

beyond the reach of further execution?

We are of the opinion that the question should be answered in the affirmative for the following reasons: (a) Gliceria Rosete, the wife, redeemed the property, not in behalf of her husband, but as successor in interest in the whole or part of the property, it being then conjugal. The term "successor in interest" appearing in subdivision (a), Section 23, Rule 29, includes, according to Chief Justice Moran, "one who succeeds to the interest of the debtor by operation of law" or "the wife as regards her husband's homestead by reason of the fact that some portion of her husband's title passes to her (Comments on the Rules of Court, 1952 ed., Vol. 1, pp. 841-842); and (b) a property is deemed to belong exclusively to the wife (1) when acquired by her by right of redemption, and (2) with money belonging exclusively to her (Article 1396, old Civil Code).

The interest which a wife has in conjugal property in this jurisdiction may be likened to that of a wife in a homestead in American jurisdiction. That interest is known as "inchoate right of dower", or a "contingent interest." By virtue of this inchoate right, a wife has a right of redemption of a homestead as successor in interest of her husband. Thus, in *Hepfner v. Urten*, 12 Pac., 486, it was held that by the declaration of homestead by the husband of the property sold a portion of his title passed to his wife, and "she had the right of residence thereon with him and the family during their joint lives, with some rights in case she should survive him. She had a right of redemption as his successor in interest." (Underlining supplied) In *Taylor v. Taylor*, 92 So., 109, where a mortgage was executed on a homestead and the husband refused to pay the indebtedness, it was held that "the wife's 'inchoate right of dower', which is more than a responsibility and may well be denominated a contingent interest, was a sufficient interest in the lands to confer the right of equitable redemption under the mortgage." And in *Malone v. Nelson*, et al., 167 So., 714, it was declared that "the right of the wife to redeem is rested upon her interest — inchoate right of dower — a right subject to a monetary valuation." These authorities have persuasive effect considering the source of our rule on the matter.

The property in question has therefore become the exclusive property of the plaintiff. She has acquired it by right of redemption as successor in interest of her husband. It has ceased to be the property of the judgment debtor. It can no longer therefore be the subject of execution under a judgment exclusively affecting the personal liability of the latter. The conclusion reached by the lower court on this matter is therefore not warranted by law.

Wherefore, the decision appealed from is modified as follows: the sale of the two parcels of land executed by the sheriff on May 9, 1950 in favor of Raymundo de Jesus for P970.00 is hereby declared null and void, and the deed of repurchase executed by the sheriff in favor of the plaintiff on March 8, 1950 is hereby revived and maintained. The rest of the decision is declared without effect. No pronouncement as to costs.

Paras, Benzong, Padilla, Montemayor, Alex Reyes, Jugo, Labrador, Concepcion and J. B. L. Reyes, JJ., concur.

Pablo, J.: took no part.

XV

Asuncion Roque, Petitioner, vs. Hon. Demetrio B. Encarnacion as Judge of the Court of First Instance of Manila, and Francisco Reyes, Respondents, No. L-6505, August 23, 1954, Labrador, J.

1. SUMMARY JUDGMENTS; ACTION FOR ANNULLMENT OF MARRIAGE CANNOT BE DECIDED BY SUMMARY JUDGMENT PROCEEDING. — A counterclaim seeking to annul defendant's marriage to plaintiff, although not denied or resisted by the latter, cannot be decided by summary judgment proceeding — first, because such action is not one to "recover upon a claim" or "to obtain a declaratory relief," and second, because it is the avowed policy of the State to prohibit annull-

ment of marriages by summary proceedings.

2. ID.; ID.; ABSENCE OF GENUINE ISSUE DOES NOT JUSTIFY MISINTERPRETATION OF RULES OR VIOLATION OF POLICY. — The Rules of Court expressly prohibit annulment of marriages without actual trial (section 10, Rule 35). The mere fact that no genuine issue was presented cannot justify a misrepresentation of the rule or a violation of the avowed policy of the State.

J. C. Orendain, Canuto Pefianco, Jr. & Luz Tordesillas for petitioner.

Celestino L. de Dios and Jose S. Atienza for respondents.

DECISION

LABRADOR, J.:

In Civil Case No. 16787 of the Court of First Instance of Manila, entitled *Asuncion Roque Reyes vs. Francisco Reyes*, plaintiff, petitioner herein, alleges that she married defendant in November, 1943, and that out of their marriage two children were born; that during the marriage plaintiff acquired certain personal and real properties which produce a monthly income of P3,530; that defendant committed concubinage with a woman named Elena Ebarle, and in 1952 he attempted to take away her life, giving her blows and attempting to strangle her. She, therefore, prays for (a) legal separation, (b) legal custody of the children, (c) liquidation of the conjugal property, and (d) alimony and support for the children.

In his answer, the defendant admits their marriage, claiming, however, that it took place in February, 1944, but he denies the alleged concubinage by him and the alleged income of the properties, or the squandering of the same. He presented a counterclaim, alleging that plaintiff was already a married woman when she contracted the marriage with him, having been married with one Policarpio Bayore since February 19, 1930; that she fraudulently represented herself as single, without impediment to contract marriage; that she has been squandering money obtained from him, trying to acquire property in her own name, etc. He prays for (a) the annulment of his marriage to plaintiff, (b) custody of the children, and (c) damages in the amount of P30,000. Her answer to the counterclaim is one mainly of denials. As to the express allegation contained in the counterclaim that plaintiff is a married woman at the time of their marriage, plaintiff makes this denial:

6. That the plaintiff denies specifically each and every allegation averred in paragraph 6 of the counterclaim, the truth being that said Policarpio Bayore (plaintiff's husband) has been absent for 14 consecutive years.

On October 21, 1952, defendant filed a motion for summary judgment, opposition to which was filed by plaintiff on the ground that an action for annulment can not be a ground for summary judgment. In support of the motion for summary judgment, the deposition of Policarpio Bayore, former husband of the plaintiff, was submitted. A supposed certified copy of his marriage to plaintiff was identified by Bayore at the time of the taking of his deposition. Plaintiff did not present any affidavit, deposition, or document to support his objection. Without much ado, the trial judge granted the motion for summary judgment, immediately rendering a decision (a) declaring plaintiff's marriage to defendant null and void *ab initio*, (b) declaring that plaintiff concealed her true status and awarding the custody of the children to defendant, and (c) declaring plaintiff's rights to the conjugal properties forfeited in favor of their children, although granting the custody of the smaller child to plaintiff.

The petitioner seeks to annul the judgment on the ground that the trial court had no jurisdiction to render a summary judgment in the action to annul the marriage, and on the further ground that there were real issues of fact raised in the pleadings, as she believed that her husband was already dead at the time of her marriage to defendant, etc.

The plaintiff does not deny the fact that she was married

to Policarpio Bayore in the year 1930, and that the latter is alive and the marriage still subsisting. May this counterclaim be decided by the summary judgment proceedings? Our answer must be in the negative, first, because an action to annul marriage is not an action to "recover upon a claim" or "to obtain a declaratory relief," and, second, because it is the avowed policy of the State to prohibit annulment of marriages by summary proceedings. An action "to recover upon a claim" means an action to recover a debt or liquidated demand for money. This is the restricted application of the rule in jurisdictions where the proceeding has been adopted. In Virginia this proceeding is limited to actions "to recover money"; in Connecticut, New Jersey, and New York, to recover a debt or liquidated demand; in Michigan, for an amount arising out of contract, judgment, or statute; in Columbia, to recover sums of money arising *ex contractu*; in Illinois, for the payment of moneys; in Delaware, to sums for the payment of money, or recovery of book accounts, or foreign judgments; and in England, in actions upon bills and promissory notes, etc. (Yale Law Journal, Vol. 38, p. 423.) In federal courts the proceeding has been used in patent, copyright, and trade mark cases, and in cases arising upon statutes or undisputed contracts or instruments. (See cases cited in I Moran 719-726, rev. 1952 ed.)

The fundamental policy of the State, which is predominantly Catholic and considers marriage as indissoluble (there is no divorce under the Civil Code of the Philippines), is to be cautious and strict in granting annulment of marriages (Articles 68 and 101, Civil Code of the Philippines). Pursuant to this policy, the Rules of Court expressly prohibits annulment of marriages without actual trial (Section 10, Rule 35). The mere fact that no genuine issue was presented, and we desire to expedite the dispatch of the case, can not justify a misinterpretation of the rule we have adopted or a violation of the avowed policy of the State.

We find that the trial court committed an error in annulling the marriage of plaintiff to defendant in a summary judgment proceeding without the formality of a trial. The trial court's error is not, however, limited to this. In spite of the fact that a genuine issue of fact was raised by plaintiff's pretense that she entered the marriage in good faith, this issue was ignored and the court declared her rights to properties obtained during the marriage forfeited, and the custody of one of the children denied to her. These constitute an abuse of judicial discretion amounting to excess of jurisdiction, properly the subject of a proceeding by certiorari.

The judgment entered in the case is hereby annulled, and the lower court ordered to proceed in the case according to the Rules.

Paras, Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Concepcion and J.B.L. Reyes, J.J., concur.

XVI

Nicanor Padilla, Plaintiff-Appellee, vs. Andres De Jesus, Pablo De Jesus, Josefa De Jesus, Doroteo Celis, Jr., Natividad De Jesus, Romeo Morales and Manuel De Jesus, Defendants-Appellants, No. L-6008, August 31, 1954, Bautista Angelo, J.

EJECTMENT; JURISDICTION; EXISTENCE OF ANOTHER ACTION TO ANNUL MORTGAGE OF THE PROPERTY DOES NOT DEPRIVE THE MUNICIPAL COURT TO TRY CASE OF EJECTMENT.—The circumstance that there is pending in the court of first instance a case in which defendants are seeking the annulment of the deed of mortgage of the property in question, executed by their father without their knowledge and consent, cannot and does not deprive the municipal

court of its jurisdiction to try the ejectment case filed against them by the plaintiff, in the light of the fact averred in the complaint for ejectment, and supported by evidence, that plaintiff is the exclusive owner of the property in question, having purchased it at an auction sale in 1948.

Macario Guevarra for defendants and appellants.

Padilla, Carlos & Fernando for plaintiff and appellee.

DECISION

BAUTISTA ANGELO, J.:

On August 24, 1950, plaintiff filed an action for ejectment in the Municipal Court of Manila against defendants to recover the possession of a parcel of land located at Paco, Manila.

On September 7, 1950, defendants filed a motion to dismiss on the grounds, (1) that there is another case pending in the Court of First Instance of Manila between the same parties and over the same subject-matter; (2) that the claim sought by plaintiff has been condoned; and (3) that the court has no jurisdiction over the subject-matter of the action. Plaintiff filed an opposition to this motion but the same was denied.

On November 27, 1950, defendants filed their answer setting up certain special defenses and a counterclaim. Plaintiff filed a motion to dismiss the counterclaim, to which defendants filed a written opposition. After the reception of the evidence, the court rendered judgment ordering the defendants to vacate the property involved and to pay the plaintiff a monthly rental of P100 from October, 1949 up to the time the defendants shall have vacated the property, and the costs of action.

On June 2, 1951, defendants filed a motion for reconsideration and the same having been denied, they brought the case on appeal to the Court of First Instance where they filed another motion to dismiss based on the same grounds set forth in the municipal court. This motion was also denied for lack of merit.

On August 14, 1951, defendants filed their answer wherein they reiterated the same special defenses and counterclaim they set up in the municipal court. Plaintiff moved to dismiss the counterclaim, and this motion was granted.

When the case was called for hearing on March 14, 1952, defendants moved for postponement on the ground that their principal witness could not be present. Counsel for the plaintiff objected to the postponement. However, the parties agreed to hear the testimony of one L. G. Marquez, an expert witness for the plaintiff, who testified and was cross-examined by counsel for the defendants. Thereafter, upon agreement of the parties, the continuation of the hearing was set for March 24, 1952.

When the case was called for the continuation of the hearing on said date, neither the defendants, nor their counsel, appeared, whereupon the court allowed the plaintiff to present his evidence, and on March 15, 1952, it rendered decision ordering defendants to vacate the property and to pay a monthly rental of P200 from October, 1940 until the time they shall have actually surrendered the property, with costs.

On April 14, 1952, defendants filed a motion for reconsideration and new trial, accompanied by affidavits of merits, on the ground that their failure to appear on March 24, 1952 was due to "mistake and excusable negligence" as provided for in Section 1 (a), Rule 37, of the Rules of Court. And when this motion was denied, defendants took the case directly to this Court imputing three errors to the lower court.