

BEATRIZ CABAUG-MENDOZA, PETITIONER, VS. VICENTE VARELA, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, AND DOMINGO C.MENDOZA, RESPONDENTS.*G. R. No. L-5099. April 29, 1953*

Ponente: BENGZON, J.

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The case: Petitioner requests that the respondent judge be required to give due course to her civil action against her husband Domingo C. Mendoza, without waiting for the termination of the criminal prosecution initiated by her against him for concubinage. The respondent judge ordered the suspension of the first cause, applying section 1 (c) of Rule 107, Rules of Court.

The facts: Dated February 6, 1951, petitioner's civil complaint against her husband in the Court of First Instance of Cebu (Civil Case No. R-1484) prayed specifically for: (a) separation of property (b) administration by her of the conjugal assets and (c) costs. It also prayed generally for "such other relief as may be just and equitable." The complaint contained allegations, about the parties' age and residence, their marriage in 1934, the names and ages of their children, and the properties acquired during coverture. Then it alleged that the husband being manager of the conjugal partnership gave plaintiff no cause to complain until he got entangled with another woman and maintained illicit relations with her under scandalous circumstances, thereby impelling the wife to institute a criminal case for concubinage against him and Milagros Matugina. And, the complaint averred, "to add insult to injury the defendant, in maintaining the said illicit amorous relations has been wasting the conjugal partnership properties under his management" as demonstrated in three concrete instances (related in the complaint) in which said husband had mulcted or defrauded the marital partnership.

Answering in time, the husband denied all guilt as to the sexual adventures, and the allegedly fraudulent transactions. He also set up other defenses. Thereafter he moved to dismiss the complaint arguing that it demanded legal separation based upon the supposed unfaithfulness and therefore it could not be entertained, nor given due course, until the criminal action for concubinage shall have terminated.

The court denied the motion explaining that the prayer in the complaint asked for "separation of property" and not "separation of the parties." However, on motion for reconsideration it observed that although plaintiff had not specifically prayed for legal separation of the parties, the allegations of her complaint adverting to the concubinage might, if proved, entitle her to legal separation too. The court consequently ordered the suspension of the civil proceedings during the pendency of the criminal prosecution. The plaintiff urging reconsideration of the order, repeated that she had merely asked for separation of property, that the concubinage had been mentioned in her complaint as evidentiary fact to support her allegations of waste and mismanagement, that the court could if it wished to, strike the matter of concubinage as a distinct cause of action for legal separation and proceed with the case upon the assertions of waste and fraud, eventually to decide her petition for separation of property or for administration by her (the wife) of the conjugal assets. Denial of her motion to reconsider induced the wife to start

this special civil action.

Discussion: We are of opinion that the trial court was right at first in holding that the complaint could likewise be for legal separation. However, after the representations made by the plaintiff in the motion to reconsider that she did not demand and was not asking for legal separation, said court erred in insisting that the civil case involved legal separation founded on concubinage and should be suspended pursuant to the Rule that;

"after a criminal action has been commenced no civil action arising from the same offense can be prosecuted; and the same shall be suspended * * * until final judgment in the criminal proceedings. * * *".

Our reasoning process may be briefly stated as follows:[1]

The innocent spouse of a philandering husband has, at least, three remedies under the New Civil Code: (a) legal separation, (b) separation of properties, (c) administration by her of the conjugal assets.

The first may be asked "for concubinage on the part of the husband as defined in the Penal Code" (art. 97) and as one of its effects "the conjugal partnership * * * shall be dissolved and liquidated, but the offending spouse shall have no right to any share of the profits earned by the partnership * * *".

The second and third are provided in article 167 which says that "In case of abuse of powers of administration of the conjugal partnership property by the husband, the courts, on petition of the wife may provide for a receivership, or administration by the wife or separation of property. (art. 167.)

These remedies are granted only upon her petition or request. She may ask for one or the other, depending upon her choice. Now, although a decree of legal separation entails the separation of property, it also involves other consequences, for instance, "the spouses shall be entitled to live separately from each other" (art. 106).

So, when the husband has a paramour and lavishes the family fortune on her, the aggrieved wife, to stop him, may ask for administration of conjugal property, or if she is more liberal in the matter of property interests (and is willing to allow her husband to spend his own money) she might plead only for separation of property. She might not be willing to request also for legal separation if she did not want to allow her husband to live separately from her. She is at liberty to ask or not to ask for legal separation. The courts will not foist it upon her.

In the circumstances of this case, apparently Beatriz Cabahug-Mendoza does not desire legal separation from her husband. That is what she implies here and in the court below. She repeatedly says, all she asks is separation of property or administration. Prima facie the allegations of her complaint could undoubtedly afford her any of the three remedies, legal separation, separation of property or administration by her. But as she explained to the court that she only sought for the last two and not the first, there is no reason for rejecting her representations, discrediting her word and holding that she demanded legal separation. She should properly be held to have chosen her position, which she may not afterwards reverse.[2]

Now, legal separation being excluded from plaintiff's objectives, the complaint's reference to the husband's infidelity becomes, not the central point, not her cause of action, but mere evidentiary or corroborative allegations of wasteful living or even as surplusage. The concubinage becomes incidental, considering that the wife may not obtain separation of property by proving concubinage and eschewing legal separation.[3] The main basis of the complaint is, therefore,—as plaintiff reiterated—the acts of mismanagement and fraud listed therein, her case resting thusly upon the husband's abuse of his administration powers (art. 167).

From the foregoing the inference easily flows that because the civil action (No. R-1484) for separation of property or administration by the wife is not founded upon the same offense (concubinage) which was the subject-matter of the criminal proceedings, the respondent judge erred in staying such civil litigation under Rule 107.

Judgment: Consequently he is directed not to suspend that action and to permit it to take the ordinary course. It is distinctly understood, however that, as demandant represents, she does not seek and does not ask for legal separation.

Costs shall be paid by the other respondent Domingo C. Mendoza. So ordered.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] Although some of the acts of the husband took place before the New Civil Code both parties discuss the issues in the light of its provisions.

[2] The Mentholatum Co. vs. Mangalanan, 72 Phil., 524.

[3] Under articles 97 and 191, New Civil Code, after conviction of the husband of concubinage the wife may ask legal separation. Once that is granted, then she may ask for separation of property. If she does not get the first, the second does not accrue even after conviction.

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