VIRGILIO MAQUILAN, PETITIONER, VS. DITA MAQUILAN, RESPONDENT.

G.R. No. 155409. June 08, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated August 30, 2002 promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 69689, which affirmed the Judgment on Compromise Agreement dated January 2, 2002 of the Regional Trial Court (RTC), Branch 3, Nabunturan, Compostela Valley, and the RTC Orders dated January 21, 2002 and February 7, 2002 (ORDERS) in Civil Case No. 656.

The facts of the case, as found by the CA, are as follows:

> Herein petitioner and herein private respondent are spouses who once had a blissful married life and out of which were blessed to have a son. However, their once sugar coated romance turned bitter when petitioner discovered that private respondent was having illicit sexual affair with her paramour, which thus, prompted the petitioner to file a case of adultery against private respondent and the latter's paramour. Consequently, both the private respondent and her paramour were convicted of the crime charged and were sentenced to suffer an imprisonment ranging from one (1) year, eight (8) months, minimum of prision correccional as minimum penalty, to three (3) years, six (6) months and twenty one (21) days, medium of prision correccional as maximum penalty.
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> Thereafter, private respondent, through counsel, filed a Petition for Declaration of Nullity of Marriage, Dissolution and Liquidation of Conjugal Partnership of Gains and Damages on June 15, 2001 with the Regional Trial Court, Branch 3 of Nabunturan, Compostela Valley, docketed as Civil Case No. 656, imputing psychological incapacity on the part of the petitioner.
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> During the pre-trial of the said case, petitioner and private respondent entered into a COMPROMISE AGREEMENT in the following terms, to wit:
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> - In partial settlement of the conjugal partnership of gains, the parties agree to the following:
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> - P500,000.00 of the money deposited in the bank jointly in the name of the spouses shall be withdrawn and deposited in favor and in trust of their common child, Neil Maquilan, with the deposit in the joint account of the parties.
>
> The balance of such deposit, which presently stands at P1,318,043.36, shall be withdrawn and divided equally by the parties;
>
> - The store that is now being occupied by the plaintiff shall be allotted to her while the bodega shall be for the defendant. The defendant shall be paid the sum of P50,000.00 as his share in the stocks of the store in full settlement thereof.
>
> The plaintiff shall be allowed to occupy the bodega until the time the owner of the lot on which it stands shall

construct a building thereon;

- The motorcycles shall be divided between them such that the Kawasaki shall be owned by the plaintiff while the Honda Dream shall be for the defendant;

- The passenger jeep shall be for the plaintiff who shall pay the defendant the sum of P75,000.00 as his share thereon and in full settlement thereof;

- The house and lot shall be to the common child.

- This settlement is only partial, i.e., without prejudice to the litigation of other conjugal properties that have not been mentioned;

x x x x

The said Compromise Agreement was given judicial imprimatur by the respondent judge in the assailed Judgment On Compromise Agreement, which was erroneously dated January 2, 2002.[2]

However, petitioner filed an Omnibus Motion dated January 15, 2002, praying for the repudiation of the Compromise Agreement and the reconsideration of the Judgment on Compromise Agreement by the respondent judge on the grounds that his previous lawyer did not intelligently and judiciously apprise him of the consequential effects of the Compromise Agreement.

The respondent Judge in the assailed Order dated January 21, 2002, denied the aforementioned Omnibus Motion.

Displeased, petitioner filed a Motion for Reconsideration of the aforesaid Order, but the same was denied in the assailed Order dated February 7, 2002.[3] (Emphasis supplied)

The petitioner filed a Petition for Certiorari and Prohibition with the CA under Rule 65 of the Rules of Court claiming that the RTC committed grave error and abuse of discretion amounting to lack or excess of jurisdiction (1) in upholding the validity of the Compromise Agreement dated January 11, 2002; (2) when it held in its Order dated February 7, 2002 that the Compromise Agreement was made within the cooling-off period; (3) when it denied petitioner's Motion to Repudiate Compromise Agreement and to Reconsider Its Judgment on Compromise Agreement; and (4) when it conducted the proceedings without the appearance and participation of the Office of the Solicitor General and/or the Provincial Prosecutor.[4]

On August 30, 2002, the CA dismissed the Petition for lack of merit. The CA held that the conviction of the respondent of the crime of adultery does not ipso facto disqualify her from sharing in the conjugal property, especially considering that she had only been sentenced with the penalty of prision correccional, a penalty that does not carry the accessory penalty of civil interdiction which deprives the person of the rights to manage her property and to dispose of such property inter vivos; that Articles 43 and 63 of the Family Code, which pertain to the effects of a nullified marriage and the effects of legal separation, respectively, do not apply, considering, too, that the Petition for the Declaration of the Nullity of Marriage filed by the respondent invoking Article 36 of the Family Code has yet to be decided, and, hence, it is premature to apply Articles 43 and 63 of the Family Code; that, although adultery is a ground for legal separation, nonetheless, Article 63 finds no application in the instant case since no petition to that effect was filed by the petitioner against the respondent; that the spouses voluntarily separated their property through their Compromise Agreement with court approval under Article 134 of the Family Code; that the Compromise Agreement, which embodies the voluntary separation of property, is valid and binding in all respects because it had been voluntarily entered into by the parties; that, furthermore, even if it were true that the petitioner was not duly informed by his previous counsel about the legal effects of the Compromise Agreement, this point is untenable since the mistake or negligence of the lawyer binds his client, unless such

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mistake or negligence amounts to gross negligence or deprivation of due process on the part of his client; that these exceptions are not present in the instant case; that the Compromise Agreement was plainly worded and written in simple language, which a person of ordinary intelligence can discern the consequences thereof, hence, petitioner's claim that his consent was vitiated is highly incredible; that the Compromise Agreement was made during the existence of the marriage of the parties since it was submitted during the pendency of the petition for declaration of nullity of marriage; that the application of Article 2035 of the Civil Code is misplaced; that the cooling-off period under Article 58 of the Family Code has no bearing on the validity of the Compromise Agreement; that the Compromise Agreement is not contrary to law, morals, good customs, public order, and public policy; that this agreement may not be later disowned simply because of a change of mind; that the presence of the Solicitor General or his deputy is not indispensable to the execution and validity of the Compromise Agreement, since the purpose of his presence is to curtail any collusion between the parties and to see to it that evidence is not fabricated, and, with this in mind, nothing in the Compromise Agreement touches on the very merits of the case of declaration of nullity of marriage for the court to be wary of any possible collusion; and, finally, that the Compromise Agreement is merely an agreement between the parties to separate their conjugal properties partially without prejudice to the outcome of the pending case of declaration of nullity of marriage.

Hence, herein Petition, purely on questions of law, raising the following issues:

> I.
>
> WHETHER OF NOT A SPOUSE CONVICTED OF EITHER CONCUBINAGE OR ADULTERY, CAN STILL SHARE IN THE CONJUGAL PARTNERSHIP;
>
> II
>
> WHETHER OR NOT A COMPROMISE AGREEMENT ENTERED INTO BY SPOUSES, ONE OF WHOM WAS CONVICTED OF ADULTERY, GIVING THE CONVICTED SPOUSE A SHARE IN THE CONJUGAL PROPERTY, VALID AND LEGAL;
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> III
>
> WHETHER OR NOT A JUDGMENT FOR ANNULMENT AND LEGAL SEPARATION IS A PRE-REQUISITE BEFORE A SPOUSE CONVICTED OF EITHER CONCUBINAGE OR ADULTERY, BE DISQUALIFIED AND PROHIBITED FROM SHARING IN THE CONJUGAL PROPERTY;
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> IV
>
> WHETHER OR NOT THE DISQUALIFICATION OF A CONVICTED SPOUSE OF ADULTERY FROM SHARING IN A CONJUGAL PROPERTY, CONSTITUTES CIVIL INTERDICTION.[5]

The petitioner argues that the Compromise Agreement should not have been given judicial imprimatur since it is against law and public policy; that the proceedings where it was approved is null and void, there being no appearance and participation of the Solicitor General or the Provincial Prosecutor; that it was timely repudiated; and that the respondent, having been convicted of adultery, is therefore disqualified from sharing in the conjugal property.

The Petition must fail.

The essential question is whether the partial voluntary separation of property made by the spouses pending the petition for declaration of nullity of marriage is valid.

First. The petitioner contends that the Compromise Agreement is void because it circumvents the law that

prohibits the guilty spouse, who was convicted of either adultery or concubinage, from sharing in the conjugal property. Since the respondent was convicted of adultery, the petitioner argues that her share should be forfeited in favor of the common child under Articles 43(2)[6] and 63[7] of the Family Code.

To the petitioner, it is the clear intention of the law to disqualify the spouse convicted of adultery from sharing in the conjugal property; and because the Compromise Agreement is void, it never became final and executory.

Moreover, the petitioner cites Article 2035[8] of the Civil Code and argues that since adultery is a ground for legal separation, the Compromise Agreement is therefore void.

These arguments are specious. The foregoing provisions of the law are inapplicable to the instant case.

Article 43 of the Family Code refers to Article 42, to wit:

> Article 42. The subsequent marriage referred to in the preceding Article[9] shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio.
>
> A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

where a subsequent marriage is terminated because of the reappearance of an absent spouse; while Article 63 applies to the effects of a decree of legal separation. The present case involves a proceeding where the nullity of the marriage is sought to be declared under the ground of psychological capacity.

Article 2035 of the Civil Code is also clearly inapplicable. The Compromise Agreement partially divided the properties of the conjugal partnership of gains between the parties and does not deal with the validity of a marriage or legal separation. It is not among those that are expressly prohibited by Article 2035.

Moreover, the contention that the Compromise Agreement is tantamount to a circumvention of the law prohibiting the guilty spouse from sharing in the conjugal properties is misplaced. Existing law and jurisprudence do not impose such disqualification.

Under Article 143 of the Family Code, separation of property may be effected voluntarily or for sufficient cause, subject to judicial approval. The questioned Compromise Agreement which was judicially approved is exactly such a separation of property allowed under the law. This conclusion holds true even if the proceedings for the declaration of nullity of marriage was still pending. However, the Court must stress that this voluntary separation of property is subject to the rights of all creditors of the conjugal partnership of gains and other persons with pecuniary interest pursuant to Article 136 of the Family Code.

Second. Petitioner's claim that since the proceedings before the RTC were void in the absence of the participation of the provincial prosecutor or solicitor, the voluntary separation made during the pendency of the case is also void. The proceedings pertaining to the Compromise Agreement involved the conjugal properties of the spouses. The settlement had no relation to the questions surrounding the validity of their marriage. Nor did the settlement amount to a collusion between the parties.

Article 48 of the Family Code states:

> Art. 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. (Emphasis supplied)

Section 3(e) of Rule 9 of the 1997 Rules of Court provides:

> SEC. 3. Default; declaration of.- x x x x
>
> x x x x
>
> (e) Where no defaults allowed.– If the defending party in action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated. (Emphasis supplied

Truly, the purpose of the active participation of the Public Prosecutor or the Solicitor General is to ensure that the interest of the State is represented and protected in proceedings for annulment and declaration of nullity of marriages by preventing collusion between the parties, or the fabrication or suppression of evidence.[10] While the appearances of the Solicitor General and/or the Public Prosecutor are mandatory, the failure of the RTC to require their appearance does not per se nullify the Compromise Agreement. This Court fully concurs with the findings of the CA:

> x x x. It bears emphasizing that the intendment of the law in requiring the presence of the Solicitor General and/or State prosecutor in all proceedings of legal separation and annulment or declaration of nullity of marriage is to curtail or prevent any possibility of collusion between the parties and to see to it that their evidence respecting the case is not fabricated. In the instant case, there is no exigency for the presence of the Solicitor General and/or the State prosecutor because as already stated, nothing in the subject compromise agreement touched into the very merits of the case of declaration of nullity of marriage for the court to be wary of any possible collusion between the parties. At the risk of being repetiti[ve], the compromise agreement pertains merely to an agreement between the petitioner and the private respondent to separate their conjugal properties partially without prejudice to the outcome of the pending case of declaration of nullity of marriage.[11]

Third. The conviction of adultery does not carry the accessory of civil interdiction. Article 34 of the Revised Penal Code provides for the consequences of civil interdiction:

> Art. 34. Civil Interdiction. – Civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority, or guardianship, either as to the person or property of any ward, of marital authority, of the right to manage his property and of the right to dispose of such property by any act or any conveyance inter vivos.

Under Article 333 of the same Code, the penalty for adultery is prision correccional in its medium and maximum periods. Article 333 should be read with Article 43 of the same Code. The latter provides:

> Art. 43. Prision correccional – Its accessory penalties. – The penalty of prision correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

It is clear, therefore, and as correctly held by the CA, that the crime of adultery does not carry the accessory penalty of civil interdiction which deprives the person of the rights to manage her property and to dispose of such property inter vivos.

Fourth. Neither could it be said that the petitioner was not intelligently and judiciously informed of the consequential effects of the compromise agreement, and that, on this basis, he may repudiate the Compromise Agreement. The argument of the petitioner that he was not duly informed by his previous counsel about the legal

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effects of the voluntary settlement is not convincing. Mistake or vitiation of consent, as now claimed by the petitioner as his basis for repudiating the settlement, could hardly be said to be evident. In Salonga v. Court of Appeals,[12] this Court held:

> [I]t is well-settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of petitioners' counsel may result in the rendition of an unfavorable judgment against them.
>
> Exceptions to the foregoing have been recognized by the Court in cases where reckless or gross negligence of counsel deprives the client of due process of law, or when its application "results in the outright deprivation of one's property through a technicality." x x x x[13]

None of these exceptions has been sufficiently shown in the present case.

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals is AFFIRMED with MODIFICATION that the subject Compromise Agreement is VALID without prejudice to the rights of all creditors and other persons with pecuniary interest in the properties of the conjugal partnership of gains.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Roberto A. Barrios (now deceased) and Edgardo F. Sundiam, concurring.

[2] The Compromise Agreement is dated January 11, 2002.

[3] Rollo, pp. 29-31.

[4] Rollo, p. 32.

[5] Rollo, pp. 19-20.

[6] Article 43 reads:

> Art. 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:
>
> 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;
>
> x x x x (emphasis supplied)

[7] Article 63 reads:

> Art. 63. The decree of legal separation shall have the following effects:
>
> x x x x

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

x x x x (emphasis supplied)

[8] Article 2035 reads:

Art. 2035. No compromise upon the following questions shall be valid:

(1) The civil status of persons;
(2) The validity of a marriage or a legal separation;
(3) Any ground for legal separation;
(4) Future support;
(5) The jurisdiction of courts;
(6) Future legitime. (1814a)

(emphasis supplied)

[9] Article 41 reads:

Art. 41. 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 and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Articles 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

[10] See Republic v. Cuison-Melgar, G.R. No. 139676, March 31, 2006, 486 SCRA 177, 187.

[11] Rollo, p. 39.

[12] 336 Phil. 514 (1997).

[13] Id. at 526-527.

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