

102 Phil. 168

[G.R. No. L-10699. October 18, 1957]

**WILLIAM H. BROWN, PLAINTIFF AND APPELLANT VS. JUANITA YAMBAO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

REYES, J.B.L., J.:

On July 14, 1955, William H. Brown filed suit in the Court of First Instance of Manila to obtain legal separation from his lawful wife Juanita Yambao. He alleged under oath that while interned by the Japanese invaders, from 1942 to 1945, at the University of Sto. Tomas internment camp, his wife engaged in adulterous relations with one Carlos Field of whom she begot a baby girl; that Brown learned of his wife's misconduct only in 1945, upon his release from internment; that thereafter the spouses lived separately and later executed a document (Annex A) liquidating their conjugal partnership and assigning certain properties to the erring wife as her share. The complaint prayed for confirmation of the liquidation agreement; for custody of the children issued of the marriage; that the defendant be declared disqualified to succeed the plaintiff; and for other remedy as might be just and equitable.

Upon petition of the plaintiff, the court subsequently declared the wife in default, for failure to answer in due time, despite service of summons; and directed the City Fiscal or his representative to—

“investigate, in accordance with Article 101 of the Civil Code, whether or not a collusion exists between the parties and to report to this Court the result of his investigation within fifteen (15) days from receipt of copy of this order. The City Fiscal or his representative is also directed to intervene in the case in behalf of

the State.” (Rec. App. p. 9)

As ordered, Assistant City Fiscal Rafael Jose appeared at the trial, and cross-examined plaintiff Brown. His questions (strenuously objected to by Brown’s counsel) elicited the fact that after liberation, Brown had lived maritally with another woman and had begotten children by her. Thereafter, the court rendered judgment denying the legal separation asked, on the ground that, while the wife’s adultery was established, Brown had incurred in a misconduct of similar nature that barred his right of action under Article 100 of the new Civil Code, providing;

“Art, 100. The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. Where both spouses are offenders, a legal separation cannot be claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.”

that there had been consent and connivance, and because Brown’s action had prescribed under Article 102 of the same Code:

“Art. 102 An action for legal separation cannot be filed except within one year from and after the date on which the plaintiff became cognizant of the cause and within five years from and after the date when such cause occurred.”

since the evidence showed that he learned of his wife’s infidelity in 1945 but only filed action in 1955.

Brown appeared to this Court, assigning the following errors:

“The court erred in permitting the Assistant Fiscal Rafael Jose of Manila to act as

counsel for the defendant, who defaulted.

The court erred in declaring that there was condonation of or consent to the adultery.

The court erred in dismissing the plaintiff's complaint."

Appellant Brown argues that in cross-examining him with regard to his marital relations with Lilia Deito, who was not his wife, the Assistant Fiscal acted as counsel for the defaulting" wife, when "the power of the prosecuting officer is limited to finding out whether or not there is collusion, and if there is no collusion, which is the fact in the case at bar, to intervene for the state which is not the fact in the instant case, the truth of the matter being that he intervened for Juanita Yambao, the defendant-appellee, who is private citizen and who is far from being the state."

The argument is untenable. Collusion in matrimonial cases being "the act of married persons in procuring a divorce *by mutual consent*, whether by preconcerted commission by one of a matrimonial offense, or by *failure*, in pursuance of agreement *to defend divorce proceedings*" (Cyclopaedic Law Dictionary; Nelson, Divorce & Separation, Section 500), it was legitimate for the Fiscal to bring to light any circumstances that could give rise to the inference that the wife's default was calculated, or agreed upon, to enable appellant to obtain the decree of legal separation that he sought without regard to the legal merits of his case. One such circumstance is obviously the fact of Brown's cohabitation with a woman other than his wife, since it bars him from claiming legal separation by express provision of Article 100 of the new Civil Code. Wherefore, evidence of such misconduct, and the failure of the wife to set it up by way of defense, were proper subject of inquiry as they may justifiably be considered circumstantial evidence of collusion between the spouses.

The policy of Article 101 of the new Civil Code, calling for the intervention of the state attorneys in case of uncontested proceedings for legal separation (and of annulment of marriages, under Article 88), is to emphasize that marriage is more than a mere contract; that it is a social institution in which the state is vitally interested, so that its continuation or interruption can not be made to depend upon the parties themselves (Civil Code, Article 52;

Adong vs. Cheong Gee, 43 Phil. 43; Ramirez vs. Gmur 42 Phil. 855; Goitia vs. Campos, 35 Phil. 252). It is consonant with this policy that the inquiry by the Fiscal should be allowed to focus upon any relevant matter that may indicate whether the proceedings for separation or annulment are fully justified or not.

The court below also found, and correctly held, that the appellant's action was already barred, because Brown did not petition for legal separation proceedings until ten years after he learned of his wife's adultery, which was upon his release from internment in 1945. Under Article 102 of the new Civil Code, action for legal separation can not be filed except within one (1) year from and after the plaintiff became cognizant of the cause and within five years from and after the date when such cause occurred. Appellant's brief does not even contest the correctness of such findings and conclusion.

It is true that the wife has not interposed prescription as a defense. Nevertheless, the courts can take cognizance thereof, because actions seeking a decree of legal separation, or annulment of marriage, involve public interest, and it is the policy of our law that no such decree be issued if any legal obstacles thereto appear upon the record.

Hence, there being at least two well established statutory grounds for denying the remedy sought (commission of similar offense by petitioner and prescription of the action), it becomes unnecessary to delve further into the case and ascertain if Brown's inaction for ten years also evidences condonation or connivance on his part. Even if it did not, his situation would not be improved. It is thus needless to discuss the second assignment of error.

The third assignment of error being a mere consequence of the others must necessarily fail with them.

The decision appealed from is affirmed, with costs against appellant. So ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angela, Labrador Concepcion, Endencia and Felix, JJ., concur.

Judgment affirmed.

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