399 Phil. 647

SECOND DIVISION

[G.R. No. 127406, November 27, 2000]

OFELIA P. TY,PETITIONER, VS.THE COURT OF APPEALS, AND EDGARDO M. REYES, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This appeal seeks the reversal of the decision dated July 24, 1996, of the Court of Appeals in C.A. - G.R. CV 37897, which affirmed the decision of the Regional Trial Court of Pasig, Branch 160, declaring the marriage contract between private respondent Edgardo M. Reyes and petitioner Ofelia P. Ty null and *void ab initio*. It also ordered private respondent to pay P15,000.00 as monthly support for their children Faye Eloise Reyes and Rachel Anne Reyes.

As shown in the records of the case, private respondent married Anna Maria Regina Villanueva in a civil ceremony on March 29, 1977, in Manila. Then they had a church wedding on August 27, 1977. However, on August 4, 1980, the Juvenile and Domestic Relations Court of Quezon City declared their marriage null and *void ab initio* for lack of a valid marriage license. The church wedding on August 27, 1977, was also declared null and *void ab initio* for lack of consent of the parties.

Even before the decree was issued nullifying his marriage to Anna Maria, private respondent wed Ofelia P. Ty, herein petitioner, on April 4, 1979, in ceremonies officiated by the judge of the City Court of Pasay. On April 4, 1982, they also had a church wedding in Makati, Metro Manila.

On January 3, 1991, private respondent filed a Civil Case 1853-J with the RTC of Pasig, Branch 160, praying that his marriage to petitioner be declared null and *void*. He alleged that they had no marriage license when they got married. He also averred that at the time he married petitioner, he was still married to Anna Maria. He stated that at the time he married petitioner the decree of nullity of his marriage to Anna Maria had not been issued. The decree of nullity of his marriage to Anna Maria was rendered only on August 4, 1980, while his civil marriage to petitioner took place on April 4, 1979.

Petitioner, in defending her marriage to private respondent, pointed out that his claim that their marriage was contracted without a valid license is untrue. She submitted their Marriage License No. 5739990 issued at Rosario, Cavite on April 3, 1979, as Exh. 11, 12 and 12-A. He did not question this document when it was submitted in evidence. Petitioner also submitted the decision of the Juvenile and Domestic Relations Court of Quezon City dated August 4, 1980, which declared null and *void* his civil marriage to Anna Maria Regina Villanueva celebrated on March 29, 1977, and his church marriage to said Anna Maria on August 27, 1977. These documents were submitted as evidence during trial and, according to petitioner, are

therefore deemed sufficient proof of the facts therein. The fact that the civil marriage of private respondent and petitioner took place on April 4, 1979, before the judgment declaring his prior marriage as null and *void* is undisputed. It also appears indisputable that private respondent and petitioner had a church wedding ceremony on April 4, 1982.[1]

The Pasig RTC sustained private respondent's civil suit and declared his marriage to herein petitioner null and *void ab initio* in its decision dated November 4, 1991. Both parties appealed to respondent Court of Appeals. On July 24, 1996, the appellate court affirmed the trial court's decision. It ruled that a judicial declaration of nullity of the first marriage (to Anna Maria) must first be secured before a subsequent marriage could be validly contracted. Said the appellate court:

> We can accept, without difficulty, the doctrine cited by defendant's counsel that `no judicial decree is necessary to establish the invalidity of void marriages.' It does not say, however, that a second marriage may proceed even without a judicial decree. While it is true that if a marriage is null and void, *ab initio*, there is in fact no subsisting marriage, we are unwilling to rule that the matter of whether a marriage is valid or not is for each married spouse to determine for himself - for this would be the consequence of allowing a spouse to proceed to a second marriage even before a competent court issues a judicial decree of nullity of his first marriage. The results would be disquieting, to say the least, and could not have been the intendment of even the now-repealed provisions of the Civil Code on marriage.
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> WHEREFORE, upon the foregoing ratiocination, We modify the appealed Decision in this wise:
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> 1. The marriage contracted by plaintiff-appellant [herein private respondent] Eduardo M. Reyes and defendant-appellant [herein petitioner] Ofelia P. Ty is declared null and void *ab initio*;
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> 2. Plaintiff-appellant Eduardo M. Reyes is ordered to give monthly support in the amount of P15,000.00 to his children Faye Eloise Reyes and Rachel Anne Reyes from November 4, 1991; and
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> 3. Cost against plaintiff-appellant Eduardo M. Reyes.
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> SO ORDERED.[2]

Petitioner's motion for reconsideration was denied. Hence, this instant petition asserting that the Court of Appeals erred:

I.

> BOTH IN THE DECISION AND THE RESOLUTION, IN REQUIRING FOR THE VALIDITY OF PETITIONER'S MARRIAGE TO RESPONDENT, A JUDICIAL

DECREE NOT REQUIRED BY LAW.

II

IN THE RESOLUTION, IN APPLYING THE RULING IN *DOMINGO VS. COURT OF APPEALS*.

III

IN BOTH THE DECISION AND RESOLUTION IN NOT CONSIDERING THE CIVIL EFFECTS OF THE RELIGIOUS RATIFICATION WHICH USED THE SAME MARRIAGE LICENSE.

IV

IN THE DECISION NOT GRANTING MORAL AND EXEMPLARY DAMAGES TO THE DEFENDANT-APPELLANT.

The principal issue in this case is whether the decree of nullity of the first marriage is required before a subsequent marriage can be entered into validly? To resolve this question, we shall go over applicable laws and pertinent cases to shed light on the assigned errors, particularly the first and the second which we shall discuss jointly.

In sustaining the trial court, the Court of Appeals declared the marriage of petitioner to private respondent null and *void* for lack of a prior judicial decree of nullity of the marriage between private respondent and Villanueva. The appellate court rejected petitioner's claim that *People v. Mendoza*[3] and *People v. Aragon*[4] are applicable in this case. For these cases held that where a marriage is *void* from its performance, no judicial decree is necessary to establish its invalidity. But the appellate court said these cases, decided before the enactment of the Family Code (E.O. No. 209 as amended by E.O No. 227), no longer control. A binding decree is now needed and must be read into the provisions of law previously obtaining.[5]

In refusing to consider petitioner's appeal favorably, the appellate court also said:

> *Terre v. Attorney Terre, Adm. Case No. 2349, 3 July 1992* is mandatory precedent for this case. Although decided by the High Court in 1992, the facts situate it within the regime of the now-repealed provisions of the Civil Code, as in the instant case.
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> For purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void *ab initio* is essential. . . .[6]

At the outset, we must note that private respondent's first and second marriages contracted in 1977 and 1979, respectively, are governed by the provisions of the Civil Code. The present case differs significantly from the recent cases of *Bobis v. Bobis*[7] and *Mercado v. Tan,*[8] both involving a criminal case for bigamy where the

bigamous marriage was contracted during the effectivity of the Family Code,[9] under which a judicial declaration of nullity of marriage is clearly required.

Pertinent to the present controversy, Article 83 of the Civil Code provides that:

Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

> (1) The first marriage was annulled or dissolved; or
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> (2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and before any person believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.

As to whether a judicial declaration of nullity of a void marriage is necessary, the Civil Code contains no express provision to that effect. Jurisprudence on the matter, however, appears to be conflicting.

Originally, in *People v. Mendoza*,[10] and *People v. Aragon*,[11] this Court held that no judicial decree is necessary to establish the nullity of a void marriage. Both cases involved the same factual milieu. Accused contracted a second marriage during the subsistence of his first marriage. After the death of his first wife, accused contracted a third marriage during the subsistence of the second marriage. The second wife initiated a complaint for bigamy. The Court acquitted accused on the ground that the second marriage is void, having been contracted during the existence of the first marriage. There is no need for a judicial declaration that said second marriage is void. Since the second marriage is void, and the first one terminated by the death of his wife, there are no two subsisting valid marriages. Hence, there can be no bigamy. Justice Alex Reyes dissented in both cases, saying that it is not for the spouses but the court to judge whether a marriage is void or not.

In *Gomez v. Lipana*,[12] and *Consuegra v. Consuegra*,[13] however, we recognized the right of the second wife who entered into the marriage in good faith, to share in their acquired estate and in proceeds of the retirement insurance of the husband. The Court observed that although the second marriage can be presumed to be *void ab initio* as it was celebrated while the first marriage was still subsisting, still there was a need for judicial declaration of such nullity (of the second marriage). And since the death of the husband supervened before such declaration, we upheld the right of the second wife to share in the estate they acquired, on grounds of justice and equity.[14]

But in *Odayat v. Amante* (1977),[15] the Court adverted to *Aragon* and *Mendoza* as precedents. We exonerated a clerk of court of the charge of immorality on the