

**CARMEN LAPUZ SY, REPRESENTED BY HER SUBSTITUTE MACARIO LAPUZ, PETITIONER AND APPELLANT, VS. EUFEMIO S. EUFEMIO ALIAS EUFEMIO SY UY, RESPONDENT AND APPELLEE.**

*G.R. No. L-30977. January 31, 1972*

Ponente: REYES, J.B.L., J.

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**REYES, J.B.L., J.:**

Petition, filed after the effectivity of Republic Act 5440, for review by certiorari of an order, dated 29 July 1969, of the Juvenile and Domestic Relations Court of Manila, in its Civil Case No. 20387, dismissing said case for legal separation on the ground that the death of the therein plaintiff, Carmen O. Lapuz Sy, which occurred during the pendency of the case, abated the cause of action as well as the action itself. The dismissal order was issued over the objection of Macario Lapuz, the heir of the deceased plaintiff (and petitioner herein) who sought to substitute the deceased and to have the case prosecuted to final judgment.

On 18 August 1953, Carmen O. Lapuz Sy filed a petition for legal separation against Eufemio S. Eufemio, alleging, in the main, that they were married civilly on 21 September 1934 and canonically on 30 September 1934; that they had lived together as husband and wife continuously until 1943 when her husband abandoned her, that they had no child; that they acquired properties during their marriage; and that she discovered her husband cohabiting with a Chinese woman named Go Hiok at 1319 Sisa Street, Manila, on or about March 1949. She prayed for the issuance of a decree of legal separation, which, among others, would order that the defendant Eufemio S. Eufemio should be deprived of his share of the conjugal partnership profits.

In his second amended answer to the petition, herein respondent Eufemio S. Eufemio alleged affirmative and special defenses, and, along with several other claims involving money and other properties, counterclaimed for the declaration of nullity ab initio of his marriage with Carmen O. Lapuz Sy, on the ground of his prior and subsisting marriage, celebrated according to Chinese law and customs, with one Go Hiok, alias Ngo Hiok.

Issues having been joined, trial proceeded and the parties adduced their respective evidence. But before the trial could be completed (the respondent was already scheduled to present surrebuttal evidence on 9 and 18 June 1969), petitioner Carmen O. Lapuz Sy died in a vehicular accident on 31 May 1969. Counsel for petitioner duly notified the court of her death.

On 9 June 1969, respondent Eufemio moved to dismiss the "petition for legal separation"[1] on two (2) grounds, namely: that the petition for legal separation was filed beyond the one-year period provided for in Article 102 of the Civil Code; and that the death of Carmen abated the action for legal separation.

On 26 June 1969, counsel for deceased petitioner moved to substitute the deceased Carmen by her father, Macario Lapuz. Counsel for Eufemio opposed the motion.

On 29 July 1969, the court issued the order under review, dismissing the case.[2] In the body of the order, the court stated that the motion to dismiss and the motion for substitution had to be resolved on the question of

whether or not the plaintiff's cause of action has survived, which the court resolved in the negative. Petitioner's counsel moved to reconsider but the motion was denied on 15 September 1969.

After first securing an extension of time to file a petition for review of the order of dismissal issued by the juvenile and domestic relations court, the petitioner filed the present petition on 14 October 1969. The same was given due course and answer thereto was filed by respondent, who prayed for the affirmance of the said order.[3]

Although the defendant below, the herein respondent Eufemio S. Eufemio, filed counterclaims, he did not pursue them after the court below dismissed the case. He acquiesced in the dismissal of said counterclaims by praying for the affirmance of the order that dismissed not only the petition for legal separation but also his counterclaim to declare the Eufemio-Lapuz marriage to be null and void ab initio.

But petitioner Carmen O. Lapuz Sy (through her self-assumed substitute – for the lower court did not act on the motion for substitution) stated the principal issue to be as follows:

"When an action for legal separation is converted by the counterclaim into one for a declaration of nullity of a marriage, does the death of a party abate the proceedings?"

The issue as framed by petitioner injects into it a supposed conversion of a legal separation suit to one for declaration of nullity of a marriage, which is without basis, for even petitioner asserted that "the respondent has acquiesced to the dismissal of his counterclaim" (Petitioner's Brief, page 22). Not only this. The petition for legal separation and the counterclaim to declare the nullity of the self same marriage can stand independent and separate adjudication. They are not inseparable nor was the action for legal separation converted into one for a declaration of nullity by the counterclaim, for legal separation presupposes a valid marriage, while the petition for nullity has a voidable marriage as a precondition.

The first real issue in this case is: Does the death of the plaintiff before final decree, in an action for legal separation, abate the action? If it does, will abatement also apply if the action involves property rights?

An action for legal separation which involves nothing more than the bed-and-board separation of the spouses (there being no absolute divorce in this jurisdiction) is purely personal. The Civil Code of the Philippines recognizes this in its Article 100, by allowing only the innocent spouse (and no one else) to claim legal separation; and in its Article 108, by providing that the spouses can, by their reconciliation, stop or abate the proceedings and even rescind a decree of legal separation already rendered. Being personal in character, it follows that the death of one party to the action causes the death of the action itself – *actio personalis moritur cum persona*.

\* \* \* When one of the spouses is dead, there is no need for divorce, because the marriage is dissolved. The heirs cannot even continue the suit, if the death of the spouse takes place during the course of the suit (Article 244, Section 3). The action is absolutely dead (Cass., July 27, 1871, D. 71. 1. 81; Cass. req., May 8, 1933, D.H. 1933, 332.)[4]

"Marriage is a personal relation or status, created under the sanction of law, and an action for divorce is a proceeding brought for the purpose of effecting a dissolution of that relation. The action is one of a personal nature. In the absence of a statute to the contrary, the death of one of the parties to such action abates the action, for the reason that death has settled the question of separation beyond all controversy and deprived the court of jurisdiction, both over the persons of the parties to the action and of the subject-matter of the action itself. For this reason the courts are almost unanimous in holding that the death of either party to a divorce proceeding, before final decree, abates the action. 1 Corpus Juris, 208; Wren vs. Moss, 2 Gilman, 72; Danforth vs. Danforth, 111 Ill. 236; Matter of Grandall, 196 N.Y. 127, 89 N.E. 578, 134 Am St. Rep. 830, 17 Ann. Cas. 874; Wilcon vs. Wilson, 73 Mich. 620, 41 N.W. 817; Strickland vs. Strickland, 80 Ark. 452, 97 S. W. 659; McCurley vs. McCurley, 60 Md. 185, 45 Am. Rep. 717; Begbie vs. Begbie, 128 Cal. 155, 60 Pac. 667, 49 L.

R. A. 141."[5]

The same rule is true of causes of action and suits for separation and maintenance (Johnson vs. Bates, Ark. 101 SW 412; 1 Corpus Juris 208).

A review of the resulting changes in property relations between spouses shows that they are solely the effect of the decree of legal separation; hence, they can not survive the death of the plaintiff if it occurs prior to the decree. On this point, Article 106 of the Civil Code provides:

"Art. 106. The decree of legal separation shall have the following effects:

"(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

"(2) The conjugal partnership of gains or the absolute conjugal community of property shall be dissolved and liquidated, but the offending spouse shall have no right to any share of the profits earned by the partnership or community, without prejudice to the provisions of article 176;

"(3) The custody of the minor children shall be awarded to the innocent spouse, unless otherwise directed by the court in the interest of said minors, for whom said court may appoint a guardian;

"(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent one shall be revoked by operation of law." \* \* \*

From this article it is apparent that the right to the dissolution of the conjugal partnership of gains (or of the absolute community of property), the loss of right by the offending spouse to any share of the profits earned by the partnership or community, or his disqualification to inherit by intestacy from the innocent spouse as well as the revocation of testamentary provisions in favor of the offending spouse made by the innocent one, are all rights and disabilities that, by the very terms of the Civil Code article, are vested exclusively in the persons of the spouses; and by their nature and intent, such claims and disabilities are difficult to conceive as assignable or transmissible. Hence, a claim to said rights is not a claim that "is not thereby extinguished" after a party dies, under Section 17, Rule 3, of the Rules of Court, to warrant continuation of the action through a substitute of the deceased party.

"Sec. 17. Death of party. After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. \* \* \*."

The same result flows from a consideration of the enumeration of the actions that survive for or against administrators in Section 1, Rule 87, of the Revised Rules of Court:

"SECTION 1. Actions which may and which may not be brought against executor or administrator. No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him."

Neither actions for legal separation or for annulment of marriage can be deemed fairly included in the enumeration.

A further reason why an action for legal separation is abated by the death of the plaintiff, even if property rights are involved, is that these rights are mere effects of a decree of separation, their source being the decree itself;

without the decree such rights do not come into existence, so that before the finality of a decree, these claims are merely rights in expectation. If death supervenes during the pendency of the action, no decree can be forthcoming, death producing a more radical and definitive separation; and the expected consequential rights and claims would necessarily remain unborn.

As to the petition of respondent-appellee Eufemio for a declaration of nullity ab initio of his marriage to Carmen Lapuz, it is apparent that such action became moot and academic upon the death of the latter, and there could be no further interest in continuing the same after her demise, that automatically dissolved the questioned union. Any property rights acquired by either party as a result of Article 144 of the Civil Code of the Philippines[6] could be resolved and determined in a proper action for partition by either the appellee or by the heirs of the appellant.

In fact, even if the bigamous marriage had not been void ab initio but only voidable under Article 83, paragraph 2, of the Civil Code, because the second marriage had been contracted with the first wife having been an absentee for seven consecutive years, or when she had been generally believed dead, still the action for annulment became extinguished as soon as one of the three persons involved had died, as provided in Article 87, paragraph 2, of the Code, requiring that the action for annulment should be brought during the lifetime of any one of the parties involved. And furthermore, the liquidation of any conjugal partnership that might have resulted from such voidable marriage must be carried out "in the testate or intestate proceedings of the deceased spouse," as expressly provided in Section 2 of the Revised Rule 73, and not in the annulment proceeding.

ACCORDINGLY , the appealed judgment of the Manila Court of Juvenile and Domestic Relations is hereby affirmed. No special pronouncement as to costs.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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[1] Per Annex "G" to Petition, rollo, pages 96-98, being the motion to dismiss.

[2] Per Annex "I" to Petition, rollo, pages 132-137, being the order of dismissal.

[3] Answer, rollo, pages 174-182.

[4] Planiol, Civil Law Treatise, Vol. 1, Part 1, pages 658-659.

[5] Bushnell vs. Cooper, 124 N. E. 521, 522.

[6] "Art. 144. When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership."

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