

**OFELIA GOMEZ, AS ADMINISTRATRIX OF THE ESTATE OF THE LATE
ISIDRA GOMEZ Y AQUINO, PLAINTIFF-APPELLEE, VS. JOAQUIN P.
LIPANA, DEFENDANT-APPELLANT.**

G.R. No. L-23214. June 30, 1970

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d8fa28abab0e/>

MAKALINTAL, J.:

The defendant-appellant, Joaquin P. Lipana, contracted two marriages: the first with Maria Loreto Ancino in 1930 and the second with Isidra Gomez y Aquino in 1935. At the time of the second marriage the first was still subsisting, which fact, however, Lipana concealed from the second wife.

On December 17, 1943 the spouses of the second marriage acquired by purchase a piece of land in Cubao, Quezon City, for the price of P3,000.00. The Torrens title for the property (Transfer Certificate No. 25289 of the Register of Deeds for Quezon City) was issued on February 1, 1944, in the name of "Joaquin Lipana married to Isidra Gomez."

On July 20, 1958 Isidra Gomez died intestate and childless, and survived only by her sisters as the nearest relatives. On August 7, 1961 Ofelia Gomez, judicial administratrix of her estate, commenced the present suit, pray-ing for the forfeiture of the husband's share in the Cubao property in favor of the said estate. Reliance is placed on Article 1417 of the old Civil Code, the Spanish text of which provides:

"La sociedad de gananciales concluye al disolverse el matrimonio o al ser declarado nulo.

"El conjuge que por su mala fe hubiere sido causa de la nulidad, no tendra parte en los bienes gananciales."

The trial court, ruling that the second marriage was void ab initio and that the husband was the one who gave cause for its nullity, applied the aforequoted provision and declared his interest in the disputed property forfeited in favor of the estate of the deceased second wife.

In the present appeal by the defendant he attributes two errors to the trial court: (1) in allowing a collateral attack on the validity of the second marriage and in holding it to be bigamous and void ab initio; and (2) in holding that Article 1417 of the Spanish Civil Code is applicable in this case.

The first error has not been committed. The con-trolling statute is Act 3613 of the Philippine Legislature, the Marriage Law which became effective on December 4, 1929 and was in force when the two marriages were celebrated. The pertinent provisions are as follows:

"SEC. 29. Illegal Marriages.- Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(a) The first marriage was annulled or dissolved;

(b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage so contracted being valid in either case until declared null and void by a competent court.

"SEC. 30. Annulable marriages.- A marriage may be annulled for any of the following causes, existing at the time of the marriage:

x x x x x x x x

(b) That the former husband or wife of either was living and the marriage with such former husband or wife was then in force;

x x x x x x x x

SEC. 31. Time for filing action for decree of nullity. - The action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

x x x x x x x x

(b) For causes mentioned in sub-division (b): by either party during the life of the other, or by the former husband or wife.

x x x x x x x x

The appellant, relying on Section 30(b) quoted above, maintains that his marriage to Isidra Gomez was valid and could be annulled only in an action for that purpose, which in the light of Section 31 could be filed only by either party thereto, during the lifetime of the other, or by the former spouse.

However, it is not Section 30 but Section 29 which governs in this case, particularly the first paragraph thereof, which says that "any marriage contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance." This is the general rule, to which the only two exceptions are those mentioned in sub-sections (a) and (b) of the same provision.

There is no suggestion here that the defendant's 1930 marriage to Maria Loreto Ancino had been annulled or dissolved when he married Isidra Gomez in 1935, and there is no proof that he did so under the conditions envisioned in sub-section (b). The burden is on the party invoking the exception to prove that he comes under it; and the defendant has not discharged that burden at all, no evidence whatsoever having been adduced by him at the trial. Indeed, he contracted the second marriage less than seven years after the first, and he has not shown that his first wife was then generally considered dead or was believed by him to be so.

The second error bears closer analysis. Is Article 1417 of the Spanish Civil Code applicable under the facts of this case?

There is one primordial fact which must be considered, namely, that since the defendant's first marriage has not been dissolved or declared void the conjugal partnership established by that marriage has not ceased. Nor has the first wife lost or relinquished her status as putative heir of her husband under the new Civil Code, entitled to share in his estate upon his death should she survive him. Consequently, whether as conjugal partner in a still subsisting marriage or as such putative heir she has an interest in the husband's share in the property here in dispute, even if it was acquired during the second marriage, of which interest she would be deprived if his share should be declared forfeited in favor of the second wife.

There is a difference of opinion among the members of this Court as to whether such resulting prejudice to the first wife is within the contemplation of the Spanish Civil Code when it decrees in general terms in Article 1417 that the spouse who in bad faith has given cause for nullity (of the marriage) shall have no share in the conjugal properties, considering that in the present case the first marriage has not been terminated and therefore likewise impresses the conjugal stamp of that marriage upon whatever properties are acquired during its existence. We believe, however, that it is not necessary to resolve that question here inasmuch as the facts do not call for the application of Article 1417. The first paragraph of this Article states two causes for the termination of the conjugal partnership: (1) dissolution of the marriage and (2) declaration of nullity. Under the second paragraph of the same Article it is upon the termination of the partnership by either of said causes that the forfeiture of the share of the guilty spouse takes place. Now then, when did the conjugal partnership formed by virtue of the marriage of the defendant to the deceased Isidra Gomez terminate? Obviously when the marriage was dissolved by the latter's death in 1958. By that time Article 1417 was no longer in force, having been eliminated in the new Civil Code, which took effect in 1950. The legal situation arising from these facts is that while insofar as the second wife was concerned, she having acted in good faith, her marriage produced civil effects and gave rise, just the same, to the formation of a conjugal partnership wherein she was entitled to an equal share upon dissolution,[1] no action lies under Article 1417 for the forfeiture of the husband's share in her favor, much less in favor of her estate, with respect to which there are after all no children, but only collateral relatives, who are entitled to succeed.

It would not do to say that since the second marriage in this case was void ab initio the application of Article 1417 should be reckoned as of the date it was celebrated in 1935. This article speaks from the moment of the termination of the conjugal partnership (either by the dissolution of the marriage or by the declaration of its nullity); and it would be self-contradictory to consider that the conjugal partnership was formed and terminated at the same time and by the same act, that is, by the celebration itself of the marriage. Colin y Capitant[2] comments on this provision as follows:

"Disuelsen matrimonio y, por tanto, la sociedad de gananciales, la muerte de uno de los conyuges y la declaracion de nulidad."

x x x

"En caso de declaracion de nulidad, la sociedad de gananciales se extingue al ser declarado nulo el matrimonio, es decir, en el momento en que sea firme la sentencia declarativa de la nulidad."

It may thus be seen that if the nullity, or annulment, of the marriage is the basis for the application of Article 1417, there is need for a judicial declaration thereof, which of course contemplates an action for that purpose. In the instant case, however, the conjugal partnership formed by the second marriage was dissolved by the death of the second wife; and there has been no judicial declaration of nullity except possibly in this very action, filed after dissolution by death had taken place and when Article 1417 of the Spanish Civil Code was no longer in force.

There is, to be sure, a statement of Manresa[3] that in case of nullity it is presumed, with respect to the spouse who acted in bad faith, that neither the marriage nor the conjugal partnership ever existed, and hence such spouse has no right to a share in the conjugal properties; but this legal effect of such presumption derives from the premise that Article 1417 is still in force, and in any event is of doubtful application if it would be in derogation of and to the prejudice of the right of the other spouse of the first marriage in the conjugal partnership formed thereby, which includes properties acquired by the husband during its existence.

The only just and equitable solution in this case would be to recognize the right of the second wife to her share of one-half in the property acquired by her and her husband, and consider the other half as pertaining to the conjugal

partnership of the first marriage.

Wherefore, the decision appealed from is reversed, and the complaint is dismissed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] Colin Capitant, Curso Elemental de Derecho Civil, Tomo 60, Tercera Edicion, pag. 364; Fran-cisco vs. Jason, 60 Phil. 442; Lao vs. Dee Tim, 45 Phil. 739, 745.

[2] Id., pag. 362, 363.

[3] Tomo 9, Cuarta Edicion, pag. 580.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.