

ENGRACE NIÑAL FOR HERSELF AND AS GUARDIAN AD LITEM OF THE MINORS BABYLINE NIÑAL, INGRID NIÑAL, ARCHIE NIÑAL & PEPITO NIÑAL, JR., PETITIONERS, VS. NORMA BAYADOG, RESPONDENT.*G.R. No. 133778. March 14, 2000*

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133778/>**YNARES-SANTIAGO, J.:**

May the heirs of a deceased person file a petition for the declaration of nullity of his marriage after his death?

Pepito Niñal was married to Teodulfa Bellones on September 26, 1974. Out of their marriage were born herein petitioners. Teodulfa was shot by Pepito resulting in her death on April 24, 1985. One year and 8 months thereafter or on December 11, 1986, Pepito and respondent Norma Badayog got married without any marriage license. In lieu thereof, Pepito and Norma executed an affidavit dated December 11, 1986 stating that they had lived together as husband and wife for at least five years and were thus exempt from securing a marriage license. On February 19, 1997, Pepito died in a car accident. After their father's death, petitioners filed a petition for declaration of nullity of the marriage of Pepito to Norma alleging that the said marriage was void for lack of a marriage license. The case was filed under the assumption that the validity or invalidity of the second marriage would affect petitioner's successional rights. Norma filed a motion to dismiss on the ground that petitioners have no cause of action since they are not among the persons who could file an action for "annulment of marriage" under Article 47 of the Family Code.

Judge Ferdinand J. Marcos of the Regional Trial Court of Toledo City, Cebu, Branch 59, dismissed the petition after finding that the Family Code is "rather silent, obscure, insufficient" to resolve the following issues:

- (1) Whether or not plaintiffs have a cause of action against defendant in asking for the declaration of the nullity of marriage of their deceased father, Pepito G. Niñal, with her specially so when at the time of the filing of this instant suit, their father Pepito G. Niñal is already dead;
- (2) Whether or not the second marriage of plaintiffs' deceased father with defendant is null and void ab initio;
- (3) Whether or not plaintiffs are estopped from assailing the validity of the second marriage after it was dissolved due to their father's death.[1]

Thus, the lower court ruled that petitioners should have filed the action to declare null and void their father's marriage to respondent before his death, applying by analogy Article 47 of the Family Code which enumerates the time and the persons who could initiate an action for annulment of marriage.[2] Hence, this petition for review with this Court grounded on a pure question of law.

This petition was originally dismissed for non-compliance with Section 11, Rule 13 of the 1997 Rules of Civil Procedure, and because "the verification failed to state the basis of petitioner's averment that the allegations in the petition are `true and correct'." It was thus treated as an unsigned pleading which produces no legal effect under

Section 3, Rule 7, of the 1997 Rules.[3] However, upon motion of petitioners, this Court reconsidered the dismissal and reinstated the petition for review.[4]

The two marriages involved herein having been solemnized prior to the effectivity of the Family Code (FC), the applicable law to determine their validity is the Civil Code which was the law in effect at the time of their celebration.[5] A valid marriage license is a requisite of marriage under Article 53 of the Civil Code,[6] the absence of which renders the marriage void ab initio pursuant to Article 80(3)[7] in relation to Article 58.[8] The requirement and issuance of marriage license is the State's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested.[9] This interest proceeds from the constitutional mandate that the State recognizes the sanctity of family life and of affording protection to the family as a basic "autonomous social institution." [10] Specifically, the Constitution considers marriage as an "inviolable social institution," and is the foundation of family life which shall be protected by the State.[11] This is why the Family Code considers marriage as "a special contract of permanent union" [12] and case law considers it "not just an adventure but a lifetime commitment." [13]

However, there are several instances recognized by the Civil Code wherein a marriage license is dispensed with, one of which is that provided in Article 76,[14] referring to the marriage of a man and a woman who have lived together and exclusively with each other as husband and wife for a continuous and unbroken period of at least five years before the marriage. The rationale why no license is required in such case is to avoid exposing the parties to humiliation, shame and embarrassment concomitant with the scandalous cohabitation of persons outside a valid marriage due to the publication of every applicant's name for a marriage license. The publicity attending the marriage license may discourage such persons from legitimizing their status.[15] To preserve peace in the family, avoid the peeping and suspicious eye of public exposure and contain the source of gossip arising from the publication of their names, the law deemed it wise to preserve their privacy and exempt them from that requirement.

There is no dispute that the marriage of petitioners' father to respondent Norma was celebrated without any marriage license. In lieu thereof, they executed an affidavit stating that "they have attained the age of majority, and, being unmarried, have lived together as husband and wife for at least five years, and that we now desire to marry each other." [16] The only issue that needs to be resolved pertains to what nature of cohabitation is contemplated under Article 76 of the Civil Code to warrant the counting of the five year period in order to exempt the future spouses from securing a marriage license. Should it be a cohabitation wherein both parties are capacitated to marry each other during the entire five-year continuous period or should it be a cohabitation wherein both parties have lived together and exclusively with each other as husband and wife during the entire five-year continuous period regardless of whether there is a legal impediment to their being lawfully married, which impediment may have either disappeared or intervened sometime during the cohabitation period?

Working on the assumption that Pepito and Norma have lived together as husband and wife for five years without the benefit of marriage, that five-year period should be computed on the basis of a cohabitation as "husband and wife" where the only missing factor is the special contract of marriage to validate the union. In other words, the five-year common-law cohabitation period, which is counted back from the date of celebration of marriage, should be a period of legal union had it not been for the absence of the marriage. This 5-year period should be the years immediately before the day of the marriage and it should be a period of cohabitation characterized by exclusivity - meaning no third party was involved at any time within the 5 years and continuity - that is unbroken. Otherwise, if that continuous 5-year cohabitation is computed without any distinction as to whether the parties were capacitated to marry each other during the entire five years, then the law would be sanctioning immorality and encouraging parties to have common law relationships and placing them on the same footing with those who

lived faithfully with their spouse. Marriage being a special relationship must be respected as such and its requirements must be strictly observed. The presumption that a man and a woman deporting themselves as husband and wife is based on the approximation of the requirements of the law. The parties should not be afforded any excuse to not comply with every single requirement and later use the same missing element as a pre-conceived escape ground to nullify their marriage. There should be no exemption from securing a marriage license unless the circumstances clearly fall within the ambit of the exception. It should be noted that a license is required in order to notify the public that two persons are about to be united in matrimony and that anyone who is aware or has knowledge of any impediment to the union of the two shall make it known to the local civil registrar.[17] The Civil Code provides:

Article 63: "x x x. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. x x x."

Article 64: "Upon being advised of any alleged impediment to the marriage, the local civil registrar shall forthwith make an investigation, examining persons under oath. x x x"

This is reiterated in the Family Code thus:

Article 17 provides in part: "x x x. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. x x x."

Article 18 reads in part: "x x x. In case of any impediment known to the local civil registrar or brought to his attention, he shall note down the particulars thereof and his findings thereon in the application for a marriage license. x x x."

This is the same reason why our civil laws, past or present, absolutely prohibited the concurrence of multiple marriages by the same person during the same period. Thus, any marriage subsequently contracted during the lifetime of the first spouse shall be illegal and void,[18] subject only to the exception in cases of absence or where the prior marriage was dissolved or annulled. The Revised Penal Code complements the civil law in that the contracting of two or more marriages and the having of extramarital affairs are considered felonies, i.e., bigamy and concubinage and adultery.[19] The law sanctions monogamy.

In this case, at the time of Pepito and respondent's marriage, it cannot be said that they have lived with each other as husband and wife for at least five years prior to their wedding day. From the time Pepito's first marriage was dissolved to the time of his marriage with respondent, only about twenty months had elapsed. Even assuming that Pepito and his first wife had separated in fact, and thereafter both Pepito and respondent had started living with each other that has already lasted for five years, the fact remains that their five-year period cohabitation was not the cohabitation contemplated by law. It should be in the nature of a perfect union that is valid under the law but rendered imperfect only by the absence of the marriage contract. Pepito had a subsisting marriage at the time when he started cohabiting with respondent. It is immaterial that when they lived with each other, Pepito had already been separated in fact from his lawful spouse. The subsistence of the marriage even where there was actual severance of the filial companionship between the spouses cannot make any cohabitation by either spouse with any third party as being one as "husband and wife".

Having determined that the second marriage involved in this case is not covered by the exception to the requirement of a marriage license, it is void ab initio because of the absence of such element.

The next issue to be resolved is: do petitioners have the personality to file a petition to declare their father's marriage void after his death?

Contrary to respondent judge's ruling, Article 47 of the Family Code[20] cannot be applied even by analogy to

petitions for declaration of nullity of marriage. The second ground for annulment of marriage relied upon by the trial court, which allows "the sane spouse" to file an annulment suit "at any time before the death of either party" is inapplicable. Article 47 pertains to the grounds, periods and persons who can file an annulment suit, not a suit for declaration of nullity of marriage. The Code is silent as to who can file a petition to declare the nullity of a marriage. Voidable and void marriages are not identical. A marriage that is annulable is valid until otherwise declared by the court; whereas a marriage that is void ab initio is considered as having never to have taken place^[21] and cannot be the source of rights. The first can be generally ratified or confirmed by free cohabitation or prescription while the other can never be ratified. A voidable marriage cannot be assailed collaterally except in a direct proceeding while a void marriage can be attacked collaterally. Consequently, void marriages can be questioned even after the death of either party but voidable marriages can be assailed only during the lifetime of the parties and not after death of either, in which case the parties and their offspring will be left as if the marriage had been perfectly valid.^[22] That is why the action or defense for nullity is imprescriptible, unlike voidable marriages where the action prescribes. Only the parties to a voidable marriage can assail it but any proper interested party may attack a void marriage. Void marriages have no legal effects except those declared by law concerning the properties of the alleged spouses, regarding co-ownership or ownership through actual joint contribution,^[23] and its effect on the children born to such void marriages as provided in Article 50 in relation to Article 43 and 44 as well as Article 51, 53 and 54 of the Family Code. On the contrary, the property regime governing voidable marriages is generally conjugal partnership and the children conceived before its annulment are legitimate.

Contrary to the trial court's ruling, the death of petitioner's father extinguished the alleged marital bond between him and respondent. The conclusion is erroneous and proceeds from a wrong premise that there was a marriage bond that was dissolved between the two. It should be noted that their marriage was void hence it is deemed as if it never existed at all and the death of either extinguished nothing.

Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage.^[24] "A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction."^[25] "Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts." It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good ab initio.^[26] But Article 40 of the Family Code expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage^[27] and such absolute nullity can be based only on a final judgment to that effect.^[28] For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible.^[29] Corollarily, if the death of either party would extinguish the cause of action or the ground for defense, then the same cannot be considered imprescriptible.

However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass

upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connotes that such final judgment need not be obtained only for purpose of remarriage.

WHEREFORE, the petition is GRANTED. The assailed Order of the Regional Trial Court, Toledo City, Cebu, Branch 59, dismissing Civil Case No. T-639, is REVERSED and SET ASIDE. The said case is ordered REINSTATED.

SO ORDERED.

Davide, Jr., (Chairman), Puno, and Kapunan, JJ., concur.

Pardo, J., on official business abroad.

[1] The dispositive portion of the Order dated March 27, 1998 issued by Judge Ferdinand J. Marcos of Regional Trial Court (RTC) - Branch 59, Toledo City, reads: "WHEREFORE, premises considered, defendant's motion to dismiss is hereby granted and this instant case is hereby ordered dismissed without costs." (p. 6; Rollo, p. 21).

[2] Order, p. 4; Rollo, p. 19.

[3] Minute Resolution dated July 13, 1998; Rollo, p. 39.

[4] Minute Resolution dated October 7, 1998; Rollo, p. 50.

[5] Tamano v. Ortiz, 291 SCRA 584 (1998).

[6] Now Article 3, Family Code. Art. 53. No marriage shall be solemnized unless all the requisites are complied with:

- (1) Legal capacity of the contracting parties; their consent, freely given;
- (2) Authority of the person performing the marriage; and
- (3) A marriage license, except in a marriage of exceptional character.

[7] Now Article 4, Family Code. Art. 80. The following marriages shall be void from the beginning:

x x x x x x x x

- (3) Those solemnized without a marriage license, save marriages of exceptional character.

x x x x x x x x

[8] Art. 58. Save marriages of an exceptional character authorized in Chapter 2 of this Title, but not those under article 75, no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides.

[9] Perido v. Perido, 63 SCRA 97 (1975).

[10] Section 12, Article II, 1987 Constitution; Hernandez v. CA, G. R. No. 126010, December 8, 1999; See also Tuason v. CA, 256 SCRA 158 (1996).

[11] Section 2, Article XV (The Family), 1987 Constitution.

[12] Article 1, Family Code provides: "Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal or family life. x x x.

[13] Santos v. CA, 58 SCAD 17 (1995); 310 Phil. 21, 41 (1995).

[14] Now Article 34, Family Code. Art. 76. No marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being unmarried, have lived together as husband and wife for at least five years, desire to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The official, priest or minister who solemnized the marriage shall also state in an affidavit that he took steps to ascertain the ages and other qualifications of the contracting parties and that he found no legal impediment to the marriage.

[15] Report of the Code Commission, p. 80.

[16] Rollo, p. 29.

[17] Articles 63 and 64, Civil Code; Article 17 and 18, Family Code.

[18] Article 83, Civil Code provides "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:

(1) the first marriage was annulled or dissolved; or

(2) the first spouse had been absent for seven consecutive years...."

Article 41 of the Family Code reads: "A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years..."

[19] Arts. 333 and 334, Revised Penal Code.

[20] Art. 47. The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:

(1) For causes mentioned in number 1 of Article 45 by the party whose parent or guardian did not give his or her consent, within five years after attaining the age of twenty-one; or by the parent or guardian or person having legal charge of the minor, at any time before such party has reached the age of twenty-one;

(2) For causes mentioned in number 2 of Article 45, by the sane spouse, who had no knowledge of the other's insanity; or by any relative or guardian or person having legal charge of the insane, at any time before the death of either party, or by the insane spouse during a lucid interval or after regaining sanity;

(3) For causes mentioned in number 3 of Article 45, by the injured party, within five years after the discovery of the fraud;

(4) For causes mentioned in number 4 of Article 45, by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;

For causes mentioned in numbers 5 and 6 of Article 45, by the injured party, within five years after the marriage.

[21] Suntay v. Cojuanco-Suntay, 300 SCRA 760 (1998); People v. Retirement Board, 272 Ill. App. 59 cited in I Tolentino, Civil Code, 1990 ed. p. 271.

[22] In re Conza's Estate, 176 Ill. 192; Miller v. Miller, 175 Cal. 797, 167 Pac. 394 cited in I Tolentino, Civil

Code, 1990 ed., p. 271.

[23] Article 148-149, Family Code; Article 144, Civil Code.

[24] *Odayat v. Amante*, 77 SCRA 338 (1977); *Weigel v. Sempio-Dy*, 143 SCRA 499 (1986); *People v. Mendoza*, 95 Phil. 845 (1954); 50 O.G. (10) 4767 cited in *People v. Aragon*, 100 Phil. 1033 (1957); 53 O.G. 3749.

[25] 35 Am. Jur. 219-220.

[26] 18 RCL 446-7; 35 Am Jur. 221.

[27] *Apiag v. Cantero*, 335 Phil. 511 (1997); 268 SCRA 47 (1997); *Atienza v. Judge Brillantes, Jr.*, 60 SCAD 119; 312 Phil. 939 (1995).

[28] *Domingo v. CA*, 226 SCRA 572 (1993).

[29] Article 39, Family Code as amended by E.O. 209 and 227 s. 1987 and further amended by R.A. No. 8533 dated February 23, 1998.

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.