Disturbing Family Law Jurisprudence: A Critical Observation

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I. INTRODUCTION

Family Law is a legal field that has been given significant focus both by the Supreme Court and Congress in recent years. Since the effectivity of the Family Code,[1] there has been a rapid development in both jurisprudence and legislation in this area of law. In a number of cases, explanations of psychological incapacity, divorce, marital property regimes, filiation, and even family surnames, have been made by the Supreme Court. However, there are also cases that have been significant, not because they introduce earth-shaking and trailblazing decisions that positively illumine family issues, rather, they create jurisprudence that, for the most part, unsettle a legal mind's sense of legal coherence and equanimity.

This article shall deal with some of these significant unsettling decisions or opinions of the Supreme Court.

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1. The Family Code of the Philippines [FAMILY CODE].

II. ERRONEOUS CATEGORIZATION OF INFIRMITY

In 1996, the Supreme Court decided the case of *Navarro v. Domagtoy*,[2] an administrative case filed against a judge who committed several irregularities in solemnizing a marriage. In its decision, the Supreme Court said "[w]here a judge solemnizes a marriage outside his court's jurisdiction, there is a resultant irregularity in the formal requisite laid down in article 3, which while it may not affect the validity of the marriage, may subject the officiating official to administrative liability."[3] This statement is erroneous because the law clearly provides that a judge has authority only if he solemnizes within his jurisdiction.[4] Non-observance of this rule is not a mere irregularity because it generally makes the marriage null and void. It is submitted, however, that since the principal issue in the *Domagtoy* case involves the liability of a judge and not the validity of a marriage, the said statement of the Supreme Court is merely an *obiter dictum* and therefore, does not create a precedent.[5] However, the statement has that sense of authority that can confuse law students and lawyers.

Notwithstanding the categorization, the saving grace of the Supreme Court's statement is found in the good faith of both parties, believing that the solemnizing officer had authority when in fact he had none.[6] The validity of the marriage, therefore, will not be because the infirmity of the non-jurisdiction of a judge is a mere irregularity, but because of the good faith of both contracting parties.

III. MUDDLING OF VOID MARRIAGES

In 2001, the Supreme Court decided *Nicdao-Cariño v. Cariño*.[7] This decision blurred the distinction between article 40 on subsequent void marriage and article 41 on bigamy under the Family Code.[8] While acknowledging that the

2. Navarro v. Domagtoy, 259 SCRA 129 (1996).

3. *Id.* at 135-36.

4. FAMILY CODE, art. 7, ¶ 1 ("[m]arriage may be solemnized by any incumbent member of the judiciary within the court's jurisdiction.").

5. MELENCIO S. STA. MARIA, JR., PERSONS AND FAMILY RELATIONS LAW 129 (4d ed. 2004) [hereinafter STA. MARIA].

6. FAMILY CODE, art. 35, ¶ 2 (stating that marriages solemnized by any person not legally authorized are void from the beginning, unless contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so.).

7. Nicdao-Cariño v. Cariño, 351 SCRA 127 (2001).

8. FAMILY CODE, arts. 40 and 41.

> Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

previous marriage was void for having been solemnized without a marriage license, the Court stated that the subsequent marriage of one of the parties was bigamous because the first marriage, though void, was still presumed to be valid considering that there was no judicial declaration of nullity of the first marriage.[9] It basically held that, for as long as there is a subsequent void marriage, the same will also be bigamous.

Despite this ruling, a distinction must still be made between the two provisions. Although they both contemplate a situation where the subsequent marriage is void, they differ on the status of the first marriage.[10] If the first marriage is void and a party to that first marriage subsequently remarries without obtaining a judicial declaration of nullity of the first marriage, there is no doubt that the subsequent marriage is likewise void for failure to comply with the requirement set forth in article 40.[11] The law *does not expressly define* the subsequent marriage to be bigamous, precisely because there is no bigamy if the first marriage is void, a situation contemplated by the said article.[12] On the other hand, a bigamous marriage involves a situation where such subsequent marriage was contracted at the time when the first marriage, which is valid in all respects, was still subsisting.[13]

If in such case all subsequent marriages shall be deemed void on the ground of bigamy, what then would be the usefulness of article 40 with respect to the exceptional subsequent void marriage that it contemplates?[14] It is submitted therefore that, despite the decision in the *Nicdao-Cariño* case, the basic difference between article 40 and article 41 must still be maintained.[15]

> Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two (2) years shall be sufficient.

9. STA. MARIA, *supra* note 5, at 243.
10. *Id.* at 242.
11. Valdez v. Regional Trial Court, 260 SCRA 221 (1996), *cited in* STA. MARIA, *id.*
12. *Id.* (emphasis supplied).
13. *Id.* at 243.
14. *Id.*
15. STA. MARIA, *supra* note 5, at 243.

IV. INCOHERENT EFFECT OF ILLEGITIMATE STATUS

In 2004, the Supreme Court made a sweeping ruling with respect to parental authority over illegitimate children. In *Briones v. Miguel*,[16] the Supreme Court, in no uncertain terms, declared that where the child is illegitimate, only the mother shall have sole parental authority over the said child, notwithstanding the recognition of the father.[17] The Supreme Court based its decision solely on the rights of illegitimate children under article 176 of the Family Code and construed it literally without taking into consideration the other provisions of the same law, particularly the exercise of parental authority by both parents under article 211.[18] Thus, under this jurisprudence, if illegitimacy is the situation, it seems that being a biological father is not enough to confer paternal parental authority. The incoherence of this decision with the rights of the child vis-à-vis his illegitimate father, and *vice-versa*, is simply too obvious. Articles 176 and 211 should have been harmonized by the Supreme Court so that the rights of a true illegitimate father can also be recognized.

For article 211 to apply to illegitimate children, two requisites must concur, namely: 1) the father is certain and 2) the illegitimate children are living with the said father and the mother, who are cohabiting without benefit of marriage or under a void marriage not falling under articles 36 and 53.[19] This must be the interpretation so that the two provisions governing parental authority can be harmonized. This is based on the general premise that paternity of an illegitimate child is not always certain such that a particular male person should not be made to exercise parental authority with all its legal consequences over an illegitimate child who might turn out

16. Briones v. Miguel, 440 SCRA 455 (2004).
17. *Id.* at 463-64.
18. FAMILY CODE, arts. 176 and 211.
> Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force.
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> Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.
>
> Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority.

19. STA MARIA, *supra* note 5, at 755.

not to be his child.[20] Hence, it follows that article 176 operates in cases where 1) the paternity of the child is unknown or in doubt, and 2) where, though paternity is certain, *the father is not living with the mother and the child.*[21] Thus, it has been held by the Supreme Court that where a married man living with his legitimate family got hold of his illegitimate son from the latter's mother, the illegitimate son is under the parental authority of the mother only and therefore entitled to have custody of him, pursuant to article 176.[22]

In *Dempsey v. Regional Trial Court,*[23] the Supreme Court had the occasion to rule that joint parental authority must be exercised by both parents of an acknowledged natural child, an illegitimate child whose father has categorically made an admission that he indeed is the father.[24] In the said case, the Supreme Court even expressly referred to article 211, which was then about to take effect, to wit:

> [t]he Solicitor General points out that the new Family Code promulgated as Executive Order No. 209, 17 July 1987 erases any distinction between legitimate or adopted children on one hand and acknowledged illegitimate children on the other, insofar as joint parental authority is concerned. Article 211 of the Family Code, whose date of effectivity is approaching, merely formalizes into statute the practice on parental authority.[25]

In view of the foregoing observation of the Supreme Court, it is clear that article 211 on joint parental authority applies to both legitimate and illegitimate children, where the provision does not distinguish whether the said "common children" are legitimate or illegitimate.[26] This scenario is different as compared to the effects of the repealing provision of the Family Code, expressly repealing article 17 of the Child and Youth Welfare Code, where joint parental authority referred to legitimate or adopted children only.[27] The same is true for article 311 of the Civil Code, where joint

20. *Id.*

21. *Id.* (emphasis supplied).

22. David v. Court of Appeals, 250 SCRA 82 (1995), *cited in* STA. MARIA, *id.*

23. Dempsey v. Regional Trial Court, 164 SCRA 384 (1988).

24. STA. MARIA, *supra* note 5, at 754.

25. *Dempsey*, 164 SCRA at 391, *cited in* STA. MARIA, *id.*

26. STA. MARIA, *supra* note 5, at 754.

27. *See generally*, FAMILY CODE, art. 254.

> Titles III, IV, V, VI, VII, VIII, IX, XI and XV of Book I of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, as amended, and Articles 17, 18, 19, 27, 28, 29, 30, 31, 39, 40, 41, and 42 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended, and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed.

parental authority referred only to common "legitimate children who are not emancipated."[28]

The change in the Family Code, therefore, is quite significant and indeed reflects the prevailing sentiment that illegitimate children must likewise be the concern of the State and must be accorded rights and privileges which, though not exactly equaling those of the legitimate child, should at least approximate the same.[29] Relevantly, under article 211, in case of disagreement between the father and the mother, the father's decision shall prevail, unless there is a judicial order to the contrary.[30]

If therefore, a father lives with his illegitimate child and the child's mother, then parental authority shall be exercised by both parents in accordance with article 211. Again, it is important to emphasize that once parental authority is vested, it cannot be waived, except in cases of adoption, guardianship and surrender to a children's home or an orphan institution.[31] The father's subsequent separation from the mother and the illegitimate child shall not divest him of parental authority nor shall it be considered a waiver of his parental authority. However, his parental authority can be terminated in accordance with the legal grounds provided in the Family Code, such as abandonment and absence.[32]

28. An Act to Ordain and Institute the Civil Code of the Philippines [NEW CIVIL CODE] art. 311.

> The father and mother jointly exercise parental authority over their legitimate children who are not emancipated. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.
>
> Children are obliged to obey their parents so long as they are under parental power, and to observe respect and reverence toward them always.
>
> Recognized natural and adopted children who are under the age of majority are under the parental authority of the father or mother recognizing or adopting them, and are under the same obligation stated in the preceding paragraph.
>
> Natural children by legal fiction are under the joint authority of the father and mother, as provided in the first paragraph of this Article.

29. STA. MARIA, *supra* note 5, at 754.

30. *Id.*

31. Sagala-Eslao v. Court of Appeals, 266 SCRA 317 (1997), *cited in* STA. MARIA, *id.*

32. *See generally*, FAMILY CODE, arts. 228-32, *cited in* STA. MARIA, *supra* note 5, at 755.

V. OVERTURNING GOOD JURISPRUDENCE

Another case was decided by the Supreme Court in 2004 that overturned a standing jurisprudence which has existed for 75 years. This new jurisprudence was the one laid down in *Tenebro v. Court of Appeals*.[33] Though this case involves a criminal law issue, it is nevertheless important because it deals with marriage.

It has long been well-entrenched that there can be no bigamy if the second marriage is void for reasons other than the fact that it is bigamous, such as the absence of a marriage license.[34] However, in the *Tenebro* case, this ruling was overturned. This case involves two marriages of the same person. However, the second marriage was judicially declared void because of psychological incapacity of one of the parties. In declaring that there was still criminal bigamy with respect to the second void marriage, the Supreme Court said:

> Although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the vinculum between the spouses is concerned, it is significant to note that said marriage is not without legal effects. Among these effects is that children conceived or born before the judgment of absolute nullity of the marriage shall be considered legitimate. There is therefore a recognition written into the law itself that such a marriage, although void ab initio, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment.[35]

Confining the ruling to the peculiar facts of *Tenebro*, the Supreme Court may have indeed erroneously overturned good jurisprudence which had passed the test of time for no less than 75 years. Normally, a person who has psychological incapacity to perform the essential marital obligations does not actually know or is not aware at the time of the marriage ceremony that he or she has a personality disorder consistent with such psychological incapacity under article 36 of the Family Code.[36] This is the reason why in a host of cases, the Supreme Court has strongly encouraged the presentation of

33. Tenebro v. Court of Appeals, 423 SCRA 272 (2004).

34. People v. Mora Dumpo, 62 Phil. 246 (1935).

35. *Tenebro*, 423 SCRA at 284.

36. FAMILY CODE, art. 36 ("[a] marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.").

a psychologist or psychiatrist to determine juridical antecedence or root cause of the parties' psychological incapacity. These expert witnesses can detect the inception of the malady even before the marriage ceremony, thus complying with the requirements of the law as to juridical antecedence.

Thus, the Court's opinion that "[t]o hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment"[37] may not possibly apply in case where the second marriage is void due to psychological incapacity. Moreover, in recent cases, the Supreme Court has even pronounced that bad faith, deception, and/or malice is not consistent with psychological incapacity which implies a non-cognizance that one is incapable of performing the essential marital obligations.[38]

VI. CONFUSION ON REMEDIES

In 2005, the same division of the Supreme Court, in a period of less than five months made two conflicting decisions. On 19 January 2005, the Supreme Court rendered a decision in *Republic v. Bermudez-Lorino*[39] ruling that no appeal can be entertained in relation to a decision for the judicial declaration of presumptive death under article 41 of the Family Code because article 247 of the same Code provides that such decision, being a summary judicial proceeding, is "immediately final and executory."[40] According to the Supreme Court, the Court of Appeals lacked jurisdiction to entertain such an appeal. Later, on 6 May 2005, the Supreme Court issued another decision in *Republic v. Court of Appeals*,[41] ruling that a decision for the judicial declaration of presumptive death is not a special proceeding but a summary proceeding where mere notice of appeal is enough to perfect an appeal.[42]

If the Supreme Court were consistent with the ruling in *Bermudez-Lorino*, there would not have been any point in discussing the proper mode of appeal in summary proceedings on presumptive death in the subsequent case of *Republic v. Court of Appeals*. The latter case should have also been dismissed. Instead of doing this, the Supreme Court remanded the case to

37. *Tenebro*, 423 SCRA at 284.

38. Buenaventura v. Court of Appeals, 454 SCRA 261 (2005).

39. Republic v. Bermudez-Lorino, 449 SCRA 57 (2005).

40. *Id.* at 62.

41. Republic v. Court of Appeals and Malinao-Jomoc, 458 SCRA 200 (2005).

42. *Id.* at 207.

the Court of Appeals "for appropriate action."[43] On the other hand, the only appropriate action of the Court of Appeals would be to dismiss the case pursuant to the ruling in *Bermudez-Lorino*. The conflicting decisions therefore might just lead to the same result after going through such a circuitous path.

VII. INACCURATE OPINION

Sometimes, it is better to know when to stop making discussions lest certain things might be said which can make an otherwise good resolution into a confusing one. This is exactly what happened in the case of *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*.[44] In the main decision, the Supreme Court allowed an adopted child to use as middle name the surname of the natural mother though there is no express provision in law to that effect. In this case, the illegitimate father adopted his illegitimate child after the mother (not the legal wife of the adopter) gave consent to the adoption. Needless to state, the issuance of the adoption decree terminated the parental authority of the mother. The Court cited customs and the intent of the Civil Code and Family Law Committee Deliberations in justifying its decisions. However, as an *obiter*, the Supreme Court surprisingly opined, "[a]rticle V of Republic Act 8552 provides that the adoptee remains an intestate heir of his/her biological parents. Hence, Stephanie can well assert or claim her hereditary rights from her natural mother in the future."[45] The statement is rather problematic, as it appears to be contrary to the spirit of Republic Act 8552, more popularly known as the Domestic Adoption Act.[46]

It is clear from section 18 of article V that the natural parent's right to inherit can only be done through testate and not intestate succession.[47] Considering that all legal ties are severed between the natural biological parents and the adoptee, the latter shall not inherit by way of legitime or intestacy.[48] It is to be remembered that both adoption and the rule of legitime or intestacy are purely statutory. The law must provide the benefit

43. *Id.* at 208.

44. In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, 454 SCRA 541 (2005).

45. *Id.* at 552.

46. An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes, Republic Act No. 8552 (1998) [hereinafter DOMESTIC ADOPTION ACT OF 1998].

47. *Id.* art. V, § 18 ("[i]n legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.").

48. *See,* STA. MARIA, *supra* note 5, at 655.

or privilege; otherwise such benefit or privilege cannot be conferred. The statutory right of intestacy for the biological parents to inherit does not exist and is not conferred to by the law to such persons. Moreover, while the Family Code may have provided for such right,[49] such right was nevertheless omitted in the codification of all our adoption laws in the Domestic Adoption Act. The clear legislative intent to omit the natural parents from the law of intestacy can clearly be seen from section 16 of the adoption law when it categorically mandated that "[a]ll legal ties between the biological parents and the adoptee shall be severed and the same shall then be vested on the adopters."[50] There is no doubt that the new Domestic Adoption Act which does not confer the right of intestacy on the biological natural parents is a law intended to be a comprehensive codification of all legal areas in the law on adoption. It is a rule in statutory construction that:

> In the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are deemed repealed, unless the statue or code provides otherwise expressly or impliedly. The reason is that a revision or codification is, by its very nature and purpose, intended to be a complete enactment on the subject and an expression of the whole law thereon, which thereby indicates an intent on the part of the legislature to abrogate those provisions of the old laws that are not reproduced in the revised statute or code.[51]

VIII. INADEQUATE RATIONALIZATON

On 5 October 2005, the Supreme Court released the decision in *Republic v. Orbecido*.[52] This case ruled that the second paragraph of article 26 of the Family Code allowing recognition of absolute divorce in the Philippines[53]

49. *See generally,* FAMILY CODE, art. 183, ¶ 3. This provision has been expressly repealed by the Domestic Adoption Act.

50. DOMESTIC ADOPTION ACT OF 1998, art. V § 16. Although the head note of section 16 states "Parental Authority," it is clear that the plain terms and context of the body of section 16 deals not only with termination of parental authority but "ALL LEGAL TIES." Hence, section 16 must not be narrowly applied to parental authority only. Headings should not be allowed to control the meaning of the context of the statute. *See,* Kare v. Planton 56 Phil. 248 (1931); Commissioner of Customs v. Relunia, 105 Phil. 875 (1959); People v. Yabut, 58 Phil. 499 (1933); In Re: Estate of Johnson, 39 Phil. 156 (1918), *cited in* RUBEN AGPALO, STATUTORY CONSTRUCTION 86-87 (5d ed. 2003).

51. *Id.* at 394 (citing People v. Binuya, 61 Phil. 208 (1935) and Joaquin v. Navarro, 81 Phil. 373 (1948)).

52. Republic v. Orbecido, 472 SCRA 114 (2005).

53. FAMILY CODE, art. 26 ¶ 2 ("[w]here a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad

applies even if at the time of the marriage ceremony, both parties were Filipinos, for as long as at the time of the divorce, such obtaining party was already a foreigner. Admittedly, this is a just decision for the Filipino spouse so that he or she can get married again. However, the manner by which the decision was reached leaves so much to be desired for it does not illuminate. The Supreme Court, in justifying the application of the second paragraph of article 26 cited jurisprudence and summarily made its conclusion, to wit:

> Interestingly, paragraph 2 of Article 26 traces its origin to the 1985 case of *Van Dorn v. Romillo, Jr.* The *Van Dorn* case involved a marriage between a Filipino citizen and a foreigner. The Court held therein that a divorce decree validly obtained by the alien spouse is valid in the Philippines, *and consequently, the Filipino spouse is capacitated to remarry under Philippine law.*[54]

There is likewise nothing in the *Van Dorn* case where such statement can even be clearly inferred. The *Van Dorn* case should have been taken in its proper context. It was a case where a foreigner, who obtained a divorce abroad was prohibited from participating in the assets of his former Filipina wife, considering that he was not a spouse anymore in accordance with his nationality law. What the Supreme Court exactly said was the following:

> To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligation under Article 109 of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of the heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served. [55]

The Supreme Court was indeed very careful in its statement. Even if the Supreme Court said that the petitioner need not undertake the obligations of a wife, it clearly did not say that the petitioner can marry again. What the Supreme Court is saying is that the application of the Nationality Principle to the former foreign spouse should benefit also the Filipino spouse in matters relating to the non-observance of marital obligations. It does not however recognize that the Filipino spouse can marry again. This is so because in both the 1950 Civil Code and the 1988 Family Code, there can be instances when though one is married, he or she be excused from performing some of his or her marital obligations. Thus, if there is a legal separation decree, the spouses can validly live separately. The innocent spouse need not even support the guilty spouse. The legal bond of marriage is very different from the obligations to be performed within it. Such legal

by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have the capacity to remarry under Philippine law.").

54. *Orbecido*, 472 SCRA at 121 (emphasis supplied).

55. Van Dorn v. Romillo, Jr., 139 SCRA 139 (1985).

bond must still be legally terminated by the court before a subsequent marriage can take place.

IX. FORM OVER SUBSTANCE

Finally, in resolving very important matters vested with public interest, the Supreme Court has always looked at the substance rather than form or procedure. Thus, in *Sy v. Court of Appeals*[56] where the petitioner failed to assert the absence of a marriage license as a ground for nullity in her petition based solely on psychological incapacity under article 36, and where she only invoked such absence of a marriage license in her appeal to the Supreme Court. The Supreme Court made an exception to the general procedural rule that litigants cannot raise an issue for the first time on appeal, and consequently, declared the marriage void due to the absence of a marriage license.[57] The Supreme Court said that, in order to protect the substantive rights of the parties, it was making an exception to the application of the said general procedural rule considering that the marriage contract itself, which was presented as evidence, clearly showed that the solemnization of the marriage occurred before the issuance of the marriage license.[58]

Lately however, the Supreme Court seemed to have concerned itself with looking into the form or procedure rather than the substance. In *Mallion v. Alcantara*,[59] the Supreme Court ruled on the dismissal of a second case for nullity of marriage by a litigant on the technical ground on the prohibition on splitting a cause of action.[60] In this case, the first suit was on a nullity of a marriage on the ground of psychological incapacity which, however, was dismissed. Then later, the same petitioner discovered that the marriage had no marriage license so he filed another case to nullify the marriage based on the absence of a formal requisite. The petition was again denied because according to the Supreme Court, there was splitting of a cause of action.[61] This is a clear example of putting more weight on form rather than on substance. The rule in a void marriage is that it is not a protected union except to the extent that rights are conferred by law such as in property relations.[62] It cannot be ratified or be subject to estoppel or

56. Sy v. Court of Appeals, 330 SCRA 550 (2000).

57. *Id.* at 560.

58. *Id.* at 557.

59. Mallion v. Alcantara, G.R. No. 141528, Oct. 31, 2006, *available at* http://www.supremecourt.gov.ph/jurisprudence/2006/october2006/141528.htm (last accessed Dec. 31, 2006).

60. *Id.*

61. *Id.*

62. FAMILY CODE, art. 50.

acquiescence. It cannot be cured nor waived. It is invalid from the very beginning and therefore has no effect at all. The Supreme Court, just like in the *Sy* case, should have disregarded technicalities and should have allowed the suit. Marriage, as a sacred relationship, creates status and confers rights, which should thus should be protected by the State. The State has an obligation to protect the parties in a marriage. Correspondingly, the State also has an obligation to protect parties from a marriage not recognized by the law.

X. CONCLUSION

Jurisprudence forms part and parcel of our legal system. If decisions in Family Law will continue to be confusing and, sad to say, unsound, this will definitely have a negative repercussion in society. Family conflicts now abound in the Philippines. To quote from the preface of the author in one of his books:

> In these acts of family severance that happen nationwide, the lives of hundreds of men, women, their children, grandchildren, and even their extended families are deeply affected. And in the center of the legalities of all these are the judges and the lawyers. They are tasked with the responsibility of putting order, justice and fairness in a sensitively and potentially chaotic situation of people with family problems. In a large measure, the survival of society depends also on how judges and lawyers handle the problems of the basic units of the nation, namely the families that compose it. [63]

> The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared ab initio or annulled by final judgment under Articles 40 and 45.
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> The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of third presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.
>
> All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.
>
> In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.
>
> *Id.*

63. MELENCIO S. STA. MARIA, JR., COURT PROCEDURES IN FAMILY LAW ix (2004).

Judges and lawyers, upon the other hand, should be guided by rational, coherent and well-grounded jurisprudence that answer the demands of a society as a whole.