

FLORENTINA G. DEL MUNDO, PETITIONER, VS. ELIEZER V. DEL MUNDO AND HON. MA. CELESTINA C. MANGROBANG, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA,...

Ponente: SADANG, J.

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SADANG, J.:

This is a petition under Rule 47 of the Rules of Court seeking the annulment of the decision of the Regional Trial Court of Manila, Branch 38, dated July 16, 1998, in Civil Case No. 98-86770, which declared null and void the marriage of petitioner Florentina G. del Mundo and private respondent Eliezer V. del Mundo.

Petitioner Florentina G. Del Mundo (hereafter, Florentina) alleges that she and private respondent Eliezer V. del Mundo (hereafter, Eliezer) were married by Rev. Isidro Dizon on December 16, 1958 in Manila and they have two legitimate children, Eliezer, Jr. and Gerti, now both married; that in January 2012, she learned that Eliezer had filed a petition for declaration of nullity of second marriage against a certain Evangeline P. Carag (hereafter, Carag) in the RTC-Sta. Cruz, Laguna, docketed as Civil Case No. SC-5115; that Eliezer alleged in his petition that he stumbled upon a certificate of marriage between her and Carag, that he could not have married Carag because he is still married to Florentina, and that he did not appear before Rev. Preciosa Compañero to marry Carag; that in her Answer to Eliezer's petition, Carag alleged that Florentina's marriage to Eliezer had been annulled in the decision of the RTC-Manila in Civil Case No. 98-86770; that the RTC-Manila never acquired jurisdiction over her (Florentina) because she was never served a copy of the summons and petition at her correct address at 1720 Bishop Street, Brookside Hills Subd., Brgy. San Isidro, Cainta, Rizal; and that she filed a motion to intervene in Civil Case No. SC-5115 which the court granted in an Order dated May 22, 2012.

On July 23, 2013, Eliezer filed his Answer alleging that he did not initiate Civil Case No. 98-86770 and he did not appear in said case either as petitioner, respondent or witness; that he also did not appear before the prosecutor for the determination of collusion between the parties in said case; that it is highly improbable for him or Florentina to have filed said case because neither one of them had resided in Manila; and that he and Florentina are still legally married but they have been living separately for several years already.

At the pre-trial on October 25, 2013, Eliezer did not appear and his counsel, Atty. Allan Amazona, filed a withdrawal of appearance with his conformity. At the pre-trial on February 3, 2014, both parties did not appear. Florentina's lawyer, Atty. Rolito Abing, manifested that they had filed a Motion for Judgment on the Pleadings which he is submitting for resolution.

In our Resolution of February 6, 2014, both parties were directed to file their respective memorandum, attaching thereto the originals or certified true copies of their documentary evidence. Eliezer was ordered to get a new lawyer to assist him in preparing his Memorandum.

Records show that only Florentina filed her Memorandum to which are attached the required documentary evidence. Per JRD certification on May 22, 2014, respondent did not comply with the February 6, 2014

Resolution. Accordingly, the Motion for Judgment on the Pleadings was deemed submitted for decision.

RULING

A perusal of Eliezer's Answer shows that it fails to tender an issue because it does not deny the material allegations of Florentina's Petition. Thus, judgment on the pleadings is proper.

Section 9, paragraph (2) of the Judiciary Reorganization Act (B.P. Blg. 129) vests in the Court of Appeals exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts. Pursuant to Section 2 of Rule 47 of the Rules of Court, there are two grounds for such actions: 1) extrinsic fraud and 2) lack of jurisdiction.

Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, where the defeated party has been prevented from presenting fully his side of the case, by fraud or deception practiced on him by his opponent.[1] Extrinsic or collateral fraud is different from intrinsic fraud. Intrinsic fraud takes the form of acts of a party in a litigation during the trial, such as the use of forged instruments or perjured testimony, which did not affect the presentation of the case but did prevent a fair and just determination of the case.[2] Only extrinsic fraud is a ground for annulment of judgment under Rule 47.

Jurisdiction in annulment of judgment has two aspects: 1) jurisdiction over the nature of the action or subject matter; and 2) jurisdiction over the parties. Lack of jurisdiction over the subject matter as a ground under Rule 47 means that the court should not have taken cognizance of the case because the law does not vest it with jurisdiction over the subject matter. Jurisdiction over the nature of the action or subject matter is conferred by law.[3] On the other hand, lack of jurisdiction over the parties simply means that the court never acquired jurisdiction over the defendant for want of a valid service of summons.[4]

In this case, Florentina seeks annulment of the decision of the RTC-Manila in Civil Case No. 98-86770 on the grounds of lack of jurisdiction and extrinsic fraud. She alleges that there was no valid service of summons on her and that she was prevented from presenting her side because her address in the petition was incorrectly stated.

To prove her allegations, Florentina attached to her Memorandum these documents: 1) Annex A[5] – certified true copy of the Decision in Civil Case No. 98-86770; 2) Annex B[6] - Marriage Contract of Eliezer del Mundo and Florentina Gonzalez issued by the National Statistics Office (NSO); 3) Annex C[7] – certified copy of Petition in Civil Case No. 98-86770; 4) Annex D[8] – Certificate of Live Birth (NSO) of Eliezer G. del Mundo, Jr.; 5) Annex E[9] – Certificate of Live Birth (NSO) of Gerti G. del Mundo; 6) Annex F[10] – certified copy of Petition in Civil Case No. SC-5115; 7) Annex G[11] – Certificate of Marriage (NSO) of Eliezer del Mundo and Evangeline Carag; 8) Annex H[12] – Answer of Evangeline Carag in Civil Case No. SC-5115; 9) Annex I[13] – Summons in Civil Case No. 98-86770; Annex J[14] - Complaint in Intervention of Florentina del Mundo in Civil Case No. SC-5115; 10) Annex K[15]– Order of the RTC-Sta. Cruz, Branch 26 granting Florentina del Mundo's motion for intervention in Civil Case No. SC-5115; 11) Annex L[16] - Certificate No. 12343, dated June 21, 2012, issued by Punong Barangay Felipe Sauro of San Isidro, Cainta stating that Florentina is a resident of 1720 Bishop St. Brookside Hills; 13) Annex M[17] – Affidavit of Venus Gloria stating that Florentina is her neighbor in Brookside Hills and she knows that since the 1970's, inclusive of the period from January 12, 1997 to July 16, 1998, Florentina has resided in said subdivision; 14) Annex N- [18] Affidavit of Eliezer. Jr. stating that from 1969 to 2009 her mother Florentina resided in Brookside Hills and was a teacher at the Cainta Elementary School from 1970 to 2001 15) Annex O[19] – Certificate of Employment issued by Amelia Dean, administrative officer of the Department of Education, Region IV-A that Florentina is a retired teacher of Cainta Elementary School and served as such from November 12, 1970 to October 15, 2001; 16) Annex P[20] certified true copy of Service Record of Florentina showing her salary from August 16, 1968 to October 14, 2001.

There can be no question that Florentina has a cause of action to file this petition. The evidence shows that she and Eliezer were married on December 16, 1958 (Annex B) and out of their union two children were born, Eliezer, Jr. and Gerti (Annexes C, D).

We shall now come to the merits of the petition.

The petition (Annex C) in Civil Case No. 98-86770 indicates the address of Florentina as “1187 Cristobal Street, Paco, Manila” (Paco address). As shown on its face, the petition was filed on January 12, 1998 and raffled on January 16, 1998. The summons in said case (Annex I) also reflects the Paco address and shows, on its face, that it was served on January 28, 1998 at the Paco address on a certain Cristina Gonzales, “wife of the cousin of defendant.” However, Florentina's evidence shows that she was not and could not have resided at the Paco address at the time the petition was filed and the summons served. Florentina has shown, by preponderance of evidence, that she has been residing in Brookside Hills, Cainta, Rizal from 1969 to the present. The evidence shows that she was a master teacher at Cainta Elementary School from November 12, 1970 to October 15, 2001 (Annexes O, P). We give credence to Florentina's claim that she could not have lived in Paco during her long years as a teacher in Cainta because she and her children have a house in Brookside Hills, Cainta and lived there from 1969 to the present. Indeed, it was the natural thing for Florentina to live in her Cainta Brookside Hills residence considering that she teaches in Cainta. It appears, therefore, that Florentina was not served summons for the simple reason that the address where it was served is not her residence.

The service of summons on Cristina Gonzales is not a valid substituted service. For substituted service to be valid the return must show the following: 1) the efforts exerted by the sheriff to serve the summons within a reasonable period which demonstrates the impossibility of personal service; 2) that personal service cannot be effected for justifiable reasons; c) the service was made at the defendant's residence or office or regular place of business at the time of the service; d) the service was made with some person of suitable age and discretion residing therein, if effected at defendant's residence, or with some competent person in charge thereof, if effected at defendant's office or regular place of business at the time of service.[21]

Under controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully and any substituted service other than by the statute is considered ineffective. This is necessary because substituted service is in derogation of the usual method of service; it is a method extraordinary in character and, hence, may be used only as prescribed and in the circumstances authorized by statute.[22]

In this case, the substituted service on Cristina Gonzales is not valid for the simple reason that the address where it was effected is not the residence of Florentina. We note that the return of the sheriff was not presented in evidence. However, even assuming that the sheriff made a return detailing the efforts that he exerted to effect personal service and the impossibility thereof, the substituted service would still not be valid because, to reiterate, the address where it was served is not the residence of Florentina.

We also find that extrinsic fraud is present in this case. We sustain the allegation of Florentina that she was made to appear to be a resident of the Paco address purposely to keep her ignorant of the case or prevent her from participating therein. The allegation of a wrong address in the petition in Civil Case No. 98-86770 constitutes extrinsic fraud because it misled the court in the service of summons and prevented Florentina from opposing the petition and presenting her side.

WHEREFORE, the petition is GRANTED. The Decision of the Regional Trial Court of Manila, Branch 38, dated July 16, 1998, in Civil Case No. 98-86770, annulling the marriage of petitioner Florentina Gonzales del Mundo and respondent Eliezer V. del Mundo, is NULLIFIED.

No pronouncement as to costs.

SO ORDERED.

Librea-Leagogo, J., Chairperson, and Diamante, JJ., concur.

[1] Macabingkil v. PHHC, 72 SCRA 326; Gerardo v. dela Peña, 192 SCRA 680; Leonardo v. ST Best, 422 SCRA 347.

[2] Cosmic Lumber Co. v. Court of Appeals, 265 SCRA 168; Vide Strait Times, Inc. v. Court of Appeals, 294 SCRA 714.

[3] Barco v. Court of Appeals, 420 SCRA 162; Durisol Philippines, Inc. v. Court of Appeals, 377 SCRA 353.

[4] Toyota Cubao, Inc. v. Court of Appeals, 281 SCRA 198; Ablaza v. CIR, 126 SCRA 246.

[5] Rollo, p. 204.

[6] Id., p. 209.

[7] Id., pp. 210-215.

[8] Id., p. 216.

[9] Id., p. 217.

[10] Id., pp. 218-225.

[11] Id., p. 226.

[12] Id., pp. 227-243.

[13] Id., p. 245.

[14] Id., pp. 246-251.

[15] Id., pp. 252-253.

[16] Id., p. 254.

[17] Id., p. 255.

[18] Id., p. 256.

[19] Id., p. 257.

[20] Id., p. 258.

[21] Toyota Cubao, Inc. v. Court of Appeals, 281 SCRA 198; Venturanza v. Court of Appeals, 156 SCRA 605; Laus v. Court of Appeals, 219 SCRA 688; Syjuco v. Castro, 175 SCRA 171.

[22] Laus v. Court of Appeals, 219 SCRA 688.

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