

CATALINA MONTEMAYOR, PLAINTIFF AND APPELLEE, VS. MATEO CUNANAN, DEFENDANT AND APPELLANT.

G.R. No. 5503. November 16, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

The plaintiff commenced an action against the defendant in the Court of First Instance of the Province of Pampanga, for a divorce and for a division of the marital property.

On the 25th day of February, 1906, after hearing the respective parties, the court rendered a decision containing the following order or decree:

"It is hereby ordered, that judgment be entered granting a divorce between the plaintiff and the defendant, and declaring the conjugal partnership formed between both of them to be dissolved on this date; and in order to wind up the partnership in these same proceedings, the administrator of said partnership, Mateo Cunanan, is hereby ordered to file with the court a true and exact inventory which shall comprise the capital contributed by him, his wife's dowry and paraphernalia, as well as the property acquired during the existence of the said partnership, with the costs against the defendant."

On the 4th day of March, 1909, the defendant presented a motion for a new trial based upon the ground that the facts adduced during the trial of the cause did not justify the conclusions of the lower court, which motion was denied upon the 13th day of March, 1909. On the same day the defendant excepted to the order of the court denying his motion for a new trial. On the 28th day of March, 1909, the defendant presented his bill of exceptions. On the 22d day of March, 1909, the attorney for the plaintiff presented the following motion, asking that the appeal of the defendant be not allowed:

"Now comes the plaintiff in the above-entitled case and respectfully prays the court:

"1. That the bill of exceptions presented by the defendant be overruled for the reason that the decision rendered in this case is not final; therefore, it is not appealable.

"2. That a peremptory term be fixed for the defendant to comply with the decision of the court with reference to the inventory of the property and the fruits thereof, with a warning as to contempt, on the ground that said measure is necessary for the proper execution of said part of the decision."

After hearing the respective parties, the lower court, upon the 16th day of June, 1909, denied the motion of the plaintiff in the following language:

"After considering the motion presented in this case on the 23d of March, 1909, by the representative of the plaintiff, the court holds that the decision entered in this case is final, and that the presentation of the inventory as ordered therein in order to wind up the conjugal partnership is nothing more than a consequence of the declaration of divorce; therefore, the motion is denied."

On the 16th day of June, 1909, the court approved and certified the bill of exceptions in said cause.

On the 9th day of July, 1909, after the bill of exceptions had been received in this court, the attorney for the appellee presented the following motion:

"Now comes the appellee and through his undersigned attorney respectfully prays this honorable court to dismiss with costs the bill of exceptions submitted by the appellant, for the reason that the same is not in accordance with the law, and because the controversy has not been properly submitted to this high tribunal by means of the said bill of exceptions, inasmuch as it is not final; therefore, the decision rendered in this cause by the court below is not subject to appeal."

The question presented is, Was the decision of the lower court final and appealable?

The complaint filed in the cause in the court below contained a statement of the facts upon which the plaintiff claimed a decree of divorce, as well as the facts upon which she claimed a division of the marital property and concluded with the following prayer:

"1. That a divorce between the plaintiff and the defendant be granted by the court.

"2. That an account between the parties be made up by the court as to the property acquired during the marriage, and that the same be divided between the parties in conformity with the law.

"3. That the court hold that all the property owned by the plaintiff prior to her marriage with the defendant is per se entirely free from any right of administration, or any other right on the part of the defendant.

"4. That pending a final decision in this matter the court be pleased to issue an injunction prohibiting the defendant, the lawyers who represent him, his agents or subordinates, from disposing of, pledging or mortgaging any portion of the marital property until further order of this court.

"5. That the plaintiff be granted by the court any other relief that it may deem just and equitable."

By reference to the prayer of the petition it will be noted that the lower court in its decree filed in the present case, resolved only a part of the question presented by the plaintiff. Under the provisions of section 123 of the Code of Procedure in Civil Actions, it will be noted that "no interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceeding therein pending, but only such ruling, order, or judgment, as finally determines the action or proceeding; nor shall any ruling, order, or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other."

Section 143 of said code provides as follows:

"Upon the rendition of final judgment, disposing of the action, either party shall have the right to perfect a bill of exceptions for review by the Supreme Court of all rulings, orders, and judgments made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment."

These two sections provide that (a) no appeal shall be allowed from an interlocutory ruling, order or judgment of the Court of First Instance; and (b) that bills of exception shall only be allowed upon final judgment.

It will be noted also that these sections provide for an appeal only upon a judgment which "finally determines the acting or proceeding." This phrase, "final judgment disposing of the action or proceeding" seems to be significant. The evident purpose of the legislature in using this phrase was to prevent (except in very extreme cases) appeals from an order, decree or judgment of the lower court which disposed of only a part of the proceeding or action. Appeals always mean delay in the final determination of causes. The majority of the United States Commission at the time these provisions of the Code of Procedure in Civil Actions were enacted, were eminent lawyers and fully understood the delays caused by appeals and evidently intended that no appeal should be allowed in any cause from a judgment, order or decree of the lower court until the cause was finally determined. In the present case the

plaintiff was attempting to seek (a) a divorce, and (b) a division of the conjugal property. The court granted the divorce. If an appeal should be allowed against that decree, then it would be useless to proceed to a division of the conjugal property until after the question whether or not the plaintiff was entitled to her divorce was settled on the appeal. And then suppose the Supreme Court should affirm the decree of the lower court and return the cause for further proceedings, and in settling the second question with reference to the division of the conjugal property, one or both of the parties might claim that an error was committed, they would then be entitled to another appeal against that order or decree of the lower court and have the case brought to this court again. Thus double time would be lost in the final settlement of the differences between the plaintiff and the defendant. And then again suppose that in one or the other of these appeals there existed questions upon which the parties might appeal to the Supreme Court of the United States; we would then have a further delay and the result of the whole case would remain suspended during the pendency of this appeal.

It might be argued, however, that the decree of the lower court in the present case was wrong; that the plaintiff was not entitled to her divorce and that it would be useless, therefore, to proceed to a division of the conjugal property. That might be admitted for the purpose of the argument; nevertheless it would seem clear that the decree of the court granting the divorce, without deciding the question as to the division of the conjugal property did not "finally determine the action" pending in the lower court. The lower court recognized this fact, to wit, that his decree did not finally determine all of the questions presented by the complaint in the lower court, by providing that a division of the conjugal property should constitute a part of the proceedings in that cause.

We are of the opinion and so hold that it was the purpose of the legislature in enacting the provisions of sections 123 and 143 of the Code of Procedure in Civil Actions to prohibit appeals except from decisions of the lower court which finally determine the action or proceeding. We fully recognize the fact, however, that there may be cases in which decrees or orders are made by the lower court which do not finally determine the action or proceeding, from which an appeal may be taken, but these cases must be such as will effectually prevent the parties to the action from protecting their rights in the further proceedings in the lower court, until the validity of such decree or order is finally settled on appeal. These exceptions, however, will be found to be very few. We will not now attempt to determine under what circumstances such appeals will be allowed. It is sufficient now to state the general rule.

The question as to when a decree is final is one which the courts have discussed many times and it is difficult to harmonize the numerous decisions of the various courts upon that question. Mr. Justice Brown, of the Supreme Court of the United States, speaking for the court, said:

"Probably no question of equity practice has been the subject of more frequent discussion in this court than the finality of decrees." (McGourkey vs. The Toledo & Ohio Ry. Co., 146, U. S., 536, 544.)

In the present case the court granted the plaintiff her divorce and appointed a commissioner for the purpose of making an inventory of the conjugal property. The commissioner had no authority to make a division of the property. His only duty was to make an inventory and report the same to the court when the final division in accordance with law would be made by the court. Nothing could be done in the actual division of the property without the intervention of the court and even after the court had made a decree dividing the property, if the parties were dissatisfied with such decree, they would have their right of appeal. This court has decided in the case of *De la Rama vs. De la Rama* (7 Phil. Rep., 745) that the proceeding for the division of the conjugal property was a proper proceeding in an action for divorce.

In discussing the question as to the finality of a decree, Mr. Justice Brown (146 U. S., 536, 545) laid down the following rule:

"It may be said in general that if the court make a decree fixing the rights and liabilities of the parties, and thereupon refer the case to a master for a ministerial purpose only, and no further proceedings in court are contemplated, the decree is final; but if it refer the case to him as a subordinate court and for a judicial purpose, as to state an account between the parties, upon which a further decree is to be entered, the decree is not final." (Mc-Gourkey vs. Toledo & Ohio Ry. Co., 146 U. S., 536; Craig-head vs. Wilson, 59 U. S., 18 How., 199; Beebe vs. Russell, 60 U. S., 19 How., 283.)

In the case of Perkins vs. Fourniquet (6 How., 206) the Circuit Court of the United States decreed that the complainants were entitled to two-sevenths of certain property, and referred the matter to a master to take an accounting of it. The decree was held not to be final.

In the case of Pulliam vs. Christian (6 How., 209, 47 U. S.) a decree setting aside a deed by a bankrupt, directing the trustees under the deed to deliver up to the assignee all the property in their hands, and directing an account to be taken of the proceeds and sales previously made, was also held not to be a final decree. (Keystone Manganese Co. vs. Martin, 132 U. S., 91; Lodge vs. Twell, 135 U. S., 232; Clark vs. Roller, 199 U. S., 541; Guarantee Co. vs. Mechanics' Bank, 173 U. S., 582; Araullo vs. Araullo, 3 Phil. Rep., 567; Toribio vs. Toribio, 7 Phil. Rep., 526; Ron vs. Mojica, 8 Phil. Rep., 328.)

Under all of the facts in the present case and the law applicable thereto, we are of the opinion and so hold that the defendant is not injured by denying¹ him an appeal at this stage of the proceedings, and that he must wait until the commissioner who was appointed by the lower court makes his report and the same is finally acted upon by the court and until all of the matters in controversy between the parties are disposed of by final order. Upon an appeal from that decree, every matter in discussion will be open to the parties in this court and may all be heard at the same time. We think that this is the better doctrine to establish.

The bill of exceptions in the present case is dismissed with costs against the appellant. After the expiration of ten days let a judgment be entered in accordance herewith and the record remanded to the court from which it came for such further action as may be necessary to finally determine the questions involved in the cause. It is so ordered.

Carson, Moreland, and Elliott, JJ., concur.

DISSENTING OPINION

TORRES J.:

Save always the respect due to the majority opinion, the undersigned believes that it is his duty to state the reason why he does not concur with, and has not subscribed the foregoing decision.

The question involved in the motion presented by the plaintiff may be reduced to the following: Is a decision entered by the Court of First Instance in an action for divorce, granting a separation between the plaintiff and the defendant, and holding that the conjugal partnership formed between them has been dissolved from the date of the decision, a final one? Can the said decision be appealed from by means of a bill of exceptions, under the provisions of the Code of Procedure now in force?

We answer both questions in the affirmative and therefore, in our opinion, considering the provisions of section 123 of the Code of Civil Procedure, said motion does not lie, inasmuch as the decision above alluded to definitely puts an end to the contention between a badly mated husband and wife; it authorizes their legal separation, modifies to a certain extent their respective social status, and dissolves the conjugal partnership that they had formed by their marriage, together with the other consequences which under the law a final decree of divorce

produces.

In order to wind up the said partnership the defendant was directed by the court to present an inventory comprising all the property described therein. Has the said mandate altered the final character of the judgment granting the divorce? Not at all. The latter part of the judgment will be executed after the first part has become final and susceptible of compliance. As long as no final decision granting the divorce has been rendered, the marital partnership can not be considered dissolved, nor can a separation of the property of the divorced couple be proceeded with. (Arts. 1433, 1434, and 1437, Civil Code.)

The main object of an appeal interposed and admitted by means of a bill of exceptions is to obtain from the appellate court a reversal of the judgment appealed from, that is to say, that the divorce granted therein be overruled; and this notwithstanding the fact that the second part of the judgment is expressly involved in the decision affirming or reversing the same; in the decision, however, the only question to be considered is whether or not the granting of the divorce, which was the principal finding in said judgment, was in accordance with the law.

In our opinion it is not proper to discuss what property constitutes the gananciales, and what property was contributed by each spouse and the character and conditions thereof, until it shall have been determined by means of a final judgment that the separation of the partners and of their respective properties should be made. The said separation and division will be effected when there is no more discussion as to whether or not the divorce should be granted. The judgment on this very important question can not be supposed as rendered finally in order to decide at once how the conjugal partnership will be liquidated and how the property thereof will be divided between the partners. Such operations, which are of a secondary nature, can easily be performed upon the rendering of a final judgment granting the divorce which is the principal and only object of the action.

This action should be brought to a close by means of a decision granting or denying the prayer for divorce, not by a separation and division of the property of the divorced parties which only follows as a consequence of an affirmative finding in a petition for divorce.

Sections 181 et seq. of the Code of Civil Procedure, touching partition of real estate, are not applicable in this case.

In view of the foregoing and of other considerations based on the law, in our opinion the motion above referred to should be overruled, and the appeal to this second instance should be prosecuted.

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