

95 Phil. 643

[G.R. No. L-6505. August 23, 1954]

ASUNCION ROQUE, PETITIONER, VS. HON. DEMETRIO B. ENCARNACION, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND FRANCISCO REYES, RESPONDENTS.

D E C I S I O N

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. The affidavit of defendant was also submitted in support of the action. 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 to Policarpio Bayore in the year 1930, and that the latter is alive and the marriage still subsisting. May this counterclaim be decided by the summary judgment proceeding? Our answer must be in the negative, first, because an action to annul a marriage is not an action to "recover upon a claim" or "to obtain a declaratory relief," and, second, because it is the avowed policy of the State to prohibit annulment of marriages by summary proceedings. An action "to recover upon a claim" means an action to recover a debt or liquidated demand for money. This is the restricted application of the rule in jurisdictions where the proceeding has been adopted. In Virginia this proceeding is limited to actions "to recover money"; in Connecticut, New Jersey, and New York, to recover a debt or liquidated demand; in Michigan, for an amount arising out of contract, judgment, or statute; in Columbia, to recover sums of money arising *ex contractu*; in Illinois, for the payment of money; in Delaware, to sums for the payment of money, or recovery of book accounts, or foreign judgments; and in England, in actions upon bills, wills and promissory notes, etc. (Yale Law Journal, Vol. 38, p. 423.) In federal courts

the proceeding has been used in patent, copyright, and trade mark cases, and in cases arising upon statutes or undisputed contracts or instruments. (See cases cited in I Moran, 719-726 rev. 1952 ed.)

The fundamental policy of the State, which is predominantly Catholic and considers marriage as indissoluble (there is no divorce under the Civil Code of the Philippines), is to be cautious and strict in granting annulment of marriage (article 88 and 101, Civil Code of the Philippines). Pursuant to this 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, and the desire to expedite the dispatch of the case, can not justify a misinterpretation of the rule we have adopted or a violation of the avowed policy of the State.

We find that the trial court committed an error in annulling the marriage of plaintiff to defendant in a summary judgment proceeding without the formality of a trial. The trial court's error is not, however, limited to this. In spite of the fact that a genuine issue of fact was raised by plaintiff's pretense that she entered the marriage in good faith, this issue was ignored and the court declared her rights to properties obtained during the marriage forfeited, and the custody of one of the children denied to her. These constitute an abuse of judicial discretion amounting to excess of jurisdiction, properly the subject of a proceeding by certiorari.

The judgment entered in the case is hereby annulled, and the lower court is ordered to proceed in the case according to the Rules.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A.r Jugo, Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.