

EULOGIO R. LERUM AND G. VIOLA FERNANDO, PETITIONERS AND APPELLANTS; THE PEOPLE OF THE PHILIPPINES, NECESSARY PARTY, VS. ROMAN A. CRUZ, ELENA MUÑOZ AND NELLO Y. ROA, RESPONDENTS ...

G.R. No. L-2783. November 29, 1950

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Rizal (Quezon City) dismissing the petition for declaratory relief filed by attorneys Eulogio R. Lerum and G. Viola Fernando as private prosecutors in behalf of the People of the Philippines for the purpose of testing the sufficiency and probative value of the testimony of former Judge Roman A. Cruz to prove a decree of divorce issued by him while a judge of First Instance of Manila sometime in 1944.

It appears that a case for bigamy was filed against Nello Y. Roa in the Court of First Instance of Rizal (Case No. 962). In the course of the trial held in June 16 and 30, 1948, former Judge Roman A. Cruz was placed on the witness stand by the defendant to prove that his wife Elena Muñoz has already secured a decree of divorce against him in July 1944. The prosecution objected to this move of the defendant, but the objection was overruled, and so the prosecution filed a petition for a writ of prohibition with this Court praying that the respondent judge be enjoined from allowing the defendant to prove the alleged decree of divorce by oral evidence (G. R. No. L-2340). The petition was dismissed for lack of merit. Judge Roman Cruz then was allowed to testify, and his testimony reads as follows:

"Sr. Guanlao:

"P Conoce Ud. personalmente a Elena Munoz?—R Si, señor.

"P Conoce Ud. personalmente a Nello Roa?

* * * * *

"P Porque dice Ud. que conoce a Elena Munoz?—R La conozco porque fue demandante en una causa de divorcio que se habia ventilado en una de las salas que yo presidia entonces en el Juzgado de Primera Instancia de Manila durante mi incumbencia en 1944.

"Sr. Viola Fernando:

"Pido Su Señoría el descarte de esta parte del testimonio del- testigo por ser incompetente y, ademas, es una conclusion.

"Juzgado:

"El testigo esta declarando sobre hechos de su conocimiento propio.

"Sr. Viola Fernando:

"Es una conclusion.

"Juzgado:

"El testimonio del Juez Cruz no puede considerarse como una prueba secundaria, sino mas bien que vendria a ser como una prueba primaria o principal, cuyo expediente surgio a rais de sus actuaciones oficiales como Juez. (Steno. Notes, Transcript, pp. 4-7).

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"Sr. Guanlao:

"P De su propio eonocimiento y segun su mejor recuerdo, se tramito ante Ud. la causa de referenda?

* * * * *

"Juzgado:

"Se le pregunta si recuerda. * * *

"Juzgado:

"Eso incumbe al Juzgado. Puede contestar.

"R Si, señor. (Steno. Transcript Notes, p. 6.)

* * * * *

"Juzgado:

"Puede contestar.

"Testigo:

"Si, señor, Se ha tramitado ese asunto de divorcio durante mi incumbencia en 1944, cuando presidia entonces una de las salas de Juzgado de Primera Instancia de Manila.

"P. Y cual fue el resultado de ese asunto de divorcio si Ud. recuerda?—R Se concedio el divorcio solicitado por la entonces demandante.

"P Sabe Ud. se el demandado apelo de esa decision?—R No podia haber apelado porque era un divorcio concedido mediante rebeldia.

"P Pero Ud. no esta seguro si el demandado apelo o no?—R Que yo sepa, ni sequiera peticion de reconsideracion se presento, ni que se hay dado cureo a alguna apelacion. (Steno. Notes, Transcript, pp. 13-14, hereto attached as Exhibit "A")." (Copied from G.R. No. L-2783, pp. 23-25, record on appeal).

The prosecution moved for the striking out of the above testimony of Judge Cruz, and when the motion was denied, the prosecution again brought the case to this Court through certiorari (G.R. No. L-2483), and again the petition was denied on the ground that the respondent judge had power and authority to rule on the question raised therein. After the steps taken by the prosecution to foil the attempt to prove the alleged decree of divorce by oral evidence proved futile, the private prosecution filed the present petition for declaratory relief.

It also appears that the petition was at first filed by City Attorney Jose P. Fernandez, and by attorneys Eulogio R. Lerum and G. Viola Fernando as private prosecutors in the bigamy case No. 962, but later, upon motion filed by City Attorney Fernandez, his name was stricken out from the pleadings, and so an amended petition was filed

wherein attorneys Lerum and Viola Fernando appeared as the only petitioners representing the People of the Philippines. It finally appears that attorneys Lerum and Viola Fernando made an attempt to have the Solicitor General appear as counsel, but this attempt was again ruled out on the ground that under the law the Solicitor General can only be required to intervene when the validity of a statute is involved.

While the petitioners have assigned in their brief seven errors which are alleged to have been committed by the lower court, we believe that the issues raised can be boiled down into two, to wit, (1) whether petitioners have the necessary personality and interest to file the petition under consideration; and (2) whether the subject matter of the petition is among those that can be determined by way of declaratory relief under Rule 66 of the Rules of Court.

- The incident giving rise to the petition for declaratory relief arose in a criminal case for bigamy instituted against one Nello Y. Roa. The information was filed by City Attorney Jose P. Fernandez as required by the Rules of Court, and attorneys Eulogio R. Lerum and G. Viola Fernando appeared as private prosecutors in behalf of the offended party. The incident concerns the presentation of the oral testimony of former Judge Roman A. Cruz to prove a decree of divorce issued by him as Judge of First Instance of Manila in an effort to bring about the acquittal of the defendant. The interested party, therefore, in testing the sufficiency or probative value of the aforesaid testimony is the People of the Philippines. In fact it is the City Attorney who filed the two certiorari cases with this court in a vain attempt to get a ruling on the matter. This being the case, the City Attorney should be the one to ask for the declaratory relief if it is desired to have said matter tested in court and if and when this step is feasible under the law. It appears, however, that City Attorney Jose F. Fernandez has refused to join the petitioners in filing the herein petition for declaratory relief as shown by his attitude in asking that his name be stricken out from the pleadings. This attitude is indicative that the government has no interest in prosecuting the petition, and inasmuch as all criminal actions can only be prosecuted under the direction and control of the fiscal and for that matter he is the only official who can represent the People of the Philippines (sec. 4, Rule 106, of the Rules of Court; *Herrero et al. vs. Diaz*, 42 Off. Oaz., 1166), it is evident that the petitioners herein, who as private prosecutors can only intervene subject to the control of the City Attorney (*Herrero et al. vs. Diaz*, id.), are not the proper parties to file the petition under consideration.

- Granting for the sake of argument that the petitioners herein can be considered as parties in interest within the meaning of the statute, the next question to determine is whether the subject matter which they want to be tested is among those mentioned in section 1, rule 66, of the Rules of Court.

Under this rule, only a person who is interested "under a deed, will, contract or other written instrument, and whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder." This means that the subject matter must refer to a deed, will, contract or other written instrument, or to a statute or ordinance, to warrant declaratory relief. Any other matter not mentioned therein is deemed excluded. This is under the principle of *expressio unius est exclusio alterius*.

Now, does the subject matter under consideration come within the import of the rule? The answer cannot but be in the "negative, for it does not refer to any written instrument, statute or ordinance. It merely refers to the sufficiency or probative value of an oral evidence concerning a decree of divorce issued by a former judge, which the court trying the bigamy case has ample power and authority to pass upon. This is not the opportune moment to look into the correctness of the ruling of the court in said bigamy case allowing the presentation of oral evidence to prove a decree of divorce under the circumstances at present obtaining, for the bigamy case is still pending determination. This will be determined in due time when properly presented before this Court. For the purposes of this appeal, it suffices for this Court to declare that the subject matter of the petition does not warrant the granting of declaratory relief within the meaning of said Rule 66.

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

Moran, C.J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

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