

MAURO BLARDONY, JR., PETITIONER, VS. HON. JOSE L. COSCOLLUELA, JR., AS PRESIDING JUDGE OF BRANCH CXLVI, REGIONAL TRIAL COURT, NATIONAL CAPITAL REGION, MAKATI, METRO MANILA AND M...

G.R. No. 70261. February 28, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The petitioner seeks a review of the orders dated August 9, 1983, and February 20, 1985, of respondent Judge Jose Coscolluela, Jr., of the Regional Trial Court of Makati, Branch CXLVI, amending the order of his predecessor, Judge Segundo Soza, (which dismissed private respondent's petition for dissolution of the conjugal partnership and partition of conjugal properties) by requiring petition to submit accounting of his salaries, allowances, bonuses and commissions.

The petitioner and the private respondent are spouses. They were married on April 30, 1975. During their marriage, they begot one child named Patricia Araneta Blardony, who was born on November 10, 1975. Due to irreconcilable differences, petitioner and private respondent separated in March 1981.

On different dates, the spouses executed the following agreements:

(a)

Memorandum of Agreement dated July 1981 for the support of their child, Patricia;

(b)

Receipt dated January 11, 1982, evidencing the Compromise of Settlement of Advances claimed by private respondent from petitioner;

(c)

The Deed of Conveyance of a property situated in Alabang, Muntinlupa; and

(d)

The Confirmation of the waiver by private respondent in favor of petitioner over a property situated in Calatagan, Batangas. (p. 25, Rollo.)

On May 3, 1982, the wife filed a Petition for Dissolution of Conjugal Partnership and Partition of Conjugal

Partnership Properties in the Court of First Instance of Rizal, Branch XXXVI, in Makati, where it was docketed as Sp. No. 9711.

The husband, in his answer, admitted that he had abandoned the conjugal home since March 1981; that before the filing of the petition, he and his wife, assisted by their respective counsel, tried to file a joint petition for the dissolution of their conjugal partnership but their attempt failed due to their inability to agree upon the equitable partition of their conjugal partnership properties and he prayed the court to order “a fair and equitable dissolution of their conjugal partnership in accordance with law.” (p. 74, Rollo.)

On October 8, 1982, the husband filed a motion to dismiss the petition on jurisdictional grounds, claiming that it should have been filed first in the Lupon Tagapamayapa as provided in P.D. 1508, because both are residents of the same Municipality of Makati.

Mrs. Blardony opposed the motion to dismiss. Nevertheless, Judge Segundo Soza dismissed her petition on October 8, 1982 for her failure, as plaintiff, to comply with Section 6 of P.D. 1508.

Mrs. Blardony filed a motion for reconsideration. In the meantime, the courts were reorganized and the case was transferred to Branch CXLVI (146) of the Regional Trial Court of Makati, presided over by Judge Jose Coscolluela, Jr.

On August 9, 1983, Judge Coscolluela set aside Judge Soza’s order of dismissal and required the defendant to submit an accounting of his salaries, allowances, bonuses, and commissions. The latter’s motion for reconsideration of that order was denied by the court on February 20, 1985. Hence, this petition for certiorari under Rule 65 of the Rules of Court with a prayer for a writ of preliminary injunction on the grounds that respondent Judge exceeded his jurisdiction:

- in assuming jurisdiction over the case without prior referral to the Lupon Tagapamayapa as required by P.D. 1508; and

- in declaring that the issues of support pendente lite and delivery of personal property belonging to the conjugal partnership of the parties are essentially involved in the petition, hence, the parties could go directly to court without passing through the Lupon Tagapamayapa, as provided in Section 6 of P.D. 1508.

The petition has no merit. Our jurisprudence is replete with decisions of this Court to the effect that while the referral of a case to the Lupon Tagapayapa is a condition precedent for filing a complaint in court, it is not a jurisdictional requirement, “its non-compliance cannot affect the jurisdiction which the court has already acquired over the subject matter or over the person of the defendant.” (Fernandez vs. Militante, May 31, 1988; Gonzales vs. Court of Appeals, 151 SCRA 287; Royales vs. Intermediate Appellate Court, 127 SCRA 470.) Petitioner waived the pre-litigation conciliation procedure prescribed in P.D. No. 1508 when he did not file a motion to dismiss the complaint on that score, but filed his answer thereto wherein he prayed the court to make an equitable partition of the conjugal properties.

“While petitioners could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. x x x. Upon this premise, petitioners cannot be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily.” (Royales vs. Intermediate Appellate Court, 127 SCRA 470.)

Furthermore, under Section 6 of P.D. 1508, the complaint may be filed directly in a competent court without passing the Lupon Tagapayapa in the following cases:

“SECTION 6. Conciliation, pre-condition to filing of complaint. — No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof, shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. However, the parties may go directly to court in the following cases:

“xxx xxx xxx

“(3) Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendente lite; and

“xxx xxx xxx.”

(Italics supplied.)

Respondent Judge correctly observed that:

“x. x x the issues of support pendente lite and delivery of personal properties belonging to the conjugal partnership, although not ‘coupled’ in the strict sense of the word with the instant petition, are essentially involved in this petition because of the minority of the daughter, Patricia Araneta Blardony who, as of this date, is not yet 8 years old, and because the resolution or decision of this court on the pending petition would be incomplete without a clear cut disposition on the partition of the personal and real properties of the conjugal partnership and consequent delivery thereof to the proper parties.” (p. 20, Rollo.)

WHEREFORE, finding no reversible error in the orders complained of, the petition for certiorari is denied for lack of merit. Costs against the petitioner. This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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