connected with the business in which he was engaged, and that the supreme court itself, in its decisions of October 26, 1863, November 26, 1864, October 8, 1866, and March 1 and October 27, 1867, had laid down the rule that, although the management of the wife's paraphernal property pertains to her, it is understood to be without prejudice to the husband's collecting and disposing of the products of such property, as the head of the family and for the purpose of attending to its needs. The *Audiencia* of Valencia decided the suit in favor of Casanovas. But Carruana took it in cassation to the supreme court, alleging that it violated (second assignment of error) "the well-established rule reaffirmed by the supreme court in its decision of February 21,1881, and several others, to the effect that in order that a creditor may secure preference over the rights of the wife with respect to the products and revenue of the paraphernal property, he must prove at trial that the debt, the payment of which he demands, was contracted by the husband to meet obligations of the conjugal partnership; that this was not proven in the case at bar, and it is insufficient to say, as it is said in the judgment appealed from, that among the resources declared by the husband and those for which the revenue from the wife's property is liable, should be included the credit, that is, the debts, for, according to well-settled jurisprudence of that supreme court, any money or sums borrowed by the husband must be invested in business of the conjugal partnership."

The decision of the supreme court did not sustain the appeal in cassation:

> "Considering that the debts contracted by the husband during the marriage, f r and in the exercise of the industry or profession by which he contributes toward the support of his family, cannot be deemed his personal and private debts, nor

> consequently, can they be excepted from payment out of the products or revenue of the wife's own property which are liable, like those of her husband's, for the discharge of the liabilities of the married couple; and considering that the debt claimed by Don Quirico Casanovas, for the payment of which attachment has been levied on certain property belonging to the petitioner, is of *this* nature, *inasmuch as* it was contracted in the exercise of the industry or business carried on by her husband; therefore, the doctrine cited in the second assignment of error of the appeal, is *inapplicable*, and has not been violated by the judgment appealed from, in holding, as it does, that intervention prayed for by the wife, cannot be allowed."

The appellee herself established the presumption that whatever the husband contributed toward the support of his family, he gave out of what he earned from his commissions and profession. In conformity, then, with the aforecited decision on cassation, the debts contracted for and in the exercise of such industry or profession cannot be considered as his personal and private debts, nor can they be excepted from payment out of the products or revenue of the wife's own property, which, like that of her husband's, is liable for the discharge of the marriage liabilities. So far were they from being personal debts of the husband, that the wife herself avers that the payment to Osmena of four or five thousand pesos of the twenty-six and odd thousand pesos of the total debt, had been assumed by her husband, relieving her father therefrom. He would not have assumed the payment for private purposes of his own, for his purely personal satisfaction, and in the eyes of the law, notwithstanding his having assumed payment, relieving her father-in-law therefrom, he was a perfect creditor of the latter's heir in the settlement of her father's estate and could have deducted the amount of that credit of four or five thousand pesos from her entire inheritance, that is, from that same property, subsequently called paraphernal, that his wife inherited intact.

> "Subrogation transfers to the subrogated the credit, with the corresponding rights, either against the debtor or against third persons, be they sureties or holders of mortgages." (Art. 1212, Civ. Code.)

It is undeniable that if in the same manner as the 26,000 and odd pesos were a loss, they had been a gain, the husband would not have been permitted to call the amount his personal and private gain; in the same way, the debts or losses resulting from the business cannot be

called his personal and private debts or losses.

The petition of the defendant in his answer to the complaint, to wit, that the sum owed by the husband to the Osmena estate can and ought to be paid out of the fruits or revenue of the two parcels of real estate mentioned, which belong exclusively to the wife, now the plaintiff, is proper and in accordance with the law.

Defendant also prayed in his answer that a receiver be appointed to take charge of the management of the said two properties and apply their revenue to the payment of the judgment rendered in behalf of the Osmena estate against Collantes.

According to article 1384, the wife shall have the management of her paraphernal property. Pursuant to article 1412, the husband is the administrator of the community property of the conjugal partnership and of the conjugal capital in general, and we have already said that the fruits of the paraphernal property form a part of the assets of the conjugal partnership (art. 1385). To confide the management of the property and of its revenue to a receiver would be to deprive the husband and the wife of their respective rights. In the case at bar, the wife has given no cause for being deprived, nor has any reason whatever been advanced for depriving her, of her right to manage her own property. The same may be said of the husband with respect to the community property of the marriage. There is no reason to change the present status of affairs. Neither has any sufficient reason been offered for the appointment of a receiver, nor has any of the cases enumerated in section 174 of the Code of Civil Procedure, been invoked.

Therefore, the appellant’s petition for the appointment of a receiver must be denied.

The lower court having failed to make any ruling on the declaration and the appointment prayed for by appellant, the judgment appealed from is reversed in so far as regards this omission, and we hold that the fruits and revenue from the two properties belonging to the wife, described in the judgment appealed from, are liable for the payment of the debt owing by the husband, the judgment debtor, and that there is no need for the appointment of a receiver. Without special finding as to costs, it is so ordered.

Torres, Trend, and *Araullo, JJ.,* concur.
Moreland, J., concurs in the result

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