

**MARGARET ANN WAINRIGHT VERSOZA, JOSE MA. VERSOZA, JR.,
CHARLES JOHN VERSOZA AND VIRGINIA FELICE VERSOZA,
PLAINTIFFS-APPELLANTS, VS. JOSE MA. VERSOZA,
DEFENDANT-APPELLEE.**

G.R. No. L-25609. November 27, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The question before us, framed in legal setting, is the correctness of the lower court's order dismissing, without prejudice, the complaint seeking, *inter alia*, future support upon the ground that there is no allegation therein that earnest efforts toward a compromise were made but that the same have failed, in infringement of Article 222 of the Civil Code.

With this problem in mind, we turn to the pivotal facts.

On March 4, 1964, a verified complaint, later amended, for P1,500.00 monthly support, support in arrears, and damages, and custody of children, with a petition for support pendente lite[1] was lodged against Jose Ma. Versoza by his wife, Margaret Ann Wainright Versoza, and their three minor children, Jose Ma. Versoza, Jr., Charles John Versoza and Virginia Felice Versoza. Reasons given are that defendant has abandoned plaintiffs without providing for their support and maintains illicit relations with another woman.

Defendant's answer attacked the complaint on the claim that it is premature and/or that it states no cause of action. Because, the complaint which involves members of the same family[2] does not allege earnest efforts toward a compromise before the complaint was filed as set forth in the statute mentioned at the start of this opinion. Then followed defendant's motion for preliminary hearing on jurisdiction. Defendant there argued that compliance with Article 222 of the Civil Code aforesaid was a condition pre-cedent and should have been alleged in the complaint.

On February 22, 1965, following appropriate proceedings, the lower court came out with its first appealed order. It there resolved to dismiss the complaint without prejudice, upon the ground that there was no showing that efforts have been exerted to settle the case amicably before suit was started.

Plaintiffs moved to reconsider. Annexed to its motion was an affidavit of their counsel to the effect that before court action was taken efforts were made to settle the case amicably, but which were fruitless.

On March 30, 1965, the lower court brushed aside this motion.

In an effort to conform to the position taken by the lower court, plaintiffs filed a second motion for the reconsideration of the orders of February 22, and March 30, 1965. Plaintiffs at the same time sought admission of their second amended complaint in which the required averment was made to obviate the objection, to their complaint. They there alleged that before starting the present suit, they sought amicable settlement but were unsuccessful.

On June 22, 1965, the second motion for reconsideration was likewise denied by the lower court "(f)or lack of merit".

The dismissal orders are now the subject of appeal.

1. Plaintiffs argue that the Civil Code requirement of attempt to reach a compromise and of its failure need not be alleged in the complaint. They claim that some such fact may be proved either at the main hearing or at the preliminary hearing on the motion to dismiss.

The text of Article 222 of the Civil Code is this: "No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in article 2035." [3] The requirement in Article 222 has been given more teeth by Section 1(j), Rule 16 of the Rules of Court, which states as ground for a motion to dismiss that "(t)he suit is between members of the same family and no earnest efforts towards a compromise have been made."

The cumulative impact of the statute and the rule just adverted to is that earnest efforts to reach a compromise and failure thereof must - ordinarily - be alleged in the complaint. The Civil Code provision that "(n)o suit shall be filed or maintained" simply means that the attempt to compromise and inability to arrive thereat is a condition precedent to the filing of the suit. As such it is a part of plaintiffs' cause of action. Justice J.B.L. Reyes and Judge Puno [4] bolstered this view with their statement that "(t)he terms of article 222 require express allegation of an attempt to compromise and its failure; otherwise there is no cause of action stated."

2. The foregoing, however, is but a statement of the general rule. Future support operates outside the ambit thereof. Mucius Scaevola [5] expresses the view that no objection can be made to a compromise "cuando el derecho es renunciado, eminentemente privado." Scaevola, however, emphasizes: "(P)ero el derecho a la vida no lo es." This brings us to the legal provision Scaevola commented upon, namely, Article 1814 of the Spanish Civil Code of 1889, which reads:

"Art. 1814. No puede transigir sobre el estado civil de las personas, ni sobre las cuestiones matrimoniales, ni sobre alimentos futuros." [6]

So it is, that Colin y Capitant [7] observed: "Una Cosa es que la transacción sea en principio un acto lícito, con exclusión de aquellas materias a que se refiere el art. 1814 del Código civil."

The philosophy behind the rule is best expressed by Manresa [8] in the following terms:

"Aunque el Código no lo diga expresamente, desde luego se comprende que, por regla general, pueden ser objeto de transacción todas las cosas que están en el comercio de los hombres, siempre que no se halle prohibido por la ley. Esta es la regla general; pero hay casos en que, por razones de moralidad o por otras consideraciones no menos atendibles, no puede admitirse la transacción, como sucede, por ejemplo, en materia de estado civil de las personas, de cuestiones matrimoniales y de alimentos, y otros que tampoco son susceptibles de transacción por afectar al interés público o social y no estar en el dominio o en la potestad de los particulares el sustraerlos, a los efectos rigurosos de la ley, según ocurre con los delitos y demás transgresiones punibles del derecho.

x x x

Réstanos ocuparnos de otra prohibición impuesta también por el art. 1814 en su última parte. Nos referimos a la establecida por el mismo respecto de la transacción sobre los alimentos futuros; prohibición que se funda en poderosas razones de moralidad que no pueden ocultarse, ni pasar desapercibidas para nadie que detenidamente medite sobre ello.

En efecto, en rigor de principios, la ley concede los alimentos en razón a la necesidad que de ellos tiene el

alimentista para vivir, y es evidente que transigir sobre ellos, equivaldría a renunciar en parte a la vida, como ha dicho un autor ('Colección de las Instituciones jurídicas políticas de los pueblos modernos,' tomo 13, pág. 792); y si no le fueran necesarios pudiendo por tal motivo renunciarlos, no cabría tampoco transacción, porque no tendría derecho a percibirlos."

The foregoing but emphasizes the concept of support. For, support is, amongst others, everything that is indispensable for sustenance.[9] The right to support cannot be: (1) renounced; (2) transmitted to third persons; nor (3) compensated with what the recipient owes the obligor.[10] Compensation may not even be set up against a creditor who has a claim for support due by gratuitous title.[11] Of course, support in arrears is a different thing altogether. It may be compensated, renounced and transmitted by onerous or gratuitous title.[12] In *Coral vs. Gallego*,^[13] the Court of Appeals has had occasion to declare that the right to support is not susceptible of future transactions under Article 1814 of the old Civil Code.

Article 1814 of the Spanish Civil Code was reproduced in Article 2035 of the new Civil Code - in an expanded form - as follows:

"ART. 2035. No compromise upon the following questions shall be valid:

- (1) The civil status of persons;
- (2) The validity of a marriage or a legal separation;
- (3) Any ground for legal separation;
- (4) Future support;
- (5) The jurisdiction of courts;
- (6) Future legitime."

It thus appears that Article 2035 has roots deeper than Article 222. For, whereas Article 222 is inserted as a new concept in the present Code in a laudable effort to obviate a sad and tragic spectacle occasioned by a litigation between members of the same family, Article 2035 firmly maintains the ancient injunction against compromise on matters involving future support. And this is as it should be. For, even as Article 222 requires earnest efforts at a compromise and inability to reach one as a condition precedent to the filing and maintenance of a suit "between the members of the same family", that same article took good care to add: "subject to the limitations in article 2035."

Plaintiffs ask for support past, present and future. There is also the prayer for alimony pendente lite. Since the present action also revolves on the right to future support and because compromise on future support is proscribed,^[14] then the conclusion is irresistible that an attempt at compromise of future support and failure thereof is not a condition precedent to the filing of the present suit. It need not be alleged in the complaint. The very opening statement in Article 2035 unmistakably confirms our view. It says that "(n)o compromise upon the following questions shall be valid: x x x (4) Future support."^[15] We cannot afford to give a loose view to this controlling statute. We may not disregard it. To do so is to misread the law, to write off an explicit congressional will, to cross the line which circumscribes courts of justice and step into legislative area.

Mendoza vs. Court of Appeals, 1967B Phil. 82, is to be read as controlling here. In that case, the wife filed in the Court of First Instance of Nueva Ecija an action for support against her husband who was then employed in a hospital in the United States. Defendant, by counsel, moved to dismiss, for the reason that the complaint failed to state a cause of action "because it contained no allegation that earnest efforts toward a compromise have been made before the filing of the suit, and invoking the provisions of Article 222 of the Civil Code of the Philippines."

The Court of First Instance refused to entertain the motion to dismiss. Defendant petitioned the Court of Appeals for a writ of prohibition. The appellate court denied the writ prayed for. Defendant petitioned this Court for review. We affirmed. In that first judicial test, this Court, speaking thru Mr. Justice J.B.L. Reyes, held:

"While we agree that petitioner's position represents a correct statement of the general rule on the matter, we are nevertheless constrained to hold that the Court of Appeals and the Court of First Instance committed no error in refusing to dismiss the complaint, for on its face, the same involved a claim for future support that under Article 2035 of the Civil Code of the Philippines can not be subject of a valid compromise, and is, therefore, outside the sphere of application of Article 222 of the Code upon which petitioner relies. This appears from the last proviso of said Article 222, already quoted. x x x.

x x x

Since no valid compromise is possible on these issues, a showing of previous efforts to compromise them would be superfluous.

It may be that the complaint asks for both future support and support in arrears, as petitioner contends. But, the possibility of compromise on the latter does not negate the existence of a valid cause of action for future support, to which Article 222 can not apply."[16]

Although the complaint herein seeks custody of minor children and damages as well, the prime object is support. And, of importance, of course, is future support. The reliefs sought are intimately related to each other. They all spring from the fact that husband and wife are separated from each other. So it is, that expediency dictates that they be, as they are now, placed together in one complaint. For, multiplicity of suits is not favored in law. Since one of the causes of action, that for future support, may be lodged in court without the compromise requisite in Article 222 of the Civil Code, the complaint herein, as we have ruled in *Mendoza*, may not be dismissed.

We, accordingly, hold that the lower court erred in dismissing the complaint.

3. But even on the assumption that it was error on the part of plaintiffs to have failed to so allege, plaintiffs should not be barred from making an amendment to correct it.

Parenthetically, after a responsive pleading has been served, amendments may be made only upon leave of court.[17] But, in the furtherance of justice, the court "should be liberal in allowing amendments to pleadings to avoid multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay."[18]

Thus, the instances wherein this Court considered allowance of an amendment not justified are limited. As defendant correctly points out, a proposed amendment may be refused when it confers jurisdiction on the court in which it is filed, if the cause of action originally set forth was not within that court's jurisdiction.[19] An amendment may also be refused when the cause of action is substantially altered.[20]

A typical case which merited refusal of an amendment is *Rosario vs. Carandang*, *supra*. There, the original complaint was one for forcible entry and detainer over which the Court of First Instance, where the complaint was filed, had no jurisdiction. The amendment sought by plaintiff was the inclusion of an allegation that the defendants were claiming ownership over the land in dispute. The proposed amendment would thus convert the case from one of forcible entry and detainer into one of recovery of possession, which is within the jurisdiction of the Court of First Instance. The court properly denied the amendment.

The alleged defect is that the present complaint does not state a cause of action. The proposed amendment seeks to complete it. An amendment to the effect that the requirements of Article 222 have been complied with does not confer jurisdiction upon the lower court. With or without this amendment, the subject-matter of the action remains

as one for support, custody of children, and damages, cognizable by the court below.

To illustrate, *Tamayo vs. San Miguel Brewery, Inc.*,^[21] allowed an amendment which "merely corrected a defect in the allegation of plaintiff-appellant's cause of action, because as it then stood, the original complaint stated no cause of action." We there ruled out as inapplicable the holding in *Campos Rueda Corporation vs. Bautista*, *supra*, that an amendment cannot be made so as to confer jurisdiction on the court.

The lower court, in the interest of justice, should have allowed plaintiffs to amend their complaint instead of granting the motion to dismiss. This it could have done under Section 3 of Rule 16 of the Rules of Court. For, the defect in the complaint is curable.

For the reasons given -

(1) the orders of the lower court of February 22, 1965, March 30, 1965, and June 22, 1965 are hereby set aside; and

(2) the record of this case is hereby remanded to the Court of First Instance of Rizal, Quezon City, Branch IX, with instructions to admit the second amended complaint and to conduct further proceedings not inconsistent with the opinion herein.

Costs against defendant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, and Capistrano, JJ., concur.

[1] Civil Case No. Q-7870, Court of First Instance of Rizal, Quezon City, Branch IX, entitled "*Margaret Ann Wainright Versoza, et al., Plaintiffs, versus Jose Ma. Versoza, Defendant*", for support and damages.

[2] Article 217 of the Civil Code provides that family relations shall include those (1) between husband and wife; (2) between parent and child; (3) among other ascendants and their descendants; and (4) among brothers and sister. Francisco, *Comments on the Revised Rules of Court*, Vol. I, 1965 ed., pp. 694-695.

[3] Emphasis supplied.

[4] *Outline of Philippine Civil Law*, 1956 ed., Vol. I, p. 222.

[5] *Código Civil*, 1953, Tomo XXVIII, pág. 347.

[6] Emphasis supplied.

[7] *Curso Elemental de Derecho Civil*, 1955, Tomo IV, pág. 1001; emphasis supplied.

[8] *Comentarios al Código Civil Español*, 1931, Tomo XII, págs. 103, 107; emphasis supplied.

[9] Article 290, Civil Code.

[10] Article 301, Civil Code.

[11] Par. 2, Article 1287, Civil Code.

[12] Par. 2, Article 301, Civil Code.

[13] 38 O.G. 3158, cited in *Padilla, Civil Code Anno.*, 1956 ed., Vol. IV, pp. 648-649.

[14] Advincula vs. Advincula, L- 19065, January 31, 1964, citing Coral vs. Gallego, supra. See also: Velayo vs. L-23528, July 21,1967, Velayo vs. Velayo, L-14541, March 30,1960.

[15] Emphasis supplied.

[16] At pp. 84-85; emphasis supplied.

[17] Section 2 and 3, Rule 10, Rules of Court.

[18] Shaffer vs. Palma, 1968A Phild. 767, 777.

[19] Rosario vs. Carandang, 96 Phil. 845, 850, 851; Campos Rueda Corporation vs. Bautista, L-18453, September 29, 1962 cited in Tamayo vs. San Miguel Brewery, Inc., L-17749, January 31, 1964.

[20] Section 3, Rule 10, Rules of Court; Arches vs. Villaruz, 102 Phil. 661, 668. See: Guirao vs. Ver, 16 Supreme Court of Reports Anno. 638, 640-641; and Shaffer vs. Palma, supra.

[21] Supra; emphasis supplied.

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