

ANTONIO MACADANGDANG, PETITIONER, VS. THE COURT OF APPEALS; HONORABLE ALEJANDRO E. SEBASTIAN, IN HIS CAPA-CITY AS PRESIDING JUDGE, COURT OF FIRST INSTANCE OF DAVAO, 16TH JUDICIA...

G.R. No. L-38287. October 23, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for certiorari, prohibition and injunction with prayer for temporary restraining order presents for review the Court of Appeal's resolution dated December 21, 1973, which dismissed the petition in CA-G.R. No. Sp-02656-R, petitioner's motion for reconsideration of the said resolution having been denied on January 29, 1974.

From the records, it appears that respondent Filomena Gaviana Macadangdang (hereinafter referred to as private respondent) and petitioner Antonio Macadangdang contracted marriage in 1946 after having lived together for two years. From a humble buy-and-sell business and sari-sari store operation in Davao City, the spouses moved to Mawab, Davao del Norte where, through hard work and good fortune, their small business grew and expanded into merchan-dising, trucking, transportation, rice and corn mill business, abaca stripping, real estate and others. They were blessed with six children, three of whom were already of majority age and the other three were still minors as of the time this case was initiated in the lower court. With their established businesses and accumulated wealth, their once simple life became complicated and their relationship started to suffer setbacks. While the economic or material aspect of their marriage was stabilized, the physical and spirit-ual aspects became shaky. Both accused each other of indulging in extramarital relations. Married life for them became so intolerable that they separated in 1965 when private respondent left for Cebu for good. When she returned to Davao in 1971, she learned of the illi-cit affairs of her estranged husband. Then and there, she decided to take the initial action.

On April 28, 1971, private respondent (plaintiff therein) instituted a complaint for legal separation in the Court of First Instance of Davao, Branch VIII at Tagum, Davao, which complaint was docketed as Civil Case No. 109 and entitled "Filomena Gaviana Macadangdang vs. Antonio Macadangdang" [p. 156, rec.].

Petitioner (then defendant) filed his answer with counterclaim dated May 31, 1971 [p. 158, rec.].

On February 9, 1972, private respondent filed a petition for appointment of administrator, to administer the estate of the conjugal partnership pending the termination of the case [p. 100, rec.].

Petitioner opposed the aforesaid petition in a pleading dated February 21, 1972 [p. 102, rec.].

On January 4, 1973, the petition for appointment of administrator not having been acted upon, the trial court handed down its decision, the dispositive portion of which states thus:

"Wherefore, judgment is hereby rendered ordering the legal separation of plaintiff and the defendant, or what

under the old law was separation from bed and board -- a mensa et thoro -- -with all the legal effects attend-ant thereto, particularly the dissolution and liquidation of the conjugal community of property. Since there is no complete list of the community property which has to be divided, pending the dissolution of the conjugal prop-erty, the defendant is ordered to pay to plaintiff P10,000.00 for her support, for any way he had been disposing some of the properties or mortgaging them without sharing the plaintiff any part of the fruits or proceeds thereof until the court can appoint an administrator, as prayed for by plaintiff in a separate petition, who will take over the administration and management of all the con-jugal partnership properties, and act as guardian of the minor children; to protect said properties from dissipation, and who will submit a complete inventory of said properties so that the Court can make a just division, such division to be embodied in a supplemental decision. xx.x xx." [pp. 104?115, rec.].

On August 7, 1973, private respondent filed a motion praying that she be allowed to withdraw P10,000.00 from the lease rental of a portion of their conjugal property deposited by Francisco Dizon [p. 116, rec.].

Respondent Judge acted on the aforesaid motion by issuing the order of August 13, 1973 which directed the clerk of court "to deliver, under receipt, to plaintiff Filomena Gaviana Macadangdang and/or to her counsel, Atty. Marcial Fernandez, the amount of P10,000.00" [p. 118, rec.].

On August 25, 1973, private respondent filed another motion for the appointment of an adminis-trator, reiterating her previous petition and urging favorable action thereon "to impede unlawful seques-tration of some conjugal assets and clandestine transfers" by petitioner [p. 120, rec.]. Petitioner again filed his opposition dated September 6, 1973 [p. 122, rec.].

On September 20, 1973, respondent Judge issued an order directing plaintiff's counsel "to submit three (3) names for appointment as administrator, including in the list, if possible, a banking institution authorized to handle cases of administration of properties, furnishing a copy of said list to defendant, who shall be given three (3) days from receipt thereof to present his observations and objections to said recommended persons or entity, after which the Court will select the administrator as may seem best suited for the purpose" [pp. 126--127, rec.].

Petitioner then filed a motion for reconsidera-tion dated October 3, 1973 of the order of September 20, 1973 with prayer that he be allowed to continue adminis-tering the conjugal properties in accordance with law [p. 128, rec.]. This motion for reconsideration was denied in the order of October 13, 1973 [p. 133, rec.].

On October 13, 1973, herein private respondent filed a motion for appointment of administrator and submission of complete list of conjugal assets by defendant, submitting therein three nominees for administrator [p. 135, rec.].

On October 23, 1973, petitioner filed his second motion for reconsideration praying therein that the orders of September 20, 1973 and October 13, 1973 be reconsidered by not proceeding with the appoint-ment of an administrator of the conjugal properties of the parties [p. 137, rec.].

Respondent Judge denied the aforesaid second motion for reconsideration in his order of November 19, 1973, reiterating therein his ruling that the decree of legal separation had become final [p. 141, rec.].

Petitioner brought the case to the Court of Appeals in a petition for certiorari and prohibition with writ of preliminary injunction and/or temporary restraining order filed on December 18, 1973. Said petition sought to review, set aside, and declare null and void the orders of September 20, 1973, October 13, 1973 and November 19, 1973 of respondent Judge; to prohibit respondent Judge from carrying out and executing the aforesaid orders; and to prohibit him from treating, regarding and construing his decision of January 4, 1973 as being "final and executory" as well as from enforcing the same in any manner whatsoever [pp. 1, 4 & 5, CA rec.].

The Court of Appeals, in its resolution of December 21, 1973, ruled that the questioned January 4, 1973 decision

of the lower court had become final and, consequently, the appointment of an administrator was valid and that the petition was not sufficient in substance, since the applicable law and jurisprudence afford the petitioner no valid cause to impugn the three questioned orders. The appellate court accordingly dismissed the petition [pp. 70-80, rec.].

Hence, this appeal from the resolution of December 21, 1973.

On February 6, 1980, counsel for petitioner, through a notice of death and motion to dismiss, informed this Court that petitioner Antonio Macadangdang died on November 30, 1979 and as a consequence thereof, this case and Civil Case No. 109 of the Court of First Instance of Davao have become moot and academic [p. 516, rec.].

Private respondent, when required to comment on the aforesaid motion, moved for a resolution of this case although she believes that petitioner's death has posed new intervening circumstances that would affect the entire purpose in filing the same. In effect, private respondent agrees with petitioner's counsel that her husband's death has rendered the instant petition moot and academic [pp. 522, 524, rec.].

Petitioner had averred that the Court of Appeals gravely erred in holding that respondent Judge's incomplete decision of January 4, 1973 had become final and executory and that the same Court committed an error in holding that the appointment of an administrator in the case below was proper.

Private respondent, upon the other hand, has always maintained that --

1. the decision of January 4, 1973 had become final and executory when the petitioner failed to appeal therefrom within the reglementary period of 30 days from receipt thereof, despite the non-issuance of a supplemental decision regarding the division of the conjugal properties; and
2. the appointment of an administrator pending the actual division of said properties is proper being "a must" and an exercise of the sound discretion of the Honorable Presiding Judge in the Court of First Instance of Davao, Branch VIII in Tagum [pp. 193-194, rec.].

Did petitioner's death on November 30, 1979 render the case moot and academic? Legal problems do not cease simply because one of the parties dies; the same problems may come up again in another case of similar magnitude. Considering also the far-reaching significance and implications of a pronouncement on the very important issues involved, this Court feels bound to meet said issues frontally and come out with a decisive resolution of the same.

Thus, the questions for resolution have been narrowed down to the following:

1. Whether the decision of the trial court dated January 4, 1973 in Civil Case No. 109 finding herein petitioner guilty of concubinage and decreeing legal separation between him and his wife Filomena Gaviana Macadangdang (private respondent herein) had already become final and executory long before the herein petition was filed;
2. Should the children of both spouses predecease the surviving spouse, whether the intestate heirs of the deceased could inherit from the innocent surviving spouse, particularly where the latter's share in the conjugal assets is concerned, in view of Article 106, No. 4 of the New Civil Code; and
3. The effect of the pendency of Special Proceedings No. 134 in the Court of First Instance of Davao for the settlement of the estate of the deceased petitioner herein, on the decision in Civil Case No. 109 as well as on the instant petition.

In support of his contention that the Court of Appeals committed grave error in holding that respondent Judge's incomplete decision of January 4, 1973 had become final and executory, petitioner had consistently asserted the

following reasons:

1. Private respondent's complaint for legal separation and division of properties was a single complaint. Thus, she explicitly prayed:

xx xx xx

"3. That upon trial of this action judgment be rendered ordering the legal separation of the plaintiff and the de-fendant and the division of all the assets of the conjugal partnership, xx x" [p. 157, rec.].

In this single action, private respondent asked the trial court to decide if petitioner and she should be legally separated, and if they should, what properties would form part of the conjugal regime and which properties would be assigned to each spouse.

2. Of the aforesaid issues, the lower court resolved only the issue of legal separation and reserved for supplemental decision the division of the conjugal properties. Petitioner had further argued that --

"Inasmuch as the Decision failed to dispose of all the issues before the Court, which necessitated the announcement of a forthcoming supplemental decision, petitioner respect-fully submits that the Decision was an incomplete judgment. In Santos v. de Guzman, 1 SCRA 1048, is found this very succinct ex-planation of what an incomplete judgment is:

'x x x There was but one case before the lower court. Its first decision (of June 12, 1956) was, as already stated, incomplete the same not having resolved the issues involved in the litigation. For this reason the trial had to be reopened and a supplemental decision had to be rendered x x' (at p. 1053; emphasis supplied)."

WE do not find merit in petitioner's submission that the questioned decision had not become final and executory since the law explicitly and clearly provides for the dissolution and liquidation of the conjugal part-nership of gains of the absolute community of property as among the effects of the final decree of legal separation. Article 106 of the Civil Code thus reads:

"Art. 106. The decree of legal separation shall have the following effects:

"1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

"2) The conjugal partnership of gains or the absolute conjugal community of property shall be dissolved and liquidated, but the offending spouse shall have no right to any share of the profits earned by the partnership or community, without prejudice to the provisions of Article 176;

xx xx xx x"

[underscoring supplied].

The aforequoted provision mandates the disso-lution and liquidation of the property regime of the spouses upon finality of the decree of legal separation. Such dissolution and liquidation are necessary conse-quences of the final decree. This legal effect of the decree of legal separation ipso facto or automatically follows, as an inevitable incident of, the judgment decreeing legal separation -- for the purpose of determining the share of each spouse in the conjugal assets.

Even American courts have made definite pronounce-ments on the aforestated legal effect of a divorce (legal separation) decree.

Generally speaking, the purpose of a decree in divorce insofar as the disposition of property is con-cerned is to fix

and make certain the property rights and interests of the parties (Mich-Westgate vs. West-gate, 288 N.W. 860, 291 Mich. 18, 300 [1] p. 354, C.J.S. Vol. 27B); and it has been held that the provisions of the decree should definitely and finally determine the property rights and interests of the parties (Wash.-Shaffer vs. Shaffer, 262 P. 2d. 763, 43 Wash. 2d 629; 300 [1] p. 354 C.J.S. Vol. 27B); and that any attempted reservation of such questions for future determination is improper and error (Mich.-Karwowski vs. Karwowski, 20 N.W. 2d 851, 313 Mich. 167, 300 [1] p. 354, C.J.S., Vol. 27B; underscoring supplied).

Some statutes providing for the division or disposition of the property of the parties to a divorce have been held mandatory and hence to require the court to decree some division of their property rights (U.S. - Pearce vs. CIR, 62 S. Ct. 754, 315 U.S. 543, 86 L. ed. 1016, construing Texas statute; 291 [1] p. 263 C.J.S. Vol. 27B).

Likewise, it has been held that the settle-ment of some property rights between the parties is an incident of every decree of divorce where there is any property involved (Utah - Smith vs. Smith, 291 P. 298, 77 Utah 60, 291 [1] p. 264, C.J.S., Vol. 27B).

It has been held that notwithstanding the division of property between the parties, the subject matter of a divorce action remains the marital status of the parties, the settlement of the property rights being merely incidental (Wash. State ex rel. Atkins vs. Superior Court of King County, 97 P. 2d. 139, 1 Wash. 2d 677; 291 [1] p. 264 C.J.S., Vol. 27B; underlining supplied).

Under other authorities, by the very nature of the litigation, all property rights growing out of marital relations are settled and included in divorce proceedings (Ind. - Novak vs. Novak, 133 N.E. 2d 578, 126 Ind. App. 428) and a decree of divorce is an adjudication of all property rights connected with the marriage and precludes the parties as to all matters which might have been legitimately proved in support of charges or defenses in the action (U.S. - Spreckles vs. Wakefield, C.C.A., 286 F. 465) and bars any action thereafter brought by either party to determine the question of property rights (Fla. - Cooper vs. Cooper, 69 So. 2d 881; Finston vs. Finston, 37 So. 2d 423, 160 Fla. 935; p. 751, C.J.S. Vol. 27A).

An absolute divorce ordinarily terminates all property rights and interests, not actually vested, of divorced persons in property of each other, which are dependent on the marriage (U.S. - Cockrill vs. Woodson, D.C. Mo., 70 F. 752), at least where no proceedings have been taken to vacate or modify the decree by appeal until the statutory time therefor has expired (Kan. - Roberts vs. Fagan, 92 P. 559, 76 Kan. 536). Accordingly, unless the court granting the decree is without jurisdiction, inchoate rights of the wife in the husband's property are usually cut off (Ky. - Bowling vs. Little, 206 S.W. 1, 182 Ky. 86) especially where by the terms of the decree all property obtained by either spouse from or through the other during the marriage is restored to such spouse (Tex. - Houston, etc., R. Co. vs. Helm, Civ. App. 93 S.W. 697; pp. 752-753, C.J.S. Vol. 27A).

Enunciating with directness and finality, one U.S. court held: "The part of a divorce suit regarding property is a part of the very divorce action itself" (Tex. - Ex parte Scott, 123 S.W. 2d. 306, 313, 133 Tex. 1, answers to certified questions conformed to, Civ. App. 126, S.W. 2d 525; 291 [1] p. 264, C.J.S. Vol. 27B).

Petitioner erred in invoking the case of Vda. de Zaldarriaga vs. Zaldarriaga which in turn cited the doctrine of Fuentebella vs. Carrascoso, which We have already declared abrogated in the case of Miranda vs. Court of Appeals (L-33007, 71 SCRA 295, [June 18, 1976]). In this case, this Court expli-citly stated:

"For the guidance of the bench and bar, the court declares as abandoned the doctrine of Fuentebella vs. Carrascoso and adopts the opposite rule that judgments for recovery with accounting are final and appealable (without need of awaiting the accounting) and would become final and executory if not appealed within the reglementary period."

In resolving the question of whether or not the judgment directing an accounting in an action for recovery of properties is final and appealable, this Court further explained:

"The judgment 'directing an accounting' is appealable, regardless of whether the accounting is the principal relief sought or a mere incident or consequence of the judgment which grants recovery and delivery of absconded prop-erties as the principal relief and expressly provides that 'a judgment or order directing an accounting in an action, shall not be stayed after its rendition and before an appeal is taken or during the penden-cy of an appeal.'

xx xx xx x

"If a judgment which directs solely an accounting is appeal-able notwithstanding that it 'does not finally dispose of the action and the accounting has yet to be rendered to com-plete the relief sought, 'much more so is a judgment which orders accounting as a mere incident appealable, because the judgment which orders the delivery of properties does finally dispose of the action on its merits.

"xx xx xx x

Imperative and controlling con-siderations of public policy and of sound practice in the courts to achieve the desideratum of just, speedy and inex-pensive determination of every action militate against such a novel and unprecedented situa-tion where a judgment on the merits for recovery of properties would be left dangling and would be considered as 'interlocutory' and subject to revision and alteration at will for as long as the account-ing ordered as a mere incident and logical consequence has not been rendered and acted upon by the trial court.

"xx xx xx

The Court, however, deems it proper for the guidance of the bench and bar to now declare as is clearly indicated from the compelling reasons and con-siderations herein-above stated: --that the court considers the better rule to be that stated in H.E. Heacock Co. vs. American Trading Co. (53 Phil. 481 [1929]), to wit, that where the primary purpose of a case is to ascer-tain and determine who between plaintiff and defendant is the true owner and entitled to the exclusive use of the disputed property, 'the judgment . . . rendered by the lower court [is] a judgment on the merits as to those questions, and (that) the order of the court for an accounting was based upon and is incidental to the judgment on the merits. That is to say, that the judgment . . . (is) a final judgment . . . ; that in this kind of a case an accounting is a mere incident to the judgment; that an appeal lies from the rendition of the judgment as rendered. '

xx xx xx x.

-- that accordingly, the contrary ruling in Fuentebella vs. Carrascoso which expressly reversed the Heacock case and a line of similar decisions (Africa vs. Africa, 42 Phil. 934; Villanueva vs. Capistrano; Prophylactic Brush Co., et al. vs. Court of Appeals, G.R. No. 46254, Nov. 23, 1938 [Unpublished]) and ruled that such a decision for recovery of property with accounting 'is not final but merely interlocutory and therefore not appealable' and subsequent cases adhering to the same (Zaldarriaga vs. Enriquez, 1 SCRA 1188) must be now in turn abandoned and set aside.

xx xx xx xx

"The Court's considered opinion is that imperative con-siderations of public policy and of sound practice in the courts and adherence to the constitutional mandate of simplified, just, speedy and inexpensive determination of every action call for consid-ering such judgments for recovery of property with accounting as final judgments which are duly appealable (and would therefore become final and executory if not appealed within the reglementary period) with the accounting as a mere incident of the judgment to be rendered during the course of the appeal as provided in Rule 39, section 4 or to be implemented at the execution stage upon final

affirmance on appeal of the judgment (as in Court of Industrial Relations unfair labor practice cases ordering rein-statement of the worker with accounting, computation and payment of his backwages less earnings elsewhere during his layoff) and that the only reason given in *Fuentebella* for the contrary ruling, viz, 'the general harm that would follow from throwing the door open to multiplicity of appeals in a single case' is of lesser import and consequence."

Considering the aforesaid well-established jurisprudence on the matter, the clear mandate of Article 106 of the Civil Code and the aforequoted ruling in the *Miranda* case, the decision of the trial court dated January 4, 1973 decreeing the legal separation between then spouses Antonio Macadangdang and Filomena Gaviana Macadangdang had long become final and executory and the division of the conjugal property in a "supplemental decision" is a mere incident of the decree of legal separation.

Since We have ruled on the finality of the judgment decreeing the spouses' legal separation as of January 4, 1973, the remaining issue for Our resolution is the final disposition of their conjugal partnership of gains which partnership, by reason of the final decree, had been automatically dissolved. The law (Articles 106, 107 and 176 of the Civil Code) clearly spells out the effects of a final decree of legal separation on the conjugal property.

The death on November 30, 1979 of herein petitioner who was declared the guilty spouse by the trial court, before the liquidation of the conjugal property is effected, poses a new problem which can be resolved simply by the application of the rules on intestate succession with respect to the properties of the deceased petitioner.

Thus, the rules on dissolution and liquidation of the conjugal partnership of gains under the aforesaid provisions of the Civil Code would be applied effective January 4, 1973 when the decree of legal separation became final. Upon the liquidation and distribution conformably with the law governing the effects of the final decree of legal separation, the law on intestate succession should take over in the disposition of whatever remaining properties have been allocated to petitioner. This procedure involves details which properly pertain to the lower court.

The properties that may be allocated to the deceased petitioner by virtue of the liquidation of the conjugal assets, shall be distributed in accordance with the laws of intestate succession in Special Proceedings No. 134.

WHEREFORE, THIS PETITION IS HEREBY DISMISSED, WITH COSTS AGAINST PETITIONER'S ESTATE.

SO ORDERED.

Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), concurs in the result in a separate opinion.

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CONCURRING OPINION

TEEHANKEE, J.:

I concur in the result. Assuming the finality of the January 4, 1973 decision of legal separation, and considering that "In effect, private respondent agrees with petitioner's counsel that her husband's death has rendered the instant petition moot and academic" (main opinion, at page 5), it might be the more efficacious and

compassionate procedure to consider moot the legal separation proceedings and the division and liquidation of the conjugal partnership and properties that would have followed in a "supplemental decision", had not death intervened. There would seem to be no need a continuing these legal separation proceedings, following through herein on the division of the conjugal properties as of January 4, 1973 and simultaneously proceeding with the intestate proceedings for the settlement of the deceased's estate, Sp. Proc. No. 134, when such division and settlement could more expeditiously be accomplished in the intestate proceedings.

After all, it would appear that the forfeiture of profits in the conjugal partnership of gains imposed by Article 106, paragraph 2 of the Civil Code would not apply in the light of the provision of Article 176 that such forfeiture "shall not apply if the conjugal partnership property came mostly or entirely from the work or industry, or from the wages and salaries, or from the fruits of the separate property of the guilty spouse." Prescinding therefrom, there is no point in the respondent wife's insisting upon such forfeiture, since with petitioner's death, the provision of paragraph 4 of Article 106 that "The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession" has likewise become moot and of no application. What is more, respondent wife and the children of their marriage are after all the intestate and forced heirs of the deceased petitioner and the inheritors of his estate. Even the costs awarded against petitioner's estate would thus come in effect from their own pockets.

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