

ROMULO TOLENTINO, PETITIONER VS. HELEN VILLANUEVA AND HONORABLE CORAZON JULIANO ACRAVA, JUDGE OF THE JUVENILE AND DOMESTIC RELATIONS COURT, RESPONDENTS.

G.R. NO. L-23264. March 15, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner prays for the nullification of the order dated July 29, 1963 of the respondent judge of the Juvenile and Domestic Relations Court of Manila.

On April 26, 1962, petitioner Romulo Tolentino filed a suit for annulment of his marriage to private respondent Helen Villanueva, alleging that his consent was obtained through fraud because immediately after the marriage celebration, he discovered that private respondent was pregnant despite the fact that he had no sexual relations with her prior to the marriage ceremony; and that they did not live as husband and wife as immediately after the marriage celebration, Helen Villanueva left his house and her whereabouts remained unknown to him until January, 1962 when he discovered that she is residing in San Francisco, Cebu. Said marriage was solemnized by Quezon City Judge Mariano R. Virtucio on September 28, 1959. Said case was docketed as Civil Case No. 43347 of the Juvenile and Domestic Relations Court of Manila.

Despite the fact that she was served with summons and copy of the complaint, Helen failed to file a responsive pleading, for which reason petitioner filed on June 13, 1962 a motion to declare her in default and to set the date for the presentation of his evidence.

In an order dated June 28, 1962, respondent Judge declared private respondent in default, but, pursuant to the provision of Articles 88 and 101 of the Civil Code of the Philippines, referred the case to the City Fiscal of Manila for investigation to determine whether collusion exists between the parties, directing the City Fiscal to submit his report within sixty (60) days from receipt thereof, and, in the event of a negative finding, to represent the State at the trial of the case to prevent fabrication of evidence; and likewise directed herein petitioner to furnish the City Fiscal with copies of the complaint and such other documents necessary for the City Fiscal's information and guidance.

On July 3, 1962, thru counsel, petitioner submitted to the City Fiscal only a copy of his complaint.

Assistant City Fiscal Rafael A. Jose, assigned to the case, issued a subpoena to petitioner's counsel requiring him to bring petitioner with him as well as copies of other documents in connection with the annulment case on August 27, 1962 at 10:00 A.M.

Plaintiff's counsel, in a letter dated August 24, 1962, informed Assistant City Fiscal Jose that he could not comply with the subpoena for it will unnecessarily expose his evidence.

In a motion dated and filed on October 29, 1962, petitioner, thru counsel, prayed the respondent Judge to set the date for the reception of his evidence on the ground that the City Fiscal had not submitted a report of his findings

despite the lapse of sixty (60) days from July 10, 1962 when he submitted to the City Fiscal a copy of the complaint.

On November 6, 1962, respondent Judge denied the aforesaid motion of petitioner unless he submits himself for interrogation by the City Fiscal to enable the latter to report whether or not there is collusion between the parties.

In an order dated July 29, 1963, respondent Judge dismissed the complaint in view of the fact that petitioner is not willing to submit himself for interrogation by the City Fiscal pursuant to the provisions of the second paragraph of Article 101 of the New Civil Code.

His motions for the reconsideration of the aforesaid order having been denied on July 29, 1963 and on April 11, 1964, petitioner now files his petition to annul said order of July 29, 1963 and to compel the respondent Judge to receive his evidence.

Articles 88 and 101 of the Civil Code of the Philippines expressly prohibit the rendition of a decision in suits for annulment of marriage and legal separation based on a stipulation of facts or by confession of judgment and direct that in case of non-appearance of defendant, the court shall order the prosecuting attorney to inquire whether or not collusion between the parties exists, and if none, said prosecuting attorney shall intervene for the State to prevent fabrication of evidence for the plaintiff. Thus, Articles 88 and 101 state:

"ART. 88. No judgment annulling a marriage shall be promulgated upon a stipulation of facts or by confession of judgment.

"In case of non-appearance of the defendant, the provisions of article 101, paragraph 2, shall be observed."

"ART. 101. No decree of legal separation shall be promulgated upon a stipulation of facts or by confession of judgment.

"In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated."

Even the 1940 Rules of Court, which preceded the 1950 Civil Code of the Philippines, direct that actions for the annulment of marriage or divorce shall not be decided unless the material facts alleged in the complaint are proved (Sec. 10, Rule 35, 1940 Rules of Court). The same rule is reiterated in Section 1 of Rule 19 of the 1964 Revised Rules, with "legal separation" being substituted for "divorce", obviously because the present Civil Code does not authorize absolute divorce.

The prohibition expressed in the aforesaid laws and rules is predicated on the fact that the institutions of marriage and of the family are sacred and therefore are as much the concern of the State as of the spouses; because the State and the public have vital interest in the maintenance and preservation of these social institutions against desecration by collusion between the parties or by fabricated evidence. The prohibition against annulling a marriage based on the stipulation of facts or by confession of judgment or by non-appearance of the defendant stresses the fact that marriage is more than a mere contract between the parties; and for this reason, when the defendant fails to appear, the law enjoins the court to direct the prosecuting officer to intervene for the State in order to preserve the integrity and sanctity of the marital bonds (*De Ocampo vs. Florenciano*, 107 Phil. 35, 38-40; *Brown vs. Yambao*, 102 Phil. 168, 172; *Bigornia de Cardenas vs. Cardenas, et. al.*, 98 Phil. 73, 78-79; *Roque vs. Encarnacion, et. al.*, 95 Phil. 643, 646).

Hence, the inevitable conclusion is that the petition is without merit.

WHEREFORE, THE ORDER DATED JULY 29, 1963 IS HEREBY AFFIRMED AND THE PETITION IS

HEREBY DISMISSED. WITH COSTS AGAINST PETITIONER.

Makalintal, C.J., Ruiz Castro, Teehankee, Esguerra, and Muñoz Palma, JJ., concur.

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