

## SECOND DIVISION

[ G.R. No. 116607, April 10, 1996 ]

**EMILIO TUASON, PETITIONER, VS. COURT OF APPEALS AND  
MARIA VICTORIA L. TUASON, RESPONDENTS.**

### DECISION

**PUNO, J.:**

This petition for review on certiorari seeks to annul and set aside the decision dated July 29, 1994 of the Court of Appeals in CA-G.R. CV No. 37925 denying petitioner's appeal from an order of the Regional Trial Court, Branch 149, Makati in Civil Case No. 3769.

This case arose from the following facts:

In 1989, private respondent Maria Victoria Lopez Tuason filed with the Regional Trial Court, Branch 149, Makati a petition for annulment or declaration of nullity of her marriage to petitioner Emilio R. Tuason. In her complaint, private respondent alleged that she and petitioner were married on June 3, 1972 and from this union, begot two children; that at the time of the marriage, petitioner was already psychologically incapacitated to comply with his essential marital obligations which became manifest afterward and resulted in violent fights between husband and wife; that in one of their fights, petitioner inflicted physical injuries on private respondent which impelled her to file a criminal case for physical injuries against him; that petitioner used prohibited drugs, was apprehended by the authorities and sentenced to a one-year suspended penalty and has not been rehabilitated; that petitioner was a womanizer, and in 1984, he left the conjugal home and cohabited with three women in succession, one of whom he presented to the public as his wife; that after he left the conjugal dwelling, petitioner gave minimal support to the family and even refused to pay for the tuition fees of their children compelling private respondent to accept donations and dole-outs from her family and friends; that petitioner likewise became a spendthrift and abused his administration of the conjugal partnership by alienating some of their assets and incurring large obligations with banks, credit card companies and other financial institutions, without private respondent's consent; that attempts at reconciliation were made but they all failed because of petitioner's refusal to reform. In addition to her prayer for annulment of marriage, private respondent prayed for powers of administration to save the conjugal properties from further dissipation.<sup>[1]</sup>

Petitioner answered denying the imputations against him. As affirmative defense, he claimed that he and private respondent were a normal married couple during the first ten years of their marriage and actually begot two children during this period; that it was only in 1982 that they began to have serious personal differences when his wife did not accord the respect and dignity due him as a husband but treated him like a persona non grata; that due to the "extreme animosities" between them,

he temporarily left the conjugal home for a "cooling-off period" in 1984; that it is private respondent who had been taking prohibited drugs and had a serious affair with another man; that petitioner's work as owner and operator of a radio and television station exposed him to malicious gossip linking him to various women in media and the entertainment world; and that since 1984, he experienced financial reverses in his business and was compelled, with the knowledge of his wife, to dispose of some of the conjugal shares in exclusive golf and country clubs. Petitioner petitioned the court to allow him to return to the conjugal home and continue his administration of the conjugal partnership.

After the issues were joined, trial commenced on March 30, 1990. Private respondent presented four witnesses, namely, herself; Dr. Samuel Wiley, a Canon Law expert and marriage counselor of both private respondent and petitioner; Ms. Adelita Prieto, a close friend of the spouses, and Any. Jose F. Racela IV, private respondent's counsel. Private respondent likewise submitted documentary evidence consisting of newspaper articles of her husband's relationship with other women, his apprehension by the authorities for illegal possession of drugs; and copies of a prior church annulment decree.<sup>[2]</sup> The parties' marriage was clerically annulled by the Tribunal Metropolitano Matrimoniale which was affirmed by the National Appellate Matrimonial Tribunal in 1986.<sup>[3]</sup>

During presentation of private respondent's evidence, petitioner, on April 18, 1990, filed his Opposition to private respondent's petition for appointment as administratrix of the conjugal partnership of gains.

After private respondent rested her case, the trial court scheduled the reception of petitioner's evidence on May 11, 1990.

On May 8, 1990, two days before the scheduled hearing, a counsel for petitioner moved for a postponement on the ground that the principal counsel was out of the country and due to return on the first week of June.<sup>[4]</sup> The court granted the motion and reset the hearing to June 8, 1990.<sup>[5]</sup>

On June 8, 1990, petitioner failed to appear. On oral motion of private respondent, the court declared petitioner to have waived his right to present evidence and deemed the case submitted for decision on the basis of the evidence presented.

On June 29, 1990, the trial court rendered judgment declaring the nullity of private respondent's marriage to petitioner and awarding custody of the children to private respondent. The court ruled:

"WHEREFORE, in view of the foregoing, the marriage contracted by Ma. Victoria L. Tuason and Emilio R. Tuason on June 3, 1972 is declared null and void oh initio on the ground of psychological incapacity on the part of the defendant under Sec. 36 of the Family Code. Let herein judgment of annulment be recorded in the registry of Mandaluyong, Metro Manila where the marriage was contracted and in the registry of Makati, Metro Manila where the marriage is annulled.

The custody of the two (2) legitimate children of the plaintiff and the defendant is hereby awarded to the plaintiff.

The foregoing judgment is without prejudice to the application of the other effects of annulment as provided for under Arts. 50 and 51 of the Family Code of the Philippines."<sup>[6]</sup>

Counsel for petitioner received a copy of this decision on August 24, 1990. No appeal was taken from the decision.

On September 24, 1990, private respondent filed a "Motion for Dissolution of Conjugal Partnership of Gains and Adjudication to Plaintiff of the Conjugal Properties."<sup>[7]</sup> Petitioner opposed the motion on October 17, 1990<sup>[8]</sup>

Also on the same day, October 17, 1990, petitioner, through new counsel, filed with the trial court a petition for relief from judgment of the June 29, 1990 decision.

The trial court denied the petition on August 8, 1991.<sup>[9]</sup>

Petitioner appealed before the Court of Appeals the order of the trial court denying his petition for relief from judgment. On July 29, 1994, the Court of Appeals dismissed the appeal and affirmed the order of the trial court.<sup>[10]</sup>

Hence this petition.

The threshold issue is whether a petition for relief from judgment is warranted under the circumstances of the case.

We rule in the negative.

A petition for relief from judgment is governed by Rule 38, Section 2 of the Revised Rules of Court which provides:

*"Section 2. Petition to Court of First Instance for relief from judgment or other proceedings thereof. - When a judgment or order is entered, or any other proceeding is taken, against a party in a court of first instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside."*

Under the rules, a final and executory judgment or order of the Regional Trial Court may be set aside on the ground of fraud, accident, mistake or excusable negligence. In addition, the petitioner must assert facts showing that he has a good, substantial and meritorious defense or cause of action.<sup>[11]</sup> If the petition is granted, the court shall proceed to hear and determine the case as if a timely motion for new trial had been granted therein.<sup>[12]</sup>

In the case at bar, the decision annulling petitioner's marriage to private respondent

had already become final and executory when petitioner failed to appeal during the reglementary period. Petitioner however claims that the decision of the trial court was null and void for violation of his right to due process. He contends he was denied due process when, after failing to appear on two scheduled hearings, the trial court deemed him to have waived his right to present evidence and rendered judgment on the basis of the evidence for private respondent. Petitioner justifies his absence at the hearings on the ground that he was then "confined for medical and/or rehabilitation reasons."<sup>[13]</sup> In his affidavit of merit before the trial court, he attached a certification by Lt. Col. Plaridel F. Vidal, Director of the Narcotics Command, Drug Rehabilitation Center which states that on March 27, 1990 petitioner was admitted for treatment of drug dependency at the Drug Rehabilitation Center at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila of the Philippine Constabulary-Integrated National Police.<sup>[14]</sup> The records, however, show that the former counsel of petitioner did not inform the trial court of this confinement. And when the court rendered its decision, the same counsel was out of the country for which reason the decision became final and executory as no appeal was taken therefrom.<sup>[15]</sup>

The failure of petitioner's counsel to notify him on time of the adverse judgment to enable him to appeal therefrom is negligence which is not excusable. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.<sup>[16]</sup>

Similarly inexcusable was the failure of his former counsel to inform the trial court of petitioner's confinement and medical treatment as the reason for his non-appearance at the scheduled hearings. Petitioner has not given any reason why his former counsel, intentionally or unintentionally, did not inform the court of this fact. This led the trial court to order the case deemed submitted for decision on the basis of the evidence presented by the private respondent alone. To compound the negligence of petitioner's counsel, the order of the trial court was never assailed via a motion for reconsideration.

Clearly, petitioner cannot now claim that he was deprived of due process. He may have lost his right to present evidence but he was not denied his day in court. As the records show, petitioner, through counsel, actively participated in the proceedings below. He filed his answer to the petition, cross-examined private respondent's witnesses and even submitted his opposition to private respondent's motion for dissolution of the conjugal partnership of gains.<sup>[17]</sup>

A petition for relief from judgment is an equitable remedy; it is allowed only in exceptional cases where there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition.<sup>[18]</sup> Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence.<sup>[19]</sup>