

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

PRIMA PARTOSA-JO,
Petitioner,

-versus-

**G.R. No. 82606
December 18, 1992**

**THE HONORABLE COURT OF
APPEALS and HO HANG (WITH
ALIASES JOSE JO AND CONSING),**
Respondents.

X-----X

DECISION

CRUZ, J.:

The herein private respondent, Jose Jo, admits to having cohabited with three women and fathered fifteen children. The first of these women, the herein petitioner, claims to be his legal wife by whom he begot a daughter, Monina Jo. The other two women and their respective offspring are not parties to this case.

In 1980, the petitioner filed a complaint against Jo for judicial separation of conjugal property, docketed as Civil Case No. 51, in addition to an earlier action for support, also against him and docketed as Civil Case No. 36, in the Regional Trial Court of Negros Oriental, Branch 35.

The two cases were consolidated and tried jointly. On November 29, 1983, Judge German G. Lee, Jr. rendered an extensive decision, the dispositive portion of which read:

WHEREFORE, in view of all the foregoing arguments and considerations, this court hereby holds that the plaintiff Prima Partosa was legally married to Jose Jo alias Ho Hang, alias Consing, and, therefore, is entitled to support as the lawfully wedded wife and the defendant is hereby ordered to give a monthly support of P500.00 to the plaintiff Prima Partosa, to be paid on or before the 5th day of every month, and to give to the plaintiff the amount of P40,000.00 for the construction of the house in Zamboanguita, Negros Oriental where she may live separately from the defendant being entitled under the law to separate maintenance being the innocent spouse and to pay the amount of P19,200.00 to the plaintiff by way of support in-arrears and to pay the plaintiff the amount of P3,000.00 in the concept of attorney's fees.

As will be noticed, there was a definite disposition of the complaint for support but none of the complaint for judicial separation of conjugal property.

Jo elevated the decision to the Court of Appeals, which affirmed the ruling of the trial court in the complaint for support.^[1] The complaint for judicial separation of conjugal property was dismissed for lack of a cause of action and on the ground that separation by agreement was not covered by Article 178 of the Civil Code.

When their motions for reconsideration were denied, both parties came to this Court for relief. The private respondent's petition for review on certiorari was dismissed for tardiness in our resolution dated February 17, 1988, where we also affirmed the legality of the marriage between Jose and Prima and the obligation of the former to support her and her daughter.

This petition deals only with the complaint for judicial separation of conjugal property.

It is here submitted that the Court of Appeals erred in holding that: a) the judicial separation of conjugal property sought was not allowed under Articles 175, 178 and 191 of the Civil Code; and b) no such separation was decreed by the trial court in the dispositive portion of its decision.

The private respondent contends that the decision of the trial court can no longer be reviewed at this time because it has long since become final and executory. As the decretal portion clearly made no disposition of Civil Case No. 51, that case should be considered impliedly dismissed. The petitioner should have called the attention of the trial court to the omission so that the proper rectification could be made on time. Not having done so, she is now concluded by the said decision, which can no longer be corrected at this late hour.

We deal first with the second ground.

While admitting that no mention was made of Civil Case No. 51 in the dispositive portion of the decision of the trial court, the petitioner argues that a disposition of that case was nonetheless made in the penultimate paragraph of the decision reading as follows:

It is, therefore, hereby ordered that all properties in question are considered properties of Jose Jo, the defendant in this case, subject to separation of property under Article 178, third paragraph of the Civil Code, which is subject of separate proceedings as enunciated herein.

The petitioner says she believed this to be disposition enough and so did not feel it was necessary for her to appeal, particularly since the order embodied in that paragraph was in her favor. It was only when the respondent court observed that there was no dispositive portion regarding that case and so ordered its dismissal that she found it necessary to come to this Court for relief.

The petitioner has a point.

The dispositive portion of the decision in question was incomplete insofar as it carried no ruling on the complaint for judicial separation

of conjugal property although it was extensively discussed in the body of the decision. The drafting of the decision was indeed not exactly careful. The petitioner's counsel, noting this, should have taken immediate steps for the rectification of the omission so that the ruling expressed in the text of the decision could have been embodied in the decretal portion. Such alertness could have avoided this litigation on a purely technical issue.

Nevertheless, the technicality invoked in this case should not be allowed to prevail over considerations of substantive justice. After all, the technical defect is not insuperable. We have said time and again that where there is an ambiguity caused by an omission or mistake in the dispositive portion of the decision, this Court may clarify such ambiguity by an amendment even after the judgment has become final.^[2] In doing so, the Court may resort to the pleadings filed by the parties and the findings of fact and the conclusions of law expressed in the text or body of the decision.^[3]

The trial court made definite findings on the complaint for judicial separation of conjugal property, holding that the petitioner and the private respondent were legally married and that the properties mentioned by the petitioner were acquired by Jo during their marriage although they were registered in the name of an apparent dummy.

There is no question therefore that the penultimate paragraph of the decision of the trial court was a ruling based upon such findings and so should have been embodied in the dispositive portion. The respondent court should have made the necessary modification instead of dismissing Civil Case No. 51 and thus upholding mere form over substance.

In the interest of substantive justice, and to expedite these proceedings, we hereby make such modification.

And now to the merits of Civil Case No. 51.

The Court of Appeals dismissed the complaint on the ground that the separation of the parties was due to their agreement and not because of abandonment. The respondent court relied mainly on the

testimony of the petitioner, who declared under oath that she left Dumaguete City, where she and Jo were living together “because that was our agreement.” It held that an agreement to live separately without just cause was void under Article 221 of the Civil Code and could not sustain any claim of abandonment by the aggrieved spouse. Its conclusion was that the only remedy available to the petitioner was legal separation under Article 175 of the Civil Code,^[4] by virtue of which the conjugal partnership of property would be terminated.

The petitioner contends that the respondent court has misinterpreted Articles 175, 178 and 191 of the Civil Code. She submits that the agreement between her and the private respondent was for her to temporarily live with her parents during the initial period of her pregnancy and for him to visit and support her. They never agreed to separate permanently. And even if they did, this arrangement was repudiated and ended in 1942, when she returned to him at Dumaguete City and, he refused to accept her.

The petitioner invokes Article 178 (3) of the Civil Code, which reads:

ARTICLE 178. The separation in fact between husband and wife without judicial approval, shall not affect the conjugal partnership, except that:

X x x

- (3) If the husband has abandoned the wife without just cause for at least one year, she may petition the court for a receivership, or administration by her of the conjugal partnership property or separation of property.

The above-quoted provision has been superseded by Article 128 of the Family Code, which states:

ARTICLE 128. If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property, or for authority to be the sole

administrator of the conjugal partnership property, subject to such precautionary conditions as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without any intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie presumed to have no intention of returning to the conjugal dwelling.

Under this provision, the aggrieved spouse may petition for judicial separation on either of these grounds:

1. Abandonment by a spouse of the other without just cause; and
2. Failure of one spouse to comply with his or her obligations to the family without just cause, even if said spouse does not leave the other spouse.

Abandonment implies a departure by one spouse with the avowed intent never to return, followed by prolonged absence without just cause, and without in the meantime providing in the least for one's family although able to do so.^[5] There must be absolute cessation of marital relations, duties and rights, with the intention of perpetual separation.^[6] This idea is clearly expressed in the above-quoted provision, which states that "a spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without any intention of returning."

The record shows that as early as 1942, the private respondent had already rejected the petitioner, whom he denied admission to their conjugal home in Dumaguete City when she returned from Zamboanguita. The fact that she was not accepted by Jo demonstrates all too clearly that he had no intention of resuming their conjugal relationship. Moreover, beginning 1988 until the final determination by this Court of the action for support in 1988, the private respondent

refused to give financial support to the petitioner. The physical separation of the parties, coupled with the refusal by the private respondent to give support to the petitioner, sufficed to constitute abandonment as a ground for the judicial separation of their conjugal property.

In addition, the petitioner may also invoke the second ground allowed by Article 128, for the fact is that he has failed without just cause to comply with his obligations to the family as husband or parent. Apart from refusing to admit his lawful wife to their conjugal home in Dumaguete City, Jo has freely admitted to cohabiting with other women and siring many children by them. It was his refusal to provide for the petitioner and their daughter that prompted her to file the actions against him for support and later for separation of the conjugal property, in which actions, significantly, he even denied being married to her. The private respondent has not established any just cause for his refusal to comply with his obligations to his wife as a dutiful husband.

Their separation thus falls also squarely under Article 135 of the Family Code, providing as follows:

ARTICLE 135. Any of the following shall be considered sufficient cause for judicial separation of property:

X X X

- (6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

The amendments introduced in the Family Code are applicable to the case before us although they became effective only on August 3, 1988. As we held in *Ramirez vs. Court of Appeals*:^[7]

The greater weight of authority is inclined to the view that an appellate court, in reviewing a judgment on appeal, will dispose of a question according to the law prevailing at the time of such disposition, and not according to the law prevailing at the time of rendition of the appealed judgment. The court will therefore

reverse a judgment which was correct at the time it was originally rendered where, by statute, there has been an intermediate change in the law which renders such judgment erroneous at the time the case was finally disposed of on appeal.

The order of judicial separation of the properties in question is based on the finding of both the trial and respondent courts that the private respondent is indeed their real owner. It is these properties that should now be divided between him and the petitioner, on the assumption that they were acquired during coverture and so belong to the spouses half and half. As the private respondent is a Chinese citizen, the division must include such properties properly belonging to the conjugal partnership as may have been registered in the name of other persons in violation of the Anti-Dummy Law.

The past has caught up with the private respondent. After his extramarital flings and a succession of illegitimate children, he must now make an accounting to his lawful wife of the properties he denied her despite his promise to her of his eternal love and care.

WHEREFORE, the petition is **GRANTED** and the assailed decision of the respondent court is **MODIFIED**. Civil Case No. 51 is hereby decided in favor of the plaintiff, the petitioner herein, and the conjugal property of the petitioner and the private respondent is hereby ordered divided between them, share and share alike. This division shall be implemented by the trial court after determination of all the properties pertaining to the said conjugal partnership, including those that may have been illegally registered in the name of other persons.

SO ORDERED.

Padilla, Griño-Aquino and Bellosillo, JJ., concur.

[1] Chua, Segundino G., J., ponente, Coquia, Jorge R. and De Pano, Nathanael, Jr., P. JJ., concurring, promulgated on January 28, 1987.

[2] Republic Surety and Insurance Co., Inc. vs. Intermediate Appellate Court, 152 SCRA 316; Alvendia vs. Intermediate Appellate Court, 181 SCRA 252.

[3] Sentinel Insurance Co., Inc. vs. Court of Appeals, 182 SCRA 516.

[4] Art. 175. The conjugal partnership of gains terminates:

- (1) Upon the death of either spouse;
- (2) When there is a decree of legal separation;
- (3) When the marriage is annulled;
- (4) In case of judicial separation of property under Article 191.

[5] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1990 ed., Vol. 1, p. 398.

[6] De la Cruz vs. De la Cruz, 22 SCRA 333.

[7] 72 SCRA 231.