

WILLIAM A. CHITTICK, PETITIONER, VS. HONORABLE COURT OF APPEALS AND LAURENCE F. DE PRIDA, PATRICIA CHITTICK LANE, WILLIAM A. CHITTICK, JR., DAGMAR CHITTICK GILDERSLEEVE, AND MAR...

G.R. No. L-25350. October 04, 1988

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari of the decision[*] of respondent Court of Appeals promulgated on July 31, 1965 in CA-G.R. No. 31327-R, affirming in all respect the decision[**] of the Court of First Instance of Manila, Branch II in Civil Case No. 6405 entitled Muriel M. Chittick vs. William A. Chittick.

The dispositive portion of the decision which was affirmed by respondent Court, reads as follows:

"In view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant by way of support in arrears for the sum of P21,145.42 or its present equivalent in dollar at the option of the plaintiff, with interest at the legal rate from January 12, 1951; and under the second cause of action for the sum of P9,000.00 with interest at the rate of 6% from April 29, 1940, plus attorney's fees in the amount of P900.00, and the costs of the suit." (R.A. p. 110)

The facts of the case, taken from the decision of the trial court is as follows:

"The plaintiff and the defendant, both American citizens, were married in Washington, U.S.A. on February 12, 1923. They came to the Philippines in 1924 and made the City of Manila their permanent residence. Four children were born of the marriage, namely, Patricia, who was born, on September 12, 1924; William, Jr., on January 8, 1926; Dagmar, on October 6, 1931, and Mary, on January 12, 1933. According to the defendant, due to plaintiff's infidelity, their marital relation became strained and they entered into an agreement of separation, Exhibit A, on May 8, 1937. The document, Exhibit A, was drawn by Atty. Benjamin S. Ohmick, an American lawyer, and was duly acknowledged before a notary public. The pertinent stipulations which are the bases of plaintiff's two causes of action are found in paragraphs 2 and 3, and read as follows:

'2. - The husband agrees that he will pay or cause to be paid to said wife monthly the sum of FIVE HUNDRED FIFTY PESOS (P550.00), Philippine Currency, or its pre-sent equivalent in United States Currency, at the election of the wife, for the care, maintenance and support of the said wife and the said minor children. Said payment shall continue until such time as the youngest of said minor children arrives at the age of eighteen (18) years, provided however, that the said wife in the meantime does not remarry. Should such marriage take place, it is understood and agreed that payments aforesaid shall be reduced by twenty percent (20%).

'3. It is mutually agreed that the community or conjugal assets of the parties, consisting of share of stock in various corporations, together with cash, have a net realizable value of P22,500.00, which the husband agrees to divide equally with the wife and deliver same to her whenever the said wife secures a final decree of divorce as is contemplated by her it being understood that the husband, at his option, may deliver to the wife the sum of P11,250.00 in full and complete discharge.

The plaintiff thereafter went to Nevada, U.S.A., and alleging desertion on the part of her husband, the defendant herein, the plaintiff obtained a divorce, Exhibit B, on August 30, 1937. Plaintiff stayed in the United States until December 1937, after which she returned to the Philippines. The defendant complied faithfully with the payment of the monthly support of P550.00 until the war broke out in December 1941. With the outbreak of the war, the spouses and their children were interred in the Sto. Tomas University concentration camp by the Japanese from January 1942 to March 3, 1944. Nevertheless, the defendant during the period of interment, paid to the plaintiff a total of P4,716.00 which according to the defendant, was extended as a loan to the plaintiff and which was obtained by borrowing from his friends. After the liberation in March 1945, plaintiff and defendant and their children were among the first to be sent back to the United States for medical treatment, arriving in San Francisco on May 9, 1945. From the arrival of the parties in San Francisco in May 9, 1945 to January 12, 1951 when Mary, the youngest, reached the age of 18, and when according to paragraph 2 of Exhibit A, the payment of support should cease, the defendant paid a total of \$8,145.00. The total amount due to the plaintiff by way of support, in accordance with paragraph 2 of Exhibit A, from May 9, 1945 to January 12, 1951 is \$18,717.71, thereby, leaving a balance in favor of the plain-tiff in the amount of \$10,572.71." (Record on Appeal, pp. 84-88).

On October 2, 1948, private respondent commenced an action to recover from petitioner support in arrears and her share in the conjugal partnership, in Civil Case No. 6405 of the Court of First Instance of Manila, Branch II, praying that judgment be rendered in her favor and against defendant, under the first cause of action, for the sum of \$3,442.90, United States currency, or P6,885.80; Philippine Currency, and the further sum of \$110.00 or P220.00 per month from March 1, 1948, both with legal interest from the date of filing of the complaint until paid and, under the second cause of action, for the sum of P11,250.00, with legal interest from the date of the filing of this complaint, until paid, plus the sum of P1,000.00 for attorney's fees, with costs against defendant. (Record on Appeal, pp. 1-11).

As aforesaid, the trial court rendered a decision in favor of the plaintiff.

On appeal, respondent Court of Appeals on July 31, 1965, affirmed the decision of the trial court in all respects (Rollo, pp. 82-116). On August 5, 1965, counsel for plaintiff-appellee, private respondent herein, filed a motion with respondent court for substitution of party plaintiff-appellee, who died in Los Angeles, California, United States of America on April 25, 1964, by her heirs, her surviving spouse, Laurence F. de Prida and the legitimate children of the parties (Rollo, p. 143). The motion was opposed by petitioner herein on the ground that since the relation between attorney and client ceased with the death of plaintiff-appellee, counsel cannot present any motion for and in behalf of the children of the deceased client, unless authorized by the said children and/or heirs (Rollo, p. 144). On November 3, 1965, the respondent Court issued its resolution granting the motion for substitution (Rollo, p. 209.)

A motion for reconsideration of the decision of respondent court dated July 31, 1965 was filed by petitioner on August 20, 1965 (Rollo, pp. 154-199.) It was denied by respondent court in another resolution also dated November 3, 1965 (Rollo, p. 210.)

Hence, this petition filed with this Court on November 26, 1965 (Rollo, p. 1.) In a resolution dated January 7, 1966, the Court resolved to dismiss the petition for lack of merit (Rollo, p. 215-A.)

On January 27, 1966, petitioner filed a motion for reconsideration of the Court's resolution of January 7, 1966 (Rollo, p. 217) in view of which the Court required respondents to answer within ten days from notice, in its resolution of February 17, 1966 (Rollo, p. 242.) Private respondent Laurence F. de Prida filed his answer on April 4, 1966 (Rollo, p. 247.)

On April 18, 1966, the Court resolved to give due course to the petition (Rollo, p. 276.) The brief for the

petitioner was filed on June 14, 1966 (Rollo, p. 279); the brief for the respondent was filed on August 25, 1966 (Rollo, p. 288.) The reply brief was filed on November 3, 1966 (Rollo, p. 308.)

On January 18, 1967, petitioner filed a manifestation that the Court take cognizance of two letters of his son William, Jr. stating that the case was filed by Larry de Prida (his mother's alleged second husband), without his consent and expressing a desire not to be made a party to the case against his father (Rollo, p. 309.). Acting on the manifestation the Court required private respondent to comment thereon, (Rollo, p. 315) which was filed on February 16, 1967 (Rollo, p. 316). A counter manifestation with reference to the comment of private respondent was filed by petitioner on February 23, 1967 (Rollo, p. 318).

Petitioner raised several assignments of errors but the principal conflict in this case centers on whether or not the decision of respondent Court was rendered nugatory by the death of plaintiff-appellee Muriel M. Chittick (private respondent herein) more than one year before its issuance and before a substitution of heirs could be effected.

The answer is in the affirmative.

Section 16, Rule 3 of the Rules of Court states:

"Duty of attorney upon death, incapacity, or incompetency of party. – Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative."

Section 17 of the same Rule likewise, states:

"Death of a 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. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, maybe recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs."

Private respondent Muriel M. Chittick died in Los Angeles, California, United States of America, on April 25, 1964 while the case was pending with respondent Court of Appeals. It was only on August 5, 1965, however, that counsel for private respondent filed a motion for substitution of party plaintiff-appellee (Rollo, p. 143) five days after respondent court promulgated its decision of July 31, 1965, despite Section 16, Rule 3 of the Rules of Court which clearly provides for a prompt notice of such death to be given to the Court by the attorney of the deceased. In fact said counsel himself admitted his lapse in memory, alleging however, that he thought all the while that he had already complied with the aforementioned sections of Rule 3 and that he discovered his neglect when he went over the records of the case upon receipt of the decision promulgated by the Court of Appeals (Rollo, p. 148). There is no question that this duty applies in this case where a party dies after filing of the complaint and during the pendency of the case (*Doel v. Teves*, 136 SCRA 196 /1985/, nor is there any argument against the rule that counsel's inexcusable negligence is binding on his client. (*Llantero v. Court of Appeals*, 105 SCRA 609 /1981/, *Pulido v. Court of Appeals*, 122 SCRA 63 /1983/).

More than that, apart from the fact that there appears to be no compliance with the procedure laid down in Rule 3, Sections 16 and 17 of the Rules of Court, in order that a valid substitution maybe effected, all of the Chittick children who claim that they have no knowledge of such substitution, expressly and vehemently objected to their

being included as plaintiffs against petitioner, their father (Brief for Petitioner, pp. 33-36).

Consequently, it is evident that the motion for substitution filed by the counsel for the deceased and which was subsequently approved by the Court of Appeals is null and void because the party in whose name it was presented was dead, and therefore, the authority of the attorney to represent her had ceased (Moran, Vol. I, p. 218, 1979 ed.). Furthermore, the said motion was unauthorized by the plaintiffs in question (private respondents herein) with the exception of Laurence F. de Prida, the alleged second husband of the deceased, whose heirship is however also in question. As correctly stated by petitioner, there should first be a prior determination as to whether or not de Prida is an heir of the deceased before he can be properly substituted as such (Brief for Petitioner, pp. 36-40).

Under similar circumstances, this court ruled as follows:

"In the present case, there had been no court order for the legal representative of the deceased to appear, nor had any such legal representative ever appeared in court to be substituted for the deceased; neither had the complainant ever procured the appointment of such legal representative of the deceased, nor had the heirs of the deceased, including appellant, ever asked to be allowed to be substituted for the deceased. As a result, no valid substitution was effected, consequently, the court never acquired jurisdiction over appellant for the purpose of making her a party to the case and making the decision binding upon her, either personally or as legal representative of the estate of her deceased mother." (Ferreria, et al. v. Vda. de Gonzales, et al., 104 Phil. 143).

Going back to the case at bar, it is without question that there was no valid substitution made and as a consequence, the Court of Appeals never acquired jurisdiction over the Chittick children nor over the alleged second husband whose status as heir has still to be determined.

Still further, on November 29, 1977, counsel for petitioner filed with this Court a Notice of Death of the latter on April 13, 1977 in Makati, Metro Manila (Rollo, p. 322). Accordingly, even assuming that there was a valid substitution still this case as a money claim against the defendant petitioner cannot survive under Sec. 5, Rule 86 of the Rules of Court and should have been filed against the decedent's estate which is mandatory (De Bautista v. De Guzman, 125 SCRA 682 /1983/). Nevertheless, since the Chittick children as heirs of respondent-creditor are also the heirs of petitioner-debtor, the obligation sued upon had been extinguished by the merger in their persons of the character of creditor and debtor of the same obligation (Art. 1275, Civil Code).

WHEREFORE, the appealed decision of the Court of Appeals is hereby Reversed and Set Aside and the complaint filed against defendant-petitioner is Dismissed.

No costs.

SO ORDERED.

Fernan, C.J., Feliciano, and Cortes, JJ., concur.

Gutierrez, Jr., J., on leave.

[*] Penned by Justice Julio Villamor and concurred by Justices Fred Ruiz Castro and Carmelino Alvendia.

[**] Penned by Judge Jose N. Leuterio.

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