

43 Phil. 216

[G. R. No. 17866. March 20, 1922]

ANDREE G. CHEREAU, APPLICANT AND APPELLEE, VS. ASUNCION FUENTEBELLA ET AL., OBJECTORS AND APPELLANTS. CARMEN ORTIZ, INTERVENER.

D E C I S I O N

STREET, J.:

This petition is filed in this court by Carmen Ortiz, a resident of the city of Manila, asking leave to intervene in a cause styled Andree C. Chereau vs. Asuncion Fuentesbella and others (R. G. No. 17866), relating to the registration of certain land in Camarines Sur, which proceeding is now here pending upon an appeal. The present petitioner, Carmen Ortiz, alleges that she has an interest in the land which is the subject of registration in that proceeding, and she admits that she did not appear to assert her supposed interest in the property while the cause was being considered in the Court of First Instance. In explanation of her failure to do so she asserts, in order evidently to give color to this petition, that registration of the parcels in which she is concerned had been fraudulently procured by the petitioner in that case. Accordingly it is now requested that the appeal be remanded to the Court of First Instance for further consideration and that the judgment by default be set aside, to the end that the present petitioner may assert her interest in the property to which reference is made.

To the petition now before us, the said Andree C. Chereau, the original petitioner and the litigant in whose favor registration was decreed by the trial court, answered, opposing the proposed intervention of Carmen Ortiz on various grounds but more particularly on the ground that she has no interest in the property that would justify permitting her to intervene. Upon this question the parties have submitted such proof as they desired; and the matter is now before us for determination on the proven facts.

Accordingly we shall now proceed to determine whether Carmen Ortiz, upon the facts appearing of record, has been shown to possess such an interest in the property in question

as would justify a court in admitting her as an intervener.

In attacking this problem at once, we ignore the question of the propriety of admitting such a petition at this juncture, considered as a matter of practice, as well also as the question whether the failure of the present petitioner to appear and assert her rights in the Court of First Instance was due to any such fraudulent act on the part of Andree C. Chereau, the petitioner in the registration proceeding, or any other person, as would justify a court in setting aside the default which was declared by the lower court.

The facts, then, relating to the supposed interest of Carmen Ortiz in the land which is the subject of registration in the proceeding above referred to are few and indisputable, and they are these:

Many years ago the present petitioner, Carmen Ortiz, became the wife of Andres Garchitorena, from whom she obtained a decree of divorce in the Court of First Instance of the city of Manila on December 18, 1917.

As an incident of that decree the ganancial estate was liquidated by consent, and to this end an agreement of liquidation was entered into by the spouses. Furthermore, said agreement, duly signed, was approved by the court and incorporated in its decision. Among the provisions of this contract, pertinent to the present controversy, are paragraphs III to V, inclusive, thereof, which read as follows:

“III. That according to the foregoing liquidation there must accrue to the plaintiff, Carmen Ortiz, the amount of eight thousand pesos, Philippine currency (P8,000) that she hereby acknowledges having received in cash in full satisfaction of the portion pertaining to her.

“IV. From this date Carmen Ortiz voluntarily renounces in whatever rights or participation she may have the conjugal partnership property of said marriage or over whatever kind of property that is now possessed by Mr. Andres Garchitorena.

“V. That the defendant, Andres Garchitorena, also renounces whatever civil rights he may have had in the properties of Carmen Ortiz.”

After the divorce above referred to was consummated, Andres Garchitorena died, having

meanwhile conveyed various parcels of real property of which he had been possessed, and which at one time had belonged to the ganancial estate, to his children, four in number, of the name of Garchitorena Chereau, born to him as a result of relations with Margarita Chereau. The property in which Carmen Ortiz now claims the interest which she wishes to assert as intervener is precisely a portion of the property which was assigned to Andres Garchitorena in the liquidation of the ganancial estate and then by him transferred, as above stated, to said children.

The ground on which the petitioner thus seeks to assert an interest which she had already expressly renounced in the liquidation of the ganancial estate is that the decree of divorce and the liquidation based upon it are supposed to be void. This claim seems to be made in view of the fact that it does not appear in the divorce proceeding instituted by Carmen Ortiz against her husband, Andres Garchitorena, that the offense of concubinage, or adultery of the latter, which served as the basis of the divorce, had ever been established by final sentence in a criminal proceeding, reliance being placed upon section 8 of Act No. 2710, relating to divorce.

The view entertained by the petitioner is entirely mistaken; and the decree of divorce, to say nothing of the liquidation by consent in which both parties voluntarily participated, must be considered valid. It is true that section 8 of Act No. 2710 declares that a divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action; but noncompliance with that provision cannot affect the validity of the judgment. That provision has reference of course to the species of proof required to establish the basal fact on which the right to the divorce rests; and the circumstance that this fact is not so proved in no wise impairs the jurisdiction of the court. Erroneous the judgment undoubtedly was, and if the matter had been brought by appeal to this court, and error assigned on that ground, the judgment granting the divorce would have been reversed. But after the decree has become final and the community property divided, the decree cannot now be changed in any proceeding; and much less is it subject to the collateral attack which is here made upon it.

In this connection it will be noted that the Court of First Instance undoubtedly had jurisdiction over the subject-matter of that divorce proceeding, and both the parties were properly impleaded and before the court. We note further that in the petitory part of the complaint, the court is requested to make a decree divorcing the plaintiff from the defendant, and to order a division of the ganancial property. There is nothing to indicate that the plaintiff was seeking only a limited divorce from bed and board (*a mensa et thoro*),

as was the nature of the divorce formerly procurable in the courts of this country. The prayer is merely for a divorce, and this must mean the divorce absolute after one year referred to in Act No. 2710, which is now the only kind of divorce procurable here (*Garcia Valdez vs. Soteraña Tuason*, 40 Phil., 943); and was the only sort of divorce that could be decreed at the time this divorce was granted. The court entertaining that proceeding therefore undoubtedly had jurisdiction to do exactly the thing that it did; namely, to decree divorce and to enforce the division of the community property. That said decree was an absolute decree after the expiration of a year follows as a necessary consequence from section 9 of Act No. 2710 and its validity cannot be questioned on the false assumption that it is merely a divorce from bed and board, for such it does not purport to be. The circumstance that it was an erroneous judgment does not make it a void judgment or in any wise impair its binding effect upon the parties.

It follows that the supposed interest of Carmen Ortiz in the property which was assigned to Andres Garchitorena in the liquidation above referred to is nonexistent, and for this lack of interest in the subject-matter, she is disentitled to intervene in this cause, if for no other reason:

The petition is, therefore, denied, with costs. So ordered.

Araullo, C. J., and Johnson, J., concur.

CONCURRING

AVANCEÑA, J., with whom concur MALCOLM, VILLAMOR, OSTRAND, and JOHNS, JJ.,

I agree with this decision except insofar as it declares that now, in view of Act No. 2710, only absolute divorce is obtainable.

CONCURRING

ROMUALDEZ, J.,

I concur in the dispositive part. It is true that the exclusive rights of the appellee are founded upon an erroneous judgment, insofar as at that and at the present time, no absolute divorce could, and can, be obtained except under the provisions of Act No. 2710. However, that judgment was rendered after regular jurisdiction over the case was acquired and it is now conclusive; wherefore it is valid.

Petition denied.

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