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NOTES

COMMUNITY PROPERTY: NECESSARY PARTIES TO ACTIONS CONCERNING COMMUNITY REALTY.—In *Babbitt v. Babbitt*¹ the Supreme Court of California held that a wife could recover community real property which had been the subject of litigation between the husband and a third party, where judgment in that action had been adverse to the husband. This presents the question as to what are the rights of a wife in actions regarding community real property where she is not named as a party.

Babbitt v. Babbitt was an action for divorce, on grounds of adultery and cruelty, by wife against husband. Prior to the divorce the husband had been living with another woman (hereafter called Agnes), and had purchased a house in which they lived together. Title to this house was taken in Agnes' name. Although there was a dispute as to the proportion of the purchase price furnished by the husband, there was no question that whatever funds he did put into the house were funds which belonged to the husband-wife community, or that title was taken in Agnes' name to secrete the transaction from the wife, or that Agnes was at all times aware of the husband's existing marriage. The wife joined Agnes as a party defendant in the divorce action on the theory that she was holding this real property in trust for the community.

The fact situation which gives this case its distinctive flavor is that prior to the divorce Agnes had decided that she could do without the further companionship of our errant husband, and she brought a suit in ejectment to oust him from the property in question, claiming it as her own.² He contested this action, and in his cross-complaint alleged that he had agreed to purchase the property and put it in her name, in reliance on her statements that she would convey to him on his request, and further that he paid for the property but she intended to defraud him of it.³ Agnes answered the cross-complaint, averring that she had paid part of the purchase price out of her earnings and separate property, and asked for an accounting to determine their respective interests in the property. While the action was pending, the parties stipulated that a judgment be entered that each of them take a one-half interest in the property, and judgment was so entered. When Agnes was named co-defendant in the divorce action, she entered this judgment as a bar to proceedings against her. Her theory was that since the community property was under the management and control of the husband, he represented the community in an action at law, and consequently the wife's interests were determined simultaneously with his.

Initially it must be determined whether the husband alone can represent the community in an action at law. If he can, then, even though the wife is not named as a party, she is a party in legal effect. Whether she was a party or a stranger to the ejectment action was determinative of her power to rebut Agnes' alleged defense raised in the divorce action. In deciding whether or not she had been a party to the prior action the court divided 4 to 2, in the wife's favor.

The majority of the court felt that the wife was *not* a party to the former suit, and therefore held that it was proper for her to present evidence as to the entire transaction—the original purchase, the intent of the parties in taking title in Agnes' name, and the amount of consideration contributed by each toward the purchase price of the house.

¹ 44 Cal.2d 289, 282 P.2d 1 (1955).

² Proceedings No. COC 313, Superior Court of Los Angeles County, Compton Branch (June 4, 1952).

³ CALIF. CIV. CODE § 853 recognizes resulting trusts. Query: Would the court have enforced this resulting trust since its object was illegal?

Those joining in the dissenting opinion felt that as long as the marital relationship existed the community property was under the management and control of the husband, and that the wife was a party to the prior suit by the nature of her community property relationship with her husband. She would, therefore, be bound by the judgment in any action by or against her husband in regard to the community property, unless she could prove that obtaining the judgment itself was a fraud on her interests. Thus she would be limited to showing how the judgment was obtained, i.e. by collateral or extrinsic fraud, and could not include a showing of facts on which the judgment was based; or, as declared in *Anderson v. Bank of Lassen*:⁴

"A judgment may be attacked in equity for fraud in its procurement where the jurisdiction of the court has been imposed upon, or the prevailing party, by some extrinsic and collateral fraud has prevented a fair submission of the controversy, or where the fraud was practiced in the very act of obtaining the judgment."⁵

This she failed to do, so the dissenting judges felt she was bound by the judgment against the husband, and could not recover the one-half interest in the house which had been awarded to Agnes.

To determine which of these two views is preferable, we must examine applicable statutes and judicial opinions.

For the purposes of this discussion, community property may be defined as all property, both real and personal, acquired after marriage by either husband or wife which is not acquired as the separate property of either.⁶ The husband and wife are members of a "community" created by their marriage contract. It has been described thus:

"The husband is neither agent nor trustee of the wife, but he is head of the marital community. The real character of his managerial capacity is historical and harks back to his protective position as head of the ancient family. Both the husband and wife have equal rights to possession of the community property, but the wife's possession is through her husband as head of the community."⁷

California Civil Code section 172a provides that the husband has the management and control of the community real property, limited only by the provision that the wife must join with him in executing any instrument by which such community real property is leased for more than one year, or is sold, conveyed, or encumbered. By judicial interpretation, the power to represent the community in legal actions involving community property is included within the power of the husband to manage and control. Richards, J., in *Cutting v. Bryan*,⁸ has stated what seems to be the general rule:

". . . the husband of the plaintiff was the principal party defendant in such action, and as such was representing the community interest of himself and also of his wife in said property, and that as to such interest the plaintiff herein was in privity with her husband and was represented in said action by him as fully as though she had been expressly made a party thereto."

Such is the control of the husband over the community property that it is not interrupted even by divorce proceedings unless there has been a division of the community property.⁹ Since the power to represent the community in litigation is one of the incidents of his power to manage and control the community real property, it would also continue until divorce is final. Section 161a was added to the California

⁴ 140 Cal. 695, 74 Pac. 287 (1903)

⁵ *Id.* at 698, 74 Pac. at 287.

⁶ CALIF. CIV. CODE § 164.

⁷ 14 CALIF. STATE BAR JOURNAL 9, 16 (1939).

⁸ 206 Cal. 254, 258, 274 Pac. 326, 328 (1929).

⁹ *Chance v. Kobsted*, 66 Cal.App. 434, 226 Pac. 632 (1924).

Civil Code in 1927, and it gives the wife a present, existing and equal interest in the community property during the continuance of the marriage relation. Prior to this addition the husband was taxable on the entire income of the community on the theory that the wife did not have a vested interest. This addition by the Legislature says that she *does* have a present interest. There has been some speculation as to what effect the courts may give this section in cases like the present, but so far no change is indicated. Since the principal purpose behind the enactment of the section was to allow husband and wife each to declare half of the community income to get the benefits of a lower income tax bracket, thereby achieving equal treatment under the revenue laws for California residents with those of other community property states, it is not probable that the courts will treat it as effecting a change in the wife's standing as a necessary party in litigation.¹⁰

Since it is not necessary to name a wife as a party in an action concerning community property because the husband alone is capable of representing the interests of the entire community, the wife should be estopped from further litigation on the same issues with the original adverse party. To give force and effect to the settlements worked out in our courts, it is agreed that their decision must end any particular dispute. Of course, the parties have a right to appeal their case until it has reached the highest court of review, but after that decision, the same parties may never again litigate the same issues. This is the rule of *res judicata*—a matter settled. The Restatement of the Law of Judgments¹¹ states:

“Where a judgment is rendered in an action in which a party thereto properly acts on behalf of another, the other is bound by and entitled to the rules of *res judicata* with reference to such interests as at the time are controlled by the party to the action.”¹²

Similarly, California Code of Civil Procedure sections 1908, 1910 and 1911, when read together, say that a judgment in an action before a court having jurisdiction to pronounce the judgment is conclusive between those persons who are on the opposite sides of the controversy, and upon the matters which appear from the face of the judgment to have been adjudged. If these rules of law are applied to *Babbitt v. Babbitt*, it would appear that when the action in ejectment was brought against the husband, he fully represented the interests of the community in the action, and that the judgment granting a one-half interest to Agnes would be conclusive as to further action by either husband or wife against her.

Since the majority of the court felt that these usual rules were not applicable to *Babbitt v. Babbitt*, what facts are present which justify their decision?

Although, strictly speaking, the relationship of husband to wife in his management and control of the community property is neither that of agent nor of trustee, it is of a fiduciary character.¹³ There are fairly well-defined limits within which any fiduciary can act and have his actions legally recognized as those of a fiduciary. When he steps over these bounds, he is no longer acting in his fiduciary capacity, but for himself alone, and such *ultra vires* acts are not effective to bind the interests of those he purports to represent. Intentional fraud on the part of the fiduciary is one such boundary. If the husband, as a representative of the husband-wife community, engages in any transaction intended to defraud the wife of her share of the community property, he is surely breaching his fiduciary duty, and cannot be considered to be representing the community.

¹⁰ 42 CALIF. L. REV. 368, 373 (1954).

¹¹ RESTATEMENT, JUDGMENTS (1942).

¹² *Id.* § 85.

¹³ *Fields v. Michael*, 91 Cal.App. 443, 205 P.2d 402 (1949). In this case the court actually calls the husband a “trustee.”

This gives us two fixed points of reference:

1. Where the husband properly (honestly even though unwisely) manages the community property, the wife cannot be heard to complain.

2. Where the husband deliberately acts to defraud or cheat or otherwise illegally deprive the wife of her rights, he would be acting outside of his statutory power to manage and control; i.e., he would be acting for himself, and not for the community. If he is not acting for the community, it follows that his actions would not be binding on the wife merely because of her membership in the community.

The facts in the case of *Babbitt v. Babbitt* are not squarely in point with either of these two positions. The original transaction of converting community funds into a house with title in Agnes' name was, by admission of the husband, done to keep the property away from his wife. At this point he was acting against the interests of the community, and the wife would have been able to avoid the transfer. However, two years later when Agnes and the husband met as plaintiff and defendant in the ejectment action, there is nothing to indicate that it was not a bona fide adversary action. They were thoroughly at war with each other, and each was trying his best to oust the other completely. Was the husband, in his efforts to reclaim the title (or salvage what he could), acting for himself or for the community? Granted that any property coming to him by judgment in the action would be community property by virtue of his continuing marital status, it is not reasonable to say that he is automatically reinstated as representative of the community when he is dealing with the *same party* and the *same parcel* of realty that was involved in the *original fraud*. It would be even less reasonable when the original fraudulent parties had come to an out-of-court settlement and entered a stipulated judgment dividing that property. The majority of the court looked at these facts and found that:

"The stipulated judgment in the ejectment action could not be disentangled from the fraudulent relationship of the parties thereto and it was but another step in the conspiracy between the husband and Agnes to deprive the wife of her property rights. . . . The agreed judgment was in effect merely a compromise among wrongdoers in a controversy between themselves as to a division of the spoils."¹⁴

From this conclusion that the husband was not acting for the community, it logically followed that the wife was not bound by his actions or the judgment against him, and could put the title to the whole of the house in issue again. By a finding of fact in her favor, she became the owner of the whole.

This decision places no new restrictions on the power of the husband to manage and control the community property, for the decision plainly turns on the issue of fraud and not on the fact that the wife was not named as a party to the ejectment action. It should be remembered that there is no necessity for a continued harmonious relationship between husband and wife to vitalize the husband's right to manage and control community property. It should also be noted that this decision is limited to one item only of the Babbitts' community property. If they had owned other parcels of real or personal property, there is no inference to be drawn from this decision that the court would say the other property was withdrawn from the husband's power to control because of his fraud with regard to this one parcel. It is possible that the court would have taken a different view of the facts if the ejectment action had been allowed to go to a trial and the judgment there had been based on the facts produced, rather than reached by stipulation between the original fraudulent parties.

In summary, the wife is still an unnecessary party to legal actions involving community real property in California. The husband alone *represents* the community.

¹⁴ See note 1 *supra* at 292, 282 P.2d at 3.