

ENRICO L. PACETE, CLARITA DE LA CONCEPCION, EMELDA C. PACETE, EVELINA C. PACETE AND EDUARDO C. PACETE, PETITIONERS, VS. HON. GLICERIO V. CARRIAGA, JR. AND CONCEPCION (CONCHITA) ...

G.R. No. 53880. March 17, 1994

Ponente: VITUG, J.

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VITUG, J.:

The issue in this petition for certiorari is whether or not the Court of First Instance (now Regional Trial Court) of Cotabato, Branch I, in Cotabato City, gravely abused its discretion in denying petitioners' motion for extension of time to file their answer in Civil Case No. 2518, in declaring petitioners in default and in rendering its decision of 17 March 1980 which, among other things, decreed the legal separation of petitioner Enrico L. Pacete and private respondent Concepcion Alanis and held to be null and void ab initio the marriage of Enrico L. Pacete to Clarita de la Concepcion.

On 29 October 1979, Concepcion Alanis filed with the court below a complaint for the declaration of nullity of the marriage between her erstwhile husband Enrico L. Pacete and one Clarita de la Concepcion, as well as for legal separation (between Alanis and Pacete), accounting and separation of property. In her complaint, she averred that she was married to Pacete on 30 April 1938 before the Justice of the Peace of Cotabato, Cotabato; that they had a child named Consuelo who was born on 11 March 1943; that Pacete subsequently contracted (in 1948) a second marriage with Clarita de la Concepcion in Kidapawan, North Cotabato; that she learned of such marriage only on 01 August 1979; that during her marriage to Pacete, the latter acquired vast property consisting of large tracts of land, fishponds and several motor vehicles; that he fraudulently placed the several pieces of property either in his name and Clarita or in the names of his children with Clarita and other "dummies;" that Pacete ignored overtures for an amicable settlement; and that reconciliation between her and Pacete was impossible since he evidently preferred to continue living with Clarita.

The defendants were each served with summons on 15 November 1979. They filed a motion for an extension of twenty (20) days from 30 November 1979 within which to file an answer. The court granted the motion. On 18 December 1979, appearing through a new counsel, the defendants filed a second motion for an extension of another thirty (30) days from 20 December 1979. On 07 January 1980, the lower court granted the motion but only for twenty (20) days to be counted from 20 December 1979 or until 09 January 1980. The Order of the court was mailed to defendants' counsel on 11 January 1980. Likely still unaware of the court order, the defendants, on 05 February 1980, again filed another motion (dated 18 January 1980) for an extension of "fifteen (15) days counted from the expiration of the 30-day period previously sought" within which to file an answer. The following day, or on 06 February 1980, the court denied this last motion on the ground that it was "filed after the original period given x x x as first extension had expired." [1]

The plaintiff thereupon filed a motion to declare the defendants in default, which the court forthwith granted. The

plaintiff was then directed to present her evidence.[2] The court received plaintiff's evidence during the hearings held on 15, 20, 21 and 22 February 1980.

On 17 March 1980, the court[3] promulgated the herein questioned decision, disposing of the case, thus -

“WHEREFORE, order is hereby issued ordering:

"1. The issuance of a Decree of Legal Separation of the marriage between, the plaintiff, Concepcion (Conchita) Alanis Pacete and the herein defendants, Enrico L. Pacete, in accordance with the Philippine laws and with consequences, as provided for by our laws;

"2. That the following properties are hereby declared as the conjugal properties of the partnership of the plaintiff, Concepcion (Conchita) Alanis Pacete and the defendant, Enrico L. Pacete, half and half, to wit:

"1. The parcel of land covered by TCT No. V-815 which is a parcel of land situated in the barrio of Langcong, Municipality of Matanog (previously of Parang), province of Maguindanao (previously of Cotabato province) with an area of 45,256 square meters registered in the name of Enrico Pacete, Filipino, of legal age, married to Conchita Alanis as shown in Exhibits 'B' and 'B-1' for the plaintiff.

"2. A parcel of land covered by Transfer Certificate of Title No. T-20442, with an area of 538 square meters and covered by Tax Declaration No. 2650 (74) in the name of Enrico Pacete, situated in the Poblacion of Kidapawan, North Cotabato, together with all its improvements, which parcel of land, as shown by Exhibits 'K-1' was acquired by way of absolute deed of sale executed by Amrosio Mondog on January 14, 1965.

"3. A parcel of land covered by Transfer Certificate of Title No. T-20424 and covered by Tax Declaration No. 803 (74), with an area of 5.1670 hectares, more or less, as shown by Exhibit 'R', the same was registered in the name of Enrico Pacete and the same was acquired by Enrico Pacete last February 17, 1967 from Ambag Ampoy, as shown by Exhibit 'R-1', situated at Musan, Kidapawan, North Cotabato.

"4. A parcel of land situated at Lanao, Kidapawan, North Cotabato, with an area of 5.0567 hectares, covered by Tax Declaration No. 4332 (74), as shown by Exhibit 'S', and registered in the name of Enrico Pacete.

"5. A parcel of land covered by Transfer Certificate of Title No. T-9750, situated at Lika, Mlanng, North Cotabato, with an area of 4.9841 hectares and the same is covered by Tax Declaration No. 803 (74) and registered in the name of Enrico Pacete and which land was acquired by Enrico Pacete from Salvador Pacete on September 24, 1962, as shown by Exhibit 'Q-1'.

"6. A parcel of land covered by Transfer Certificate of Title No. T-9944, with an area of 9.9566 and also covered by Tax Declaration No. 8608(74) and registered in the name of the defendant Enrico L. Pacete which Enrico L. Pacete acquired from Sancho Balingcos last October 22, 1962, as shown by Exhibit 'L-1' and which parcel of land is situated at (Kialab), Kiab, Matalam, North Cotabato.

"7. A parcel of land covered by Transfer Certificate of Title No. T-9227, situated at Kiab, Matalam, North Cotabato, with an area of 12.04339 hectares, more or less, and also covered by Tax Declaration No. 8607(74) both in the name of the defendant Enrico L. Pacete which he acquired last October 15, 1962 from Minda Bernardino, as shown by Exhibit 'M-1'.

"8. A parcel of land covered by Transfer Certificate of Title No. T-9228, situated at Kiab, Matalam, North Cotabato, with an area of 10.8908 hectares, registered in the name of Enrico Pacete and also covered by Tax Declaration No. 5781 (74) in the name of Enrico Pacete and which parcel of land he acquired last September 25, 1962 from Conchita dela Torre, as shown by Exhibit 'P-1'.

"9. A parcel of land covered by Transfer Certificate of Title No. T-10301, situated at Linao, Matalam, North Cotabato, with an area of 7.2547 hectares, registered in the name of Enrico Pacete and also covered by Tax Declaration No. 8716(74) also in the name of Enrico Pacete which Enrico Pacete acquired from Agustin Bijo

last July 16, 1963, as shown by Exhibit 'N-1'.

"10. A parcel of land covered by Transfer Certificate of Title No. 12728 in the name of the defendant, Enrico L. Pacete, with an area of 10.9006 hectares, situated at Linao, Matalam, North Cotabato and is also covered by Tax Declaration No. 5745(74) in the name of Enrico Pacete, as shown on Exhibit 'O' and which Enrico Pacete acquired last December 31, 1963 from Eliseo Pugni, as shown on Exhibit 'O-1'.

"3. Ordering the Cancellation of Original Certificate of Title No. P-34243 covering Lot No. 1066, issued in the name of Evelina Pacete, situated at Kiab, Matalam, North Cotabato, and ordering the registration of the same in the joint name of Concepcion (Conchita) Alanis Pacete and Enrico L. Pacete as their conjugal property, with address on the part of Concepcion (Conchita) Alanis Pacete at Parang, Maguindanao and on the part of Enrico L. Pacete at Kidapawan, North Cotabato.

"4. Ordering likewise the cancellation of Original Certificate of Title No. V-20101, covering Lot No. 77, in the name of Eduardo C. Pacete, situated at New Lawaan, Mlang, North Cotabato, and the issuance of a new Transfer Certificate of Title in the joint name of (half and half) Concepcion (Conchita) Alanis Pacete and Enrico L. Pacete.

"5. Ordering likewise the cancellation of Original Certificate of Title No. P-29890, covering Lot 1068, situated at Kiab, Matalam, North Cotabato, with an area of 12.1031 hectares, in the name of Emelda C. Pacete, and the issuance of a new Transfer Certificate of Title in the joint name (half and half) of Concepcion (Conchita) Alanis Pacete and Enrico L. Pacete; and declaring that the fishpond situated at Barrio Tumanan, Bislig, Surigao Del Sur, with an area of 48 hectares and covered by Fishpond Lease Agreement of Emelda C. Pacete, dated July 29, 1977 be cancelled and in lieu thereof, the joint name of Concepcion (Conchita) Alanis Pacete and her husband, Enrico L. Pacete, be registered as their joint property, including the 50 hectares fishpond situated in the same place, Barrio Timanan, Bislig, Surigao del Sur.

"6. Ordering the following motor vehicles to be the joint properties of the conjugal partnership of Concepcion (Conchita) Alanis Pacete and Enrico L. Pacete, viz:

"a. Motor vehicle with Plate No. T-RG?783; Make, Dodge; Motor No. T137-20561; Chassis No. 83920393, and Type, Mcarrier;

"b. Motor vehicle with Plate No. T-RG?784; Make, Dodge; Motor No. T214-229547; Chassis No. 10D-1302-C; and Type, Mcarrier;

"c. Motor vehicle with Plate No. J-PR--818; Make, Ford; Motor No. GPW-116188; Chassis No. HOCC-GPW-1161-88-C; Type, Jeep;

"d. Motor vehicle with Plate No. TH-5J?583; Make, Ford; Motor No. F70MU5-11111; Chassis No. HOCC-GPW-116188-G; Type, Stake;

"e. Motor vehicle with Plate No. TH-5J?584; Make, Hino; Motor No. ED300-45758; Chassis No. KB222-22044; Type, Stake; and

"f. Motor vehicle with Plate No. TH-5J?585; Make, Ford; Motor No. LTC-780-Dv; Chassis No. 10F-13582-K; Type, Stake.

"7. Ordering the defendant Enrico L. Pacete to pay the plaintiff the sum of P46,950.00 which is the share of the plaintiff in the unaccounted income of the ricemill and corn sheller for three years from 1971 to 1973.

"8. Ordering the defendant, Enrico L. Pacete, to reimburse the plaintiff the monetary equivalent of 30% of whatever the plaintiff has recovered as attorney's fees;

"9. Declaring the subsequent marriage between defendant Enrico L. Pacete and Clarita de la Concepcion to be

void ab initio; and

"10. Ordering the defendants to pay the costs of this suit." [4]

Hence, the instant special civil action of certiorari.

Under ordinary circumstances, the petition would have outrightly been dismissed, for, as also pointed out by private respondents, the proper remedy of petitioners should have instead been either to appeal from the judgment by default or to file a petition for relief from judgment. [5] This rule, however, is not inflexible; a petition for certiorari is allowed when the default order is improperly declared, or even when it is properly declared, where grave abuse of discretion attended such declaration. [6] In these exceptional instances, the special civil action of certiorari to declare the nullity of a judgment by default is available. [7] In the case at bench, the default order unquestionably is not legally sanctioned. The Civil Code provides:

"Art. 101. No decree of legal separation shall be promulgated upon a stipulation of facts or by confession of judgment.

"In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated."

The provision has been taken from Article 30 of the California Civil Code, [8] and it is, in substance, reproduced in Article 60 of the Family Code. [9]

Article 101 reflects the public policy on marriages, and it should easily explain the mandatory tenor of the law. In *Brown v. Yambao*, [10] the Court has observed:

"The policy of Article 101 of the new Civil Code, calling for the intervention of the state attorneys in case of uncontested proceedings for legal separation (and of annulment of marriages, under Article 88), is to emphasize that marriage is more than a mere contract; that it is a social institution in which the state is vitally interested, so that its continuation or interruption can not be made to depend upon the parties themselves (Civil Code, Article 52; *Adong vs. Cheong Gee*, 43 Phil. 43; *Ramirez v. Gmur*, 42 Phil. 855; *Goitia v. Campos*, 35 Phil. 252). It is consonant with this policy that the inquiry by the Fiscal should be allowed to focus upon any relevant matter that may indicate whether the proceedings for separation or annulment are fully justified or not."

Article 103 of the Civil Code, now Article 58 of the Family Code, further mandates that an action for legal separation must "in no case be tried before six months shall have elapsed since the filing of the petition," obviously in order to provide the parties a "cooling-off" period. In this interim, the court should take steps toward getting the parties to reconcile.

The significance of the above substantive provisions of the law is further underscored by the inclusion of the following provision in Rule 18 of the Rules of Court:

"SEC. 6. No defaults in actions for annulments of marriage or for legal separation. - If the defendant in an action for annulment 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, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated."

The special proscriptions on actions that can put the integrity of marriage to possible jeopardy are impelled by no less than the State's interest in the marriage relation and its avowed intention not to leave the matter within the exclusive domain and the vagaries of the parties to alone dictate.

It is clear that the petitioner did, in fact, specifically pray for legal separation.[11] That other remedies, whether principal or incidental, have likewise been sought in the same action cannot dispense, nor excuse compliance, with any of the statutory requirements aforequoted.

WHEREFORE, the petition for certiorari is hereby GRANTED and the proceedings below, including the Decision of 17 March 1980 appealed from, are NULLIFIED and SET ASIDE. No costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, p. 49.

[2] Ibid., p. 50.

[3] Presided by Judge Glicerio V. Carriaga, Jr.

[4] Rollo, pp. 55-60.

[5] Rollo, pp. 192-193.

[6] Lina vs. Court of Appeals, 135 SCRA 637; Garcia vs. Court of Appeals, 209 SCRA 732; Dimayacyac v. Court of Appeals, 93 SCRA 265.

[7] Pioneer Insurance & Surety Corp. vs. Hontanosas, 78 SCRA 447; Dimayacyac vs. Court of Appeals, 93 SCRA 265; Zenith Insurance Corp. vs. Purisima, 114 SCRA 62 citing Omico Mining & Industrial Corp. vs. Vallejos, 63 SCRA 285.

[8] Tolentino, Civil Code of the Philippines, 1968 ed., Vol. I, p. 299.

[9] "ART. 60. No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.

"In any case, the court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed."

[10] 102 Phil. 168, 172.

[11] Rollo, p. 95.

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