

TRINIDAD FLORENDO, PETITIONER AND APPELLEE, VS. RUFINA ORGANO, RESPONDENT AND APPELLANT.

G.R. No. L-4037. November 29, 1951

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from the Court of First Instance of Ilocos Sur "absolving" the plaintiff from a counterclaim. The main action, which was for divorce, had been dismissed for failure of the plaintiff to prosecute.

Briefly, the plaintiff and the defendant are man and wife and have been living apart since 1909. In an action for maintenance and support brought in Civil Case No. 2853 of the Court of First Instance of Ilocos Sur, this Court on appeal (G. R. No. 41438) handed down on March 1, 1935, a decision which closed with this judgment:

"En su virtud, se revoca la sentencia apelada y se condena al demandado-apelado a pagar a la demandante-apelante las pensiones alimenticias devengadas y no pagadas, fijadas en la sentencia de 8 de septiembre de 1909, desde el 1° de febrero de 1932 hasta el presente, así como las que vayan venciendo de aquí en adelante por la misma suma de P30 al mes hasta que por orden judicial se modifique dicha suma, mas la cantidad de P500, en concepto de honorarios de abogado, con los intereses de esta última suma a razón de 6 por ciento al año desde la interposición de la demanda hasta su completo pago, mas las costas en ambas instancias."

It was for the balance of the proceeds of that judgment and the installments which fell due thereafter that the counterclaim was interposed. It was alleged that the said judgment had been only partially executed on August 8, 1939, leaving P700 unsatisfied, and that none of the subsequent installments had been paid. The total amount demanded was P3,640, embracing all the unpaid allowances down to the date of the filing of the counterclaim, which was October 9, 1943.

The trial court held that the counterclaim was *res judicata* and that the defendant's remedy did not lie in this "expediente". But the court was unexplicit as to where and how the defendant should go for relief, or whether, in its opinion, the plaintiff had been discharged from all liability under the unexecuted judgment by prescription or laches, as the plaintiff contended.

The allegations in the pleadings and discussions in the briefs may be boiled down to this question as the pivotal issue. What is the appropriate procedure to enforce the Judgment in Civil Case No. 2853? It is the counterclaimant's contention that that judgment has become dormant, and hence the necessity for reviving it. But if revival of the judgment was in defendant's mind, neither the text of the counterclaim, her prayer, nor her evidence discloses such intention. Upon its face the counterclaim was a demand for outright payment of the amount therein stated.

But, strangely, the counterclaim as a direct action, which the appellee, the lower court and we construe 'it to mean, is not out of place in this case, and it is unnecessary to revive the judgment on which it, the counterclaim, is founded. Both by law and authority as well as by its very nature, a judgment for alimony does not become

dormant, much less does it prescribe except as to installments not recovered within the period fixed by the statute of limitations. The authorities are in harmony that a money decree for alimony is not a judgment in the full legal meaning of the term and does not become stale simply because of a failure to issue execution thereon within the period limited by statute. The decree continues in force until it expires or is changed, which is within the authority of the court to effectuate. The court which awarded the alimony, it has been held, has the parties before it as long as the award has operative force, and may modify or terminate the decree as the changed or changing circumstances make modification or termination just or necessary. (Lemert vs. Lemert, 74 N.E., 194; Stare ex rel. Cook vs. Cook, 64 N. E. 567; Olney vs. Watts, 3 N.E. 354; Myers vs. Myers, 3 Ohio N. P. 162; Sargent vs. Sargent, 8 Ohio N. P. 238; Khapp vs. Khapp, 134 Mass. 353; McIlly vs. McIlroy, 208 Mass. 458; Atkinson vs. Atkinson, 170 So. 198, 200.) This doctrine is implied in this Court's judgment, *supra*, and was written more explicitly in the following paragraph of the opinion:

"A diferencia de las sentencias ordinarias, la referida sentencia no tiene fecha fija de cumplimiento, sino que dura mientras dura la obligacion del demandado a alimentar a la demandant e y el derecho de Ista a ser alimentada. Ciertamente es que, como toda otra sentencia por cantidad de pesos, caduca dentro (despues) de a los diez anos desde que se promulgo; pero no ' en cuanto a los pagos a plazo devengados y no pagados dentro de los diez anos desde el vencimiento de cada plazo (Art. 43, caso 1.º, Cod. de Proc. Civ.; 34 Corpus Juris, 1087)."

It follows from the above ruling and the authorities before cited that, under ordinary circumstances, a simple motion for execution would be the proper step to secure the payment of support and maintenance in arrears. A motion of the character mentioned would afford the judgment creditor a speedy and adequate remedy, and has the advantage of being less cumbersome and complicated than a counterclaim.

Notwithstanding the availability of a motion to achieve the same end, however, we perceive no valid reason why a counterclaim may not be set up if for no other reason than to bring in An one proceeding all disputes between the same parties. The new Rules of Court; are liberal in the allowance of counterclaims, and even discourage separate actions which make for multiplicity of suits; wherever possible they permit, and sometimes require, combining in one litigation all the cross-claims of the parties. (See Sec. 1, Rule 10, and the notes to Koran's Comments thereon.) The plaintiff having himself brought an action against the defendant should submit himself in good grace to a counterclaim which differs from a motion only in form, and the court below in the face of the plaintiff's own move ought not to have listened to objections which are mere trifles that do not prejudice the substantial rights of the objector.

We are of the opinion therefore that the trial court erred in dismissing the defendant-appellant's counterclaim or absolving the plaintiff from it, regardless of the theory of the decision.

Before concluding, a passing comment on the operation of the statute of limitations with reference to decrees for alimony on installments may be in order, if only to explain the concepts expressed in the preceding paragraphs and to put out of the way a possible source of future controversy between the parties and resultant further delay.

We have said that a judgment for support does not prescribe or become dormant. At the same time we have also said that installments not recovered within ten years from the time they became due do prescribe.

Lest these pronouncements be thought confusing and contradictory, let it be noted that installments into which an alimony is derived may lapse by prescription but that the judgment itself does not. The judgment remains in effect indefinitely but unpaid installments that are more than ten years old are uncollectible. This situation is made possible, Indeed inevitable, by the fact that installments do not fall due at the same time, with the result that while some installments may prescribe, there always remain others which do not. As installments become payable one

at a time, so they prescribe in the same progression, successively as they are allowed to reach the ten-year limitation period without any action being taken to collect them.

The installments included in the judgment of this Court in G. R. No. 41438 date as far back as February 1, 1932, so that some of them were already of more than ten years¹ standing when the dismissed counterclaim was docketed in 1943. However, the period of limitation with reference to those installments was interrupted by the institution of the action in Civil Case No. 2853, and that interruption did not cease until the rendition of the Supreme Court's decision in March, 1935. By reason of the interruption the full period of prescription commenced to run anew upon the cessation of the suspension; and computed from that date, the ten-year limitation had not run out when the counterclaim was set up in 1943. "When prescription is interrupted by a judicial demand, the full time for the prescription must be reckoned from the cessation of the interruption (Spring vs. Barr, 120 So, 256, 2 La. App. 732; 54 C.J.S. 293.)

The appealed decision is reversed and the court below is directed to proceed to give judgment on the defendant's counterclaim for the amount to be ascertained from the evidence already introduced or which may be introduced upon further trial if a new trial be found necessary for this purpose. Costs will be assessed against the plaintiff and appellee.

Paras, C. J., Feria. Pablo, Bengzon, Padilla, Reyes. Jugo, and Bautista Angelo, JJ., concur.

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