

ELISEA LAPERAL, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR

G. R. No. L-18008. October 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On May 10, 1960, Elisea Laperal filed in the Court of First Instance of Baguio (Sp. Proc. No. 433) a petition which reads:

"1. That petitioner has been a bona fide resident of the City of Baguio for the last three years prior to the date of the filing of this petition;

"2. That petitioner's maiden name is ELISEA LAPERAL; that on March 24, 1939, she married Mr. Enrique R. Santamaria; that in a partial decision entered on this Honorable Court on January 18, 1958, in Civil Case No. 356 of this Court, entitled 'Enrique R. Santamaria vs. Elisea L. Santamaria,' Mr. Enrique Santamaria was given a decree of legal separation from her; that the said partial decision is now final;

"3. That during her marriage to Enrique R. Santamaria, she naturally used, instead of her maiden name, that of Elisea L. Santamaria; that aside from her legal separation from Enrique R. Santamaria, she has also ceased to live with him for many years now;

"4. That in view of the fact that she has been legally separated from Mr. Enrique R. Santamaria and has likewise ceased to live with him for many years, it is desirable that she be allowed to change her name and/or be permitted to resume using her maiden name, to wit: ELISEA LAPERAL.

"Wherefore, petitioner respectfully prayed that after the necessary proceedings are had, she be allowed to resume using her maiden name of Elisea Laperal."

The petition was opposed by the City Attorney of Baguio on the ground that the same violates the provisions of Article 370 (should be 372) of the Civil Code, and that it is not sanctioned by the Rules of Court.

In its decision of October 31, 1960, the court denied the petition for the reason that Article 372 of the Civil Code requires the wife, even after she is decreed legally separated from her husband, to continue using the name and surname she employed before the legal separation. Upon petitioner's motion, however, the court, treating the petition as one for change of name, reconsidered its decision and granted the petition on the ground that to allow petitioner, who is a businesswoman decreed legally separated from her husband, to continue using her married name would give rise to confusion in her finances and the eventual liquidation of the conjugal assets. Hence, this appeal by the State.

The contention of the Republic finds support in the provisions of Article 372 of the New Civil Code which reads:

"ART. 372. When legal separation has been granted, the wife shall continue using her name and surname employed before the legal separation". (Italics supplied)

Note that the language of the statute is mandatory that the wife, even after the legal separation has been decreed, shall continue using her name and surname employed before the legal separation. This is so because her married status is unaffected by the separation, there being no severance of the vinculum. It seems to be the policy of the law that the wife should continue to use the name indicative of her unchanged status for the benefit of all concerned.

The appellee contends, however, that the petition is substantially for change of her name from Elisea L. Santa-maria, the one she has been using, since her marriage, to Elisea Laperal, her maiden name, giving as reason or cause therefor her being legally separated from the husband, Enrique R. Santamaria, and the fact that they have ceased to live together for many years.

There seems to be no dispute that in the institution of these proceedings, the procedure prescribed in Rule 103 of the Rules of Court for change of name has been observed. But from the petition quoted in full at the beginning of this opinion, the only reason relied upon for the change of name is the fact that petitioner is legally separated from her husband and has, in fact, ceased to live with him for many years. It is doubtful, to say the least, whether Rule 103 which refers to change of name in general, may prevail over the specific provisions of Article 372 of the New Civil Code with regards to married women legally separated from their husbands. Even, however, applying Rule 103 to this case, the fact of legal separation alone which is the only basis for the petition at bar—is, in our opinion, not a sufficient ground to justify a change of the name of herein petitioner, for to hold otherwise would be to provide an easy circumvention of the mandatory provisions of the said Article 372.

It is true that in the second decision which reconsidered the first it is stated that as petitioner owns extensive business interests, the continued use of her husband's surname may cause undue confusion in her finances and the eventual liquidation of the conjugal assets. This finding is however without basis. In the first place, these were not the causes upon which the petition was based; hence, obviously no evidence to this effect had been adduced. Secondly, with the issuance of the decree of legal separation in 1958, the conjugal partnership between petitioner and her husband had automatically been dissolved and liquidated. (Art. 106[2], Civil Code.) Consequently, there could be no more occasion for an eventual liquidation of the conjugal assets.

Wherefore, the order of the lower court of December 1, 1960, granting the petition, is hereby set aside and the petition dismissed. Without costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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