ISIDRO ABLAZA, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

G.R. No. 158298. August 11, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Whether a person may bring an action for the declaration of the absolute nullity of the marriage of his deceased brother solemnized under the regime of the old Civil Code is the legal issue to be determined in this appeal brought by the petitioner whose action for that purpose has been dismissed by the lower courts on the ground that he, not being a party in the assailed marriage, had no right to bring the action.

Antecedents

On October 17, 2000, the petitioner filed in the Regional Trial Court (RTC) in Cataingan, Masbate a petition for the declaration of the absolute nullity of the marriage contracted on December 26, 1949 between his late brother Cresenciano Ablaza and Leonila Honato.[1] The case was docketed as Special Case No. 117 entitled In Re: Petition for Nullification of Marriage Contract between Cresenciano Ablaza and Leonila Honato; Isidro Ablaza, petitioner.

The petitioner alleged that the marriage between Cresenciano and Leonila had been celebrated without a marriage license, due to such license being issued only on January 9, 1950, thereby rendering the marriage void ab initio for having been solemnized without a marriage license. He insisted that his being the surviving brother of Cresenciano who had died without any issue entitled him to one-half of the real properties acquired by Cresenciano before his death, thereby making him a real party in interest; and that any person, himself included, could impugn the validity of the marriage between Cresenciano and Leonila at any time, even after the death of Cresenciano, due to the marriage being void ab initio.[2]

Ruling of the RTC

On October 18, 2000, [3] the RTC dismissed the petition, stating:

> Considering the petition for annulment of marriage filed, the Court hereby resolved to DISMISS the petition for the following reasons: 1) petition is filed out of time (action had long prescribed) and 2) petitioner is not a party to the marriage (contracted between Cresenciano Ablaza and Leonila Nonato on December 26, 1949 and solemnized by Rev. Fr. Eusebio B. Calolot).
>
> SO ORDERED.

The petitioner seasonably filed a motion for reconsideration, but the RTC denied the motion for reconsideration on November 14, 2000.

Ruling of the Court of Appeals

The petitioner appealed to the Court of Appeals (CA), assigning the lone error that:

> The trial court erred in dismissing the petition for being filed out of time and that the petitioner is not a party to the marriage.

In its decision dated January 30, 2003,[4] however, the CA affirmed the dismissal order of the RTC, thus:

> While an action to declare the nullity of a marriage considered void from the beginning does not prescribe, the law nonetheless requires that the same action must be filed by the proper party, which in this case should be filed by any of the parties to the marriage. In the instant case, the petition was filed by Isidro Ablaza, a brother of the deceased-spouse, who is not a party to the marriage contracted by Cresenciano Ablaza and Leonila Honato. The contention of petitioner-appellant that he is considered a real party in interest under Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as he stands to be benefited or injured by the judgment in the suit, is simply misplaced. Actions for annulment of marriage will not prosper if persons other than those specified in the law file the case.
>
> Certainly, a surviving brother of the deceased spouse is not the proper party to file the subject petition. More so that the surviving wife, who stands to be prejudiced, was not even impleaded as a party to said case.
>
> WHEREFORE, finding no reversible error therefrom, the Orders now on appeal are hereby AFFIRMED. Costs against the petitioner-appellant.
>
> SO ORDERED.[5]

Hence, this appeal.

Issues

The petitioner raises the following issues:

> I.
>
> WHETHER OR NOT THE DECISION OF THIS HONORABLE COURT OF APPEALS IN CA-G.R. CV. NO. 69684 AFFIRMING THE ORDER OF DISMISSAL OF THE REGIONAL TRIAL COURT, BRANCH 49 AT CATAINGAN, MASBATE IN SPECIAL PROCEEDING NO. 117 IS IN ACCORDANCE WITH APPLICABLE LAWS AND JURISPRUDENCE;
>
> II.
>
> WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IN CA-G.R. CV NO. 69684 (SHOULD) BE REVERSED BASED ON EXECUTIVE ORDER NO. 209 AND EXISTING JURISPRUDENCE.

The issues, rephrased, boil down to whether the petitioner is a real party in interest in the action to seek the declaration of nullity of the marriage of his deceased brother.

Ruling

The petition is meritorious.

A valid marriage is essential in order to create the relation of husband and wife and to give rise to the mutual rights, duties, and liabilities arising out of such relation. The law prescribes the requisites of a valid marriage. Hence, the validity of a marriage is tested according to the law in force at the time the marriage is contracted.[6] As a general rule, the nature of the marriage already celebrated cannot be changed by a subsequent amendment of the governing law.[7] To illustrate, a marriage between a stepbrother and a stepsister was void under the Civil Code, but is not anymore prohibited under the Family Code; yet, the intervening effectivity of the Family Code does not affect the void nature of a marriage between a stepbrother and a stepsister solemnized under the regime

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of the Civil Code. The Civil Code marriage remains void, considering that the validity of a marriage is governed by the law in force at the time of the marriage ceremony.[8]

Before anything more, the Court has to clarify the impact to the issue posed herein of Administrative Matter (A.M.) No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages), which took effect on March 15, 2003.

Section 2, paragraph (a), of A.M. No. 02-11-10-SC explicitly provides the limitation that a petition for declaration of absolute nullity of void marriage may be filed solely by the husband or wife. Such limitation demarcates a line to distinguish between marriages covered by the Family Code and those solemnized under the regime of the Civil Code.[9] Specifically, A.M. No. 02-11-10-SC extends only to marriages covered by the Family Code, which took effect on August 3, 1988, but, being a procedural rule that is prospective in application, is confined only to proceedings commenced after March 15, 2003.[10]

Based on Carlos v. Sandoval,[11] the following actions for declaration of absolute nullity of a marriage are excepted from the limitation, to wit:

> - Those commenced before March 15, 2003, the effectivity date of A.M. No. 02-11-10-SC; and
>
> - Those filed vis-à-vis marriages celebrated during the effectivity of the Civil Code and, those celebrated under the regime of the Family Code prior to March 15, 2003.

Considering that the marriage between Cresenciano and Leonila was contracted on December 26, 1949, the applicable law was the old Civil Code, the law in effect at the time of the celebration of the marriage. Hence, the rule on the exclusivity of the parties to the marriage as having the right to initiate the action for declaration of nullity of the marriage under A.M. No. 02-11-10-SC had absolutely no application to the petitioner.

The old and new Civil Codes contain no provision on who can file a petition to declare the nullity of a marriage, and when. Accordingly, in Niñal v. Bayadog,[12] the children were allowed to file after the death of their father a petition for the declaration of the nullity of their father's marriage to their stepmother contracted on December 11, 1986 due to lack of a marriage license. There, the Court distinguished between a void marriage and a voidable one, and explained how and when each might be impugned, thuswise:

> Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage. "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." "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. 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 and such absolute nullity can be based only on a final judgment to that effect. For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible. 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.

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> 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.[13]

It is clarified, however, that the absence of a provision in the old and new Civil Codes cannot be construed as giving a license to just any person to bring an action to declare the absolute nullity of a marriage. According to Carlos v. Sandoval,[14] the plaintiff must still be the party who stands to be benefited by the suit, or the party entitled to the avails of the suit, for it is basic in procedural law that every action must be prosecuted and defended in the name of the real party in interest.[15] Thus, only the party who can demonstrate a "proper interest" can file the action.[16] Interest within the meaning of the rule means material interest, or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.[17]

Here, the petitioner alleged himself to be the late Cresenciano's brother and surviving heir. Assuming that the petitioner was as he claimed himself to be, then he has a material interest in the estate of Cresenciano that will be adversely affected by any judgment in the suit. Indeed, a brother like the petitioner, albeit not a compulsory heir under the laws of succession, has the right to succeed to the estate of a deceased brother under the conditions stated in Article 1001 and Article 1003 of the Civil Code, as follows:

> Article 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one half of the inheritance and the brothers and sisters or their children to the other half.
>
> Article 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

Pursuant to these provisions, the presence of descendants, ascendants, or illegitimate children of the deceased excludes collateral relatives like the petitioner from succeeding to the deceased's estate.[18] Necessarily, therefore, the right of the petitioner to bring the action hinges upon a prior determination of whether Cresenciano had any descendants, ascendants, or children (legitimate or illegitimate), and of whether the petitioner was the late Cresenciano's surviving heir. Such prior determination must be made by the trial court, for the inquiry thereon involves questions of fact.

As can be seen, both the RTC and the CA erroneously resolved the issue presented in this case. We reverse their error, in order that the substantial right of the petitioner, if any, may not be prejudiced.

Nevertheless, we note that the petitioner did not implead Leonila, who, as the late Cresenciano's surviving wife,[19] stood to be benefited or prejudiced by the nullification of her own marriage. It is relevant to observe, moreover, that not all marriages celebrated under the old Civil Code required a marriage license for their validity;[20] hence, her participation in this action is made all the more necessary in order to shed light on whether the marriage had been celebrated without a marriage license and whether the marriage might have been a marriage excepted from the requirement of a marriage license. She was truly an indispensable party who must be joined herein:

> xxx under any and all conditions, [her] presence being a sine qua non for the exercise of judicial power. It is precisely "when an indispensable party is not before the court [that] the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[21]

We take note, too, that the petitioner and Leonila were parties in C.A.-G.R. CV No. 91025 entitled Heirs of Cresenciano Ablaza, namely: Leonila G. Ablaza and Leila Ablaza Jasul v. Spouses Isidro and Casilda Ablaza, an action to determine who between the parties were the legal owners of the property involved therein. Apparently, C.A.-G.R. CV No. 91025 was decided on November 26, 2009, and the petitioner's motion for reconsideration was denied on June 23, 2010. As a defendant in that action, the petitioner is reasonably presumed to have knowledge that the therein plaintiffs, Leonila and Leila, were the wife and daughter, respectively, of the late Cresenciano. As such, Leila was another indispensable party whose substantial right any judgment in this action will definitely affect. The petitioner should likewise implead Leila.

The omission to implead Leonila and Leila was not immediately fatal to the present action, however, considering that Section 11,[22] Rule 3, Rules of Court, states that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. The petitioner can still amend his initiatory pleading in order to implead her, for under the same rule, such amendment to implead an indispensable party may be made "on motion of any party or on (the trial court's) own initiative at any stage of the action and on such terms as are just."

WHEREFORE, the petition for review on certiorari is granted.

We reverse and set aside the decision dated January 30, 2003 rendered by the Court of Appeals.

Special Case No. 117 entitled In Re: Petition for Nullification of Marriage Contract between Cresenciano Ablaza and Leonila Honato; Isidro Ablaza, petitioner, is reinstated, and its records are returned to the Regional Trial Court, Branch 49, in Cataingan, Masbate, for further proceedings, with instructions to first require the petitioner to amend his initiatory pleading in order to implead Leonila Honato and her daughter Leila Ablaza Jasul as parties-defendants; then to determine whether the late Cresenciano Ablaza had any ascendants, descendants, or children (legitimate or illegitimate) at the time of his death as well as whether the petitioner was the brother and surviving heir of the late Cresenciano Ablaza entitled to succeed to the estate of said deceased; and thereafter to proceed accordingly.

No costs of suit.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Abad,[*] and Villarama, Jr., JJ., concur.

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[*] Additional member per Special Order No. 843 dated May 17, 2010.

[1] Rollo, pp. 24-26.

[2] Id., p. 14.

[3] Id., p. 22.

[4] Penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court), with Associate Justice Buenaventura J. Guerrerro (retired) and Associate Justice Teodoro P. Regino (retired) concurring; rollo, pp. 18-21.

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[5] Rollo, pp. 20-21.

[6] Sta. Maria Jr., Persons and Family Relations, 2004 ed., p. 105; citing Stewart v. Vandervort, 34 W. VA. 524, 12 SE 736, 12 LRA 50.

[7] Id. p. 106.

[8] Id, pp. 106-107.

[9] Id.

[10] Enrico vs. Heirs of Sps. Eulogio B. Medinaceli and Trinidad Catli-Medinaceli, G.R. No. 173614, September 28, 2007, 534 SCRA 418.

[11] G.R. No. 179922, December 16, 2008, 574 SCRA 116.

[12] G.R. No. 133778, March 14, 2000, 328 SCRA 122.

[13] At pp. 135-136 (highlighting provided for emphasis).

[14] Supra, note 12.

[15] Oco v. Limbaring, G.R. No. 161298, January 31, 2006, 481 SCRA 348.

[16] Amor-Catalan v. Court of Appeals, G.R. No. 167109, February 6, 2007, 514 SCRA 607.

[17] Carlos v. Sandoval, supra, note 15; citing Abella Jr. v. Civil Service Commission, G.R. No. 152574, November 17, 2004, 442 SCRA 507.

[18] See Heirs of Ignacio Conti v. Court of Appeals, G.R. No. 118464, December 21, 1998, 300 SCRA 345.

[19] This action is entitled In Re: Petition for Nullification of Marriage Contract between Cresenciano Ablaza and Leonila Honato; Isidro Ablaza, petitioner.

[20] Under the old Civil Code, not all marriages solemnized without a marriage license were void from the beginning. Exempt from the requirement of a marriage license were marriages of exceptional character, as provided for from Article 72 to Article 79, old Civil Code, to wit:

Article 72. In case either of the contracting parties is on the point of death or the female has her habitual residence at a place more than fifteen kilometers distant from the municipal building and there is no communication by railroad or by provincial or local highways between the former and the latter, the marriage may be solemnized without necessity of a marriage license; but in such cases the official, priest, or minister solemnizing it shall state in an affidavit made before the local civil registrar or any person authorized by law to administer oaths that the marriage was performed in articulo mortis or at a place more than fifteen kilometers distant from the municipal building concerned, in which latter case he shall give the name of the barrio where the marriage was solemnized. The person who solemnized the marriage shall also state, in either case, that he took the necessary steps to ascertain the ages and relationship of the contracting parties and that there was in his opinion no legal impediment to the marriage at the time that it was solemnized.

Article 73. The original of the affidavit required in the last preceding article, together with a copy of the marriage contract, shall be sent by the person solemnizing the marriage to the local civil registrar of the municipality where it was performed within the period of thirty days, after the performance of the marriage. The local civil registrar shall, however, before filing the papers, require the payment into the municipal treasury of the legal fees required in Article 65.

Article 74. A marriage in articulo mortis may also be solemnized by the captain of a ship or chief of an airplane during a voyage, or by the commanding officer of a military unit, in the absence of a chaplain, during war. The duties mentioned in the two preceding articles shall be complied with by the ship captain, airplane chief or commanding officer.

Article 75. Marriages between Filipino citizens abroad may be solemnized by consuls and vice-consuls of the Republic of the Philippines. The duties of the local civil registrar and of a judge or justice of the peace or mayor with regard to the celebration of marriage shall be performed by such consuls and vice-consuls.

Article 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.

Article 77. In case two persons married in accordance with law desire to ratify their union in conformity with the regulations, rites, or practices of any church, sect, or religion it shall no longer be necessary to comply with the requirements of Chapter 1 of this Title and any ratification made shall merely be considered as a purely religious ceremony.

Article 78. Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.

However, twenty years after approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provisions of this Code. But the President of the Philippines, upon recommendation of the Secretary of the Interior, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces.

Article 79. Mixed marriages between a Christian male and a Mohammedan or pagan female shall be governed by the general provision of this Title and not by those of the last preceding article, but mixed marriages between a Mohammedan or pagan male and a Christian female may be performed under the provisions of the last preceding article if so desired by the contracting parties, subject, however, in the latter case to the provisions of the second paragraph of said article.

[21] Regner v. Logarta, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 289; citing Borlasa v. Polistico, 47 Phil. 345, 347 (1925) and People v. Hon. Rodriguez, 106 Phil. 325, 327 (1959).

[22] Section 11. Misjoinder and non-joinder of parties. -- Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. (11a)

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