

SECOND DIVISION

[G.R. No. 123926, July 22, 1999]

**ROGELIO MARISCAL, PETITIONER, VS. COURT OF APPEALS AND
BELLA C. CATALAN, RESPONDENTS.**

DECISION

BELLOSILLO, J.:

The only issue in this petition for review is whether the appellate court erred in setting aside the order of the trial court denying the motion to dismiss on the ground of *litis pendencia*.

The antecedent facts: On 29 March 1993 private respondent Bella C. Catalan filed a complaint against petitioner Rogelio Mariscal before the Regional Trial Court of Iloilo for the annulment of their marriage contracted on 4 April 1988 on the ground that it was void *ab initio* for having been solemnized without a valid marriage license and for being bigamous. She also sought to recover from Mariscal the sum of \$32,000.00 she allegedly sent to him while she was working as a nurse in the United States to buy properties as investment for their future life together. She further asked for P100,000.00 for moral damages, P50,000.00 for exemplary damages, P60,000.00 for attorney's fees, plus P700.00 per appearance and reimbursement of all her expenses of litigation. The case was docketed as Civil Case No. 20983.^[1] Previously, Catalan also filed criminal complaints against Mariscal for bigamy and perjury before the Iloilo courts.^[2]

Two (2) days later, or on 31 March 1993, Rogelio Mariscal filed his own complaint against Bella C. Catalan before the Regional Trial Court of Digos (Davao del Sur) seeking likewise the annulment of the same marriage on the ground that he was forced to marry her at gunpoint and that they had no valid license. Mariscal likewise prayed for moral damages of P100,000.00, exemplary damages of P20,000.00, attorney's fees of P50,000.00 including P2,000.00 monthly retainer starting 31 March 1993 and another P2,000.00 as court appearance fee, and litigation expenses of P20,000.00. The case was docketed as Civil Case No. 2996.^[3]

In view of Civil Case No. 20983 which she earlier instituted in the Regional Trial Court of Iloilo, Catalan moved for the dismissal of Civil Case No. 2996 invoking *litis pendencia*, citing Civil Case No. 20983 pending before the RTC of Iloilo which involved the same parties and the same cause of action. But the RTC of Digos denied the motion to dismiss as well as the subsequent motion for reconsideration of Catalan.^[4]

On appeal, the RTC of Digos was reversed by the Court of Appeals in its assailed decision of 17 July 1995 thus -

Both actions filed separately in the two courts by petitioner (respondent Catalan herein) and respondent Mariscal (petitioner herein) are for the annulment of marriage contracted by them. Common to the complaints filed in both cases is the ground that no license to contract marriage was obtained by both parties. That the marriage contracted by respondent Mariscal was bigamous because he had contracted a previous marriage with another woman is another ground alleged by petitioner in her complaint. Certainly the judgment to be rendered in the action first instituted, regardless of which party is successful, will amount to *res judicata* against the second action x x x x Petitioner's added claim of \$32,000 against respondent Mariscal in her complaint cannot militate against the fact that the causes of action and reliefs in both cases are identical.

WHEREFORE, the orders complained of x x x are annulled and set aside. Accordingly, respondent Rogelio Mariscal's complaint in Civil Case No. 2996 of the Regional Trial Court, 11th Judicial Region, Branch 19, Digos, Davao del Sur, is **DISMISSED** on the ground of *litis pendencia* x x x x^[5]

His motion for reconsideration having been rejected on 17 January 1996,^[6] petitioner Mariscal is now before us submitting that the appellate court erred in ordering the dismissal of Civil Case No. 2996 notwithstanding that the judgment that may be rendered in either Civil Case No. 2996 or Civil Case No. 20983 will not constitute *res judicata* on the other; for, on the possibility that the RTC of Iloilo dismisses the complaint for annulment, the RTC of Digos can still void the marriage by ruling that Mariscal's consent to the marriage with Catalan was vitiated by force, duress, intimidation and threats.

The petition is devoid of merit. It is not infrequent that this Court is given the opportunity to discuss *litis pendencia* as ground for the dismissal of an action which has become unnecessary and vexatious. In *Victronics Computers, Inc. v. RTC-Br. 63, Makati*,^[7] we said -

It is a rule that for *litis pendencia* to be invoked as ground for the abatement or dismissal of an action, the concurrence of the following requisites is necessary: (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and, (c) the identity in the two (2) cases should be such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to *res judicata* in the other.

It is quite evident that the first two (2) requisites are present. The parties involved in Civil Case No. 20983 (RTC-Iloilo) are the very same protagonists in Civil Case No. 2996 (RTC-Digos). The actions in both fora are based on the same set of facts that gave rise to the uniformity of the principal reliefs sought, more particularly, the ultimate dissolution of their marriage.

The third requisite is the bone of contention. Mariscal contends that there can be no *res judicata* between the two (2) simultaneous civil actions because of the different grounds for the nullification of their marriage respectively invoked by them. According to him, the judgment in one case will not abate the second because the