

FERNANDO O. PALAROAN, PLAINTIFF AND APPELLANT, VS. AURORA A. ANAYA, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-19193. November 29, 1965*

Ponente: DIZON, J.

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On January 7, 1954, appellant Fernando O. Palaroan filed an action in the Court of First Instance of Manila (Civil Case No. 21589) for the annulment of his marriage to appellee Aurora A. Anaya celebrated on December 4, 1953 before the Hon. Natividad Almeda Lopez, then Judge of the Municipal Court of Manila, claiming that his consent thereto was obtained thru force and intimidation employed by said appellee, her two brothers and other relatives. While the case was pending trial, the Juvenile and Domestic Relations Court was created and the case was remanded to it being one falling within its jurisdiction. After due trial, the said court, on September 23, 1959, rendered judgment dismissing the complaint and ordering Palaroan to pay Anaya, by way of support, the sum of P100.00 a month; the sum of P6,795.32 as support in arrears, plus the sum of P5,000.00 as moral damages and the sum of P500.00 as attorney's fees and cost in accordance with appellee's counterclaim.

No appeal having been taken from the above-mentioned decision, appellee Anaya, on January 4, 1961, filed a motion for the issuance of a writ of execution. This was granted by the lower court over Palaroan's opposition who claimed that the decision had not yet become final and executory for lack of due notice to him.

Thereafter; Palaroan moved for a reconsideration of the above order to prevent garnishment from being levied upon his salary due from the San Miguel Brewery, Manila, alleging further, under oath, that he needed the same to support his three minor children and his aged and bedridden mother. The Juvenile and Domestic Relations Court however, denied the motion.

Instead of appealing from the order of the lower court granting the motion for execution, or contesting it by certiorari, appellant filed a complaint against appellee Aurora A. Anaya and the Sheriff of Manila with the Court of First Instance of Manila (Civil Case No. 47396) to annul the aforesaid decision of the Juvenile and Domestic Relations Court, claiming that the same was contrary to law. The complaint also prayed that, pending determination thereof, a writ of preliminary injunction be issued to restrain defendants therein from enforcing the writ of execution issued by the Juvenile and Domestic Relations Court, but the lower court (Court of First Instance of Manila) in its order of July 15, 1961, refused to grant the writ on the ground that to do so "would amount to annulling the actuations of a coordinate branch * * *". Palaroan moved for a reconsideration of this order. Meanwhile, appellee. Anaya filed her answer to the complaint denying the material averments thereof, at the same time praying for the dismissal of the action on the ground that the court had no jurisdiction over its subject-matter, and for damages.

After the motion for reconsideration and the motion to dismiss had been jointly heard, the court issued its order of September 16, 1961 (a) denying the motion for reconsideration and (b) dismissing the complaint. From this order, Palaroan took the present appeal.

Appellant's main contention in his first and second assignments of error is that the aforementioned decision of the Juvenile and Domestic Relations Court of September 23, 1959 is void, being contrary to law, and, as a consequence, the lower court erred in ruling that it can not be annulled. In this connection he contends that support may be granted only upon proof that the claimant needs the same for his or her maintenance; that appellee, at the time of the filing of the action, was earning a sufficient amount for this purpose, while, on the other hand, he was earning a mere monthly salary of P575.00 to support himself, three minor children and the mother of said children; that the decision aforesaid is void because it was obtained thru fraud "as demonstrated by the affidavit of the defendant that the consent of the plaintiff to the said marriage was not voluntary."

These contentions deserve but scant consideration now, because the same should have been raised by appellant in the appeal that he could and should have taken from the decision of the Juvenile and Domestic Relations Court of September 23, 1959 - which decision, as stated heretofore, has long ago become final and executory - or from the order granting the writ of execution and denying his motion for reconsideration mentioned heretofore.

Appellant also claims that said decision of the Domestic Relations court had not yet become executory because the notice of judgment was served on Atty. Pedro Valdez Liongson, who had already ceased to be his attorney. This is likewise untenable, it appearing that the same point was raised in said court in connection with appellee's motion for execution and appellant's motion for reconsideration, and the court ruled that, as far as the record of the case could show, said attorney was still one of appellants' attorneys of record and that the notice of judgment on him served was therefore proper and valid.

Again, appellant failed to appeal from said order and to contest its validity and that of the decision on the merits, either by certiorari or other appropriate remedy.

Moreover, the fraud that appellant speaks of in his brief as ground for the nullity of the decision rendered by the Juvenile and Domestic Relations Court is not the kind of fraud - extrinsic - that would constitute a ground for the annulment of the proceedings had before said court, but the fraud, that, if proven, would be ground for the annulment of the marriage contracted between him and appellee. If his consent to the marriage contract was not given voluntarily, he should have appealed from the decision of September 23, 1959 dismissing his complaint. The lower court, therefore, was right in virtually ruling that appellant had no cause of action for the annulment of the aforesaid decision and other orders complained of.

In view of the conclusions we have arrived at in connection with the first and second assignments of error, We deem it unnecessary to consider the last.

Wherefore, the appealed order is affirmed, with costs.

Bengzon, C. J., Bautista Angelo, Concepción, Reyes, J. B. L., Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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