

**ANGELICA LEDESMA, PETITIONER, VS. INTESTATE ESTATE OF
CIPRIANO PEDROSA REPRESENTED BY NELSON JIMENA,
HONORABLE JUDGE BETHEL KATALBAS-MOSCARDON IN HER
CAPACITY AS PRESIDING JUDGE...**

G.R. No. 102126. March 12, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

This is a special civil action for certiorari under Rule 65 assailing an order dated 24 January 1991 issued by herein respondent presiding judge-designate Bethel Katalbas-Moscardon of the Regional Trial Court of Bacolod City, Branch 51 which considered the supplemental action for partition (after annulment of the marriage) as terminated due to the death of one of the spouses (husband) and the pendency of intestate proceedings over his estate.

Petitioner Angelica Ledesma's marriage to Cipriano Pedrosa was declared a nullity by the Regional Trial Court of Negros Occidental, Branch 51 on 8 February 1984 in Civil Case No. 1446. [1] The dispositive portion of the order annulling the marriage also provided thus:

"x x x that the properties acquired by plaintiff Cipriano Pedrosa and defendant Angelica Ledesma at the time they were living together as common-law husband and wife is (sic) owned by them as co-owners to be governed by the provision on co-ownership of the civil code; that the properties acquired by plaintiff and defendant after their marriage was solemnized on March 25, 1965, which was annulled by this Court in the above-entitled proceeding, forms (sic) part of the conjugal partnership and upon dissolution of the marriage, to be liquidated in accordance with the provision of the civil code." [2]

Surprisingly it took some time before the next order implementing the above disposition was issued on 4 May 1989, the pertinent part of which reads:

"x x x. It appearing from the records that the court has to verify and determine the correct inventory of the properties of Cipriano Pedrosa and Angelica Ledesma, the parties, including the receiver, through their respective attorneys, are ordered to submit their respective inventory, if one has not been submitted yet, before June 1, 1989. x x x." [3]

Pending receipt by the court of the ordered inventory, Cipriano Pedrosa died. A separate petition for the probate of his last will and testament was filed. [4] Nelson Jimena was named executor and substituted Pedrosa in the partition proceedings (Civil Case No. 1446).

Due to disagreement of the parties on the characterization of the properties, the court in the partition proceedings ordered (30 March 1990) the submission of comments, objections and manifestations on the project of partition submitted by the parties. During a lull in the proceedings, the presiding judge also passed away. On 24 January 1991 the following now-questioned order was issued by the herein respondent presiding judge-designate who took over:

"It is informed by Atty. Pio Viloso that insofar as the status of this case is concerned, the plaintiff who has long been dead, was substituted by the administrator, now the plaintiff Nelson Jimena, and Atty. Vicente Sabornay, as the receiver. Furthermore, the judgment as to the annulment of the marriage had already been rendered partially by then Presiding Judge Quirino Abad Santos, Jr., on February 8, 1984. What is being litigated here by the parties affects the property division to dissolve the partnership. However, the plaintiff died and an intestate proceeding is now pending before Branch 43 whereby the said Nelson Jimena was actually the appointed administrator, and who was substituted as plaintiff in this case.

With all these informations, and considering the nature of the action, the Court finds the substitution of the original plaintiff improper, as the defendant herein can pursue her claim over the properties before the intestate proceedings being instituted. Action for intervention in order that the judgment in this particular proceeding can be implemented, can be raised in the intestate Court. Likewise, the appointment of the receiver conflicts with that of the judicial administrator considering that with the filing of the intestate case, the properties of the deceased plaintiff are in custodia legis and this Court loses jurisdiction in determining further the distribution of the properties.

In view of the above, without prejudice to the defendant's right to file as intervenor in the intestate proceedings with the judgment annulling the marriage, the proceedings becomes moot and academic with the pendency of the intestate proceeding before Branch 43. This case is therefore deemed TERMINATED." [5]

With the denial of petitioner's motion for reconsideration by the respondent court, this special civil action was initiated.

Petitioner argues that respondent judge reneged in the performance of a lawful duty when she refrained from rendering a decision in the partition case (Civil Case No. 1446) and considered the same closed and terminated, due to the pendency of intestate proceedings over the deceased husband's estate (Sp. Proc. No. 4159).[6] It is likewise erroneous, petitioner contends, to rule that petitioner's remedy is a motion for intervention in said intestate proceedings to implement judgment in the marriage-annulment case, since petitioner has already presented all her evidence in the annulment case to prove which properties acquired during the marriage pertain to her.

The case of *Macadangdang vs. Court of Appeals*,[7] where a similar issue was involved - the husband having died after the legal separation of the spouses had been finally decreed but before the actual liquidation of their community of properties - is on point. The Court therein said:

"WE do not find merit in petitioner's submission that the questioned decision had not become final and executory since the law explicitly and clearly provides for the dissolution and liquidation of the conjugal partnership of gains or the absolute community of property as among the effects of the final decree of legal separation. Article 106 of the Civil Code thus reads:

'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;

x x x x x

The aforequoted provision mandates the dissolution and liquidation of the property regime of the spouses upon finality of the decree of legal separation. Such dissolution and liquidation are necessary consequences of the final decree. This legal effect of the decree of legal separation ipso facto or automatically follows, as an

inevitable incident of, the judgment decreeing legal separation for the purpose of determining the share of each spouses in the conjugal assets.

x x x x x.”

“x x x, the decision of the trial court dated January 4, 1973 decreeing the legal separation between then spouses Antonio Macadangdang and Filomena Gaviana Macadangdang had long become final and executory and the division of the conjugal property in a ‘supplemental decision’ is a mere incident of the decree of legal separation.

Since We have ruled on the finality of the judgment decreeing the spouses’ legal separation as of January 4, 1973, the remaining issue for Our resolution is the final disposition of their conjugal partnership of gains which partnership, by reason of the final decree, had been automatically dissolved. The law (Article 106, 107 of the Civil Code) clearly spells out the effects of a final decree of legal separation on the conjugal property.

The death on November 30, 1979 of herein petitioner who was declared the guilty spouses by the trial court, before the liquidation of the conjugal property is effected, poses a new problem which can be resolved simply by the application of the rules on intestate succession with respect to the properties of the deceased petitioner.

Thus, the rules on dissolution and liquidation of the conjugal partnership of gains under the aforecited provisions of the Civil Code would be applied effective January 4, 1973 when the decree of legal separation became final. Upon the liquidation and distribution conformably with the law governing the effects of the final decree of legal separation, the law on intestate succession should take over in the disposition of whatever remaining properties have been allocated to petitioner. This procedure involves details which properly pertain to the lower court.

The properties that may be allocated to the deceased petitioner by virtue of the liquidation of the conjugal assets, shall be distributed in accordance with the laws of intestate succession in Special Proceedings No. 134.”

The Macadangdang decision involved legal separation but, with equal reason, the doctrine enunciated therein should be applied to a marriage annulment which is the situation at bar. The respondent presiding judge is directed to decide the partition (liquidation) case (Civil Case No. 1446) within thirty (30) days from receipt of notice of this decision to determine which of the properties of the conjugal partnership should be adjudicated to the husband and the wife. This is but a consequence or incident of its decision rendered in the same case annulling the marriage. Petitioner's letters to the Court indicate that she is seventy (70) years of age and the prolonged action for partition (liquidation) has taken a toll on her resources. Justice and equity demand the disposition of her case with dispatch. Any properties that may be adjudicated to the deceased husband Pedrosa can then be distributed in accordance with his last will and testament in the special proceedings involving his estate (Sp. Proc. No. 4159).

ACCORDINGLY, the respondent Judge's order dated 24 January 1991 considering Civil Case No. 1446 closed and terminated for being moot and academic is REVERSED and SET ASIDE. Respondent Judge or whoever may have succeeded her is ordered to decide said action for partition (liquidation) within thirty (30) days from receipt of this decision.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon and Campos, Jr., JJ., concur.

[1] Rollo, p. 40

[2] Annex E of petition, Rollo,. pp. 40-44

[3] Annex F, Rollo, pp. 45-46

[4] Sp. Proc. No. 4159, RTC of Negros Occidental, Branch 43

[5] Annex I, Rollo, pp. 49-50

[6] It would appear that the other case Sp. Proc. No. 4159 is not an intestate but a testate proceeding.

[7] G.R. No. L-38287, October 23, 1981, 108 SCRA 314

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