Supreme Court E-Library

Villaluz, dated July 21, 1975 in Civil Case No. Q-19158 is declared void. Civil Case No. Q-19158 is remanded to the court of origin for further proceedings at which the petitioners should be given an opportunity to present their evidence, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-42260. April 30, 1979]

JOVENCIA DE GUZMAN and FEDERICO RECARIO, *petitioner, vs.* **JUDGE MELENCIO A. GENATO of the Court of First Instance of Misamis Occidental, Branch I, Oroquieta City and AURELIO EN. JUTBA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ALLEGATIONS; TERMS OF STATUTE NEED NOT BE USED.** — Petitioners' contention that there is no cause of action against them because the action is a suit between a husband and his wife and there is no allegation in the complaint that earnest efforts towards a compromise has been made, but that the same have failed, pursuant to Article 222 of the Civil Code, without merit, where it is apparent from the complaint that the husband had exerted efforts to meet his wife and even enlisted the help of the Philippine Constabulary who summoned his wife "for confrontation and arrangement," but the wife refused to see him. *It is not necessary that plaintiff should expressly use the* terms of the statute, *i.e.*, "that earnest efforts towards a

Supreme Court E-Library

compromise have been made but that same have failed," in his pleadings in order to comply with the requirement. Similar allegations which would convey the same meaning are sufficient for the purpose of the law.

2. **ID.; ID.; VENUE; ACTION FOR DAMAGES; MAY BE FILED IN THE PLACE WHERE PLAINTIFF RESIDES.** — An action filed by the husband against the wife for recovery of damages and of his share in the fruits of the conjugal partnership properties is purely personal, and therefore may be filed in the place where plaintiff resides. The fact that real properties belonging to the conjugal partnerships are mentioned in the complaint, or that plaintiff has asked for the issuance of a writ of preliminary injunction to restrain the wife from selling certain parcels of land belonging to the conjugal partnership does not make the case a real action. In so doing, the husband merely sought to exercise his right, under Article 165 of the Civil Code, to administer the conjugal partnership.

APPEARANCES OF COUNSEL

Roque F. Apostol for petitioners.
Aurelio En. Jutba in his own behalf.

D E C I S I O N

CONCEPCION JR., *J.*:

Petition for *certiorari* with prohibition, to annul and set aside the order of the respondent judge, dated November 14, 1974, denying the petitioners' motions to dismiss the complaint in Civil Case No. 3056 of the Court of First Instance of Misamis Occidental, entitled: "*Atty. Aurelio En. Jutba,* plaintiff, *versus Jovencia de Guzman and Federico Recario,* defendants."

The private respondent, Aurelio En. Jutba, and the petitioner, Jovencia de Guzman, are husband and wife. On August 29, 1974, the husband filed a complaint against his wife and the petitioner, Federico Recario, for indemnification of damages incurred by him on account of the therein defendants' adulterous acts, as well as for his share in the fruits of the conjugal partnership

Supreme Court E-Library

properties during the time when the conjugal partnership was administered by his wife.[1] The case was docketed therein as Civil Case No. 3056 and assigned to Branch I, Oroquieta City, presided by the respondent Judge Melencio A. Genato.

On October 1 and 2,1974, the petitioners filed their respective motions to dismiss the complaint, based upon similar grounds, that:

"(1) the plaintiff has no cause of action against the defendants since the action is a suit between members of the same family and there is no allegation in the complaint to show the earnest efforts towards a compromise have been made before the filing of the suit, but that the same has failed; and

"(2) the venue is improperly laid considering that the case involves ownership, possession and administration of real properties so that any action affecting the same should have been filed in the court of the province or city where the said properties are found."[2]

On November 14, 1974, the respondent Judge denied the petitioners' motions to dismiss the complaint in an order which reads, as follows:

"The grounds of the motion to dismiss dated October 2, 1974 filed by Federico Recario as well as those filed by Jovencia de Guzman, dated October 1, 1974, not being indubitable, but evidentiary, same are hereby denied. The amended complaint filed by the plaintiff dated October 21, 1974 which has been filed before the answer to the original complaint is admitted."[3]

Thereafter, the respondent judge set the pre-trial conference of the case for January 5 and 6, 1976.[4] Whereupon, the petitioners initiated the instant recourse. As prayed for, a temporary restraining order was issued on January 9, 1976, restraining the respondents from further proceeding with Civil Case No.

---

[1] *Rollo*, p. 4.

[2] *Id.*, p. 8, 13.

[3] *Id.*, p. 16.

[4] *Id.*, p. 2; Par. 5 of Petition.

Supreme Court E-Library

3056 of the Court of First Instance of Misamis Occidental and from enforcing the order dated November 14, 1974.

The petitioners contend that the respondent judge abused his discretion in assuming jurisdiction over the case which is without a cause of action and where venue is wrongfully laid.

1. The petitioners argue that there is no cause of action against them because the action is a suit between a husband and his wife and there is no allegation in the complaint that earnest efforts towards a compromise have been made, but that the same have failed, pursuant to Article 222 of the Civil Code.

The contention is without merit. In his Amended Complaint, the private respondent stated the following:

xxx xxx xxx

"2. That this is a case between husband, Aurelio Jutba, the plaintiff, against his wife, Jovencia de Guzman with her paramour, Federico Recario, her co-defendant. In the month of April, 1969, while plaintiff was scriously ill and hospitalized, the defendants left Manila for unknown destination and since then they were absconding, hiding and evading processes. But in May, 1974 defendants were living in adultery as husband and wife at 643 E. Jacinto Street, Davao City. *Twice were summoned by the P.C. for confrontation and arrangement but refused to appear*. So an adultery complaint was filed in the City Fiscal's Office of Davao City now pending for trial."[5] (Italics supplied)

It is apparent therefrom that the husband has exerted efforts to meet his wife and even enlisted the help of the Philippine Constabulary who summoned his wife "for confrontation and arrangement," but the wife refused to see him. There is, thus, substantial compliance with the law. It is not necessary that the plaintiff should expressly use the terms in the statute, *i.e.*, "that earnest efforts towards a compromise have been made, but the same have failed," in his pleadings in order to comply with the requirement. Similar allegations which would convey the same meaning are sufficient for the purposes of the law.

[5] *Id.*, p. 34.

Supreme Court E-Library

2. The petitioners also contend that the venue of the case was improperly laid. The petitioners argue that the case is essentially an action involving real properties which are found in the City of Manila and in Davao City so that the case should have been filed with the Court of First Instance of Manila and Davao City where the said properties are located, instead of with the Court of First Instance of Misamis Occidental, the province where the plaintiff resides.

The contention is devoid of merit. The action is purely personal and is for the recovery of damages. Although the plaintiff therein had mentioned real properties belonging to the conjugal partnership which are situated in Manila and Davao City, he is not asking to be declared the rightful owner or lawful possessor of the parcels of land mentioned; nor is he asking for its partition, in order to classify this action as a real action. The plaintiff therein merely prayed that the defendants be ordered to pay him the amounts of: (a) ₱36,600.00, which represents his share in the fruits of the conjugal partnership properties during the time when the conjugal partnership was administered by his wife because he was sick; (b) ₱10,000.00, which he spent in order to restore titles and maintain a case in court for the cancellation of fake titles; (c) ₱50,000.00, as moral damages, for "the sleepless nights, great moral shock and unbearable sorrows and shameful dishonor, great mental tension, and anguish" as a result of the defendants' adulterous relationship and breach of fidelity; and (d) ₱12,000.00, for attorney's fees and expenses of litigation, plus the costs of suit.[6] The fact that the plaintiff therein has asked for the issuance of a writ of preliminary injunction to restrain the defendant Jovencia de Guzman and/or her agents from selling certain parcels of land belonging to the conjugal partnership does not make the case a real action. In so doing, the husband merely sought to exercise his right, under Article 165 of the Civil Code, to administer the conjugal partnership.

WHEREFORE, the petition should be, as it is hereby, DISMISSED for lack of merit. The temporary restraining order heretofore issued is hereby lifted and set aside. Costs against the petitioners.

---

[6] *Id.*, p. 36.

Supreme Court E-Library

SO ORDERED.

Aquino and *Santos, JJ.*, concur.

Barredo (Actg. Chairman) and *Antonio, JJ.*, concur in the result.

Abad Santos, J., took no part.

FIRST DIVISION

[G.R. No. L-43456. April 30, 1979]

POTENCIANA VILLODRES, *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION and REPUBLIC OF THE PHILIPPINES (Bureau of Public Schools),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; PRESUMPTION OF COMPENSABILITY; APPLICATION.** — Where the employee's illness supervened during his employment, there is a disputable presumption that the claim is compensable. The employee is relieved of the duty to prove causation as it is then legally presumed that the illness arose out of the employment. To the employer is shifted the burden to establish that the illness is non-compensable.

2. **ID.; ID.; ID.; EFFECT OF FAILURE TO CONTROVERT.** — For failure to controvert the employee's claim, the employer is deemed to have renounced all non-jurisdictional defenses.

3. **ID.; ID.; DISABILITY BENEFIT; EFFECT OF DEATH OCCURRED WITHIN TWO YEARS FROM DISABILITY; CASE AT BAR.** — The contention of the Workmen's Compensation Commission that the claim is not compensable because deceased died three years after October 2, 1972, when he was disabled, has no merit.