

**LORENZO MENDOZA, PETITIONER, VS. GORGONIA PARUNGAO,
HONORABLE EDUARDO GUTIERREZ DAVID, JUDGE OF FIRST
INSTANCE OF NUEVA ECIJA, GABRIEL BELMONTE, SHERIFF
EX-OFFICIO OF NUEVA ECIJ...**

G. R. No. 26231. August 27, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for a writ of certiorari filed by Lorenzo Mendoza against Gorgonia Parungao, the Honorable Eduardo Gutierrez David, Judge of the Court of First Instance of Nueva Ecija, the Honorable Gabriel Belmonte, ex-officio sheriff of the Province of Nueva Ecija and the Honorable Manuel V. Moran, Vacation Judge of Nueva Ecija praying that a preliminary injunction be issued against the respondent sheriff prohibiting them from carrying out the sale of the property of the petitioner by virtue of the writ of execution issued on March 24, 1926, in civil case No. 3962 of the Court of First Instance of Nueva Ecija; that the respondents, the Honorable Gutierrez David and the Honorable Manuel V. Moran, be ordered to forward to this court all of the record in said civil case No. 3962 of the Court of First Instance of Nueva Ecija. for revision, meanwhile prohibiting them from taking any further action relative to said case and in due time to render judgment in favor of the petitioner declaring the order of November 27, 1925, void, as well as the said writ of execution of March 24, 1926, and all proceedings had therein, with the costs against the respondents.

The actual and essential facts in the present proceeding are as follows:

On August 7, 1925, the Court of First Instance of Nueva Ecija rendered judgment in civil case No. 3745 of said court in which the herein respondent Gorgonia Paruñgao was plaintiff and the herein petitioner Lorenzo Mendoza defendant, declaring the marriage between the two null on account of the return of the first husband of the petitioner, who had been thought dead after an absence of more than seven years.

In the month of October (the exact date is not shown) of 1925, Antonio Buenaventura, the first husband of the respondent Gorgonia Paruñgao, died in the barrio of Cabu in the municipality of Cabanatuan, Nueva Ecija.

Said judgment annulling the marriage being on appeal, on September 14, 1925, the said respondent Gorgonia Paruñgao brought an action, numbered 3962 in the Court of First Instance of Nueva Ecija, against the petitioner Lorenzo Mendoza in which she alleged the existence of certain conjugal property acquired during her marriage with the said petitioner, and asked for a settlement of the same and the sum of P300 as alimony during the pendency of the suit.

The herein respondent and defendant in said civil case No. 3962 in answering the complaint on December 14, 1925, denied generally and specifically the facts alleged therein.

On November 27, 1925, upon petition of a party the court issued an order directing the defendant Lorenzo Mendoza, during the pendency of the case and from the filing of the complaint, to pay the plaintiff the sum of P50

monthly and in advance by way of support.

On January 20, 1926, upon petition of the plaintiff, the court issued an order directing the execution of the order of November 27, 1925, granting the said plaintiff support.

On February 8, 1926, the defendant Lorenzo Mendoza filed a motion praying for the reconsideration of said order of November 27, 1925, '

On March 23, 1926, the Court of First Instance of Nueva Ecija issued another order of execution of the said order of November 27, 1925.

On March 24, 1926, a writ of execution was issued against the property of the defendant in order to collect the sum of P325 the total amount of the monthly payments due from September 14, 1925.

Said writ of execution not having been complied with the Court of First Instance of Nueva Ecija, then presided over by the Honorable Manuel V. Moran, vacation judge, on June 8, 1926, issued an order citing the defendant Lorenzo Mendoza, the provincial sheriff Manuel Tecson, the deputy sheriff Laureano Aquino, and the other sheriff Manuel Munsayac to appear and show cause why they should not be punished for contempt for not having complied with said writ of execution.

On July 10, 1926, the Court of First Instance of Nueva Ecija issued an order denying the motion of the defendant praying that the writs of attachment of the dates of January 20th and March 23rd of 1926, respectively, be cancelled.

In its decision of July 23, 1926, this court affirmed the judgment of the Court of First Instance of Nueva Ecija declaring null and of no effect the marriage contracted by the petitioner Lorenzo Mendoza and the respondent Gorgonia Paruñgao on February 14, 1916.,¹

The first question to be decided in the present proceeding is whether or not the respondent Gorgonia Paruñgao, on September 14, 1925, when she filed her complaint for the liquidation of the conjugal property and alimony, was entitled to support during the pendency of the action.

The right to support between spouses arises from law (art. 143 of the Civil Code) and is based upon their obligation to mutually help each other created by the matrimonial bond. After the complaint for annulment of marriage has been filed by the wife and admitted she is entitled to support during the pendency of the suit (arts. 67 and 68, par. 4, Civil Code), but once the nullity is decreed, this right ceases, because the mutual obligation created by the marriage is extinguished. The marriage of the respondent with the petitioner having been annulled on August 7, 1925, by virtue of the rule enunciated, she was no longer entitled to support on September 14, 1925, when she filed her complaint for support. The same rule obtains in the United States (38 C. J., 1258; 1 R. C. L., 939). This does not mean, however, that she is not entitled to payment in advance of a part of her undetermined share of the conjugal property if, after the liquidation sought by her, there exists such conjugal property. In those states of the United States where the institution of conjugal partnership prevails, it has been held by the courts that the necessary sum may be taken from the community property for the support of the wife (24 C. J., 246; 31 C. J., 175).

In the case now before us, the order of the Court of First Instance of Nueva Ecija of November, 27, 1925, may be considered as an order for the payment of P50 monthly as an advance payment on account of such share of the conjugal property as may be found from the liquidation to belong to Gorgonia Paruñgao. This order, however, being of an interlocutory character and not final (sec. 123, Act No. 190) no writ of execution can be issued thereon (sec. 443, Act No. 190; 23 C. J., 314); but its unjustified disobedience may constitute contempt of court

and, after the proper proceedings prescribed by law in such cases, may be punished as such.

The issuance of the writs of execution on January 20 and March 23, 1926, and the order of June 8, 1926, to show cause in connection with the noncompliance of said writs of execution, constitutes an excess of jurisdiction, which is the proper subject-matter of the extraordinary remedy of certiorari.

For the foregoing and not considering it necessary to order the forwarding of the record to this court, the remedy applied for is granted, declaring void the writ of execution of March 23, 1926, and all the proceedings had therein and making the preliminary injunction issued by this court absolute, with the costs against the respondents. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

[1] Paruñgaovs. Mendoza, G. R. No. 24982, not reported.

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