

HILARIA SIKAT, PLAINTIFF AND APPELLANT, VS. JOHN CANSON, DEFENDANT AND APPELLEE.*G.R. No. 45152. April 10, 1939*

Ponente: LAUREL, J.

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On February 15, 1904, Hilaria Sikat and John Canson contracted marriage in the town of Bayambang, Pangasinan. They lived together as husband and wife until 1911 when they separated. During the same year the wife commenced divorce proceedings against her spouse, but on January 16, 1912, upon petition of both parties, the case was dismissed without the court passing upon the merits thereof. At the time of their marriage in 1904, John Canson was an Italian citizen but on February 27, 1922, he became a naturalized Filipino citizen. In 1929, he went to Reno, Nevada, United States of America, and on October 8, of that year, he obtained an absolute decree of divorce on the ground of desertion. Hilaria Sikat, however, did not accompany her husband but remained in the Philippines. Subsequently, in 1933, the plaintiff filed another action, civil case No. 5398 of the Court of First Instance of Rizal, wherein she sought to compel the defendant to pay her a monthly pension of P500 as alimony or support. To this complaint, the defendant Canson interposed three defenses: (1) adultery on the part of the plaintiff; (2) absolute divorce obtained by the defendant as decreed by the court in Reno, Nevada, United States of America; and (3) that the defendant did not have the means to pay the allowance sought. The lower court dismissed the complaint in a decision rendered on November 27, 1933. In this decision the court declined to accord validity to the divorce obtained in Reno but found that Hilaria Sikat had forfeited her right to support because she had committed adultery. This judgment was not appealed and it became final.

On June 1, 1934, the present action was instituted by the plaintiff-appellant to obtain the liquidation of the conjugal partnership. The action is predicated on the existence of a final decree of absolute divorce rendered by the court of Reno, Nevada, since 1929. The court below dismissed the action. The reasons for this dismissal are given in the following excerpt from its decision:

"Para el Juzgado toda la controversia gira alrededor de la validez del divorcio decretado en Reno el año 1929, pues si este divorcio es invalido en esta jurisdiccion, la demandante no podrla exigir la liquidation de la sociedad conyugal.

"Ahora bien, el divorcio absoluto, como disoluci6n del vinculo conyugal, toca tan cerca a la moral y a las buenas costumbres que no se puede menos de considerarlo como una institucion de interes y orden publicos, y por esta razon no cabe considerar ni reputar como valido en esta jurisdiccion un divorcio concedido por motivos no reconocidos ni autorizados por las leyes de Filipinas, especialmente teniendo en cuenta que el demandado ya se habia naturalizado filipino cuando pidi6 el divorcio de que se trata.

"Ignorar el espiritu restrictivo de nuestra Ley de Divorcio seria infringir el articulo 11, apartado tercero, del Codigo Civil que dispone que Mas (leyes) que tienen por objeto el orden publico y las buenas costumbres, no quedaran sin efecto por leyes o sentencias dictadas, ni por disposiciones o convenciones acordadas en pais extranjero."

"No estando disuelto el matrimonio y no habiendose probado, ni intentado probar, ninguno de los otros motivos que, segun el articulo 1433 del Codigo Civil, justifican una separacion judicial de los bienes de los esposos (interdiccion civil o ausencia declarada), no existen terminos habiles para declarar disuelta la sociedad conyugal entre las partes y proceder a su liquidacion."

From this judgment of the lower court the present appeal was taken to this court in the usual manner, and plaintiff assigns the following principal error:

"Erro el juzgado inferior al afirmar que 'no cabe considerar ni reputar como valido en esta jurisdiccion un divorcio concedido por motivos no reconocidos ni autorizados por las leyes de Filipinas, especialmente teniendo en cuenta que el demandado ya se habia naturalizado filipino cuando pidio el divorcio de que se trata.'"

Counsel for plaintiff-appellant contends that twelve days prior to the issuance of the decree of divorce, defendant-appellee became a naturalized American citizen and argues that the Nevada court had thereby acquired jurisdiction over him to issue a divorce decree. It is not, however, the citizenship of the plaintiff for divorce which confers jurisdiction upon a court, but his legal residence within the State (*Cousins Hix vs. Fluemer*, 55 Phil., 851). And assuming that John Canson acquired legal residence in the State of Nevada through the approval of his citizenship papers, this did not confer jurisdiction on the Nevada court to grant a divorce that would be valid in this jurisdiction nor jurisdiction that could determine their matrimonial status, because the wife was still domiciled in the Philippines. The Nevada court never acquired jurisdiction over her person. (*Gorayeb vs. Hashim*, 50 Phil., 26, and *Cousins Hix vs. Fluemer*, supra.) This was not a proceeding in rem to justify a court in entering a decree as to the res or marriage relation entitled to be enforced outside of the territorial jurisdiction of the court. (*Haddock vs. Haddock*, 201 U. S., 562.) In *Barretto Gonzalez vs. Gonzalez* (58 Phil., 67), we observed:

"* * * While the decisions of this court heretofore in refusing to recognize the validity of foreign divorce has usually been expressed in the negative and have been based upon lack of matrimonial domicile or fraud or collusion, we have not overlooked the provisions of the Civil Code now enforced in these Islands. Article 9 thereof reads as follows:

" 'The laws relating to family rights and duties, or to the status, condition, and legal capacity of persons, are binding upon Spaniards even though they reside in a foreign country.'"

"And article 11, the last part of which reads:

" '* * * prohibitive laws concerning persons, their acts and their property, and those intended to promote public order and good morals shall not be rendered without effect by any foreign laws or judgments or by anything done or any agreements entered into in a foreign country.'"

"It is therefore a serious question whether any foreign divorce, relating to citizens of the Philippine Islands, will be recognized in this jurisdiction, except it be for a cause, and under conditions for which the courts of the Philippine Islands would grant a divorce."

The courts in the Philippines can grant a divorce only on the ground of "adultery on the part of the wife or concubinage on the part of the husband" as provided for under section 1 of Act No. 2710. The divorce decree in question was granted on the ground of desertion, clearly not a cause for divorce under our laws. That our divorce law, Act No. 2710, is too strict or too liberal is not for this court to decide. (*Barretto Gonzalez vs. Gonzalez*, supra.) The allotment of powers between the different governmental agencies restricts the judiciary within the confines of interpretation, not of legislation. The legislative policy on the matter of divorce in this jurisdiction is clearly set forth in Act No. 2710 and has been upheld by this court (*Goitia vs. Campos Rueda*, 35 Phil., 252; *Garcia Valdez vs. Soteria Tuason*, 40 Phil., 943-952; *Ramirez vs. Gmur*, 42 Phil., 855; *Chereau vs. Fuentebella*,

43 Phil, 216; Fernandez vs. De Castro, 48 Phil., 123; Gorayeb vs. Hashim, supra; Francisco vs. Tayao, 50 Phil., 42; Alkuino Lim Pang vs. Uy Pian Ng Shun and Lim Tingco, 52 Phil., 571; Cousins Hix vs. Fluemer, supra; and Barretto Gonzalez vs. Gonzales, supra.)

We observe that plaintiff-appellant had made her choice of two inconsistent remedies afforded her by law: (1) to impugn the divorce and file an action for support, or (2) uphold the validity of the divorce and sue for a liquidation of conjugal partnership. She chose the first remedy when she filed her action for support. She lost the case and should take the consequences.

The decision appealed from is hereby affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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