44 Phil. 454

[G.R. No. 19341. January 29, 1923]

JENNIE FLORIDA, PLAINTIFF AND APPELLEE, VS. A.W. YEARSLEY, DEFENDANT AND APPELLANT.

D E C I S I O N

STATEMENT

Plaintiff alleges that at all times since 1912 she has been and is now the owner of the lease of those certain premises occupied as a cabaret and dancing hall known as "Lerma Park," in the municipality of Caloocan, Province of Rizal, and of the business and buildings connected therewith and belonging thereto. Since that time the defendant, as her agent, has had the control and management of the premises and of the business, and that he has collected and expended large sums of money in the operation thereof, the amount of which is unknown to the plaintiff. That he has failed to account to her for the moneys received and collected, and that on April 20, 1921, she made a demand upon him for the possession of the business and property, and that he refused to make delivery. Wherefore, she prays judgment for an accounting to determine the amount due and owing1 the plaintiff, and that she have the possession of the property and business.

For answer, the defendant made a specific denial of all of the matters alleged in the complaint, and, as a separate defense, pleads that the plaintiff is not and never was the owner of the business or the property; that any documents executed tending to show that she had any interest in the property were executed as a matter of convenience only; that in October and November, 1918, the business was in bad condition, and, for such reason, the defendant decided to either sell it or mortgage it, but was unable to do so for the reason that the money lenders suspected that plaintiff might have or claim to have an

interest in the property, and at their suggestion he was forced to obtain from the plaintiff a transfer of any right, title or interest which she might have or claim to have in the property, and that he then obtained from her a bill of sale on November 8, 1918, for P25,000, known in the record as Exhibit 23, which is made a part of the answer. That plaintiff never did have any interest in the business and never did have anything to do with its administration or management, and never at any time had possession of it. That on November 8, 1918, he paid the plaintiff the sum of P25,000, as she was leaving the Philippine Islands, in order to induce her to sign Exhibit 23; that upon that date she did leave; that after her return she never claimed or asserted any interest in the property until April 21, 1921.

Upon such issues a trial was had, more than six hundred pages of testimony were taken, a large number of exhibits were introduced in evidence, and the lower court rendered an opinion, in substance and to the effect, that the plaintiff was the owner of the business and property known as "Lerma Park," and that within thirty days the defendant should render to her an accounting of his administration of the business as to the income, expenses, profit, and loss, in which should be included all the debits against the plaintiff of the moneys she may have received from the defendant, including the P20,000 paid to her as she was leaving the Philippine Islands. From which the defendant appeals, assigning sixteen different errors, all of which, for the purpose of this opinion, may be included in the contention that the court erred in declaring the plaintiff to be the owner of the business, and in not finding that the defendant at all times had been and is now the sole and absolute owner of the business known as "Lerma Park."

JOHNS, J.:

For many years previous to their trouble, the plaintiff and defendant were intimate, personal friends, and each enjoyed the confidence and respect of the other. The testimony is not clear or convincing as to who actually furnished the money for the initial investment in the Lerma Park property, and it may be that the plaintiff did provide some of the money for that purpose. The evidence is conclusive that at all times the business was carried on and conducted in the name of the defendant, and that he personally contracted all debts and paid all the bills, and that he was the sole manager of the business. The record shows

that there were times when the business did not pay, and was even operated at a loss, and that the defendant was often threatened with legal proceedings to collect claims against the property. That at different times court proceedings were commenced to enforce the collection of claims, in all of which Yearsley was the sole defendant. That prior to the commencement of this action the plaintiff did not claim or assert in court that she was the owner or had any interest in the property. Neither is it shown that at such times the plaintiff paid out or advanced her own personal money to aid the defendant or to relieve the situation. In other words, in the operation and management of the property, the defendant was thrown and had to rely upon his own personal resources, and did not receive any financial aid or support from the plaintiff. It is also conclusive that at no time did the defendant ever render a statement or in any way account to the plaintiff for his conduct of the business. Neither is there any claim or pretense that she ever made any demand upon him for a statement prior to the commencement of the action in April, 1921. The business of what is known as "Lerma Park" was initiated some time in 1913 or 1914. Soon after that and to protect the creditors, chattel mortgages were executed on the property in which both the plaintiff and defendant joined, in one of which it is recited that the plaintiff claims an interest in the property. But at no time or place is there any evidence during all of that period that she claimed to be the sole and absolute owner. The plaintiff admits that some time in December, 1917, the defendant paid her P1,000, and that in January, 1918, he paid her P4,000, and that at or about the time she left the Philippine Islands, on November 8, 1918, he paid her the further sum of P20,000, making a total of P25,000, which she received from the defendant. Previous to that time any surplus from the business there may have been was used in the improvement and development of the property, and it is very doubtful whether there were any actual profits.

The storm center in this case is the bill of sale, known in the record as Exhibit 23. The plaintiff claims that she never signed it and that her signature is a forgery. The defendant contends that she personally signed it. It recites an actual consideration of P25,000 and appears to be dated November 8, 1918, but is not witnessed. But the plaintiff does admit that at or about that time she did receive the P20,000 from the defendant, and that at previous times she had received P5,000, making a total of P25,000. She also admits that upon that date and just as she was leaving for the United States, she gave the defendant a

general power of attorney. The fact that she gave the defendant a power of attorney on that date is strong evidence that she had never given him a power of attorney at any previous time. There is no written evidence that the defendant was ever the agent of the plaintiff in any business, or that the defendant ever transacted any business under the power of attorney which the plaintiff admits that she gave him on November 8, 1918, or under any power of attorney.

Upon that date she left for the United States, and returned to Manila in January, 1920, after an absence of more than fourteen months.

As stated, up to the time she left, the relations between plaintiff and defendant, covering a period of more than four years, were friendly and confidential. During that period many thousand pesos were monthly received and paid out in the operation and management of the property. If it be a fact that the plaintiff was the sole and absolute owner, as she now claims, and that the defendant was her managing agent, in the very nature of things, there would have been some understanding or agreement as to the compensation which the defendant should receive for his services, and the plaintiff would have required at least monthly statements of the amount received and paid out, showing the actual condition of the business. There is no claim or pretense that there was ever any agreement between them as to the amount defendant should receive for his services, or that he ever made or rendered a statement of any kind of a profit and loss account or of the operating expenses. Again, if she was the sole owner of the business she would at least have insisted upon a statement and an accounting before leaving for the United States, and there is no evidence that any statement was ever rendered to her or that she ever asked for it. She testified that during her absence for fourteen months she wrote the defendant two letters, neither of which was ever answered. The testimony is conclusive that upon her return she was in Manila at least eight months without ever seeing the defendant or going near the business, or even making any inquiry about it. If she was the owner, the most natural thing upon her return would be to go and see the defendant and ask him for a statement and an accounting.

There is a sharp and direct conflict in the evidence as to whether the signature of the plaintiff to Exhibit 23 is genuine, and a large amount of evidence was taken pro and con on that question. Be that as it may, and regardless of the bill of sale, the actions and conduct of the plaintiff, the

collateral facts and surrounding circumstances are the very strongest evidence that plaintiff never was the sole and absolute owner ol the property.

It may be that she did have some kind of an undefined interest, and that in a way she was a secret partner of the defendant. Assuming that to be true, any interest which she ever had was acquired by the defendant at the time he paid her the P20,000, the receipt of which she admits. In view of the subsequent actions and conduct of the plaintiff, the payment of that amount at that time and under the circumstances cannot be explained or accounted for upon any other theory.

The stubborn fact remains that for seven long years the defendant was in the actual, physical possession, control, and management of the business, and that at no time prior to the commencement of this action has he ever been called upon or required to account to the plaintiff for his actions and conduct, and all of the money was handled by the defendant, and the bank account was kept in his own name.

Under the theory of the lower court, the plaintiff was the sole owner of the business, and, for such reason, it attached much importance to article 1459 of the Civil Code which, among other things, provides:

> "The following persons cannot take by purchase, even at a public or judicial auction, either in person or through the mediation of another:
>
> "An agent, any property of which the management or sale may have been intrusted to him."

As we construe the record, that article is not in point. The plaintiff was never the sole or absolute owner of the business which, for seven years, was conducted in defendant's name, during all of which time he claimed, represented and held himself out to be the sole owner. Any interest which the plaintiff may have had at the time she received the P20,000 was more or less of an undefined, equitable interest, and that money was paid to take over and acquire her interest whatever it may have been.

In other words, the plaintiff received and accepted the P20,000 with the

understanding and agreement that it was in full payment of any right, title or interest which she had or claimed to have in the property or business, and as a full and complete settlement of all matters between them.

We have given this case the careful consideration which its importance demands, and we find as a fact, upon which the testimony is conclusive, that in consideration of the P20,000, the receipt of which she admits, the plaintiff parted with and sold to the defendant all of her right, title and interest in the property and business on November 8, 1918, at the time she left the Philippine Islands for the United States.

The judgment of the lower court is reversed, and one will be entered here against the plaintiff and in favor of the defendant for the costs of this action. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

PETITION FOR A REHEARING

February 27, 1923.

JOHNS, J.:

In response to plaintiff's vigorous petition for a rehearing, at the expense of considerable time and trouble, another member of this court has carefully read and examined the whole record consisting of about nine hundred pages of testimony and a large number of exhibits, and has arrived at the same result. In the petition much stress is laid upon the alleged fact that the original decision does not take any consideration of Exhibit G and does not even mention Exhibit J, by which the plaintiff leased the Lerma Park to O. E. Hart, and in finding that the plaintiff did not advance her own money or come to its relief when the business was operated at a loss, and that it failed to take any consideration the fact that soon after her return from the United States, plaintiff took steps to enforce her rights, and that it attached much importance

to the failure of the plaintiff to demand an accounting before she left for the United States, and that there was no written evidence that the defendant was ever the agent of the plaintiff, and in finding that any interest which the plaintiff had was acquired hy the defendant at the time he paid her the P20,000.

Speaking of Exhibits G and J, the petition for rehearing says:

> "It appears affirmatively from the decision of this Honorable Court that the said document was not taken into consideration in any way whatever, and must therefore have been overlooked in the great mass of testimony and exhibits offered in evidence in the case."

The original opinion was largely founded upon plaintiff's own admissions, undisputed facts and the written instruments. As counsel says, the lease of the real property itself was in the name of the plaintiff, from which he assumes that she was the exclusive owner of the property and of the business connected with it. But it is undisputed that the business connected with the property was operated by, and in the sole name of, the defendant, and that to all intents and purposes, he was the owner of the business. As the original opinion points out, several notes and chattel mortgages were jointly signed by the plaintiff and the defendant. Plaintiff's own actions and conduct for six long years are inconsistent with her exclusive ownership of the property. The record shows that she is an intelligent woman with a knowledge of how business ought to be transacted, and her own signature to numerous public documents is conclusive proof that the defendant had an interest in the property, including the lease itself, and that she recognized that interest in more ways than one, and that such interest was recognized by the parties with whom they were doing business.

The plaintiff and defendant joined in chattel mortgages to Findlay, Richardson & Co. on the personal property of the business to secure the payment of their three joint and several promissory notes, and they both joined in other instruments and chattel mortgages pertaining to, of and concerning, the property, in one of which it is specifically recited that upon certain conditions "the parties of the first part may remain in possession of said

property and continue the operation of said business."

August 10, 1914, Findlay, Richardson & Co., to whom one of the mortgages was executed, wrote Mr. Yearsley a letter in which it is said:

> "I beg herewith to confirm our understanding that the assignment executed by yourself and Mrs. Jennie Florida, under date of August 7, 1914, in favor of Findlay, Richardson & Company, Ltd., of your interest in the lease executed between Mrs. Florida and Mr. Hart of the property known as Lerma Park, etc., and
> that we agree to assign back to you and Mrs. Florida whatever interest we may then have in the lease with Mr. Hart."

The record is conclusive that, although the lease to the ground itself was in the personal name of the plaintiff, all of the business was conducted by, and in the name of, the defendant, and the written documents are conclusive evidence that, although the plaintiff may have had some kind of an interest in the business, it is also clear that it was operated by, and in the name of, the defendant. It is true that the lease itself stood in the name of the plaintiff, and if that fact stood alone it would be conclusive evidence that the plaintiff was the owner of the property. But for six long years the business itself was conducted by, and in the name of, the defendant. That fact standing alone would be conclusive evidence that he was the exclusive owner of the business. Under such existing conditions, the defendant claims that he paid the plaintiff P20,000 to acquire all of her right, title and interest in the property, and the proofs and her subsequent acts and conduct strongly support defendant's contention.

In his petition for a rehearing counsel has assumed that, because the lease itself to the ground stood in the name of the plaintiff, it follows that she was the sole owner of the business. Under the established facts that position is not tenable. The testimony is conclusive that the business itself was conducted by, and in the sole name of, the defendant. In a case involving such a mass of testimony and exhibits, it is not practicable to discuss every point in detail, and it may be true, as counsel claims, that there were some erroneous statements of fact in the original opinion, but they were immaterial and do not in the

least affect the result.

With all due respect to the petition for a rehearing, every material point in appellant's brief was fully considered, the final conclusions were drawn from our legal construction of the undisputed facts, the written instruments and plaintiff's own testimony.

The petition is denied. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Ostrand, and *Romualdez, JJ.,* concur.

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