

ROSITA VELOSO DE OLAYVAR, PLAINTIFF AND APPELLANT, VS. ARISTOTELES OLAYVAR, DEFENDANT AND APPELLEE.

G.R. No. L-8088. November 29, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff instituted this action in the Court of First Instance of Leyte praying that support be given her and her four children coupled with a petition for support pendente lite.

Defendant in his answer set up as special defense that in the Court of First Instance of Cebu there is a case for legal separation pending between the same parties on the ground of adultery wherein the right of plaintiff to demand support is incidentally involved (Civil Code No. R-3196). This separation case was instituted earlier than the present one.

In view of the pendency of the separation case in Cebu, the court deemed it proper to hold in abeyance further action on the case for support for the reason that the case in Cebu "should have priority in order to ascertain the rights of the parties with particular reference to support in favor of the plaintiff." The court however modified later this ruling on the premise that, as the legal separation case might take a long time before it is finally disposed of, it is imperative that the matter of support be given preferential consideration.

Defendant moved to have this ruling reconsidered, and having failed in this attempt, he filed a motion to dismiss predicated on the same plea that there is between the same parties a case for legal separation in the Court of First Instance of Cebu invoking in his favor the rule that a complaint may be dismissed where "there is another action pending between the same parties for the same cause." [Rule 8, section 1(d)] And on March 24, 1954, the court entered an order dismissing the case in line with the plea of the defendant. This is the order subject of the present appeal.

In order that an action may be dismissed on the ground that "there is another action pending between the same parties for the same cause" [Rule 8, section 1(d)], the following requisites must concur: (1) identity of parties, or at least such as representing the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to res adjudicata in the other.[1] (Moran, Comments on the Rules of Court, 1952 ed., Vol. I, p. 169.) Do these requisites concur in the two cases under consideration?

An analysis of the facts deducible from the pleadings would reveal an affirmative answer. Note that the present action is for support not only of plaintiff but of her children. The action is predicated on the infidelity of defendant who because of his propensity towards other women made him neglectful of his marital duties. The case of legal separation, on the other hand, asserts adultery on the part of plaintiff which is a valid defense against an action for support (Quintana vs. Lerma, 24 Phil., 285). Our new Civil Code provides that the obligation to give support shall cease "when the recipient, be he a forced heir or not, has committed some act which gives rise to disinheritance"

[Article 303 (4)], and under Article 921 of the same Code, it shall be sufficient cause for disinheritance "when spouse has given cause for legal separation." It further appears that in the separation case the wife interposed an answer wherein, repudiating the charge of adultery, she demanded that she and her children be given the proper maintenance and support to which they are entitled under the law.

All of the foregoing show that the two cases raise practically the same issues. There is therefore no need of prosecuting them separately and independently for that would amount to duplicity of action. And as it appears that the case of legal separation was instituted earlier than the one for support, it is fair that the latter be dismissed as was correctly done by the lower court.

The order appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

[1] This ruling finds support in the following cases: *Tambunting vs. De Leon*, L-2184, August 11, 1950; *Manuel vs. Wigett*, 14 Phil., 9; *Hongkong & Shanghai Banking Corp. vs. Ibañez de Aldecoa & Palet Co.*, 30 Phil., 255. See also *Viuda de Hernandez vs. Jison*, 40 Off. Gaz., 3646, 74 Phil., 72; *J. Northcott & Co. vs. Villa-abrille*, 41 Phil., 462; *Santos vs. Tierra, et al.*, 89 Phil., 715; *Capati vs. Ballesteros*, 47 Off. Gaz., 5127.

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