

confined in the Philippine General Hospital for only eighteen days and, according to Exhibit B-8, he underwent only two minor operations, one on December 13, 1937, and one on February 19, 1938. In other words, if plaintiff had chosen to sue defendant for compensation, an action which would have subrogated defendant into plaintiff's right of action against the Bachrach Motor Company or any other person responsible for his injuries, such compensation would have been less than the amount he has actually received from both the Bachrach Motor Company and the defendant, namely P2,570.

Upon all the foregoing consideration, the appealed decision is reversed and the action dismissed, with costs against plaintiff-appellee.

Benzon, Padilla, Lopez Vito, and Alex Reyes, JJ., concur

Judgment reversed.

XIV

Gliceria Rosete, Plaintiff-Appellee, vs. Provincial Sheriff of Zambales, Simplicio Yap and Corazon Yap, Defendants-Appellants. G. R. No. L-6335, July 31, 1954, Bautista Angelo, J.

EXECUTION; REDEMPTION BY WIFE OF CONJUGAL PROPERTY SOLD ON EXECUTION; REDEEMED PROPERTY BECOMES PARAPHERNAL. — Inasmuch as the wife redeemed two parcels of land belonging to the conjugal partnership which were sold on execution, with money obtained by her from her father, the two parcels of land has become paraphernal and as such is beyond the reach of further execution. (Section 23 of Rule 39; 1 Moran, Comments on the Rules of Court, 1952 ed., pp. 841-842; article 1596, old Civil Code; Hefner vs. Orton, 12 Pac., 486; Taylor vs. Taylor, 92 So., 109; Malone vs. Nelson, 167 So., 714.) She has acquired it by right of redemption as successor in interest of her husband. It has ceased to be the property of the judgment debtor. It can no longer therefore be the subject of execution under a judgment exclusively affecting the personal liability of the latter.

Ricardo N. Agbunag for the defendants and appellee.

Jorge A. Pascua for the plaintiff and appellee.

DECISION

BAUTISTA ANGELO, J.:

In Criminal Case No. 2897 for murder of the Court of First Instance of Zambales, Epifanio Fularon was convicted and sentenced to indemnify the heirs of the victim in the amount of P2,000.

On February 10, 1949, to satisfy said indemnity, a writ of execution was issued and the sheriff levied upon four parcels of land belonging to the conjugal partnership of Epifanio Fularon and Gliceria Rosete. These parcels of land were sold at public auction as required by the rules for the sum of P1,385.00, leaving an unsatisfied balance of P739.34.

On March 8, 1950, Gliceria Rosete redeemed two of the four parcels of land which were sold at public auction for the sum of P879.80, the sheriff having executed in her favor the corresponding deed of repurchase.

On April 10, 1950, an alias execution was issued to satisfy the balance of the indemnity and the sheriff levied upon the two parcels of land which were redeemed by Gliceria Rosete and set a date for their sale. Prior to the arrival of this date, however, Gliceria Rosete filed a case for injunction to restrain the sheriff from carrying out the sale praying at the same time for a writ of preliminary injunction. This writ was issued upon the filing of the requisite bond but was later dissolved upon a motion filed by defendants who put up a counter-bond.

The dissolution of the injunction enabled the sheriff to carry out the sale as originally scheduled and the property was sold to one

Raymundo de Jesus for the sum of P970. This development prompted the plaintiff to amend her complaint by praying therein, among other things, that the sale carried out by the sheriff be declared null and void. After due trial, wherein the parties practically agreed on the material facts pertinent to the issue, the court rendered decision declaring the sale null and void. The defendants appealed, and the case was certified to this Court on the plea that the appeal involves purely questions of law.

The question to be decided is whether the sale made by the sheriff on May 9, 1950 of the two parcels of land which were redeemed by Gliceria Rosete in the exercise of her right of redemption is valid it appearing that they formed part of the four parcels of land belonging to the conjugal partnership which were originally sold to satisfy the same judgment of indemnity awarded in the criminal case. The lower court declared the sale null and void on the strength of the ruling laid down in the case of Lichauco v. Olegario, 43 Phil. 540, and this finding is now disputed by the appellants.

In the case above adverted to, Lichauco obtained a judgment against Olegario for the sum of P72,766.37. To satisfy this judgment, certain real estate belonging to Olegario was levied in execution and at the sale Lichauco bid for it for the sum of P10,000. Olegario, on the same day, sold his right of redemption to his cousin Dalmaico. Later, Lichauco asked for an alias writ of execution and the sheriff proceeded with the sale of the right of redemption of Olegario whereas Lichauco himself bid for the sum of P10,000. As Lichauco failed to register the sale owing to the fact that the sale executed by Olegario in favor of his cousin was already recorded, Lichauco brought the matter to court to test the validity of the latter sale. One of the issues raised was, "Whether or not Faustino Lichauco, as an execution creditor and purchaser at the auction in question was entitled, after his judgment had thus been executed but not wholly satisfied, to have it executed again by levying upon the right of redemption over said properties." The court ruled that this cannot be done for it would render nugatory the means secured by law to an execution debtor to avoid the sale of his property made at an auction under execution. Said this Court:

"We, therefore, find that the plaintiff, as a judgment creditor, was not, and is not, entitled, after an execution has been levied upon the real properties in question by virtue of the judgment in his favor, to have another execution levied upon the same properties by virtue of the same judgment to reach the right of redemption which the execution debtor and his privies retained over them."

Inasmuch as the Lichauco case refers to the levy and sale of the right of redemption belonging to a judgment debtor and not to the levy of the very property which has been the subject of execution for the satisfaction of the same judgment, it is now contended that it cannot be considered as a precedent in the present case for here the second levy was effected on the same property subject of the original execution. But this argument falls on its own weight when we consider the following conclusion of the court, "x x x what we wish to declare is that a judgment by virtue of which a property is sold at public auction can have no further effect on such property." (Underlining supplied)

Nevertheless, when this case came up for discussion some members of the Court expressed doubt as to the applicability of the Lichauco case considering that it does not decide squarely whether the same property may be levied on an alias execution if it is reacquired by the judgment debtor in the exercise of his right of redemption, and as on this matter the requisite majority could not be obtained the inquiry turned to another issue which for purposes of this case is sufficient to decide the controversy.

The issue is: Since it appears that plaintiff redeemed the two parcels of land in question with money obtained by her from her father, has the property become paraphernal and as such is

beyond the reach of further execution?

We are of the opinion that the question should be answered in the affirmative for the following reasons: (a) Gliceria Rosete, the wife, redeemed the property, not in behalf of her husband, but as successor in interest in the whole or part of the property, it being then conjugal. The term "successor in interest" appearing in subdivision (a), Section 23, Rule 39, includes, according to Chief Justice Moran, "one who succeeds to the interest of the debtor by operation of law" or "the wife as regards her husband's homestead by reason of the fact that some portion of her husband's title passes to her (Comments on the Rules of Court, 1952 ed., Vol. 1, pp. 841-842); and (b) a property is deemed to belong exclusively to the wife (1) when acquired by her by right of redemption, and (2) with money belonging exclusively to her (Article 1396, old Civil Code).

The interest which a wife has in conjugal property in this jurisdiction may be likened to that of a wife in a homestead in American jurisdiction. That interest is known as "inchoate right of dower", or a "contingent interest." By virtue of this inchoate right, a wife has a right of redemption of a homestead as successor in interest of her husband. Thus, in *Hepfner v. Urten*, 12 Pac., 486, it was held that by the declaration of homestead by the husband of the property sold a portion of his title passed to his wife, and "she had the right of residence thereon with him and the family during their joint lives, with some rights in case she should survive him. She had a right of redemption as his successor in interest." (Underlining supplied) In *Taylor v. Taylor*, 92 So., 109, where a mortgage was executed on a homestead and the husband refused to pay the indebtedness, it was held that "the wife's 'inchoate right of dower', which is more than a responsibility and may well be denominated a contingent interest, was a sufficient interest in the lands to confer the right of equitable redemption under the mortgage." And in *Malone v. Nelson*, et al., 167 So., 714, it was declared that "the right of the wife to redeem is rested upon her interest — inchoate right of dower — a right subject to a monetary valuation." These authorities have persuasive effect considering the source of our rule on the matter.

The property in question has therefore become the exclusive property of the plaintiff. She has acquired it by right of redemption as successor in interest of her husband. It has ceased to be the property of the judgment debtor. It can no longer therefore be the subject of execution under a judgment exclusively affecting the personal liability of the latter. The conclusion reached by the lower court on this matter is therefore not warranted by law.

Wherefore, the decision appealed from is modified as follows: the sale of the two parcels of land executed by the sheriff on May 9, 1950 in favor of Raymundo de Jesus for P970.00 is hereby declared null and void, and the deed of repurchase executed by the sheriff in favor of the plaintiff on March 8, 1950 is hereby revived and maintained. The rest of the decision is declared without effect. No pronouncement as to costs.

Paras, Benzong, Padilla, Montemayor, Alex Reyes, Jugo, Labrador, Concepcion and J. B. L. Reyes, JJ., concur.

Pablo, J.: took no part.

XV

Asuncion Roque, Petitioner, vs. Hon. Demetrio B. Encarnacion as Judge of the Court of First Instance of Manila, and Francisco Reyes, Respondents, No. L-6505, August 23, 1954, Labrador, J.

1. SUMMARY JUDGMENTS; ACTION FOR ANNULLMENT OF MARRIAGE CANNOT BE DECIDED BY SUMMARY JUDGMENT PROCEEDING. — A counterclaim seeking to annul defendant's marriage to plaintiff, although not denied or resisted by the latter, cannot be decided by summary judgment proceeding — first, because such action is not one to "recover upon a claim" or "to obtain a declaratory relief," and second, because it is the avowed policy of the State to prohibit annul-

ment of marriages by summary proceedings.

2. ID.; ID.; ABSENCE OF GENUINE ISSUE DOES NOT JUSTIFY MISINTERPRETATION OF RULES OR VIOLATION OF POLICY. — The Rules of Court expressly prohibit annulment of marriages without actual trial (section 10, Rule 35). The mere fact that no genuine issue was presented cannot justify a misrepresentation of the rule or a violation of the avowed policy of the State.

J. C. Orendain, Canuto Pefianco, Jr. & Luz Tordesillas for petitioner.

Celestino L. de Dios and Jose S. Atienza for respondents.

DECISION

LABRADOR, J.:

In Civil Case No. 16787 of the Court of First Instance of Manila, entitled *Asuncion Roque Reyes vs. Francisco Reyes*, plaintiff, petitioner herein, alleges that she married defendant in November, 1943, and that out of their marriage two children were born; that during the marriage plaintiff acquired certain personal and real properties which produce a monthly income of P3,530; that defendant committed concubinage with a woman named Elena Ebarle, and in 1952 he attempted to take away her life, giving her blows and attempting to strangle her. She, therefore, prays for (a) legal separation, (b) legal custody of the children, (c) liquidation of the conjugal property, and (d) alimony and support for the children.

In his answer, the defendant admits their marriage, claiming, however, that it took place in February, 1944, but he denies the alleged concubinage by him and the alleged income of the properties, or the squandering of the same. He presented a counterclaim, alleging that plaintiff was already a married woman when she contracted the marriage with him, having been married with one Policarpio Bayore since February 19, 1930; that she fraudulently represented herself as single, without impediment to contract marriage; that she has been squandering money obtained from him, trying to acquire property in her own name, etc. He prays for (a) the annulment of his marriage to plaintiff, (b) custody of the children, and (c) damages in the amount of P30,000. Her answer to the counterclaim is one mainly of denials. As to the express allegation contained in the counterclaim that plaintiff is a married woman at the time of their marriage, plaintiff makes this denial:

6. That the plaintiff denies specifically each and every allegation averred in paragraph 6 of the counterclaim, the truth being that said Policarpio Bayore (plaintiff's husband) has been absent for 14 consecutive years.

On October 21, 1952, defendant filed a motion for summary judgment, opposition to which was filed by plaintiff on the ground that an action for annulment can not be a ground for summary judgment. In support of the motion for summary judgment, the deposition of Policarpio Bayore, former husband of the plaintiff, was submitted. A supposed certified copy of his marriage to plaintiff was identified by Bayore at the time of the taking of his deposition. Plaintiff did not present any affidavit, deposition, or document to support his objection. Without much ado, the trial judge granted the motion for summary judgment, immediately rendering a decision (a) declaring plaintiff's marriage to defendant null and void *ab initio*, (b) declaring that plaintiff concealed her true status and awarding the custody of the children to defendant, and (c) declaring plaintiff's rights to the conjugal properties forfeited in favor of their children, although granting the custody of the smaller child to plaintiff.

The petitioner seeks to annul the judgment on the ground that the trial court had no jurisdiction to render a summary judgment in the action to annul the marriage, and on the further ground that there were real issues of fact raised in the pleadings, as she believed that her husband was already dead at the time of her marriage to defendant, etc.

The plaintiff does not deny the fact that she was married