

**ROBERTO DOMINGO, PETITIONER, VS. COURT OF APPEALS AND
DELIA SOLEDAD AVERA REPRESENTED BY HER ATTORNEY-IN-FACT
MOISES R. AVERA, RESPONDENTS.**

G.R. No. 104818. September 17, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

The instant petition seeks the reversal of respondent court's ruling finding no grave abuse of discretion in the lower court's order denying petitioner's motion to dismiss the petition for declaration of nullity of marriage and separation of property.

On May 29, 1991, private respondent Delia Soledad A. Domingo filed a petition before the Regional Trial Court of Pasig entitled "Declaration of Nullity of Marriage and Separation of Property" against petitioner Roberto Domingo. The petition which was docketed as Special Proceedings No. 1989-J alleged among others that: they were married on November 29, 1976 at the YMCA Youth Center Bldg., as evidenced by a Marriage Contract Registry No. 1277K-76 with Marriage License No. 4999036 issued at Carmona, Cavite; unknown to her, he had a previous marriage with one Emerlina dela Paz on April 25, 1969 which marriage is valid and still existing; she came to know of the prior marriage only sometime in 1983 when Emerlina dela Paz sued them for bigamy; from January 23, 1979 up to the present, she has been working in Saudi Arabia and she used to come to the Philippines only when she would avail of the one-month annual vacation leave granted by her foreign employer; since 1983 up to the present, he has been unemployed and completely dependent upon her for support and subsistence; out of her personal earnings, she purchased real and personal properties with a total amount of approximately P350,000.00, which are under the possession and administration of Roberto; sometime in June 1989, while on her one-month vacation, she discovered that he was cohabiting with another woman; she further discovered that he had been disposing of some of her properties without her knowledge or consent; she confronted him about this and thereafter appointed her brother Moises R. Avera as her attorney-in-fact to take care of her properties; he failed and refused to turn over the possession and administration of said properties to her brother/attorney-in-fact; and he is not authorized to administer and possess the same on account of the nullity of their marriage. The petition prayed that a temporary restraining order or a writ of preliminary injunction be issued enjoining Roberto from exercising any act of administration and ownership over said properties; their marriage be declared null and void and of no force and effect; and Delia Soledad be declared the sole and exclusive owner of all properties acquired at the time of their void marriage and such properties be placed under the proper management and administration of the attorney-in-fact.

Petitioner filed a Motion to Dismiss on the ground that the petition stated no cause of action. The marriage being void ab initio, the petition for the declaration of its nullity is, therefore, superfluous and unnecessary. It added that private respondent has no property which is in his possession.

On August 20, 1991, Judge Maria Alicia M. Austria issued an Order denying the motion to dismiss for lack of

merit. She explained:

"Movant argues that a second marriage contracted after a first marriage by a man with another woman is illegal and void (citing the case of *Yap v. Court of Appeals*, 145 SCRA 229) and no judicial decree is necessary to establish the invalidity of a void marriage (citing the cases of *People v. Aragon*, 100 Phil. 1033; *People v. Mendoza*, 95 Phil. 845). Indeed, under the *Yap* case there is no dispute that the second marriage contracted by respondent with herein petitioner after a first marriage with another woman is illegal and void. However, as to whether or not the second marriage should first be judicially declared a nullity is not an issue in said case. In the case of *Vda. de Consuegra v. GSIS*, the Supreme Court ruled in explicit terms, thus:

And with respect to the right of the second wife, this Court observed that although the second marriage can be presumed to be void ab initio as it was celebrated while the first marriage was still subsisting, still there is need for judicial declaration of its nullity. (37 SCRA 316, 326)

The above ruling which is of later vintage deviated from the previous rulings of the Supreme Court in the aforecited cases of *Aragon* and *Mendoza*.

Finally, the contention of respondent movant that petitioner has no property in his possession is an issue that may be determined only after trial on the merits."^[1]

A motion for reconsideration was filed stressing the erroneous application of *Vda. de Consuegra v. GSIS*^[2] and the absence of justiciable controversy as to the nullity of the marriage. On September 11, 1991, Judge Austria denied the motion for reconsideration and gave petitioner fifteen (15) days from receipt within which to file his answer.

Instead of filing the required answer, petitioner filed a special civil action of certiorari and mandamus on the ground that the lower court acted with grave abuse of discretion amounting to lack of jurisdiction in denying the motion to dismiss.

On February 7, 1992, the Court of Appeals^[3] dismissed the petition. It explained that the case of *Yap v. CA*^[4] cited by petitioner and that of *Consuegra v. GSIS* relied upon by the lower court do not have relevance in the case at bar, there being no identity of facts because these cases dealt with the successional rights of the second wife while the instant case prays for separation of property corollary with the declaration of nullity of marriage. It observed that the separation and subsequent distribution of the properties acquired during the union can be had only upon proper determination of the status of the marital relationship between said parties, whether or not the validity of the first marriage is denied by petitioner. Furthermore, in order to avoid duplication and multiplicity of suits, the declaration of nullity of marriage may be invoked in this proceeding together with the partition and distribution of the properties involved. Citing Articles 48, 50 and 52 of the Family Code, it held that private respondent's prayer for declaration of absolute nullity of their marriage may be raised together with other incidents of their marriage such as the separation of their properties. Lastly, it noted that since the Court has jurisdiction, the alleged error in refusing to grant the motion to dismiss is merely one of law for which the remedy ordinarily would have been to file an answer, proceed with the trial and in case of an adverse decision, reiterate the issue on appeal. The motion for reconsideration was subsequently denied for lack of merit.^[5]

Hence, this petition.

The two basic issues confronting the Court in the instant case are the following.

First, whether or not a petition for judicial declaration of a void marriage is necessary. If in the affirmative, whether the same should be filed only for purposes of remarriage.

Second, whether or not SP No. 1989-J is the proper remedy of private respondent to recover certain real and

personal properties allegedly belonging to her exclusively.

Petitioner, invoking the ruling in *People v. Aragon*[6] and *People v. Mendoza*,[7] contends that SP. No. 1989-J for Declaration of Nullity of Marriage and Separation of Property filed by private respondent must be dismissed for being unnecessary and superfluous. Furthermore, under his own interpretation of Article 40 of the Family Code, he submits that a petition for declaration of absolute nullity of marriage is required only for purposes of remarriage. Since the petition in SP No. 1989-J contains no allegation of private respondent's intention to remarry, said petition should, therefore, be dismissed.

On the other hand, private respondent insists on the necessity of a judicial declaration of the nullity of their marriage, not for purposes of remarriage, but in order to provide a basis for the separation and distribution of the properties acquired during coverture.

There is no question that the marriage of petitioner and private respondent celebrated while the former's previous marriage with one Emerlina de la Paz was still subsisting, is bigamous. As such, it is void from the beginning.[8] Petitioner himself does not dispute the absolute nullity of their marriage.[9]

The cases of *People v. Aragon* and *People v. Mendoza* relied upon by petitioner are cases where the Court had earlier ruled that no judicial decree is necessary to establish the invalidity of a void, bigamous marriage. It is noteworthy to observe that Justice Alex Reyes, however, dissented on these occasions stating that:

"Though the logician may say that where the former marriage was void there would be nothing to dissolve, still it is not for the spouses to judge whether that marriage was void or not. That judgment is reserved to the courts. x x x"[10]

This dissenting opinion was adopted as the majority position in subsequent cases involving the same issue. Thus, in *Gomez v. Lipana*,[11] the Court abandoned its earlier ruling in the *Aragon* and *Mendoza* cases. In reversing the lower court's order forfeiting the husband's share of the disputed property acquired during the second marriage, the Court stated 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."

Citing *Gomez v. Lipana*, the Court subsequently held in *Vda. de Consuegra v. Government Service Insurance System*, that "although the second marriage can be presumed to be void ab initio as it was celebrated while the first marriage was still subsisting, still there is need for judicial declaration of such nullity."

In *Tolentino v. Paras*,[12] however, the Court turned around and applied the *Aragon* and *Mendoza* ruling once again. In granting the prayer of the first wife asking for a declaration as the lawful surviving spouse and the correction of the death certificate of her deceased husband, it explained that "(t)he second marriage that he contracted with private respondent during the lifetime of his first spouse is null and void from the beginning and of no force and effect. No judicial decree is necessary to establish the invalidity of a void marriage."

However, in the more recent case of *Wiegel v. Sempio-Diy*[13] the Court reverted to the *Consuegra* case and held that there was "no need of introducing evidence about the existing prior marriage of her first husband at the time they married each other, for then such a marriage though void still needs according to this Court a judicial declaration of such fact and for all legal intents and purposes she would still be regarded as a married woman at the time she contracted her marriage with respondent Karl Heinz Wiegel."

Came the Family Code which settled once and for all the conflicting jurisprudence on the matter. A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense.[14] Where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law for said projected marriage to be free from legal infirmity is a final

judgment declaring the previous marriage void.[15]

The Family Law Revision Committee and the Civil Code Revision Committee[16] which drafted what is now the Family Code of the Philippines took the position that parties to a marriage should not be allowed to assume that their marriage is void even if such be the fact but must first secure a judicial declaration of the nullity of their marriage before they can be allowed to marry again. This is borne out by the following minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees where the present Article 40, then Art. 39, was discussed.

"B. Article 39. -

The absolute nullity of a marriage may be invoked only on the basis of a final judgment declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that the above provision should include not only void but also voidable marriages. He then suggested that the above provision be modified as follows:

The validity of a marriage may be invoked only ...

Justice Reyes (J.B.L. Reyes), however, proposed that they say:

The validity or invalidity of a marriage may be invoked only ...

On the other hand, Justice Puno suggested that they say:

The invalidity of a marriage may be invoked only ...

Justice Caguioa explained that his idea is that one cannot determine for himself whether or not his marriage is valid and that a court action is needed. Justice Puno accordingly proposed that the provision be modified to read:

The invalidity of a marriage may be invoked only on the basis of a final judgment annulling the marriage or declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that in annulment, there is no question. Justice Puno, however, pointed out that, even if it is a judgment of annulment, they still have to produce the judgment.

Justice Caguioa suggested that they say:

The invalidity of a marriage may be invoked only on the basis of a final judgment declaring the marriage invalid, except as provided in Article 41.

Justice Puno raised the question: When a marriage is declared invalid, does it include the annulment of a marriage and the declaration that the marriage is void? Justice Caguioa replied in the affirmative. Dean Gupit added that in some judgments, even if the marriage is annulled, it is declared void. Justice Puno suggested that this matter be made clear in the provision.

Prof. Baviera remarked that the original idea in the provision is to require first a judicial declaration of a void marriage and not annulable marriages, with which the other members concurred. Judge Diy added that annulable marriages are presumed valid until a direct action is filed to annul it, which the other members affirmed. Justice Puno remarked that if this is so, then the phrase 'absolute nullity' can stand since it might result in confusion if they change the phrase to 'invalidity' if what they are referring to in the provision is the declaration that the marriage is void.

Prof. Bautista commented that they will be doing away with collateral defense as well as collateral attack. Justice Caguioa explained that the idea in the provision is that there should be a final judgment declaring the marriage void and a party should not declare for himself whether or not the marriage is void, which the other

members affirmed. Justice Caguioa added that they are, therefore, trying to avoid a collateral attack on that point. Prof. Bautista stated that there are actions which are brought on the assumption that the marriage is valid. He then asked: Are they depriving one of the right to raise the defense that he has no liability because the basis of the liability is void? Prof. Bautista added that they cannot say that there will be no judgment on the validity or invalidity of the marriage because it will be taken up in the same proceeding. It will not be a unilateral declaration that it is a void marriage. Justice Caguioa saw the point of Prof. Bautista and suggested that they limit the provision to remarriage. He then proposed that Article 39 be reworded as follows:

The absolute nullity of a marriage for purposes of remarriage may be invoked only on the basis of final judgment ...

Justice Puno suggested that the above be modified as follows:

The absolute nullity of a previous marriage may be invoked for purposes of establishing the validity of a subsequent marriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41.

Justice Puno later modified the above as follows:

For the purpose of establishing the validity of a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa commented that the above provision is too broad and will not solve the objection of Prof. Bautista. He proposed that they say:

For the purpose of entering into a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.

Justice Caguioa explained that the idea in the above provision is that if one enters into a subsequent marriage without obtaining a final judgment declaring the nullity of a previous marriage, said subsequent marriage is void ab initio.

After further deliberation, Justice Puno suggested that they go back to the original wording of the provision as follows:

The absolute nullity of a previous marriage may be invoked for purposes of remarriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41."^[17]

In fact, the requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy.^[18]

Just over a year ago, the Court made the pronouncement that there is a necessity for a judicial declaration of absolute nullity of a prior subsisting marriage before contracting another in the recent case of *Terre v. Terre*.^[19] The Court, in turning down the defense of respondent *Terre* who was charged with grossly immoral conduct consisting of contracting a second marriage and living with another woman other than complainant while his prior marriage with the latter remained subsisting, said that "for purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void ab initio is essential."

As regards the necessity for a judicial declaration of absolute nullity of marriage, petitioner submits that the same can be maintained only if it is for the purpose of remarriage. Failure to allege this purpose, according to petitioner's theory, will warrant dismissal of the same.

Article 40 of the Family Code provides:

"ART. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void." (n)

Crucial to the proper interpretation of Article 40 is the position in the provision of the word "solely." As it is placed, the same shows that it is meant to qualify "final judgment declaring such previous marriage void." Realizing the need for careful craftsmanship in conveying the precise intent of the Committee members, the provision in question, as it finally emerged, did not state "The absolute nullity of a previous marriage may be invoked solely for purposes of remarriage..." in which case "solely" would clearly qualify the phrase "for purposes of remarriage." Had the phraseology been such, the interpretation of petitioner would have been correct and, that is, that the absolute nullity of a previous marriage may be invoked solely for purposes of remarriage, thus rendering irrelevant the clause "on the basis solely of a final judgment declaring such previous marriage void."

That Article 40 as finally formulated included the significant clause denotes that such final judgment declaring the previous marriage void need not be obtained only for purposes of remarriage. Undoubtedly, one can conceive of other instances where a party might well invoke the absolute nullity of a previous marriage for purposes other than remarriage, such as in case of an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, as well as an action for the custody and support of their common children and the delivery of the latters' presumptive legitimes. In such cases, evidence needs must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void. Hence, in the instance where a party who has previously contracted a marriage which remains subsisting desires to enter into another marriage which is legally unassailable, he is required by law to prove that the previous one was an absolute nullity. But this he may do on the basis solely of a final judgment declaring such previous marriage void.

This leads us to the question: Why the distinction? In other words, for purposes of remarriage, why should the only legally acceptable basis for declaring a previous marriage an absolute nullity be a final judgment declaring such previous marriage void? Whereas, for purposes other than remarriage, other evidence is acceptable?

Marriage, a sacrosanct institution, declared by the Constitution as an "inviolable social institution, is the foundation of the family;" as such, it "shall be protected by the State." [20] In more explicit terms, the Family Code characterizes it as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life." [21] So crucial are marriage and the family to the stability and peace of the nation that their "nature, consequences, and incidents are governed by law and not subject to stipulation..." [22] As a matter of policy, therefore, the nullification of a marriage for the purpose of contracting another cannot be accomplished merely on the basis of the perception of both parties or of one that their union is so defective with respect to the essential requisites of a contract of marriage as to render it void ipso jure and with no legal effect - and nothing more. Were this so, this inviolable social institution would be reduced to a mockery and would rest on very shaky foundations indeed. And the grounds for nullifying marriage would be as diverse and far-ranging as human ingenuity and fancy could conceive. For such a socially significant institution, an official state pronouncement through the courts, and nothing less, will satisfy the exacting norms of society. Not only would such an open and public declaration by the courts definitively confirm the nullity of the contract of marriage, but the same would be easily verifiable through records accessible to everyone.

That the law seeks to ensure that a prior marriage is no impediment to a second sought to be contracted by one of the parties may be gleaned from new information required in the Family Code to be included in the application for a marriage license, viz, "If previously married, how, when and where the previous marriage was dissolved and

annulled."[23]

Reverting to the case before us, petitioner's interpretation of Art. 40 of the Family Code is, undoubtedly, quite restrictive. Thus, his position that private respondent's failure to state in the petition that the same is filed to enable her to remarry will result in the dismissal of SP No. 1989-J is untenable. His misconstruction of Art. 40 resulting from the misplaced emphasis on the term "solely" was in fact anticipated by the members of the Committee.

"Dean Gupit commented that the word "only" may be misconstrued to refer to "for purposes of remarriage." Judge Diy stated that "only" refers to "final judgment." Justice Puno suggested that they say "on the basis only of a final judgment." Prof. Baviera suggested that they use the legal term "solely" instead of "only," which the Committee approved."[24] (Underscoring supplied)

Pursuing his previous argument that the declaration for absolute nullity of marriage is unnecessary, petitioner suggests that private respondent should have filed an ordinary civil action for the recovery of the properties alleged to have been acquired during their union. In such an eventuality, the lower court would not be acting as a mere special court but would be clothed with jurisdiction to rule on the issues of possession and ownership. In addition, he pointed out that there is actually nothing to separate or partition as the petition admits that all the properties were acquired with private respondent's money.

The Court of Appeals disregarded this argument and concluded that "the prayer for declaration of absolute nullity of marriage may be raised together with the other incident of their marriage such as the separation of their properties."

When a marriage is declared void ab initio, the law states that the final judgment therein shall provide for "the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings."[25] Other specific effects flowing therefrom, in proper cases, are the following:

"Art. 43. x x x x x x x x

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or, in default of children, the innocent spouse;

(3) Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;

(4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

(5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession. (n)

Art. 44. If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void ab initio and all donations by reason of marriage and testamentary disposition made by one in favor of the other are revoked by operation of law. (n)"[26]

Based on the foregoing provisions, private respondent's ultimate prayer for separation of property will simply be one of the necessary consequences of the judicial declaration of absolute nullity of their marriage. Thus, petitioner's suggestion that in order for their properties to be separated, an ordinary civil action has to be instituted for that purpose is baseless. The Family Code has clearly provided the effects of the declaration of nullity of

marriage, one of which is the separation of property according to the regime of property relations governing them. It stands to reason that the lower court before whom the issue of nullity of a first marriage is brought is likewise clothed with jurisdiction to decide the incidental questions regarding the couple's properties. Accordingly, the respondent court committed no reversible error in finding that the lower court committed no grave abuse of discretion in denying petitioner's motion to dismiss SP No. 1989-J.

WHEREFORE, the instant petition is hereby DENIED. The decision of respondent Court dated February 7, 1992 and the Resolution dated March 20, 1992 are AFFIRMED.

SO ORDERED.

Bidin and Melo, JJ., concur.

Vitug, J., see concurring opinion.

Feliciano, J., (Chairman), on official leave.

[1] Annex "C," Rollo, pp. 28-29.

[2] L-28093, January 30, 1971, 37 SCRA 315.

[3] Annex "J," Rollo, pp. 62-67, Justice Jorge S. Imperial, ponente and Justices Luis A. Javellana and Serafin V.C. Guingona, concurring.

[4] L-40003, October 28, 1986, 145 SCRA 229.

[5] Annex "M," Rollo, p. 80.

[6] 100 Phil. 1033 (1957).

[7] 95 Phil. 845 (1954).

[8] CIVIL CODE, art. 80, par. 4; FAMILY CODE, arts. 35, par. 4 and 41.

[9] Rollo, pp. 102 and 106.

[10] See: Note 6 at p. 1036; Note 7 at p. 848.

[11] L-23214, June 30, 1970, 33 SCRA 615, 620-621.

[12] L-43905, May 30, 1983, 122 SCRA 525.

[13] G.R. No. 53703, August 19, 1986, 143 SCRA 499.

[14] FAMILY CODE, art. 39.

[15] Id., art. 40. See also: arts. 11, 13, 42, 44, 48, 50, 52, 54, 86, 99, 147, 148.

[16] The Family Law Revision Committee of the Integrated Bar of the Philippines (IBP) prepared the draft of the revision of Book I of the Civil Code of the Philippines. After more than four years, the draft was turned over to the Civil Code Revision Committee of the UP Law Center which reviewed and revised the same for more than three years.

[17] August 23, 1986, pp. 4-7.

[18] J. A.V. SEMPIO-DIY, HANDBOOK OF THE FAMILY CODE OF THE PHILIPPINES, 46 (1988).

[19] Adm. Case No. 2349, July 3, 1992, 211 SCRA 6, 11.

[20] CONST., art. XV, sec. 2.

[21] FAMILY CODE, art. 1.

[22] id.

[23] id., art. 11.

[24] See: Note 17, at p. 7.

[25] Art. 50 (2).

[26] In relation to Art. 50 (1) - The effects provided for in paragraphs (2), (3), (4) and (5) of Article 43 and in Article 44 shall also apply in proper cases to marriages which are declared void ab initio or annulled by final judgment under Articles 40 and 45.

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CONCURRING OPINION

VITUG, J.:

I concur with the opinion so well expressed by Mme. Justice Flerida Ruth P. Romero. I should like, however, to put in a modest observation.

Void marriages are inexistent from the very beginning and, I believe, no judicial decree is required to establish their nullity, except in the following instances:

(a) For purposes of remarriage pursuant to the provision of Article 40 of the Family Code; viz:

The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. (n)

(b) A marriage celebrated prior to the effectivity of the Family Code in case a party thereto was psychologically incapacitated to comply with the essential marital obligations of marriage (Article 36, Family Code), where an action or defense for the declaration of nullity prescribes ten (10) years after the Family Code took effect (Article 39, Family Code); otherwise, the marriage is deemed unaffected by the Family Code.

A void marriage, even without its being judicially declared a nullity, albeit the preferability for, and justiciability (fully discussed in the majority opinion) of, such a declaration, will not give it the status or the consequences of a valid marriage, saving only specific instances where certain effects of a valid marriage can still flow from the void marriage. Examples of these cases are children of void marriages under Article 36 (due to psychological incapacity) and Article 53, in relation to Article 52 (due to failure of partition, delivery of presumptive legitimes of children and recording thereof following the annulment or declaration of nullity of a prior marriage), conceived or born before the judicial declaration of nullity of such void marriages, who the law deems as legitimate (Article 54, Family Code).

In most, if not in all, other cases, a void marriage is to be considered extant per se. Neither the conjugal partnership of gain under the old regime nor the absolute community of property under the new Code (absent a marriage settlement), will apply; instead, their property relations shall be governed by the co-ownership rules

under either Article 147 or Article 148 of the Family Code. I must hasten to add as a personal view, however, that the exceptional effects on children of a void marriage because of the psychological incapacity of a party thereto should have been extended to cover even the personal and property relations of the spouses. Unlike the other cases of void marriages where the grounds therefor may be established by hard facts and with little uncertainty, the term "psychological incapacity" is so relative and unsettling that until a judicial declaration of nullity is made its interim effects can long and literally hang on the balance not only insofar as the spouses themselves are concerned but also as regards third persons with whom the spouses deal.

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