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THIRD DIVISION

[G.R. No. 158298, August 11, 2010]

ISIDRO ABLAZA, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

Whether a person may bring an action for the declaration of the absolute nullity of the marriage of his deceased brother solemnized under the regime of the old *Civil Code* is the legal issue to be determined in this appeal brought by the petitioner whose action for that purpose has been dismissed by the lower courts on the ground that he, not being a party in the assailed marriage, had no right to bring the action.

Antecedents

On October 17, 2000, the petitioner filed in the Regional Trial Court (RTC) in Cataingan, Masbate a petition for the declaration of the absolute nullity of the marriage contracted on December 26, 1949 between his late brother Cresenciano Ablaza and Leonila Honato.[1] The case was docketed as Special Case No. 117 entitled *In Re: Petition for Nullification of Marriage Contract between Cresenciano Ablaza and Leonila Honato; Isidro Ablaza, petitioner*.

The petitioner alleged that the marriage between Cresenciano and Leonila had been celebrated without a marriage license, due to such license being issued only on January 9, 1950, thereby rendering the marriage void *ab initio* for having been solemnized without a marriage license. He insisted that his being the surviving brother of Cresenciano who had died without any issue entitled him to one-half of the real properties acquired by Cresenciano before his death, thereby making him a real party in interest; and that any person, himself included, could impugn the validity of the marriage between Cresenciano and Leonila at any time, even after the death of Cresenciano, due to the marriage being void *ab initio*.[2]

Ruling of the RTC

On October 18, 2000, [3] the RTC dismissed the petition, stating:

> Considering the petition for annulment of marriage filed, the Court hereby resolved to DISMISS the petition for the following reasons: 1) petition is filed out of time (action had long prescribed) and 2) petitioner is not a party to the marriage (contracted between Cresenciano Ablaza and Leonila Nonato on December 26, 1949 and solemnized by Rev. Fr. Eusebio B. Calolot).

SO ORDERED.

The petitioner seasonably filed a *motion for reconsideration*, but the RTC denied the *motion for reconsideration* on November 14, 2000.

Ruling of the Court of Appeals

The petitioner appealed to the Court of Appeals (CA), assigning the lone error that:

> The trial court erred in dismissing the petition for being filed out of time and that the petitioner is not a party to the marriage.

In its decision dated January 30, 2003,[4] however, the CA affirmed the dismissal order of the RTC, thus:

> While an action to declare the nullity of a marriage considered void from the beginning does not prescribe, the law nonetheless requires that the same action must be filed by the proper party, which in this case should be filed by any of the parties to the marriage. In the instant case, the petition was filed by Isidro Ablaza, a brother of the deceased-spouse, who is not a party to the marriage contracted by Cresenciano Ablaza and Leonila Honato. The contention of petitioner-appellant that he is considered a real party in interest under Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as he stands to be benefited or injured by the judgment in the suit, is simply misplaced. Actions for annulment of marriage will not prosper if persons other than those specified in the law file the case.
>
> Certainly, a surviving brother of the deceased spouse is not the proper party to file the subject petition. More so that the surviving wife, who stands to be prejudiced, was not even impleaded as a party to said case.
>
> WHEREFORE, finding no reversible error therefrom, the Orders now on appeal are hereby AFFIRMED. Costs against the petitioner-appellant.
>
> SO ORDERED.[5]

Hence, this appeal.

Issues

The petitioner raises the following issues:

I.

> WHETHER OR NOT THE DECISION OF THIS HONORABLE COURT OF APPEALS IN CA-G.R. CV. NO. 69684 AFFIRMING THE ORDER OF

DISMISSAL OF THE REGIONAL TRIAL COURT, BRANCH 49 AT CATAINGAN, MASBATE IN SPECIAL PROCEEDING NO. 117 IS IN ACCORDANCE WITH APPLICABLE LAWS AND JURISPRUDENCE;

II.

WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IN CA-G.R. CV NO. 69684 (SHOULD) BE REVERSED BASED ON EXECUTIVE ORDER NO. 209 AND EXISTING JURISPRUDENCE.

The issues, rephrased, boil down to whether the petitioner is a real party in interest in the action to seek the declaration of nullity of the marriage of his deceased brother.

Ruling

The petition is meritorious.

A *valid* marriage is essential in order to create the relation of husband and wife and to give rise to the mutual rights, duties, and liabilities arising out of such relation. The law prescribes the requisites of a valid marriage. Hence, the validity of a marriage is tested according to the law in force at the time the marriage is contracted.[6] As a general rule, the nature of the marriage already celebrated cannot be changed by a subsequent amendment of the governing law.[7] To illustrate, a marriage between a stepbrother and a stepsister was void under the *Civil Code*, but is not anymore prohibited under the *Family Code*; yet, the intervening effectivity of the *Family Code* does not affect the void nature of a marriage between a stepbrother and a stepsister solemnized under the regime of the *Civil Code*. The *Civil Code* marriage remains void, considering that the validity of a marriage is governed by the law in force at the time of the marriage ceremony.[8]

Before anything more, the Court has to clarify the impact to the issue posed herein of Administrative Matter (A.M.) No. 02-11-10-SC (*Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*), which took effect on March 15, 2003.

Section 2, paragraph (a), of A.M. No. 02-11-10-SC explicitly provides the limitation that a petition for declaration of absolute nullity of void marriage may be filed *solely* by the husband or wife. Such limitation demarcates a line to distinguish between marriages covered by the *Family Code* and those solemnized under the regime of the *Civil Code*.[9] Specifically, A.M. No. 02-11-10-SC extends only to marriages covered by the *Family Code*, which took effect on August 3, 1988, but, being a procedural rule that is prospective in application, is confined only to proceedings commenced *after* March 15, 2003.[10]

Based on *Carlos v. Sandoval,*[11] the following actions for declaration of absolute nullity of a marriage are excepted from the limitation, to wit:

1. Those commenced *before* March 15, 2003, the effectivity date of A.M. No. 02-11-10-SC; and

2. Those filed *vis-à-vis* marriages celebrated during the effectivity of the *Civil Code* and, those celebrated under the regime of the *Family Code* prior to March 15, 2003.

Considering that the marriage between Cresenciano and Leonila was contracted on December 26, 1949, the applicable law was the old *Civil Code,* the law in effect at the time of the celebration of the marriage. Hence, the rule on the exclusivity of the parties to the marriage as having the right to initiate the action for declaration of nullity of the marriage under A.M. No. 02-11-10-SC had absolutely no application to the petitioner.

The old and new *Civil Codes* contain no provision on who can file a petition to declare the nullity of a marriage, and when. Accordingly, in *Niñal v. Bayadog,*[12] the children were allowed to file *after the death of their father* a petition for the declaration of the nullity of their father's marriage to their stepmother contracted on December 11, 1986 due to lack of a marriage license. There, the Court distinguished between a void marriage and a voidable one, and explained *how* and *when* each might be impugned, thuswise:

> Jurisprudence under the *Civil Code* states that no judicial decree is necessary in order to establish the nullity of a marriage. "A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction." "**Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts**." **It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good *ab initio*.** But Article 40 of the *Family Code* expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage and such absolute nullity can be based only on a final judgment to that effect. **For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible. Corollarily, if the death of either party would extinguish the cause of action or the ground for defense,**

then the same cannot be considered imprescriptible.

> However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the *Family Code* connotes that such final judgment need not be obtained only for purpose of remarriage.[13]

It is clarified, however, that the absence of a provision in the old and new *Civil Codes* cannot be construed as giving a license to just any person to bring an action to declare the absolute nullity of a marriage. According to *Carlos v. Sandoval*,[14] the plaintiff must still be the party who stands to be benefited by the suit, or the party entitled to the avails of the suit, for it is basic in procedural law that every action must be prosecuted and defended in the name of the real party in interest. [15] Thus, only the party who can demonstrate a "proper interest" can file the action.[16] Interest within the meaning of the rule means material interest, or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.[17]

Here, the petitioner alleged himself to be the late Cresenciano's brother and surviving heir. Assuming that the petitioner was as he claimed himself to be, then he has a material interest in the estate of Cresenciano that will be adversely affected by any judgment in the suit. Indeed, a brother like the petitioner, albeit not a compulsory heir under the laws of succession, has the right to succeed to the estate of a deceased brother under the conditions stated in Article 1001 and Article 1003 of the *Civil Code*, as follows:

> Article 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one half of the inheritance and the brothers and sisters or their children to the other half.
>
> Article 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

Pursuant to these provisions, the presence of descendants, ascendants, or