

FIFTH DIVISION

[CA-G.R. CV NO. 64909, August 11, 2006]

**JANOS TAMAS HERCZOG, PETITIONER-APPELLEE, VS. ROSA C.
ROSACAY-HERCZOG, RESPONDENT-APPELLEE,**

REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

D E C I S I O N

ROMILLA-LONTOK, J.:

Before this Court is an appeal from the Decision rendered by Branch 2 of the Regional Trial Court of Batangas City, dated March 26, 1999, in Civil Case No. 4373, the dispositive portion of which states, to wit:

"WHEREFORE, judgment is hereby rendered in favor of the petitioner, declaring that:

1. the marriage of petitioner, Janos Tamas Herczog, and respondent, Rosa C. Rosacay-Herczog, on April 18, 1990 as null and void pursuant to Article 36 of the Family Code, as amended;
2. the conjugal property relationship dissolved pursuant to the aforementioned compromise agreement;
3. the family name Herczog be dropped from the respondent's name and;
4. that a copy of this Decision be furnished to the National Census and Statistics Office and the appropriate Register of Deeds in connection with the dissolution of the conjugal property relationship of the spouses.

SO ORDERED."

On October 25, 1994, Janos Tamas Herczog, a Dutch National, then residing within the country as an employee of Pilipinas Shell Petroleum Corporation, Shell Compound, Tabangao, Batangas, filed a complaint for annulment of his marriage with Rosa C. Rosacay-Herczog. The complaint alleged that Janos and Rosa were married on April 18, 1990 at the Hague-Holland. Janos is a divorcee. Rosa was single with two (2) illegitimate children, namely: Jane Tammy Rose Rosacay, then 2½ years of age and Joanna Rose, then one (1) month old. The complaint is anchored on Rosa's alleged psychological incapacity.

On January 3, 1995, Janos through counsel, filed a motion for referral to the Public Prosecutor to determine the absence of collusion.

Under date of February 6, 1995, Rosa filed her Answer with a counter-petition for Legal Separation and Support *pendente lite*. In her answer, Rosa alleged having started to live-in with Janos in March, 1989, initially in an apartment in Batangas City where Janos visited on weekends and later in the quarters which Janos occupied in the Shell Compound in Tabangao.

In May, 1989, Janos was assigned in Paris, France where he brought Rosa and her children and where they stayed the whole year. They acquired a house in Southern France. In Paris, Janos was irritable most of the time. He quickly lost his temper for no apparent reason. He was assigned in Holland in February, 1990. They got married in the Hague in April, 1990. They bought a house and lot in Holland.

In 1991, Janos was assigned in California, U.S.A. He also brought Rosa and the children with him. They acquired house furnishings in California.

Janos maltreated Rosa. He would slap or kick her, pull her hair, punch her in the stomach even without any reason when he was in a bad mood. Rosa always forgave him in an effort to make a success of their marriage. Janos wanted Rosa to follow his every wish. She was treated like a sex slave. Janos' sharp and inconsiderate language caused the loss of Rosa's self-esteem. Even the children were treated with a heavy hand. He beat Rosa black and blue on October 20, 1994. She had to have medical attention.

Janos had an affair with their maid. He also had an affair with a certain Arlene Elma Sta. Clara. The spouses acquired a house and lot in BF Homes, Parañaque where Janos forbade Rosa to go to. The BF Homes property is registered in Rosa's name; yet, Janos orchestrated a mortgage with his mother. Janos falsely accuses Rosa of infidelity to cover up for his womanizing. The spouses have "a house and lot in Holland, a house and lot in BF Homes, Parañaque, house furnishings in Paris, France and California, U.S.A.; a Toyota Corolla; two (2) Isuzu jeepneys and furnishings and appliances in their house in Tabangao, Batangas City."

Rosa prays for the dismissal of Janos' complaint for annulment; a grant of legal separation with forfeiture of Janos' share in the conjugal property; and for support *pendente lite*.

In answer to Rosa's counter-petition for legal separation, Janos admitted being a good provider for Rosa's children; denied that the properties enumerated by Rosa in her answer are conjugal; alleged having acquired a 50-hectare property in Samar, half of which was covered by CARP; alleged having been a good, tolerant and loving husband to Rosa; denied having maltreated her; alleged that all their fights had been initiated by Rosa whose temper he could not endure; that Rosa suffers from psychosis; that Rosa had an illicit relationship with Enrico Andal, their driver; that Rosa had always been hungry for sex; and Rosa had made numerous attempts against his life.

In opposition to Rosa's application for support *pendente lite*, Janos stated that being the offending party and on account of infidelity, Rosa is not entitled to support, nor to any share in the conjugal partnership which she forfeits in accordance with the provisions of the Family Code.

Janos reiterates his prayer for annulment of his marriage with Rosa; dropping by

Rosa of the family name Herczog; dismissal of the petition for legal separation and denial of support *pendente lite*.

Pre-trial was set on March 20, 1995.

During pre-trial, the parties stipulated on the following:

1. That petitioner and respondent were married on April 20, 1990 at the Hague, Holland;
2. The parties have no children of their own and delimited the issues to be -
 1. Whether or not petitioner is entitled to annulment of his marriage with the respondent; and
 2. Whether or not respondent is entitled to legal separation.

In the course of the trial, under date of April 26, 1995, the parties submitted two (2) motions to approve Compromise Agreement on (1) Support *Pendente Lite* and on Support of Rosa's children; and (2) on Liquidation/Separation of Properties. The motion to approve agreement on support *pendente lite* was granted by the lower court. The agreement as to separation of property was held in abeyance pending trial.

The plaintiff presented Drs. Natividad Alcantara-Dayana and Normando Napeñas; Janos Herczog, Arlene Elma Sta. Clara and Rolando Mendel.

Janos Herczog substantiated the allegations in his complaint. Arlene Elma Sta. Clara denied any alleged illicit relationship with Janos. Mendel testified on the mental incapacity and infidelity of Rosa.

Rosa denied psychological incapacity. She established her grounds for legal separation. Psychologist Rose Marie Yengko was presented to establish Rosa's psychological profile.

After trial the Solicitor General was ordered to submit the proper certification as required. The case was submitted for decision without said certification.

The trial court rendered a decision which annulled the marriage. The compromise agreement relative to separation of property was approved.

The Solicitor General appealed on the following assigned errors:

I

THE TRIAL COURT GRAVELY ERRED IN DECLARING THE MARRIAGE OF PETITIONER-APPELLEE JANOS TAMAS HERCZOG AND RESPONDENT-APPELLEE ROSA ROSACAY-HERCZOG, AS NULL AND VOID.

II

THE TRIAL COURT GRAVELY ERRED IN GRANTING THE PETITION NOTWITHSTANDING FAILURE OF PETITIONER TO PRESENT PROOF THAT