

MARGARITA S. NEKAI, Plaintiff

v.

THIMOTEO G. NEKAI, Defendant

Civil Action No. 273

Trial Division of the High Court

Mariana Islands District

July 23, 1969

Action for divorce. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that in awarding property in support after a divorce the court had jurisdiction over only the community property and not the separate property of the couple and that under the circumstances of the case each party was entitled to one-half of a bank account in the amount such account stood on the date of separation.

1. Marianas Land Law-Generally

Among the Carolineans ownership of land is largely in the women.

2. Domestic Relations--Support-Community Property

Section 704 of the Trust Territory Code does not give the court authority to award the separate property of one of the spouses to the other in a divorce proceeding, rather such section permits disposition of only "property in which both have interests". (T.T.C., Sec. 704)

3. Domestic Relations--Support-Community Property

Section 704 of the Code was apparently drafted to make the law in the Trust Territory similar to the laws in the "community property states" of the United States. (T.T.C., Sec. 704)

4. Domestic Relations--Support-Community Property

The Carolinean custom in relation to the fact that a house built by a husband on land owned by the wife becomes part of the land belonging to her is similar to the general rule with relation to community property.

5. Domestic Relations--Support

Under Section 704 of the Code the court, as to property in which both parties have interests, has jurisdiction to dispose of it "as it deems justice and the best interests of all concerned may require", and this might involve an equal division of the property, or giving it all to the "innocent party", or it might even require that it be given to the "guilty party", the one whose wrong caused the divorce. (T.T.C., Sec. 704)

CLIFTON, *Temporary Judge*

FINDINGS OF FACT

The court finds as follows:-

1. That it is true that the defendant threatened to kill the plaintiff while he was armed with a loaded gun and that the plaintiff was frightened thereby and hid from him, and that said conduct of the defendant has made further living together intolerable to the plaintiff.

2. That it is not true that the plaintiff was guilty of adultery as alleged by the defendant.

3. That the real property hereinafter described in part as the land shown in Title Determination No. 1309 was given to the plaintiff as her separate property and that the cement block house built thereon is also her separate property, and defendant has never had any interest in said property.

4. That land given to the defendant on Wolei Island by defendant's father was defendant's separate property and that plaintiff never has had any interest in said property.

5. That the plaintiff is and has been at all times mentioned herein able-bodied and able to support herself.

OPINION

The court has found that the plaintiff has sustained her cause of action for a divorce by her proof that the defendant threatened to kill her and that he searched for her while he was threatening to kill her and while he was armed with a gun. The defendant has not proved his charges in defense of this action that the plaintiff was guilty of adultery.

The court has found that the house and the land on which it was built, which was given to her by the plaintiff's father, was her separate property and that the defendant has no interest in it. It is true that he built or aided in

building the cement block house and that he contributed largely to the building materials. However, the testimony of the father that he gave the land to his daughter alone, by oral statements and later gave her a written deed, plaintiff's Exhibit No.1, is sufficient to show that the house and land are the separate property of the plaintiff. This is supported by the fact that the parties were of Carolinean extraction and that among the Carolineans ownership of land is largely in the women.

[1] In the anthropological work, Land Tenure Patterns, Trust Territory of the Pacific Islands, is found the following on p. 225 and 226 of the text in the section on Land Tenure in the Marianas:-

"It has already been noted that the Carolineans on Saipan continued to operate within their traditional land tenure pattern. Farm land and town lots and buildings are owned collectively by the female members of the matrilineal lineages. Houses built by men become the property of their wives and on the death of the husband they continue to be so."

There is also the following in another anthropological work, Spoehr's "Saipan-the Ethnology of a War Devastated Island", on p. 363 of said work:-

"Carolinean real property, as in the case of the Chamorros, consists of farm land and town site (sito). It was the consensus of informant's opinion that, by traditional Carolinean custom farm land, sito and buildings upon either were 'owned' by the women members of a maternal lineage. *If a man built a house it automatically became his wife's. On his death, or in case of divorce, the house was retained by the wife.*"

Although there is some testimony of the defendant as to the Carolinean custom in relation to the division of property in a divorce, Section 704 of the Trust Territory Code reads as follows:-

"In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children for their

support, for support of either party, and for the disposition of either or both parties interest in any property *in which both have interests*, as it deems justice and the best interests of all concerned may require."

[2,3] This section does not give the court authority to award the separate property of one of the spouses to the other in a divorce proceeding, and if the custom had been otherwise, which the court has not found, it would have been changed by Section 704. Section 704 does not permit the court to dispose of property in which *either* has an interest but only as to "property in which both have interests". Section 704 was apparently drafted to make the law in the Trust Territory similar to the laws in the "community property states" of the United States.

[4] The court has also noted that the Carolinean custom in relation to the fact that a house built by a husband on land owned by the wife becomes part of the land belonging to her is similar to the general rule with relation to community property. In 15 Am. Jur. 2d, at p. 843, it is said:-

"It is said to be the general rule that improvements made on a spouse's separate property with community funds belong to the owner of the property that was improved. Accordingly, improvements made by the husband with community funds on the separate property of the wife have been held to be her separate property."

The court has found that the property on Wolei Island formerly owned by the defendant was his separate property, and hence it could not be subject to disposition in this action, even if he still held it.

[5] The defendant has contended that the prevailing party in a divorce case should, under Carolinean custom, be given all of the property-community and separate-of both spouses on a sort of "winner take all" basis. This is not the law under Section 704 of the Trust Territory

Code. As previously noted, this gives the court no jurisdiction to dispose of the separate property of one of the spouses. As to the property in which both have interests, the court has jurisdiction to dispose of it "as it deems justice and the best interests of all concerned may require". This might involve an equal division of the property, or giving it all to the "innocent party", or it might even require that it be given to the "guilty party", the one whose wrong caused the divorce.

As to the disposition of the property in this case, it would seem that the bulk of it has been accumulated since the separation of the parties in March, 1968. Prior to that time the property in which both had interests consisted of the building in which the Smiling Bar was conducted on land owned by the defendant's uncle, the stock in trade, an interest in a truck which was being paid for in installments and a bank account. Apparently there were bills due for the liquor, although a loan for the building had been repaid. Shortly after they separated, typhoon "Jean" struck and demolished the bar. After that it was reconstructed and its stock replenished, partly by funds obtained by a loan by the defendant's nephew, who has aided with other members of defendant's family in rebuilding the bar. Payments on the truck have continued and the defendant has been and is now working as a bus driver.

A somewhat similar situation exists with relation to the plaintiff. She has aided her family in constructing another bar, and in operating it.

Although the court has found for the plaintiff as to the grounds for a divorce, it is quite apparent that the parties were incompatible before their separation and before the threats of the defendant, and that the property which is now in the hands of each of them is by and large, since the typhoon, the result of their separate labors. It would be difficult to ascertain what, if anything, was left

of the Smiling Bar after the typhoon, and the remaining value of the truck is largely because of the payments made since the separation. The court awards to the plaintiff whatever property, if any, she has acquired since March 6, 1968, the date of the separation, while the defendant is awarded the Smiling Bar and its stock in trade, the pick-up truck of the parties and the money in the safety box at the said bar. These awards are subject to the fact that the defendant must pay the debts of the bar and the balance due on the truck. As to the bank account which existed on or prior to March 6, 1968, each of the parties is awarded an amount equal to one-half of the amount in said account on March 6, 1968, that is, as a part of the division or disposition of the property the defendant is ordered to pay to the plaintiff an amount equal to one-half of any amount in the name of either of the parties in the Bank of America on March 6, 1968, free and clear of any debt.

Judge Ignacio V. Benavente is named as a Master to take testimony and report to this court as a Master to find the amount in said bank account or accounts aforesaid on March 6, 1968. Said amount shall be included in a final judgment, fixing only the amount, which shall be entered when the report of the Master is made and approved by this court. An interlocutory judgment of divorce shall be entered herein as of this date, final in all respects excepting as to the amount of the judgment for one-half of the bank account which defendant shall pay the plaintiff.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. That the bonds of matrimony existing between the plaintiff and defendant are hereby dissolved.

2. That the property described as

"All of that certain parcel of land and the buildings thereon shown in Title Determination No. 1309 and more fully described

as Lot 41, Tanapag, North District, Saipan, Mariana Islands, bounded on the north by the property of Jesus Guerrero, on the east by the Mission, on the west by the property of Pedro Taitano and on the south by the property of Jose Rapugao, containing 4120.64 square feet, more or less"

is the separate property of the plaintiff, and the defendant has no right title or interest in or to the same.

3. That any interest remaining in the defendant in land on Wolei Island, given to the defendant by his father, is the separate property of the defendant, and that the plaintiff has no right title or interest in or to said land.

4. That the remaining property of the parties hereto is disposed of in the following manner:-

The court awards to the plaintiff whatever property, if any, she has acquired since March 6, 1968, the date of the separation, while the defendant is awarded the Smiling Bar and its stock in trade, the pick-up truck of the parties and the money in the safety box at the said bar. These awards are subject to the fact that the defendant must pay the debts of the bar and the balance due on the truck. As to the bank account which existed on or prior to March 6, 1968, each of the parties is awarded an amount equal to one-half of the amount in said account on March 6, 1968, that is, as a part of the division or disposition of the property the defendant is ordered to pay to the plaintiff an amount equal to one-half of any amount in the name of either of the parties in the Bank of America on March 6, 1968, free and clear of any debt.

Judge Ignacio V. Benavente is named as a Master to take testimony and report to this court as a Master to find the amount in said bank account or accounts aforesaid on March 6, 1968. Said amount shall be included in a final judgment fixing only the amount, which shall be entered when the report of the Master is made and approved by this court.

5. This judgment is entered as an interlocutory judgment of divorce, which shall be final in all respects excepting as to the amount of the judgment for one-half of the amount of the bank account or accounts, which sum the defendant is ordered to pay to the plaintiff. The final judgment shall only fix said amount.

6. Each party is given thirty days after the date of the entry of the final judgment in which to file a notice of appeal from this judgment and the final judgment in this action.