Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

[G.R. No. 25577. March 3, 1927.]

AFIFE ABDO CHEYBAN GORAYEB, *Plaintiff-Appellee*, v. NADJIB TANNUS HASHIM, *Defendant-Appellant*.

C. A. Sobral for *Appellant*.

Gibbs & McDonough for *Appellee*.

SYLLABUS

1. JUDGMENTS; FOREIGN JUDGMENT; MAY BE PLEADED BY WAY OF DEFENSE. — A person who is sued in a Philippine court and who wishes to have the benefit of a judgment rendered in an American court may plead such judgment in his answer, thereby making an issue upon the question of the validity of the judgment. Section 309 of the Code of Civil Procedure is not to be interpreted as requiring an affirmative original action or proceeding by one who occupies a purely defensive position. All that is intended to be secured by the provision referred to is that our courts shall have an opportunity to pass judicially upon the efficacy of the foreign judgment.

2. MARRIAGE AND DIVORCE; FOREIGN DIVORCE; LACE OF JURISDICTION IN COURT GRANTING DIVORCE; COLLATERAL ATTACK. — A judicial divorce granted in an American State to a resident of the Philippine Islands may be questioned here upon the ground of lack of jurisdiction in the court granting the divorce. While this undoubtedly involves a collateral attack upon the decree of divorce, the rule must be considered settled in American and Philippine jurisprudence

3. ID.; ID.; ID.; ID.; NULLITY OF DIVORCE. — Doctrine of Ramirez v. Gmur (42 Phil., 855), followed, to the effect that the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status, and the divorce granted by such a court is not entitled to recognition here.

4. ID.; ID.; ID.; ID.; ID.; PHILIPPINE RESIDENTS WHO HAVE BEEN MARRIED ABROAD. — The foregoing rule is applicable to married people who are domiciled in the Philippine Islands although they may have contracted marriage elsewhere.

5. HUSBAND AND WIFE; ALIMONY; EXCESSIVE PAYMENTS UNDER ERRONEOUS ORDERS; SET-OFF. — Where alimony in favor of a wife is granted by a Court of First Instance in an amount not greater than necessary to maintain respectable existence, this court will not disturb such allowance even though it should appear that the wife may have been actually overpaid upon alimony account in the past. Excessive payments made under valid, though erroneous, prior orders, cannot be offset against claims for current alimony.

D E C I S I O N

STREET, *J.*:

This appeal is an incident arising out of Civil case No. 19115 instituted in the Court Of First Instance of Manila on November 12, 1920, wherein the plaintiff, Afife Abdo Cheyban Gorayeb, has obtained a judgment requiring the defendant (who is also her husband) Nadjib Tannus Hashim, to pay to her a monthly stipend by way of support. In connection with the institution of said action the plaintiff procured an order requiring the defendant to pay to the plaintiff the Sum of P1,000 per month as alimony, pendente lite. Vigorous efforts were made by the defendant to procure the abrogation of this order not only in the court of origin but in this Court by writ of *certiorari*; but these efforts were unsuccessful. 1 Upon finally hearing the cause upon its merits, the Honorable Vicente Nepomuceno, presiding in the Court of First Instance, under date of December 24, 1923, awarded the plaintiff permanent alimony at the rate of P500 per month, beginning November 12, 1920, the date of the filing of the complaint. This judgment was subsequently affirmed by this Court upon appeal. 2 On January 23, 1926, the lower court, after due hearing, reduced the rate of alimony to P100, at which amount it now stands.

Meanwhile, the plaintiff had caused execution to issue against the defendant to enforce the payment of the provisional allowance of P1,000 per month, and various valuable properties belonging to the defendant were sold under execution for the amount of P34,000. After judgment had become final under the order of December 24, 1923, still another property belonging to the defendant was sold under execution for the sum of P6,710. The proceeds of these sales were paid in due course to the plaintiff.

It appears that for more than twelve years the plaintiff and defendant have been wholly estranged and living apart. During this period each has attempted to convict the other of infidelity; but the prosecution instituted by the defendant against the plaintiff for adultery and the later prosecution for concubinage instituted by the plaintiff against the defendant were both unsuccessful.

While the question of the defendant's civil liability for the support claimed by the plaintiff was still undetermined, the defendant sought refuge in the State of Nevada; and, on December 1, 1924, there obtained a decree of divorce from the plaintiff in the court of the Second Judicial District of the State of Nevada. He then returned to the Philippine Islands, and on October 20, 1925, the plaintiff filed a motion in civil case No. 19115, alleging that the defendant had failed to pay the pension of P500 per month, which had been awarded to her in the decision of December 24, 1923, and praying that he be adjudged to be in contempt of court and that he be fined and sentenced to imprisonment for six months and until he should comply with the order. In response to this motion the defendant pleaded the decree of divorce obtained by him from the Nevada court, claiming that said decree had had the effect of dissolving the bonds of matrimony between himself and the plaintiff and of relieving him from all liability to pay the pension claimed.

Upon hearing the cause the trial court found that, while, as a matter of fact, the defendant was in arrears in the payment of the pension, nevertheless the defense asserted by him had been put forth in good faith. His Honor therefore absolved the defendant from the contempt charge, with costs de oficio. At the same time it was declared that the civil obligation created by the previous orders of the court remained in full force and effect, notwithstanding the decree of divorce upon which the defendant relied, and he was ordered to continue the payment of the pension at the reduced rate of P100 per month. From so much of this order as declares the defendant civilly liable for the pension claimed by the plaintiff the defendant appealed, and it is this appeal that is now before us.

The only question necessary to be here considered relates to the civil liability of the defendant for the monthly stipend which has been judicially awarded to the plaintiff and the amount of said liability, supposing the obligation still to subsist. Upon the first point the trial court held that the obligation of the defendant to pay the stipend had been in no wise affected by the Nevada divorce. We are of the opinion that this conclusion is correct. There can be no other reasonable inference drawn from the defendant's acts than that the procuring of the divorce in Nevada was a mere device on the part of the defendant to rid himself of the obligation created by the judgment of the Philippine court and that his temporary sojourn in the State of Nevada was a mere ruse unaccompanied by any genuine intention on his part to acquire a legal domicile in that State. This being true, the divorce granted by the Nevada court cannot be recognized by the courts of this country.

In Ramirez v. Gmur (42 Phil., 855), this court held, in conformity with the rule declared by the Supreme Court of the United States, that the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status; and a divorce granted by such a court is not entitled to recognition elsewhere. The voluntary appearance of the defendant before such a tribunal does not invest the court with jurisdiction. In the same case this court went on to gay: "It follows that, to give a court jurisdiction on the ground of the plaintiff's residence in the State or country of the judicial forum, his residence must be bona fide. If a spouse leaves the family domicile and goes to another State for the sole purpose of obtaining a divorce, and with no intention of remaining, his residence there is not sufficient to confer jurisdiction on the courts of that State. This is especially true where the cause of divorce is one not recognized by the laws of the State of his own domicile. (14 Cyc., 817, 818.)"

From this it will be seen that a divorce granted in one State may be called in question in the courts of another and its validity determined upon the evidence relating to domicile of the parties to the divorce. This undoubtedly involves a collateral attack upon the decree of divorce; but, as has been said by the Supreme Court of the United States, it is now too late to deny the right collaterally to impeach a decree of divorce in the courts of another State by proof that the court granting the divorce had no jurisdiction, even though the record purports to show jurisdiction and the appearance of the parties (German Savings and Loan Society v. Dormitzer, 192 U. S., 125).

The rule above referred to has been held by the Supreme Court of the United States to prevail in the courts of the various States of the American Union, notwithstanding the existence of the constitutional provision requiring the courts of every State to give full faith and credit to judgments obtained in other States. There is no similar constitutional provision in force in these Islands, but, under section 309 of the Code of Civil Procedure, the judicial records of the courts of the United States and of the several States and Territories of the United States have the same force in the Philippine Islands as in the place where the judgment was obtained. But there is nothing in this provision that would require the courts of this country to give any greater consideration to the judgment of the court of an American State than is conceded to it in other States and districts of the United States, in conformity with the doctrine sustained by the Supreme Court of the United States and upheld in the courts of those States where the marriage tie is best guarded.

In the application of the rule above stated the circumstance that the parties to the present action contracted marriage in Syria, instead of the Philippine Islands, is not material to the case. The fact that they contracted marriage lawfully, wherever the act may have been accomplished, created the status of married persons between them; and the question with which we are here concerned is not as to the marriage, but as to the divorce conceded to the defendant in the State of Nevada.

Section 309 of the Code of Civil Procedure, declaring that a judgment obtained in an American court shall have the same effect in the Philippine Islands as in the place where such judgment was obtained, contains a qualification expressed in the following words: "except that it can only be enforced here by an action or special proceeding." Upon this provision the attorneys for the plaintiff plant a proposition to the effect that a Philippine court cannot recognize the decree of divorce granted by the Nevada court upon the mere exemplification of a certified copy of the decree; and it is insisted that, in order to get the benefit of said decree, it is necessary for the defendant to institute an independent action or special proceeding in one of our courts for the purpose of obtaining a judicial ratification of the decree of divorce. But it will be remembered that the defendant pleaded the decree of divorce by way of defense in his answer; and if the decree of divorce had been such as to have entitled it to recognition here, the defendant could in our opinion have obtained the benefit of it in this action. The provision in question no doubt contemplates primarily the situation where affirmative action has to be taken in the Philippine Islands to give effect to the foreign judgment as where the plaintiff desires to obtain execution upon property in these Islands to satisfy a judgment obtained abroad. But a decree of divorce operates on the marriage status; and if effective at all, it dissolves the marriage tie, without the necessity of any affirmative proceeding in any other court. At any rate, all that was intended to be secured by the provision requiring an action or proceeding here was that

the courts of this country should have an opportunity to pass judicially upon the efficacy of the judgment. This purpose is accomplished as well where the foreign judgment is relied upon in an answer and duly proved, as where the original action is actually brought by the holder of the judgment. It could not have been intended by the authors of section 309 that the holder of the foreign judgment must be deprived of the benefit of it merely because he happens to be defendant rather than plaintiff in an action brought in our courts.

From what has been said it follows that the objections interposed by the plaintiff to the manner in which the defendant seeks to avail himself of his alleged decree of divorce are not well taken; but for reasons already stated, the decree itself is of no force in this jurisdiction. It supplies therefore no justification for the defendant's failure to pay alimony.

But it is said that, even conceding that the defendant is technically liable for alimony, he should nevertheless be relieved from the order requiring him to pay alimony, in view of the fact that the plaintiff has been overpaid upon account of alimony. In this connection reliance is placed upon the supposed retroactive effect of the order of December 24, 1923, fixing the plaintiff's stipend definitely at P500 per month, while the original order granting alimony, pendente lite, was at the rate of P1,000 per month; and, as will be remembered, judgment was executed at that rate for an amount much in excess of what would have been obtained if the rate of P500 per month had been allowed from the beginning. It is insisted that the plaintiff should be required to refund this excess or at least that it should be considered an equitable set-off against the claim for present alimony.

It is true that the original order granting alimony at the rate of P1,000 per month was of a provisional character, and the final order fixing the alimony at P500 per month was given retroactive effect to the beginning of the litigation. At first blush, therefore, the facts appear to supply an equitable consideration in favor of the defendant as regards his alimony account; but upon examining the situation more minutely, it will be found that the case is not precisely such as it appears to be on the surface. It is true that the plaintiff secured execution of the order for alimony in an amount in excess of what she finally became entitled to upon alimony account, but it is nevertheless true that the property thus acquired by the plaintiff was made subject in her hands to the preexisting debts properly chargeable against the conjugal partnership; and litigation already determined in this court, or now pending before it, shows that the plaintiff has already lost, or is in a way to lose, a great part, if not all, of the property so secured upon execution. Furthermore, it is evident that she has not yet received in cash the amount actually due her for alimony. It is therefore evident that there is nothing in the supposed overexecution of the claim for alimony which raises any equitable consideration in the defendant's favor.

In addition to this, it must be remembered that alimony is an allowance for support and is fixed with a view to enable the party entitled thereto to confront obligations for current necessities. The demands of to-day and tomorrow cannot always be satisfactorily met from the resources of yesterday, and it seems inconsistent with the very nature of the obligation to offset against claims for current alimony sums of money that have been improperly taken under previous orders. It has accordingly been held by American courts that excessive payments made under valid, though erroneous, prior orders cannot be offset against claims for current alimony (19 C. *J.*, p. 226; Lishey v. Lishey, 6 Lea [Tenn.], 418; Johnson v. Johnson [Tenn. Ch. A.], 49 S. W., 305). Spanish jurisprudence appears to confirm this view (6 Manresa, Ley de Enjuiciamento Civil, p. 80; 20 Jur. Civ., Recursos y Competencias, p. 566). This doctrine would seem to be applicable with full force so far as regards the right to the amount strictly necessary to maintain respectable existence. In the case before us the amount accruing to the plaintiff is only P100 per month, which is an exceedingly modest amount, considered from any point of view.

It results that we find no error whatever in the appealed judgment, either as regards the liability of the defendant for alimony or its amount.

The judgment appealed from will therefore be affirmed, and it is so ordered, with costs against the *Appellant*.

Villamor, Ostrand, Johns, Romualdez, and Villa-Real, *JJ.*, concur.