

NADJIB TANNUS HASHIM, PETITIONER, VS. HONORABLE PEDRO CONCEPCION, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND AFIFE ABDO CHEYBAN GORAYEB, RESPONDENTS.*G. R. No. 18381. January 12, 1922*

Ponente: OSTRAND, J.

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This is a petition for a writ of certiorari. It appears from the record that on November 11, 1920, the petitioner's wife Afife Abdo Cheyban Gorayeb filed a complaint against him in the Court of First Instance of the city of Manila, alleging that the defendant, the petitioner herein, owned property to the value of P1,000,000; that his income amounted to P4,000 per month, and that he refused to support her. She therefore asked that the petitioner be ordered to pay her the sum of P1,000 per month for her maintenance. On motion of plaintiff the Court of First Instance, under date of November 28, 1920, ordered the defendant to pay the plaintiff the sum of P1,000 monthly, by way of maintenance pendente lite. The defendant failed to make the payment and a writ of execution was issued. Upon the writ being returned unsatisfied, supplementary proceedings were had under Chapter 20 of the Code of Civil Procedure; and the defendant was examined upon his oath on February 11, 1921. During this examination the defendant adopted a somewhat defiant attitude and returned evasive and very unsatisfactory answers. Subsequently, and under the date of February 21, 1921, an alias writ of execution was issued for the maintenance allowance for the period from November 12, 1920, to January 12, 1921; and on April 4, 1921, another writ of execution was issued for the maintenance allowance for the period from January 12 to March 12, 1921. Under the latter writ the defendant's interests in a house and lot on Calle Oroquieta was sold by the sheriff and bid in by the plaintiff for the total sum of P2,000. As far as shown by the record this is all the plaintiff has received under the order of November 28, 1920, granting the maintenance allowance pendente lite.

On July 5, 1921, the plaintiff's attorneys filed charges of contempt of court against the defendant in the Court of First Instance for failure to comply with the order of November 28, 1920. The matter was assigned for hearing on October 6, 1921, the defendant being duly notified, and on November 28, 1921, the respondent herein, the Honorable Pedro Concepcion, judge of the Court of First Instance, issued an order in which he, after reciting that the conduct of the defendant constituted a clear case of contempt, ordered that said defendant be confined in prison until he should comply with the order of November 28, 1920. The defendant appears, so far successfully, to have evaded arrest and is now absconding and hiding himself from the process of justice.

On December 21, 1921, his attorneys filed the petition, now under consideration in this court, alleging that the respondent judge of the Court of First Instance had exceeded his jurisdiction in issuing the order of November 28, 1920, and asking that said respondent be ordered to certify to this court a transcript of the record of the cause pending in the Court of First Instance, and that the same be reviewed here; and, further, that a restraining order be issued against the said respondent ordering him to desist and refrain from further action in the premises until further orders from this court.

We are unable to discover any merit in the petitioner's contention. That an action by a wife against her husband for maintenance is within the jurisdiction of the Court of First Instance is too obvious for argument, and the marriage having been proven, that court has also power to issue an order for maintenance pendente lite. (Yangco vs. Rohde, 1 Phil., 404.) We also agree with the judge of the lower court that the petitioner's conduct in that court constituted a clear case of contempt and that the order of arrest was fully warranted. If petitioner desires a reduction in the maintenance allowance he should purge himself of contempt and make a full and fair disclosure of his financial circumstances to the lower court. In the event of an adverse ruling he might have his remedy by an appeal to this court.

The petition is denied with the costs against the petitioner. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, Villamor, Johns, and Romualdez, JJ., concur.

Johnson, J., did not take part.

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