

AURORA A. ANAYA, PLAINTIFF-APPELLANT, VS. FERNANDO O. PALAROAN, DEFENDANT-APPELLEE.

G.R. No. L-27930. November 26, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of dismissal, issued *motu proprio* by the Juvenile & Domestic Relations Court, Manila, of a complaint for annulment of marriage, docketed therein as Civil Case No. E-00431, entitled "Aurora A. Anaya, plaintiff, vs. Fernando O. Palaroan, defendant".

The complaint in said Civil Case No. E-00431 alleged, *inter alia*, that plaintiff Aurora and defendant Fernando were married on 4 December 1953; that defendant Fernando filed an action for annulment of the marriage on 7 January 1954 on the ground that his consent was obtained through force and intimidation, which action was docketed in the Court of First Instance of Manila as Civil Case No. 21589; that judgment was rendered therein on 23 September 1959 dismissing the complaint of Fernando, upholding the validity of the marriage and granting Aurora's counterclaim; that (per paragraph IV) while the amount of the counterclaim was being negotiated "to settle the judgment", Fernando had divulged to Aurora that several months prior to their marriage he had pre-marital relationship with a close relative of his; and that "the non-divulgement to her of the afore-mentioned pre-marital secret on the part of defendant that definitely wrecked their marriage, which apparently doomed to fail even before it had hardly commenced - - - frank disclosure of which, certitude precisely precluded her, the Plaintiff herein from going thru the marriage that was solemnized between them constituted 'FRAUD', in obtaining her consent, within the contemplation of No. 4 of Article 85 of the Civil Code" (sic) (record on Appeal, page 3). She prayed for the annulment of the marriage and for moral damages.

Defendant Fernando, in his answer, denied the allegations in paragraph IV of the complaint and denied having had pre-marital relationship with a close relative; he averred that under no circumstance would he live with Aurora, as he had escaped from her and from her relatives the day following their marriage on 4 December 1953; that he denied having committed any fraud against her. He set up the defenses of lack of cause of action and estoppel, for her having prayed in Civil Case No. 21589 for the validity of the marriage and her having enjoyed the support that had been granted her. He counterclaimed for damages for the malicious filing of the suit. Defendant Fernando did not pray for the dismissal of the complaint but for its dismissal "with respect to the alleged moral damages".

Plaintiff Aurora filed a reply with answer to the counterclaim, wherein she alleged:

"(1) that prior to their marriage on 4 December 1953, he paid court to her, and pretended to shower her with love and affection not because he really felt so but because she merely happened to be the first girl available to marry so he could evade marrying the close relative of his whose immediate members of her family were threatening him to force him to marry her (the close relative);

"(2) that since he contracted the marriage for the reason intimated by him, and not because he loved her, he

secretly intended from the very beginning not to perform the marital duties and obligations appurtenant thereto, and furthermore, he covertly made up his mind not to live with her;

"(3) that the foregoing clandestine intentions intimated by him were prematurely concretized for him, when in order to placate and appease the immediate members of the family of the first girl (referent being the close relative) and to convince them of his intention not to live with plaintiff, carried on a courtship with a third girl with whom, after gaining the latter's love cohabited and had several children during the whole range of nine years that Civil Case No. 21589, had been litigated between them (parties);" (Record on Appeal, pages 10-11)

Failing in its attempt to have the parties reconciled, the court set the case for trial on 26 August 1966 but it was postponed. Thereafter, while reviewing the expediente, the court realized that Aurora's allegation of the fraud was legally insufficient to invalidate her marriage, and, on the authority of *Brown vs. Yambao*, 102 Phil. 168, holding:

"It is true that the wife has not interposed prescription as a defense. Nevertheless, the courts can take cognizance thereof, because actions seeking a decree of legal separation, or annulment of marriage, involve public interest, and it is the policy of our law that no such decree be issued if any legal obstacles thereto appear upon the record." - - -

the court a quo required plaintiff to show cause why her complaint should not be dismissed. Plaintiff Aurora submitted a memorandum in compliance therewith, but the court found it inadequate and thereby issued an order, dated 7 October 1966, for the dismissal of the complaint; it also denied reconsideration.

The main issue is whether or not the non-disclosure to a wife by her husband of his pre-marital relationship with another woman is a ground for annulment of marriage.

We must agree with the lower court that it is not. For fraud as a vice of consent in marriage, which may be a cause for its annulment, comes under Article 85, No. 4, of the Civil Code, which provides:

"Art. 85. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

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"(4) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as her husband or his wife, as the case may be;"

This fraud, as vice of consent, is limited exclusively by law to those kinds or species of fraud enumerated in Article 86, as follows:

"Art. 86. Any of the following circumstances shall constitute fraud referred to in number 4 of the preceding article:

- (1) Misrepresentation as to the identity of one of the contracting parties;
- (2) Non-disclosure of the previous conviction of the other party of a crime involving moral turpitude, and the penalty imposed was imprisonment for two years or more;
- (3) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband.

"No other misrepresentation or deceit as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage."

The intention of Congress to confine the circumstances that can constitute fraud as ground for annulment of

marriage to the foregoing three cases may be deduced from the fact that, of all the causes of nullity enumerated in Article 85, fraud is the only one given special treatment in a subsequent article within the chapter on void and voidable marriages. If its intention were otherwise, Congress would have stopped at Article 85, for, anyway, fraud in general is already mentioned therein as a cause for annulment. But Article 86 was also enacted, expressly and specifically dealing with "fraud referred to in number 4 of the preceding article", and proceeds by enumerating the specific frauds (misrepresentation as to identity, non-disclosure of a previous conviction, and concealment of pregnancy), making it clear that Congress intended to exclude all other frauds or deceptions. To stress further such intention, the enumeration of the specific frauds was followed by the interdiction: "No other misrepresentation or deception as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage".

Non-disclosure of a husband's pre-marital relationship with another woman is not one of the enumerated circumstances that would constitute a ground for annulment; and it is further excluded by the last paragraph of the article, providing that "no other misrepresentation or deception as to chastity" shall give ground for an action to annul a marriage. While a woman may detest such non-disclosure of premarital lewdness or feel having been thereby cheated into giving her consent to the marriage, nevertheless the law does not assuage her grief after her consent was solemnly given, for upon marriage she entered into an institution in which society, and not herself alone, is interested. The lawmaker's intent being plain, the Court's duty is to give effect to the same, whether it agrees with the rule or not.

But plaintiff-appellant Anaya emphasizes that not only has she alleged "non-divulgement" (the word chosen by her) of the pre-marital relationship of her husband with another woman as her cause of action, but that she has, likewise, alleged in her reply that defendant Fernando paid court to her without any intention of complying with his marital duties and obligations and covertly made up his mind not to live with her. Plaintiff-appellant contends that the lower court erred in ignoring these allegations in her reply.

This second set of averments which were made in the reply (pretended love and absence of intention to perform duties of consortium) is an entirely new and additional "cause of action". According to the plaintiff herself, the second set of allegations is "apart, distinct and separate from that earlier averred in the Complaint" (Record on Appeal, page 76). Said allegations were, therefore, improperly alleged in the reply, because if in a reply a party-plaintiff is not permitted to amend or change the cause of action as set forth in his complaint (*Calo vs. Roldan*, 76 Phil. 445), there is more reason not to allow such party to allege a new and additional cause of action in the reply. Otherwise, the series of pleadings of the parties could become interminable.

On the merits of this second fraud charge, it is enough to point out that any secret intention on the husband's part not to perform his marital duties must have been discovered by the wife soon after the marriage: hence her action for annulment based on that fraud should have been brought within four years after the marriage. Since appellant's wedding was celebrated in December of 1953, and this ground was only pleaded in 1966, it must be declared already barred.

FOR THE FOREGOING REASONS, the appealed order is hereby affirmed. No costs.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Dizon and Makasiar, JJ., on official leave.

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