

CONSUELO VELAYO, PETITIONER, VS. COURT OF APPEALS AND RODOLFO VELAYO, RESPONDENTS.

G.R. No. 14541. March 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is a petition for review of the resolution of the Court of Appeals dismissing the suit for support and partition of conjugal property which petitioner Consuelo Velayo filed against her husband, respondent Rodolfo Velayo.

The case originated in the Court of First Instance of Manila, which, after trial, found grounds for granting the petition for partition and pursuant to the manifestation of the parties, granted them a period of ten days within which to submit to it for approval an agreement under which separation of property would be adjudged. The parties having submitted the required agreement, the court promulgated its decision on May 30, 1953, approving the agreement and ordering the parties to comply with the terms thereof. Upon motion of petitioner, a writ of execution was issued against respondent for the sums due from him as support for petitioner and their children and as her share of the conjugal properties. Because execution could not be satisfied, petitioner moved that respondent be ordered to appear in court so he could be examined under the provisions of Section 34, Rule 39 of the Rules of Court. The court ordered respondent to appear in court on August 29, 1953 so he may be examined respecting his properties and income, but this order could not be served on respondent because his counsel had withdrawn his appearance, and respondent had failed to inform the court of his address. Petitioner filed on March 9, 1956 a "petition to cite the defendant for contempt of court", praying that defendant be required to appear in court to show cause why he should not be punished for contempt and placed under confinement until he has paid in full the amounts due to petitioner and their children.

The Juvenile and Domestic Relations Court, to which this petition had been transferred, issued an order dated January 8, 1958, requiring respondent to pay petitioner within 30 days all sums due her and their children under the decision of May 30, 1955, otherwise he would be held in contempt of court. On February 7, 1958, respondent filed a notice of appeal and posted a P25,000.00 bond to stay execution of the order.

In the Court of Appeals where the case was docketed as CA-G.R. No. 23311-R, respondent filed a motion to dismiss the case on the ground that it had been terminated by an amicable settlement he entered into with petitioner. Acting upon the motion, the appellate court passed on August 9, 1958 a resolution dismissing the case. This is the resolution now under review.

Petitioner submits that the compromise agreement was void ab initio because it contains terms which are contrary to laws, morals and public policy; and, hence, it cannot be the ground for dismissal of the case. Respondent admits and we find that certain parts of the compromise agreement are indeed violative of legal precepts and highly repugnant to morals. Sanction cannot be given to petitioner's pardon and condonation of "all acts of concubinage committed and being committed by "respondent nor to her waiver of any claim against respondent for support now or in the future. The right to receive support cannot be renounced (Article 301, New Civil Code);

and no compromise upon future support shall be valid (Article 2035, New Civil Code).

Respecting the other stipulations in the compromise agreement, we find nothing wrong with petitioner's waiver of all claims for support she had under the case which she filed against respondent. Equally proper are the provisions that respondent will have custody of their children; that for the protection of said children, respondent will incorporate his business enterprises and give them one-third share therein; and that he will see to it that one-third of all his properties will be given to them.

The question that suggests itself is whether the invalid provisions render void the whole agreement. We think not. The invalid stipulations are independent of the rest of the terms of the agreement and can easily be separated therefrom without doing violence to the manifest intention of the parties. This being so, the legal terms of the contract can be enforced (Article 1420, New Civil Code).

Baseless is petitioner's claim that said agreement should be considered as totally rescinded because respondent failed to comply with his, undertaking therein. Respondent had given petitioner several sums of money as partial consideration of their amicable settlement. She received from him P500.00 on August 27, 1958 and P200.00 on November 14, 1958. In addition, respondent executed a deed of assignment in which he ceded to their three children one-third of all his rights and participation in the Mastercraft Jewelry Store as well as one-third of all his present and future properties. Respondent, therefore, had fulfilled his obligations under the agreement.

Nevertheless, outright dismissal of the whole case was not proper. The order of the Juvenile and Domestic Relations Court from which respondent had appealed, ordered respondent to pay petitioner all sums due her by virtue of the decision dated May 30, 1953. The decision referred to ordered the parties to observe the terms of their agreement which had been approved by the Court. This agreement stipulated that, respondent would pay petitioner as her share of the conjugal properties, P5,000.00 upon approval of the agreement and P15,000.00 within a period of two years therefrom; and while said balance of P15,000.00 has not been paid, he would pay her P200.00 monthly for her support and P300.00 monthly for the support of their three children; and that after said balance has been paid in full, he would give her P150.00 monthly as his one-half share toward the support of their children. Therefore, under the order of the Juvenile, and Domestic Relations Court, respondent was obliged to pay petitioner not only support in arrears but also her share of the conjugal properties. The compromise agreement constitutes a waiver of petitioner's claim for support under this case, but it did not express or even intimate of a waiver of her share of the conjugal properties. Under these circumstances, it is the appeal that should have been dismissed, so that petitioner can still have the order of the Juvenile and Domestic Relations Court executed, in so far as her right to share in the conjugal properties is concerned.

Wherefore, the resolution of the Court of Appeals is hereby modified in the sense that respondent's appeal to it is hereby considered dismissed. Without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Barrera, JJ., concur.

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