

SATURNINO SELANOVA, COMPLAINANT, VS. ALEJANDRO E. MENDOZA, CITY JUDGE, MANDAUE CITY, RESPONDENT.

A.M. No. 804-CJ. May 19, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Saturnino Selanova charged Judge Alejandro E. Mendoza of Mandaue City with gross ignorance of the law for having prepared and ratified a document dated November 21, 1972, extrajudicially liquidating the conjugal partnership of the complainant and his wife, Avelina Ceniza. One condition of the liquidation was that either spouse (as the case may be) would withdraw the complaint for adultery or concubinage which each had filed against the other and that they waived their "right to prosecute each other for whatever acts of infidelity" either one would commit against the other.

Judge Mendoza in his comment on the charge purposed to convey the impression that he was aware of the invalidity of the agreement but he nevertheless ratified it and gave it his nihil obstat on the assurance of the spouses that they would ask the Court of First Instance of Negros Oriental (where they were residing) to approve the agreement. That pretension is disbelieved by the Judicial Consultant.

Respondent Judge alleged that he relied on the provision that "the husband and the wife may agree upon the dissolution of the conjugal partnership during the marriage, subject to judicial approval" (Par. 4, Art. 191, Civil Code).

He argues that to give the prohibition against an extrajudicial liquidation of the conjugal partnership during the marriage "an unqualified and literal legal construction" would render nugatory the aforequoted provisions of article 191. He cites *Lacson vs. San Jose-Lacson*, L-23482, L-23767 and L-24259, August 30, 1968, 24 SCRA 837 as authority for the propriety of an extrajudicial agreement for the dissolution during the marriage of the conjugal partnership as long as the agreement is subsequently approved by the court.

However, the respondent overlooks the unmistakable ruling of this Court in the *Lacson* case that judicial sanction for the dissolution of the conjugal partnership during the marriage should be "secured beforehand".

Respondent Judge surmised that Selanova's complaint was instigated by a lawyer whose case was adversely decided by the Judge. That speculation was denied by Selanova who also belied Judge Mendoza's version that the complainant and his wife, Avelina Ceniza, "together with their parents", came to the office of Judge Mendoza and solicited his help in the amicable settlement of their marital imbroglio.

According to Selanova, in 1972 his father was already dead and his mother was ninety-one years old. They could not possibly have come to Judge Mendoza's office. Selanova said that only he and his brother-in-law, Arcadio Ceniza, an alleged classmate of Judge Mendoza, were the persons who went to the Judge's office. But that version may be inaccurate and oversimplified, considering that the agreement was signed before Judge Mendoza not only by Selanova but also by his wife and two witnesses, Lamberto M. Ceniza and Florencio C. Pono.

Judge Mendoza retired on February 27, 1975 when he reached the age of seventy. In his letter of April 8, 1975 he asked for a compassionate view of his case considering his forty-three years' service in the government (he started his public career in 1932 as a policeman and became a justice of the peace in 1954). He also cited the financial predicament of his big family occasioned by the delay in the payment of his retirement and terminal leave pay.

The case was not referred to a Judge of the Court of First Instance for investigation because actually no factual issues necessitate a hearing and presentation of evidence. Respondent Judge admitted that he was responsible for the execution of the questioned document, an extrajudicial "Liquidation of Conjugal Properties", which he caused complainant Saturnino Selanova and his wife, Avelina Ceniza, to sign.

In that instrument Judge Mendoza divided the two pieces of conjugal assets of the spouses by allocating to the husband a thirteen-hectare riceland and to the wife the residential house and lot. The last paragraph of the instrument, which licensed either spouse to commit any act of infidelity, was in effect a ratification of their personal separation. The agreement in question is void because it contravenes the following provisions of the Civil Code:

"ART. 221. The following shall be void and of no effect:

(1) Any contract for personal separation between husband and wife;

(2) Every extrajudicial agreement, during marriage, for the dissolution of the conjugal partnership of gains or of the absolute community of property between husband and wife;

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Even before the enactment of the new Civil Code, this Court held that the extrajudicial dissolution of the conjugal partnership without judicial approval was void (*Quintana vs. Lerma*, 24 Phil. 285; *De Luna vs. Linatoc*, 74 Phil. 15; *De La Rosa vs. Barruga*, L-2368, June 30, 1950, 4 ROP Digest 171, sec. 29).

On the other hand, disciplinary action had been taken against notaries who authenticated agreements for the personal separation of spouses wherein either spouse was permitted to commit acts of infidelity.

Thus, in *Panganiban vs. Borromeo*, 58 Phil. 367, a lawyer was severely censured for having notarized a document containing "an agreement between the husband and the wife which permitted the husband to take unto himself a concubine and the wife to live in adulterous relationship with another man, without opposition from either one of them". The document was prepared by another person.

In that case this Court noted that while adultery and concubinage are private crimes, "they still remain crimes" and a contract legalizing their commission is "contrary to law, morals and public order, and as a consequence not judicially recognizable". Since the notary's commission was already revoked, this Court did not disbar him. The fact that he "may not have realized the full purport of the document to which he took acknowledgment" was considered mitigating.

Severe censure was also administered to a notary of Cebu City who ratified a document entitled "Legal Separation" executed by husband and wife, wherein they agreed that they separated mutually and voluntarily, that they renounced their rights and obligations, and that they authorized each other to remarry, renouncing any action to which they might be entitled and each promising not to be a witness against the other. Those covenants are contrary to law, morals and good customs and tend to subvert the vital foundation of the legitimate family (*Biton vs. Momongon*, 62 Phil. 7).

In the *Santiago* case respondent lawyer prepared for a married couple (who had been separated for nine years) a document wherein it was stipulated, *inter alia*, that they authorized each other to marry again, at the same time

renouncing whatever right of action one might have against the other. When the husband inquired if there would be no trouble, respondent lawyer pointed to his diploma which was hanging on the wall and said: "I would tear that off if this document turns out not to be valid." The husband remarried. The respondent was suspended from the practice of law for one year for having been ignorant of the law or being careless in giving legal advice (In re Santiago, 70 Phil. 66).

In Balinon vs. De Leon, 94 Phil. 277, Attorney Celestino M. de Leon prepared an affidavit wherein he declared that he was married to Vertudes Marquez, from whom he had been separated, their conjugal partnership having been dissolved, and that he was consorting with Regina S. Balinon, his "new found life-partner", to whom he would "remain loyal and faithful" "as a lawful and devoted loving husband for the rest of" his life "at all costs". Attorney Justo T. Velayo notarized that affidavit. This Court reprimanded Velayo and suspended De Leon from the practice of law for three years.

In the instant case, respondent Judge, due to his unawareness of the legal prohibition against contracts for the personal separation of husband and wife and for the extrajudicial dissolution of their conjugal partnership, prepared the said void agreement which was acknowledged before him as "City Judge and Notary Public Ex-Officio". (Because he was admitted to the bar in 1948 and, consequently, he did not study the new Civil Code in the law school, he might not have been cognizant of its aforecited article 221).

Taking into account that circumstance and his apparent good faith and honest desire to terminate the marital conflict between the complainant and his wife, we are of the opinion that a drastic penalty should not be imposed on him. But he deserves a severe censure for his mistake in preparing and notarizing the aforementioned immoral and illegal agreement.

Such severe reprimand should not be an obstacle to his enjoyment of retirement privileges, assuming that there are no causes for depriving him of such benefits.

WHEREFORE, the respondent is severely censured.

SO ORDERED.

Fernando, Chairman, Barredo, Antonio and Concepcion Jr., JJ., concur.

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