

TOMAS EUGENIO, SR., PETITIONER, VS. HON. ALEJANDRO M. VELEZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 20, CAGAYAN DE ORO CITY, DEPUTY SHERIFF JOHNSON TAN, JR., DEPUTY SHERI...*G.R. No. 85140, May 17, 1990*

Ponente: PADILLA, J.

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On 5 October 1988, petitioner came to this Court with a petition for certiorari and prohibition with application for restraining order and/or injunction (docketed as G.R. No. 85140) seeking to enjoin respondent Judge from proceeding with the Habeas Corpus case (Sp. Proc. No. 88-55, RTC, Branch 20, Cagayan de Oro City),* the respondent Sheriff from enforcing and implementing the writ and orders of the respondent Judge dated 28, 29, and 30 September 1988, and to declare said writ and orders as null and void. In a resolution issued on 11 October 1988, this Court required comment from the respondents on the petition but denied the application for a temporary restraining order.

The records disclose the following:

Unaware of the death on 28 August 1988 of Vitaliana Vargas (Vitaliana, for brevity), her full blood brothers and sisters, herein private respondents (Vargases, for brevity) filed on 27 September 1988, a petition for habeas corpus before the RTC of Misamis Oriental (Branch 20, Cagayan de Oro City) alleging that Vitaliana was forcibly taken from her residence sometime in 1987 and confined by herein petitioner in his palacial residence in Jasaan, Misamis Oriental. Despite her desire to escape, Vitaliana was allegedly deprived of her liberty without any legal authority. At the time the petition was filed, it was alleged that Vitaliana was 25 years of age, single, and living with petitioner Tomas Eugenio.

The respondent court in an order dated 28 September 1988 issued the writ of habeas corpus, but the writ was returned unsatisfied. Petitioner refused to surrender the body of Vitaliana (who had died on 28 August 1988) to the respondent sheriff, reasoning that a corpse cannot be the subject of habeas corpus proceedings; besides, according to petitioner, he had already obtained a burial permit from the Undersecretary of the Department of Health, authorizing the burial at the palace quadrangle of the Philippine Benevolent Christian Missionary, Inc. (PBCM), a registered religious sect, of which he (petitioner) is the Supreme President and Founder.

Petitioner also alleged that Vitaliana died of heart failure due to toxemia of pregnancy in his residence on 28 August 1988. As her common law husband, petitioner claimed legal custody of her body. These reasons were incorporated in an explanation filed before the respondent court. Two (2) orders dated 29 and 30 September 1988 were then issued by respondent court, directing delivery of the deceased's body to a funeral parlor in Cagayan de Oro City and its autopsy.

Petitioner (as respondent in the habeas corpus proceedings) filed an urgent motion to dismiss the petition therein, claiming lack of jurisdiction of the court over the nature of the action under sec. 1(b) of Rule 16 in relation to sec. 2, Rule 72 of the Rules of Court.[1] A special proceeding for habeas corpus, petitioner argued, is not applicable to

a dead person but extends only to all cases of illegal confinement or detention of a live person.

Before resolving the motion to dismiss, private respondents (as petitioners below) were granted leave to amend their petition.[2] Claiming to have knowledge of the death of Vitaliana only on 28 September 1988 (or after the filing of the habeas corpus petition), private respondents (Vargases) alleged that petitioner Tomas Eugenio, who is not in any way related to Vitaliana was wrongfully interfering with their (Vargases') duty to bury her. Invoking Arts. 305 and 308 of the Civil Code,[3] the Vargases contended that, as the next of kin in the Philippines, they are the legal custodians of the dead body of their sister Vitaliana. An exchange of pleadings followed. The motion to dismiss was finally submitted for resolution on 21 October 1988.

In the absence of a restraining order from this Court, proceedings continued before the respondent court; the body was placed in a coffin, transferred to the Greenhills Memorial Homes in Cagayan de Oro City, viewed by the presiding Judge of respondent court, and examined by a duly authorized government pathologist.[4]

Denying the motion to dismiss filed by petitioner, the court a quo held in an order,[5] dated 17 November 1988, that:

"It should be noted from the original petition, to the first amended petition, up to the second amended petition that the ultimate facts show that if the person of Vitaliana Vargas turns out to be dead then this Court is being prayed to declare the petitioners as the persons entitled to the custody, interment and/or burial of the body of said deceased. The Court, considering the circumstance that Vitaliana Vargas was already dead on August 28, 1988 but only revealed to the Court on September 29, 1988 by respondent's counsel, did not lose jurisdiction over the nature and subject matter of this case because it may entertain this case thru the allegations in the body of the petition on the determination as to who is entitled to the custody of the dead body of the late Vitaliana Vargas as well as the burial or interment thereof, for the reason that under the provisions of Sec. 19 of Batas Pambansa Blg. 129, which reads as follows:

'Sec. 19. Jurisdiction in civil cases. - Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

x x x x x x x x

(5) In all actions involving the contract of marriage and marital relations;

(6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions;

x x x x x x x x"

it so provides that the Regional Trial Court has exclusive original jurisdiction to try this case. The authority to try the issue of custody and burial of a dead person is within the lawful jurisdiction of this Court because of Batas Pambansa Blg. 129 and because of the allegations of the pleadings in this case, which are enumerated in Sec. 19, pars. 1, 5 and 6 of Batas Pambansa Blg. 129."

Thereafter, the court a quo proceeded as in ordinary civil cases and, in due course, rendered a decision on 17 January 1989,[6] resolving the main issue of whether or not said court acquired jurisdiction over the case by treating it as an action for custody of a dead body, without the petitioners having to file a separate civil action for such relief, and without the Court first dismissing the original petition for habeas corpus.

Citing Sections 19 and 20 of Batas Pambansa Blg. 129 (the Judiciary Reorganization Act of 1981),[7] Sections 5 and 6 of Rule 135 of the Rules of Court,[8] Articles 305 and 308 in relation to Article 294 of the Civil Code and Section 1104 of the Revised Administrative Code,[9] the decision stated:

"x x x. By a mere reading of the petition the court observed that the allegations in the original petition as well as in the two amended petitions show that Vitaliana Vargas has been restrained of her liberty and if she were dead then relief was prayed for the custody and burial of said dead person. The amendments to the petition were but elaborations but the ultimate facts remained the same, hence, this court strongly finds that this court has ample jurisdiction to entertain and sit on this case as an action for custody and burial of the dead body because the body of the petition controls and is binding and since this case was raffled to this court to the exclusion of all other courts, it is the primary duty of this court to decide and dispose of this case. x x x." [10]

Satisfied with its jurisdiction, the respondent court then proceeded to the matter of rightful custody over the dead body, (for purposes of burial thereof). The order of preference to give support under Art. 294 was used as the basis of the award. Since there was no surviving spouse, ascendants or descendants, the brothers and sisters were preferred over petitioner who was merely a common law spouse, the latter being himself legally married to another woman. [11]

On 23 January 1989, a new petition for review with application for a temporary restraining order and/or preliminary injunction was filed with this Court (G.R. No. 86470). Raised therein were pure questions of law, basically identical to those raised in the earlier petition (G.R. No. 85140); hence, the consolidation of both cases. [12] On 7 February 1989, petitioner filed an urgent motion for the issuance of an injunction to maintain status quo pending appeal, which this Court denied in a resolution dated 23 February 1989 stating that "Tomas Eugenio has so far failed to sufficiently establish a clear legal right to the custody of the dead body of Vitaliana Vargas, which now needs a decent burial." The petitions were then submitted for decision without further pleadings.

Between the two (2) consolidated petitions, the following issues are raised:

1. propriety of a habeas corpus proceeding under Rule 102 of the Rules of Court to recover custody of the dead body of a 25 year old female, single, whose nearest surviving claimants are full blood brothers and sisters and a common law husband.
2. jurisdiction of the RTC over such proceedings and/or its authority to treat the action as one for custody/possession/authority to bury the deceased/recovery of the dead.
3. interpretation of par. 1, Art. 294 of the Civil Code (Art. 199 of the new Family Code) which states:

'ART. 294. The claim for support, when proper and two or more persons are obliged to give it, shall be made in the following order:

- (1) From the spouse;

x x x'

Section 19, Batas Pambansa Blg. 129 provides for the exclusive original jurisdiction of the Regional Trial Courts over civil cases. Under Sec. 2, Rule 102 of the Rules of Court, the writ of habeas corpus may be granted by a Court of First Instance (now Regional Trial Court). It is an elementary rule of procedure that what controls is not the caption of the complaint or petition; but the allegations therein determine the nature of the action, and even without the prayer for a specific remedy, proper relief may nevertheless be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. [13]

When the petition for habeas corpus was filed before the court a quo, it was not certain whether Vitaliana was dead or alive. While habeas corpus is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is exercised in its issuance, and such facts must be made to appear to the judge to whom the petition is presented as, in his judgment, prima facie entitle the

petitioner to the writ.[14] While the court may refuse to grant the writ if the petition is insufficient in form and substance, the writ should issue if the petition complies with the legal requirements and its averments make a prima facie case for relief. However, a judge who is asked to issue a writ of habeas corpus need not be very critical in looking into the petition for very clear grounds for the exercise of this jurisdiction. The latter's power to make full inquiry into the cause of commitment or detention will enable him to correct any errors or defects in the petition.[15]

In *Macazo and Nunez vs. Nunez*,[16] the Court frowned upon the dismissal of a habeas corpus petition filed by a brother to obtain custody of a minor sister, stating:

"All these circumstances notwithstanding, we believe that the case should not have been dismissed. The court below should not have overlooked that by dismissing the petition, it was virtually sanctioning the continuance of an adulterous and scandalous relation between the minor and her married employer, respondent Benildo Nunez, against all principles of law and morality. It is no excuse that the minor has expressed preference for remaining with said respondent, because the minor may not chose to continue an illicit relation that morals and law repudiate.

x x x x x x x x

"The minor's welfare being the paramount consideration, the court below should not allow the technicality, that Teofilo Macazo was not originally made a party, to stand in the way of its giving the child full protection. Even in a habeas corpus proceeding the court had power to award temporary custody to the petitioner herein, or some other suitable person, after summoning and hearing all parties concerned. What matters is that the immoral situation disclosed by the records be not allowed to continue."[17]

After the fact of Vitaliana's death was made known to the petitioners in the habeas corpus proceedings, amendment of the petition for habeas corpus, not dismissal, was proper to avoid multiplicity of suits. Amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case may so far as possible be determined on its real facts and in order to expedite the trial of cases or prevent circuitry of action and unnecessary expense, unless there are circumstances such as inexcusable delay or the taking of the adverse party by surprise or the like, which justify a refusal of permission to amend.[18] As correctly alleged by respondents, the writ of habeas corpus as a remedy became moot and academic due to the death of the person allegedly restrained of liberty, but the issue of custody remained, which the court a quo had to resolve.

Petitioner claims he is the spouse contemplated under Art. 294 of the Civil Code, the term spouse used therein not being preceded by any qualification; hence, in the absence of such qualification, he is the rightful custodian of Vitaliana's body. Vitaliana's brothers and sisters contend otherwise. Indeed, Philippine Law does not recognize common law marriages. A man and woman not legally married who co-habit for many years as husband and wife, who represent themselves to the public as husband and wife, and who are reputed to be husband and wife in the community where they live may be considered legally "married" in common law jurisdictions but not in the Philippines.[19]

While it is true that our laws do not just brush aside the fact that such relationships are present in our society, and that they produce a community of properties and interests which is governed by law,[20] authority exists in case law to the effect that such form of co-ownership requires that the man and woman living together must not in any way be incapacitated to contract marriage.[21] In any case, herein petitioner has a subsisting marriage with another woman, a legal impediment which disqualified him from even legally marrying Vitaliana. In *Santero vs. CFI of Cavite*,[22] the Court, thru Mr. Justice Paras, interpreting Art. 188 of the Civil Code (Support of Surviving Spouse and Children During Liquidation of Inventoried Property) stated: "Be it noted however that with respect to

'spouse', the same must be the 'legitimate spouse' (not common-law spouses ...)".

There is a view that under Article 332 of the Revised Penal Code, the term "spouse" embraces common law relation for purposes of exemption from criminal liability in cases of theft, swindling and malicious mischief committed or caused mutually by spouses. The Penal Code article, it is said, makes no distinction between a couple whose cohabitation is sanctioned by a sacrament or legal tie and another who are husband and wife de facto.[23] But this view cannot even apply to the facts of the case at bar. We hold that the provisions of the Civil Code, unless expressly providing to the contrary as in Article 144, when referring to a "spouse" contemplate a lawfully wedded spouse. Petitioner vis-a-vis Vitaliana was not a lawfully-wedded spouse to her; in fact, he was not legally capacitated to marry her in her lifetime.

Custody of the dead body of Vitaliana was correctly awarded to her surviving brothers and sisters (the Vargases). Section 1103 of the Revised Administrative Code provides:

"Sec. 1103. Persons charged with duty of burial. - The immediate duty of burying the body of a deceased person, regardless of the ultimate liability for the expense thereof, shall devolve upon the persons hereinbelow specified:

x x x

"(b) If the deceased was an unmarried man or woman, or a child, and left any kin, the duty of burial shall devolve upon the nearest of kin of the deceased, if they be adults and within the Philippines and in possession of sufficient means to defray the necessary expenses."

WHEREFORE, the decision appealed from is **AFFIRMED**. Both petitions are hereby **DISMISSED**. No Costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Gancayco and Grino-Aquino, JJ., on leave.

* Hon. Alejandro Velez, presiding.

[1] Rule 16 (Motion to Dismiss):

SECTION 1. Grounds. - Within the time for pleading a motion to dismiss the action may be made on any of the following grounds:

(a) x x x

(b) That the court has no jurisdiction over the nature of the action or suit;

Rule 72 (Subject Matter and Applicability of General Rules)

x x x

SECTION 2. Applicability of rules of civil actions. - In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

[2] 3 and 11 October 1988 orders, Record of Regional Trial Court Proceedings, pp. 74, 75 & 102

[3] ART. 305. The duty and the right to make arrangements for the funeral of a relative shall be in accordance with the order established for support, under article 294. In case of descendants of the same degree, or of brothers

and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right.

ART. 308. No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in Articles 294 and 305.

[4] Record of RTC Proceedings, pp. 296-297

[5] Ibid., p. 338

[6] Record of RTC Proceedings, p. 577

[7] Supra

[8] Sec. 5 - Inherent power of courts; Sec. 6 - means to carry jurisdiction into effect.

[9] Sec. 1104. Right of custody to body - Any person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it, except when an inquest is required by law for the purpose of determining the cause of death; and, in case of death due to or accompanied by a dangerous communicable disease, such body shall until buried remain in the custody of the local board of health or local health officer, or if there be no such, then in the custody of the municipal council.

[10] G.R. No. 86470, Rollo at 34

[11] Annexes 7 & 8, Petition, G.R. No. 85140, Rollo at 85 and 86

[12] Resolution of 26 January 1989, G.R. No. 85140, Rollo at 114

[13] Ras v. Sua, G.R. No. L-23302, September 25, 1968, 25 SCRA 158-159; Nactor v. IAC, G.R. No. 74122, March 15, 1988, 158 SCRA 635

[14] 39 Am. Jur., 2d, Habeas Corpus § 129

[15] Ibid., § 130

[16] G.R. No. L-12772, 24 January 1959, 105 Phil. 55

[17] Ibid.

[18] PNB vs. CA, G.R. No. L-45770, 30 March 1988, 159 SCRA 933

[19] Fiel vs. Banawa, No. 56284-R, March 26, 1979, 76 OG 619

[20] Article 144 of the Civil Code provides:

When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership.

[21] Aznar, et al. vs. Garcia, et al., G.R. Nos. L-11483-84, 14 February 1958, 102 Phil. 1055.

[22] G.R. Nos. 61700-03, September 24, 1987, 153 SCRA 728

[23] People vs. Constantino, No. 01897-CR, September 6, 1963, 60 O.G. 3603

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