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CRISAE L DOMINGO C. BATTUNG III  
Division Clerk of Court  
Third Division  
MAY 12 2022

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

ARTURO C. TANYAG,  
Petitioner,

G.R. No. 231319

Present:

-versus-

LEONEN, J., *Chairperson*,  
CARANDANG,  
ZALAMEDA,  
ROSARIO, and  
DIMAAMPAO.\*, *JJ.*

DOLORES G. TANYAG,  
Respondent.

Promulgated:  
November 10, 2021  
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DECISION

LEONEN, J.:

Upon the parties' filing of a petition for the declaration of nullity of marriage, trial courts also acquire jurisdiction over matters incidental and consequential to the marriage. Among these is the settlement of the parties' common properties. By filing another petition for the determination of which properties form part of the co-ownership, a party commits forum shopping by splitting causes of action.

This resolves the Petition for Review on Certiorari<sup>1</sup> filed by Arturo C. Tanyag, assailing the Court of Appeals Decision<sup>2</sup> and Resolution<sup>3</sup> that

\* Designated additional Member per Special Order No. 2839.

<sup>1</sup> Rollo, pp. 10-26.

<sup>2</sup> Id. at 30-41. The September 26, 2016 Decision was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes of the Seventh Division, Court of Appeals, Manila.

<sup>3</sup> Id. at 43-44. The April 19, 2017 Resolution was penned by Associate Justice Magdangal M. De Leon

affirmed the Regional Trial Court Order,<sup>4</sup> denying his Motion for Preliminary Hearing on Affirmative Defenses.<sup>5</sup>

On July 31, 1979, Arturo married Dolores G. Tanyag (Dolores).<sup>6</sup> Having been married before the effectivity of the Family Code, their property relations were governed by the rules on conjugal partnership of gains. In 2004, however, Dolores filed a Petition to declare their marriage null and void due to Arturo's psychological incapacity before the Regional Trial Court of Quezon City (Nullity Case).<sup>7</sup>

During the pendency of the Nullity Case, Dolores filed a separate Petition for Declaration of Paraphernal Property before the Regional Trial Court of La Trinidad, Benguet (Property Case).<sup>8</sup> In this Petition,<sup>9</sup> she prayed that the trial court declare as her exclusive paraphernal property two parcels of land covered by Original Certificate of Title Nos. P-5362 and P-5363, and that Arturo be ordered to surrender to her the owner's duplicate of the titles.<sup>10</sup>

Arturo challenged the trial court's jurisdiction over his person in the Property Case. He also alleged that the Property Case was barred by *litis pendentia* and that Dolores was guilty of forum shopping because of the Nullity Case.<sup>11</sup>

After proceedings, the Regional Trial Court of Quezon City rendered a Decision,<sup>12</sup> declaring the marriage between Dolores and Arturo null and void.<sup>13</sup> Dolores thus moved to liquidate, partition, and distribute their properties in the Nullity Case.<sup>14</sup> However, her motion was denied.<sup>15</sup> She thus filed a Motion for Reconsideration and Arturo joined her by filing a Manifestation. Both parties elevated the matter to the Court of Appeals.<sup>16</sup>

Meanwhile, Arturo filed a Motion for Preliminary Hearing on Affirmative Defenses<sup>17</sup> in the Property Case, seeking to have the Petition dismissed on the ground of primary jurisdiction, *litis pendentia*, and

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and concurred in by Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes of the Seventh Division, Court of Appeals, Manila.

<sup>4</sup> Id. at 10–11.

<sup>5</sup> Id. at 173–177.

<sup>6</sup> Id. at 31.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 45–51.

<sup>10</sup> Id. at 49–50.

<sup>11</sup> Id. at 31.

<sup>12</sup> Id. at 111–132. The February 25, 2015 Decision was penned by Presiding Judge Cecilyn E. Burgos-Villavert of Regional Trial Court of Quezon City, Branch 89.

<sup>13</sup> Id. at 131.

<sup>14</sup> Id. at 31.

<sup>15</sup> Id.

<sup>16</sup> Id. at 14.

<sup>17</sup> Id. at 173–177.

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deliberate forum shopping. After an exchange of pleadings, the Regional Trial Court of La Trinidad Benguet denied Arturo's motion.<sup>18</sup>

Arturo appealed to the Court of Appeals, which dismissed the same.<sup>19</sup> The Court of Appeals also denied his motion for reconsideration.<sup>20</sup>

Thus, this Petition for Review.

Petitioner alleges that the Petition for Declaration of Paraphernal Property is barred by *litis pendentia*. He claims there is identity of parties in the two cases, as well as identity in the rights they invoke and the reliefs they seek. He points out that respondent prayed that their marriage be declared null and void in the Nullity Case, "with all the legal effects attaching thereto pursuant to the Family Code of the Philippines." In the Property Case, respondent prayed to have particular parcels of land as her exclusive paraphernal property. The declaration of the land as exclusive paraphernal property of respondent will allegedly result in the liquidation of the conjugal partnership. He claims that since the declaration of nullity results in the dissolution and liquidation of the absolute community of property or the conjugal partnership of gains, the jurisdiction over the determination of the ownership of the properties is with the Regional Trial Court of Quezon City.<sup>21</sup>

Petitioner asserts that respondent is guilty of willful and deliberate forum shopping. As the respondent did not include the subject parcels of land in the inventory of properties in the Nullity Case, she allegedly circumvented the rule on prohibition against forum shopping. Respondent also did not indicate in her verification and certification that she filed the Nullity Case praying for the same reliefs. Respondent is also seeking to have the Regional Trial Court of Quezon City liquidate, partition, and distribute their properties. At the time of the filing of this Petition, the matter was pending before the Court of Appeals.<sup>22</sup>

Petitioner also points out that the nullity of the marriage must attain finality before the liquidation, partition, and distribution of their properties.<sup>23</sup>

In her Comment,<sup>24</sup> respondent counters that it was improper and premature for petitioner to raise forum shopping as an issue when the assailed Order involved the denial of his Motion for Preliminary Hearing on Affirmative Defenses, not a motion to dismiss. She also argues that

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<sup>18</sup> Id. at 32.

<sup>19</sup> Id. at 30-41.

<sup>20</sup> Id. at 43-44.

<sup>21</sup> Id. at 16-19.

<sup>22</sup> Id. at 19-20.

<sup>23</sup> Id. at 21.

<sup>24</sup> Id. at 227-234.



petitioner is estopped from questioning the validity of the proceedings having already participated in trial.<sup>25</sup>

The issue for resolution of this Court is whether the Petition for Declaration of Paraphernal Property must be dismissed on the ground of *litis pendentia*.

We grant the petition.

Respondent's Property Case is barred by *litis pendentia*. As she committed forum shopping, the Property Case should be dismissed.

This Court has discussed the concepts of *res judicata*, *litis pendentia*, and forum shopping in *Pavlow v. Mendenilla*:<sup>26</sup>

Res judicata is the conceptual backbone upon which forum shopping rests. *City of Taguig v. City of Makati*, explained in detail the definition of forum shopping, how it is committed, and the test for determining if it was committed. This test relies on two (2) alternative propositions: *litis pendentia* and *res judicata*. Even then, *litis pendentia* is itself a concept that merely proceeds from the concept of *res judicata*:

*Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* explained that:

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. . . .

Jurisprudence has recognized that forum shopping can be committed in several ways:

(1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of

<sup>25</sup> Id. at 231–233.

<sup>26</sup> 809 Phil. 24 (2017) [Per J. Leonen, Second Division].

action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

....

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action.<sup>27</sup> (Emphasis in the original, citations omitted)

The requisites of *litis pendentia* are present in this case.

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<sup>27</sup> Id. at 49–51.

It is not disputed that the parties are identical in the Nullity and Property Cases.

At first impression, the causes of action in the Nullity and Property Cases may appear different. In the Property Case, it is to determine whether the two parcels of land covered by Original Certificate of Title Nos. P-5362 and P-5363 form part of Dolores' paraphernal property. Meanwhile, in the Nullity Case, it is to determine the validity of Dolores and Arturo's marriage. Ultimately, however, as to the parties' properties, there is an identity of rights asserted and relief prayed for. The parties are claiming ownership rights and seeking to be adjudged as the respective owners thereof.

While the Property Case does not involve the validity of the marriage, the outcome of the Nullity Case will necessarily affect the outcome of the Property Case. The status of a marriage determines the property relations between the parties. The declaration of absolute nullity of a marriage on the ground of psychological incapacity will create a special co-ownership between the parties under Article 147 of the Family Code.<sup>28</sup>

In *Tan-Andal v. Andal*,<sup>29</sup> this Court held:

Void marriages are no marriages. Thus, the provisions of the Family Code on property relations between husband and wife — the systems of absolute community, conjugal partnership of gains, and separation of property — do not apply in disposing of properties that may have been acquired during the parties' cohabitation. Instead, the property regime of parties to a void marriage is governed either by Article 147 or Article 148 of the Family Code, depending on whether the parties have no legal impediment to marry.<sup>30</sup> (Citations omitted)

Thus, the finding of petitioner's psychological incapacity and the consequent declaration of absolute nullity of his marriage with respondent in the Nullity Case will determine whether there is even a conjugal partnership of gains between the parties to which the subject properties in the Property Case might be attributed. This change in the property regimes between the parties likewise carries a concomitant difference in the set of rules governing the properties.

This Court discussed the nature of a co-ownership under Article 147 of the Family Code in *Valdes v. Regional Trial Court*.<sup>31</sup>

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<sup>28</sup> See *Mercado-Fehr v. Fehr*, 460 Phil. 445 (2003) [Per C.J. Puno, Third Division] and *Valdes v. Regional Trial Court, Branch 102, Quezon City*, 328 Phil. 1289 (1996) [Per J. Vitug, First Division].

<sup>29</sup> G.R. No. 196359, May 11, 2021, <<https://sc.judiciary.gov.ph/20821/>> [Per J. Leonen, Third Division].

<sup>30</sup> Id.

<sup>31</sup> 328 Phil. 1289 (1996) [Per J. Vitug, First Division].

This peculiar kind of co-ownership applies when a man and a woman, suffering no legal impediment to marry each other, so exclusively live together as husband and wife under a void marriage or without the benefit of marriage. The term “capacitated” in the provision (in the first paragraph of the law) refers to the legal capacity of a party to contract marriage, i.e., any “male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38” of the Code.

Under this property regime, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership. Any property acquired during the union is prima facie presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party’s “efforts consisted in the care and maintenance of the family household.” Unlike the conjugal partnership of gains, the fruits of the couple’s separate property are not included in the co-ownership.<sup>32</sup> (Citations omitted)

*Valdes* involved a similar case for the declaration of absolute nullity of a marriage on the ground of psychological incapacity. In its judgment declaring the marriage null and void, the trial court also “directed [the parties] to start proceedings on the liquidation of their common properties as defined by Article 147 of the Family code[.]”<sup>33</sup> This Court said that the settlement of the parties’ common property is an incidental and consequential matter thereto.<sup>34</sup> Thus, the trial court having jurisdiction over the petition for declaration of absolute nullity of marriage may take cognizance of the same:

In deciding to take further cognizance of the issue on the settlement of the parties’ common property, the trial court acted neither imprudently nor precipitately; a court which has jurisdiction to declare the marriage a nullity must be deemed likewise clothed with authority to resolve incidental and consequential matters.<sup>35</sup>

Owing to the interrelatedness of the issues, a party to a petition for the declaration of absolute nullity of marriage may, in the same proceeding, file a motion for the liquidation, partition, and distribution of the properties of the spouses:

Section 21. *Liquidation, partition and distribution, custody, support of common children and delivery of their presumptive legitimes.* – Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children and delivery of their

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<sup>32</sup> Id. at 1296 – 1297.

<sup>33</sup> Id. at 1293.

<sup>34</sup> Id.

<sup>35</sup> Id. at 1298.

presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings.<sup>36</sup>

Notably, respondent actually filed a Motion to Liquidate, Partition, and Distribute<sup>37</sup> in the Nullity Case, acknowledging that the trial court may liquidate the co-ownership.<sup>38</sup> However, the trial court denied respondent's Motion<sup>39</sup> and subsequent Motion for Reconsideration.<sup>40</sup> Both petitioner and respondent assailed the denial through Petitions for Certiorari before the Court of Appeals.<sup>41</sup>

It has come to this Court's attention that the Court of Appeals has since resolved to grant the Petitions for Certiorari.<sup>42</sup> The Court of Appeals attributed grave abuse of discretion to the trial court in the Nullity Case for denying the Motion to Liquidate, Partition, and Distribute and "failing to proceed with the partition and distribution of the parties' properties in the same action, in contravention of Sections 19 (4) and 21 of A.M. No. 02-11-10-SC and the prevailing jurisprudence on the matter."<sup>43</sup> It remanded the case to the trial court in the Nullity Case for further proceedings.

The parties have not informed this Court of further developments in the Nullity Case, including whether the Regional Trial Court of Quezon City has fully resolved the matter of partition. Depending on the status of the liquidation, partition, and distribution in the Nullity Case, the Property Case will be barred by *litis pendentia* or *res judicata*.

In any event, respondent is guilty of forum shopping.

The rule on forum shopping is provided for in Rule 7, Section 5 of the Rules of Court:

Section. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same

<sup>36</sup> A.M. No. 02-11-10-SC, sec. 21 (2010). Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

<sup>37</sup> *Rollo*, pp. 133–137.

<sup>38</sup> *Id.* at 135.

<sup>39</sup> *Id.* at 138–139. The July 14, 2015 Order was penned by Presiding Judge Cecilyn E. Burgos-Villavert of the Regional Trial Court of Quezon City, Branch 89.

<sup>40</sup> *Id.* at 149. The September 29, 2005 Order was penned by Presiding Judge Cecilyn E. Burgos-Villavert of the Regional Trial Court of Quezon City, Branch 89.

<sup>41</sup> *Id.* at 32.

<sup>42</sup> Neither party informed this Court of this incident, but this Court may take judicial notice of this fact pursuant to Section 2, Rule 129 of the Revised Rules on Evidence, as amended.

<sup>43</sup> The November 22, 2017 Decision in CA-G.R. SP Nos. 143226 and 143743 was penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Samuel H. Gaerlan and Jhosep Y. Lopez (both now members of this Court) of the Tenth Division, Court of Appeals, Manila.

issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

In *Asia United Bank v. Goodland Co., Inc.*,<sup>44</sup>

There is forum shopping “when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.” The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company*:

Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).<sup>45</sup>

Upon the filing of the Petition for Declaration of Nullity of Marriage, the trial court also acquired jurisdiction over matters incidental and consequential to the marriage. Among these incidental and consequential matters is the settlement of the parties’ common properties, which entails a determination of which properties are included in and excluded from the co-ownership.

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<sup>44</sup> 660 Phil. 504 (2011) [Per J. Del Castillo, First Division].

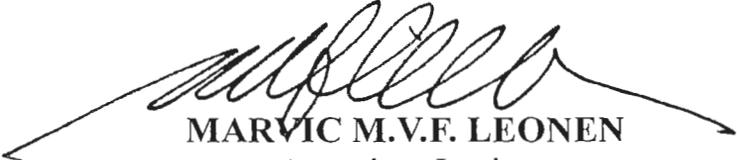
<sup>45</sup> *Id.* at 514.

Yet, respondent filed a separate Petition for Declaration of Paraphernal Property, asking a different trial court to determine that the two parcels of land subject of the Property Case are not conjugally owned. By doing so, respondent committed forum shopping by splitting causes of action.

The Property Case should be dismissed for *litis pendentia* if the liquidation, partition, and distribution are still pending in the Nullity Case, or for *res judicata* if the liquidation, partition, and distribution have already been finally resolved in the Nullity Case.

**WHEREFORE**, the Petition is **GRANTED**. The Court of Appeals' September 26, 2016 Decision and April 19, 2017 Resolution in CA-G.R. SP No. 145613 are **REVERSED** and **SET ASIDE**. The Petition for Declaration of Paraphernal Property docketed as Civil Case No. 14-F-2175 before the Regional Trial Court of La Trinidad, Benguet, Branch 9 is **DISMISSED**.

**SO ORDERED.**

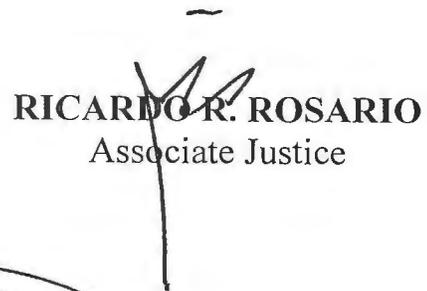


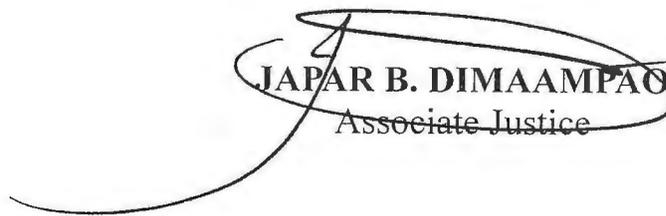
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**ROSMARI D. CARANDANG**  
 Associate Justice

  
**RODIL V. ZALAMEDA**  
 Associate Justice

  
**RICARDO R. ROSARIO**  
 Associate Justice

  
**JAPAR B. DIMAAMPAO**  
 Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
 Associate Justice  
 Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY

  
**ALEXANDER G. GESMUNDO**  
 Chief Justice

*Mis-DCBatt*  
**ISAEL DOMINGO C. BATTUNG III**  
 Division Clerk of Court  
 Third Division  
 MAY 12 2022

