INTESTATE ESTATE OF THE DECEASED BENITO MARCELO. EMILIA FRANCISCO AND LUCILA MARCELO, PETITIONERS AND APPELLANTS, VS. ANTONINA JASON, RENATO MARCELO, BENITO MARCELO AND CECILIA ...

G. R .No. 39871. August 30, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the claimants Emilia Francisco and Lucila Marcelo from the order of the Court of First Instance of Palawan, the dispositive part of which reads as follows:

> "Wherefore, the petition of Emilia Francisco and her daughter Lucila is denied and the widow Antonina Jason and her children Renato, Benito and Cecilia, all surnamed Marcelo, are declared heirs of the deceased Benito Marcelo. So ordered."

In support of their appeal the appellants assign fourteen alleged errors as committed by the trial court in its said order, which will be discussed in the course of this decision.

The pertinent facts which are necessary for the resolution of the questions raised in this appeal, some of which have been admitted by the parties and the others proven by a preponderance of the evidence, are as follows:

On September 16,1896, Benito Marcelo and Emilia Francisco contracted a canonical marriage before the Reverend Father Jose Ibanez, then parish priest of Puerto Princesa, Palawan. In view of said marriage, said spouses lived together until the month of January, 1897, when Benito Marcelo was deported to Spain. On March 9, 1900, while said Benito Marcelo was in exile, his wife Emilia Francisco gave birth to a girl who, on October 6, 1901, was baptized in Puerto Princesa, Paragua (now Palawan) and given the name of Lucila. (Exhibits I and I-1.) In the month of December, 1902, Benito Marcelo returned for the first time to Puerto Princesa from Spain. Having found his wife living with another man in Iloilo, Iloilo, he returned to Puerto Princesa where, on November 1, 1904, he filed a complaint against his wife praying for "the corresponding divorce and the return to him of all the missing property with its usufruct." (Exhibit E.) On November 2, 1904, Emilia Francisco answered the complaint denying the allegations relative to the property contained therein, and praying, in turn, for a divorce with acquittal of said charges. When the case was called for hearing, the court, in the presence of both parties, proceeded to take the evidence presented by them. After the taking of the evidence, the plaintiff Benito Marcelo withdrew all the allegations regarding property contained in his complaint and prayed that the case for divorce alone be tried. The defendant Emilia Francisco having consented to the motion, on November 3, 1904, the judge, in open court, entered judgment the dispositive part of which reads as follows:

> "Wherefore, the court orders and decrees that the petition of said plaintiff Benito Marcelo for an absolute divorce from his said wife Emilia Francisco be, and the same is hereby, granted; and with regard to said plaintiff, the marriage is hereby annulled and set aside and he is absolved and relieved from all obligations to said Emilia Francisco as his wife, as if said marriage had never been celebrated. The petition of said Emilia

> Francisco, or Emilia Marcelo, for a divorce, is denied for the reason that she has not presented sufficient grounds, and her cross-complaint contained in her answer is hereby dismissed, with costs of this instance in favor of the plaintiff Benito Marcelo and against said defendant Emilia Francisco.
>
> "Given in public session this third day of November, 1904."

On December 31, 1906, Benito Marcelo contracted a second marriage with Antonina Jason, the herein oppositor and appellee, before the justice of the peace of Arevalo, Iloilo, to whom he showed a copy of said decree of divorce, after having shown it to said Antonina Jason. The newlyweds moved to Puerto Princesa where they lived as husband and wife until June 3, 1929, when Benito Marcelo died, leaving property which had been acquired by him with the £id of Antonina Jason during his second marriage with her.

The first question to be decided in this appeal is whether or not the claimant Lucila Marcelo is a daughter of the deceased Benito Marcelo.

> It may be noted that said claimant Emilia Francisco was canonically married to Benito Marcelo on September 16, 1896; that both had lived together as husband and wife from their marriage until the month of January, 1897, when Benito Marcelo was deported to Spain; that on March 9, 1900, while her husband was in exile, Emilia Francisco gave birth to a girl who, on October 6, 1901, was baptized in Puerto Princesa, Paragua (now Palawan), and given the name of Lucila (Exhibits I and I-1); that in December, 1902, Benito Marcelo returned for the first time to Puerto Princesa from Spain.

From January, 1897, to December, 1902, about four years and eleven months had elapsed. If Benito Marcelo was absent from the Philippines during that period and the claimant Lucila Marcelo was born on March 9, 1900, that is, two years and two months after said Benito Marcelo had left his wife Emilia Francisco for exile, said Lucila Marcelo could not have been conceived during the four months when said spouses lived together as husband and wife, and therefore, cannot be a daughter of said Benito Marcelo.

The second question to be decided in this appeal is whether or not the order of the Court of First Instance of Palawan, dated November 3, 1904, granting Benito Marcelo an absolute divorce from his wife, the herein claimant Emilia Francisco, has dissolved the marriage contracted by them.

In order that a judgment may be valid, not only must the court rendering it have jurisdiction over the parties, but it must also have jurisdiction to take cognizance of the subject matter of the litigation and to grant the relief sought. The lack of jurisdiction over them renders the judgment void and subject to collateral attack. (33 C. J., p. 1076.) Failure to appeal therefrom does not give it validity inasmuch as neither tacit nor express consent of the parties confers jurisdiction. (33 C. J., p. 1077.) In this case, although the Court of First Instance of Palawan had jurisdiction to take cognizance of complaints for divorce, such jurisdiction was limited to divorce "quoad thorum et mutuam habitationem" for relative divorce, on the ground of adultery, because Law II, Title X, Partida IV, which was the only divorce law then in force, did not authorize divorce "quoad vinculum", or absolute divorce. (Benedicto vs. De la Rama, 3 Phil., 34; 50 Law. ed., 765; Ibanez vs. Ortiz, 5 Phil, 325; Goitia vs. Campos Rueda, 35 Phil., 252; V. S. vs. Joanino, 27 Phil., 477; Del Prado vs. De la Fuente, 28 Phil., 23; De Jesus vs. Palma, 34 Phil, 483; Garcia Valdez vs. Soterana Tuason, 40 Phil., 943.) The Court of First Instance of Palawan, therefore, had no jurisdiction to grant an absolute divorce, not only because it lacked jurisdiction to take cognizance thereof but also because it was not specifically prayed for in the complaint. Failure on the part of Emilia Francisco to appeal from said decree with respect to said excess of jurisdiction and relief, did not give it validity with regard to said excess because, as stated, jurisdiction is conferred by law alone and cannot be conferred by the consent of the parties.

Inasmuch as the Court of First Instance of Palawan had jurisdiction to take cognizance of a case for relative

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divorce, and this form of divorce is included within the decree of absolute divorce, said decree is valid with respect to said form which may be separated from that of absolute divorce. (I Black on Judgments, 2d. ed., sec. 261; I Freeman on Judgments, 5th ed., par. 324.)

It is clear therefore that although the decree of divorce under consideration is void in so far as it dissolves the marriage bond, it is not so in so far as it only affects the separation from bed and board and of property.

Having arrived at the conclusion that the decree of absolute divorce granted by the Court of First Instance of Palawan is valid only with regard to the separation of the spouses Benito Marcelo and Emilia Francisco from bed and board and of their property, the question arises whether or not the civil marriage contracted on December 31, 1906, during the lifetime of Emilia Francisco, by said Benito Marcelo and the herein oppositor-appellee Antonina Jason before the justice of the peace of Arevalo, Iloilo, was valid.

Section III of General Orders, No. 68, which was in force in the year 1906, provides that "a subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

> "1. The former marriage has been annulled or dissolved."

Inasmuch as the bond of Benito Marcelo's first marriage with the herein claimant-appellant Emilia Francisco had not been dissolved, his marriage with the oppositor-appellee Antonina Jason is illegal and void.

Now then, the civil marriage contracted by Benito Marcelo and Antonina Jason being void from the beginning, what civil effects does the declaration of nullity thereof produce?

Article 69 of the Civil Code provides as follows:

> "ART. 69. A marriage contracted in good faith produces civil effects, although it may be declared void.
>
> "If good faith existed on the part of only one of the spouses it shall produce civil effects only with regard to such spouse and to the children.
>
> "Good faith is presumed if the contrary is not shown.
>
> "When bad faith has existed on the part of both spouses, the marriage shall produce civil effects only with relation to the children."

It will be noted that the above legal provision establishes the presumption of good faith on the part of all the contracting parties, if the contrary is not shown. It is he who desires to prevent its effects who must prove that good faith did not exist. For the good faith to be perfect, it is necessary: (1) That the spouses celebrated their marriage with the prescribed formalities; (2) that they were ignorant of the defects that rendered it void; and (3) that their ignorance is excusable. ([Law II, Title XV, Partida IV] IV Escriche, page 49.)

In the case under consideration, the first requisite has been complied with, that is, Benito Marcelo's marriage with Antonina Jason was celebrated with the formalities prescribed by law.

With regard to the second and third requisites, that is, that said contracting parties were ignorant of the defect that rendered their marriage void, or the existence of the first marriage, and that their ignorance was excusable, the evidence shows that said contracting parties as well as the justice of the peace, who married them, believed that said first marriage had been dissolved by virtue of the decree of absolute divorce. Although they should have known that absolute divorce was then not permissible, however, inasmuch as the divorce law is not eternal and immutable and the courts of justice are the government agencies wherein the faculty of interpreting the private civil laws reside; and their decisions, although binding only on the parties, deserve to be respected, said

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contracting parties, in believing the decree of divorce absolute, acted in good faith.

According to the above quoted article 69 of the Civil Code, a marriage contracted in good faith, although it may be declared void, produces civil effects, among them being the formation of the conjugal partnership and the legitimacy of the children born during the same and before it is declared void. Hence, from the time Benito Marcelo and Antonina Jason were married on December 31, 1906, until June 3, 1929, when the former died, all the property which both acquired by their industry and at the expense of the common fund, the fruits of the paraphernal property of either of them and those of the partnership property, belong to said conjugal partnership. (Article 1401, Civil Code.)

Let us now determine the effects of the decree of absolute divorce in favor of Benito Marcelo and against his first wife Emilia Francisco on the conjugal partnership formed by their marriage.

The undersigned is of the opinion that the decree of absolute divorce, by itself alone, does not produce the separation of property or the dissolution of the conjugal partnership, but it is necessary that there be a judicial decree to that effect (article 1432, Civil Code; 9 Manresa, page 782); and that the conjugal partnership formed by the marriage of Benito Marcelo and Emilia Francisco continued until the former's death on June 3, 1929, when it was ipso facto dissolved (article 1417, Civil Code), said Emilia Francisco being entitled to the property of the conjugal partnership formed by her marriage with Benito Marcelo, in the proportion prescribed by article 1431 of the Civil Code. The majority, however, do not agree with this opinion and believe that Emilia Francisco is now estopped from claiming the conjugal property on the ground that she let more than twenty-five years elapse from the granting of the decree of divorce until the death of her husband, and twenty-three years from the date on which he contracted a second marriage.

In view of the foregoing considerations, we are of the opinion and so hold: (1) That a decree of absolute divorce granted in 1904 does not produce the effect of dissolving the marriage bond of the divorced spouses but only that of separating them from bed and board, on the ground that the court granted it without jurisdiction, it not being sanctioned by the law then in force; (2) that the separation of property, not having been decreed together with or independently of the separation from bed and board, that separation did not take place, nor was the conjugal partnership dissolved; and (3) that a second marriage celebrated in view of a decree of absolute divorce, which had been granted without jurisdiction and innocently presented during the celebration of the marriage, is in good faith and produces civil effects with regard to the wife and the children born prior to its dissolution by the death of the husband, although it may be declared void.

Wherefore, and finding no error in the order appealed from, the same is affirmed in all its parts, with costs against the appellants. So ordered.

Malcolm, Imperial, and Butte, JJ., concur.

Goddard, J., concurs in the result.

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