

**CONSUELO MADRIGAL-VAZQUEZ, PETITIONER, VS. JUDGE
CORAZON J. AGRAVA, AS JUDGE OF THE JUVENILE AND DOMESTIC
RELATIONS COURT OF MANILA, AND LUIS VAZQUEZ,
RESPONDENTS.**

G.R. No. L-32219. February 25, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the dismissal of a legal separation case by reason of a notice of dismissal and on the ground that "the suit is between members of the same family and no earnest efforts towards a compromise have been made".

Consuelo Madrigal and Luis Vazquez were married on March 19, 1952. They are childless. On March 23, 1970 Vazquez filed against his wife with the Juvenile and Domestic Relations Court of Manila a complaint for legal separation.

Instead of answering the complaint, Consuelo Madrigal filed a motion to dismiss on the grounds of lack of cause of action and that no earnest efforts towards a compromise had been made by the parties.

The lower court denied the motion because in its opinion no compromise can be made upon a ground for legal separation (Art. 2035 [3] , Civil Code), and, consequently, it would not be necessary or proper to allege that efforts had been made to compromise the case and that such efforts were fruitless.

That order of denial was assailed by Consuelo Madrigal in this petition for certiorari and prohibition.

During the pendency of this case, or on July 10, 1978, Vazquez filed a notice of withdrawal of his complaint for legal separation (p. 207, Rollo).

Counsel for Consuelo Madrigal opposed the withdrawal on the ground that the lower court could not act on it because of the writ of preliminary injunction issued by this Court on July 18, 1970, restraining Judge Agrava and Vazquez from taking any further action or proceeding in the legal separation case, Civil Case No. E-01088 (p. 80, Rollo).

Nevertheless, said counsel admitted that "were it not for said preliminary injunction", Vazquez "could indeed dismiss" his action (p. 210, Rollo).

We hold that that notice of dismissal of complaint rendered this case moot and academic[*] and that it is not necessary to resolve the controversial issue of whether in an action by the husband for legal separation against the wife, it should be alleged that earnest efforts towards a compromise had been made, as supposedly required in article 222 of the Civil Code and section 1(j), Rule 16 of the Rules of Court.

Because of that notice of dismissal, Consuelo Madrigal obtained the relief which she had sought by means of her motion to dismiss.

WHEREFORE, this case is dismissed. The writ of preliminary injunction is hereby dissolved. Pursuant to section 1, Rule 17 of the Rules of Court, the lower court is directed to allow the dismissal of the complaint without prejudice. No costs.

SO ORDERED.

Barredo (Chairman), Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

Abad Santos, J., no part.

[*] Aside from the legal separation case filed in the Manila JDRC, Vazquez sued his wife in Civil Case No. 16933 of the Rizal CFI, Pasig Branch 21, for an accounting of household articles and supplies. The case was dismissed on the ground that the matter falls within the jurisdiction of the Manila JDRC where the legal separation case was pending. This Court did not give due course to the petition for the review of that dismissal order (Minute Res. of March 4, 1974, Vazquez vs. Madrigal-Vazquez, L-38126).

In Civil Case No. 21647 of the Rizal CFI, Pasig Branch 20, Mrs. Vazquez sued her husband for annulment of marriage. The trial court annulled the marriage in a decision dated June 3, 1980, which was appealed to the Court of Appeals, where it is now pending (CA-G. R. No. 67664-R).

In that annulment of marriage case, Vazquez filed a counterclaim for legal separation which was not admitted. This Court dismissed Vazquez's petition for the review of the order disallowing his counterclaim for legal separation (Res. of Jan. 23, 1978, Vazquez vs. Judge Magsino, L-46687).

Vazquez then filed another legal separation case in the Rizal CFI, Pasig Branch 21, Civil Case No. 28552 which is still pending. A certiorari incident stemming from that case is pending in the Court of Appeals, CA-G. R. No. SP-12598.

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