

CLARA SALAZAR, ESTER ORTIZANO, ET AL., PETITIONERS AND APPELLANTS, VS. FILEMON Q. ORTIZANO, RESPONDENT AND APPELLEE.*G.R. No. L-20480. April 29, 1966*

Ponente: BENGZON, J.P., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/269eae37ee55/>**BENGZON, J.P., J.:**

In November 1926 Filemon Ortizano and Clara Salazar got married before the Justice of the Peace of the municipality of Butuan, [1] province of Agusan. They were thereafter blessed with five children, namely, Ester, Godofredo, Marianito, Filemon and Salvatore.

On November 1, 1960 Clara Salazar together with her children Ester Ortizano, Godofredo Ortizano and Marianito Ortizano, and one Lut Racaza, as petitioners, sued Filemon Ortizano in the Court of First Instance of Agusan, for support; for custody of the minor children Filemon and Salvatore, both surnamed Ortizano—then 13 and 10 years old, respectively; for separation or partition of conjugal properties in accordance with an extra-judicial agreement (Annex A); and for damages. Petitioners also prayed for preliminary injunction to prevent the respondent from encumbering or otherwise alienating conjugal properties. They alleged that respondent Filemon Ortizano maltreated Clara Salazar, abandoned her and lives in their conjugal abode with another woman with whom he has several children; that respondent refuses to surrender custody over the minor children, Salvatore and Filemon, inspite of repeated demands; that Clara Salazar repeatedly demanded support from respondent but the latter has failed and refuses to give the same, except for meager amounts; that on August 1, 1957 Clara Salazar and respondent executed a "Mutual Agreement" which reads:

"That I Filemon Ortizano of legal age, married, Filipino citizen, resident and with postal address in the City of Butuan, Philippines for purposes of this instrument known as Party of the First Part and Clara Salazar Ortizano, of legal age, married, Filipino citizen, resident and with postal address in the City of Butuan, Philippines, for purposes of this instrument known as Party of the Second Part both entered through a Civil Marriage in November, 1926 performed by the Justice of the Peace of the defunct Butuan Municipality, Province of Agusan and on this date voluntarily agreed to separate (severe carnal connection from each other), do hereby by these presents, pledge and agree to abide by the following:

Party of the First Part

"The Party of the First Part consents to the proposition that:

"(a) Filemon Ortizano, shall no longer live with the party of the second part.

"(b) That the Party of the First Part hereby recognizes the absolute and complete freedom of the Party of the Second Part to do all tilings and practice in her own will, viz; to marry or live with another woman thereby binding and pledging himself not to do any act of revenge or retaliation against the party of the Second Part in the event she (Party of the Second Part) takes a man for a husband.

"(c) The party of the First Part agrees to divide into seven (7) equal parts for him, the party of the second part,

and their children namely: Ester, Godofredo, Marianito, Filemon Jr. and Salvatore, all surnamed Ortizano, existing conjugal properties in their names and any property or monies due the party of the First Part, acquired or earned during the period prior to their separation.

Party of the Second Part

"The Party of the Second Part, hereby recognizes the absolute and complete freedom of the party of the first part to do all things and practices in his own will viz: to marry or live with another man, thereby binding and pledging himself not to do any act of revenge or retaliation against the party of the First Part in the event he (party of the First Part) takes a woman for a wife. Clara Salazar Ortizano hereby known as party of the Second Part agrees to all terms set forth in this agreement."

that respondent did not comply with the provisions of the above-quoted agreement and as a result Clara Salazar suffered damages, moral and actual, in a sum not less than P10,000.00, and that there is imperative need to enjoin respondent from encumbering and/or alienating conjugal properties.

After filing his answer and during the hearing on the issuance of the writ of preliminary injunction, respondent orally moved for the dismissal of the petition on the basis of his affirmative and/or special defenses let up in the answer. Acting on said motion, the court ruled, in its order of June 30, 1961, that the "action is predicated upon a 'Mutual Agreement' of the spouses Filemon Ortizano and Clara Salazar * * * based upon an illicit and immoral consideration, the real purpose behind it, being to allow the husband Filemon Ortizano to marry or live with another woman, and the wife Clara Salazar Ortizano, with another man." It dismissed the amended petition for lack of cause of action. Hence, petitioners' appeal direct to this Court on a question purely of law.

The sole issue is whether or not the amended petition states a cause of action. In this regard, the order appealed from being premised on a motion to dismiss, only the allegations in the amended petition need be considered. And in order to test in this manner whether or not a cause of action is made out in the petition, the motion must admit, if only hypothetically, the truth of the allegation.[2]

The court a quo sustained the motion to dismiss on the theory that the action entirely rests on the "Mutual Agreement" (Annex A) executed by Clara Salazar and respondent for an illicit or immoral consideration. As can be seen from the allegations in the amended petition, petitioners seek (1) separation of property in accordance with Annex A, (2) support, and (3) custody of the minor children, Salvatore and Filemon. Annex "A"'s illegality could at most affect only the cause of action for separation of property, leaving unimpaired the rest of the causes of action which are predicated on allegations different and distinct from Annex "A". Said allegations are: abandonment by respondent of his wife, Clara Salazar (paragraph 4); respondent's failure to support her despite repeated demands (paragraph 5); care and custody of their minor children, Salvatore and Filemon, by respondent under the same roof with his concubine; and, respondent's non-compliance with Clara Salazar's demands for their custody (paragraph 7).

The second paragraph of Article 191 in relation to Article 178, No. 3 of the Civil Code authorizes separation of property in case of abandonment by the husband. Paragraph (1) of Article 291 of the same Code obliges the husband to support his wife. And the wife may ask for separate maintenance where the husband has committed repeated acts of conjugal infidelity,[3] a much lesser marital offense than maintaining a concubine in the conjugal home, as alleged in this case. Furthermore, the allegation in paragraph 7 of the amended petition that the minor children Filemon and Salvatore live with respondent's concubine would argue in favor of custody by their mother pursuant to Article 363 of the Civil Code, to the effect that the children's welfare is the paramount consideration in all questions on their custody.[4]

Anent the lower court's intimation of misjoinder of parties in the amended petition, suffice it to state that such a

defect, if any, is not a ground for dismissal of the action. [5]

Wherefore, the order appealed from is hereby reversed and this case remanded to the court of origin for further proceedings. No costs. So ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar, and Sanchez, JJ., concur.

[1] Now Butuan City.

[2] *Alquigue vs. de Leon*, L-15059, March 30, 1963.

[3] *Dadivas de Villanueva vs. Villanueva*, 54 Phil. 92.

[4] *Cortes vs. Castillo*, 41 Phil. 466.

[5] Section 11, Rule 3, Rules of Court; *Montes vs. Castro*, L-12372, April 30, 1959.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.