Nadal Vs. May

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Decided On : Apr-20-1914

Appeal No. : 233 U.S. 447

Appellant : Nadal

Respondent : May

Judgement :

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U.S. Supreme Court Nadal v. May, 233 U.S. 447 (1914)

Nadal v. May

No. 130

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Decided April 20, 1914

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ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR PORTO RICO

SYLLABUS

The Civil Code of Porto Rico of March 1, 1902, did not go into effect until July 1, 1902, *Ortea v. Lara,* 202 U. S. 339 , and prior thereto the wife's assent to a conveyance by her husband was not necessary. Decisions of this Court and of the local courts as to the date when a code of law making material changes in the prior existing law went into effect may well become a rule of property which should not be disturbed by subsequent conflicting decisions.

This Court, as a general rule, is unwilling to overrule local tribunals upon matters of purely local concern. *Santa Fe Central Ry. v. Friday,* 232 U. S. 694 .

5 P.R.F. 582 affirmed.

The facts, which involve the validity of title to land in Porto Rico and determination of the date when the Civil Code of 1902 went into effect, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit by the plaintiff in error to establish his title to one-half interest in a plantation called "Carmen," as devisee of his aunt, Altagracia Nadal. It is alleged that the plantation was bought with the separate money of Altagracia Nadal by her husband, after marriage; that she became the owner of one undivided half, subject to

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the administration of her husband until the termination of the conjugal partnership, and that this half passed to her devisee at her death. The complaint admits that, after the purchase, the husband purported to convey the whole plantation to a third

person, but alleges that the wife did not consent to the conveyance, and that therefore her rights remained.

It appears that, on May 1, 1901, Altagracia Nadal brought a suit against her husband for an account of her paraphernal property, alleging, among other things, that he had recorded in his favor the estate Carmen, acquired by a deed of October 25, 1900, and praying judgment that it was her private property because bought with her separate funds, and for a cautionary notice to be entered in the registry. On November, 10, 1901, a settlement was made by which it was stated that the husband had received $10,000 as the product of the wife's paraphernal property, had paid her $5,000 and given a mortgage for the other $5,000, and in view thereof, she "renounces all the rights and interests which she might have against her husband because of the facts stated in the said complaint." The instrument was presented to the court with a prayer that the court would hold that the parties had desisted from continuing the action and that the cautionary notice be cancelled, which was granted on November 21. There had been conveyances of Carmen, without consideration, it was testified; there was a reconveyance to the husband, and on June 2, 1902, he conveyed it, without his wife's consent, to Elisa Sanjurjo, who, on August 29 of the same year, conveyed it to the people of Porto Rico, for valuable consideration, there being then no cautionary notice on record. On April 10, 1906, the wife assigned to the plaintiff the mortgage received by her on the above settlement, and on April 27, 1906, made the will under which the plaintiff claims.

By this will, the testatrix left to the plaintiff a mortgage

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described, with all its rights and actions (*asi como todos sus derechos y acciones*) and also the mortgage assigned on April 10, in case the assignment should not have been effective in favor of her said nephew Rafael Martinez y Nadal, *todos los derechos y acciones que puedan caberme en los bienes mios que est em a nombre de mi esposo Isidro Fernandez Sanjurjo, en virtud de la transacci on celebrada con mi dicho esposo.*

The plaintiff's claim is founded on these last words. The official translation accepted by the court reads that she leaves the mortgage

"in case the assignment shall not have become effective, all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband."

The plaintiff contends that the word "and" should be read in before "all the rights and actions" on the notion that a *y* has dropped out or should be implied. He argues that the estate Carmen was not embraced in the settlement, because community property in which the wife had and retained a community interest, and that the last words devise it -- *en virtud de* signifying more nearly in spite of the settlement than by virtue of it.

On the other hand, it is argued that the settlement renounced all claim by the wife to Carmen, if any she had; that the last words of the will have an import similar to that of those used in connection with the previous mortgage; that *en virtud de* means by virtue of, that, if the wife had a claim it was outside the settlement, and those words would not describe it, even if at the date of the will, the estate had still stood in the husband's name, where notoriously, and as she well knew, it had not stood for years. The government also claims as a *bona fide* purchaser without notice. It is obvious, we think, from this summary, that these arguments against the plaintiff's claim are hard to meet, and they were not met. But it is

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not necessary absolutely to decide on their validity, as the case is disposed of by a preliminary point.

Both sides agree that the wife's assent to a conveyance by her husband was made necessary for the first time by 1328 of the Civil Code of March 1, 1902. Unless that Code went into effect at its date, it did not apply to the conveyance of June 2. The plaintiff argues with much force that it was in effect then, and that the decisions to the contrary are all based on a mistaken certificate of the Secretary of

Porto Rico; but we are of opinion that the considerations on the other side must prevail. On the last day of its session, the legislature passed four codes making material changes in the existing law -- the Political Code, the Penal Code, the Code of Criminal Procedure, and the Civil Code, which, although in form separate acts, were published in one volume and constituted a large part of a system. Two of these Codes fixed July 1, 1902, as the time for their taking effect. It was the duty of the Secretary to promulgate the laws (Act of Congress of April 12, 1900, c. 191, 19, 31 Stat. 77, 81), and he was directed by an act of the same date as that of the Codes to revise and arrange the provisions of the Codes for publication along with the Joint Codes Committee of the legislature, the arrangement to be completed as soon as practicable after April 1, and publication being expected on or before August 1. A resolution of the day before shows that they had to be enacted before enrollment with manuscript corrections. Rev.Stat. & Codes of Porto Rico, 1902, p. 299. The Secretary certified that they were in effect on and after July 1, 1902. But the injustice of making the Civil Code operative before its contents could be known and before the revision contemplated by the law was so manifest that, on February 24, 1903, an act was passed purporting to validate all conveyances of real estate and in general all acts that required certification by a notary executed after March 1, 1902, and on or before January 1,

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1903, if they would have been valid by the laws in force on February 28, 1902. This Court assumed that the Civil Code went into effect on July 1 in *Ortega v. Lara,* 202 U. S. 339 , 202 U. S. 343 , and the Supreme Court of Porto Rico has decided the same point twice. *Morales v. Registrar of Property,* 16 P.R.Fed. 109, 114; *Buso v. Buso,* 18 P.R.Fed. 864, 867-868. It is impossible to know how many or how important transactions may have taken place on the faith of these repeated solemn assurances, and apart from the general unwillingness of this Court to overrule the local tribunals upon matters of purely local concern (*Sante Fe Central Ry. Co. v. Friday,* 232 U. S. 694 , 232 U. S. 700), it is not too much to say that the decisions have become a rule of property, even if we did not think, as we do, that probably the Secretary's certificate expressed the legislative will.

Judgment affirmed.