

PETITION FOR THE PRESUMPTION OF DEATH OF NICOLAI SZATRAW. CONSUELO SORS, PETITIONER AND APPELLANT

G. R. No. L-1780. August 31, 1948

Ponente: PADILLA, J.

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PADILLA, J.:

Pleading under oath that she is the lawful wife of Nicolas Szatraw, a Polish citizen, to whom she was married in Manila on November, 1936, whom she bore a child named Alexis Szatraw born on 8 September 1937, with whom she had lived from the time they were married until February, 1940, when her husband, on the pretext that he would call on some friends, departed from the conjugal abode carrying the child along with him and never returned, about whose whereabouts she made inquiries from among her husband's friends and countrymen and learned that her husband and child had left for Shanghai, where, according, however, to information obtained from Polish citizens who had arrived from that place, he and the child had not been seen and could not be found; that all her efforts to know the whereabouts of her husband and child were in vain; and that, because of her husband's absence for more than seven years during which she has not heard any news, from him and about her child, she believes that he is dead, Consuelo Sors prays that her husband be declared dead and that her parental authority over her child, should the latter be alive and later on appear, be preserved.

The foregoing facts pleaded in the petition were proved. The evidence further shows that she and her husband did not acquire any property during their marriage and that his life was not insured.

Upon the foregoing evidence the trial court dismissed the petition on the ground that it is not for the settlement of the estate of the absentee, and because the rule of evidence establishing the presumption that a person unheard from in seven years is dead, does not create a right upon which a judicial pronouncement or a decree may be predicated. The petitioner has appealed.

The petition is not for the settlement of the estate of Nicolai Szatraw, because it does not appear that he possessed property brought to the marriage and because he had acquired no property during his married life with the petitioner. The rule invoked by the latter is merely one of evidence which permits the court to presume that a person is dead after the fact that such person had been unheard from in seven years had been established. This presumption may arise and be invoked and made in a case, either in an action or in a special proceeding, which is tried or heard by, and submitted for decision to, a competent court. Independently of such an action or special proceeding, the presumption of death cannot be invoked, nor can it be made the subject of an action or special proceeding. In this case, there is no right to be enforced nor is there a remedy prayed for by the petitioner against her absent husband. Neither is there a prayer for the final determination of his right or status or for the ascertainment of a particular fact (*Hagans v. Wislizenus*, 42 Phil. 880), for the petition does not pray for a declaration that the petitioner's husband is dead, but merely asks for a declaration that he be presumed dead because he had been unheard from in seven years. If there is any pretense at accuring a declaration that the petitioner's husband is dead, such a pretension cannot be granted because it is unauthorized. The petition is for a declaration that the petitioner's husband is presumptively dead. But this declaration, even if judicially made,

would not improve the petitioner's situation, because such a presumption is already established by law. A judicial pronouncement to that effect, even if final and executory, would still be a prima facie presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or matter involved in a case, or upon which a competent court has to pass. The latter must decide finally the controversy between the parties, or determine finally the right or status of a party or establish finally a particular fact, out of which certain rights and obligations arise or may arise; and once such controversy is decided by a final judgment, or such right or status determined, or such particular fact established, by a final decree, then the judgment on the subject of the controversy, or the decree upon the right or status of a party or upon the existence of a particular fact, becomes *res judicata*, subject to no collateral attack, except in a few rare instances especially provided by law. It is therefore, clear that a judicial declaration that a person is presumptively dead, because he had been unheard from in seven years, being a presumption *juris tantum* only, subject to contrary proof, cannot reach the stage of finality or become final. Proof of actual death of the person presumed dead because he had been unheard from in seven years, would have to be made in another proceeding to have such particular fact finally determined. If a judicial decree declaring a person presumptively dead, because he had not been heard from in seven years, cannot become final and executory even after the lapse of the reglementary period within which an appeal may be taken, for such presumption is still disputable and remains subject to contrary proof, then a petition for such a declaration is useless, unnecessary, superfluous and of no benefit to the petitioner. The Court should not waste its valuable time and be made to perform a superfluous and meaningless act.

Little effort is necessary to perceive that a declaration such as the one prayed for by the petitioner, if granted, may make or lead her to believe that the marital bonds which bind her to her husband are torn asunder, and that for that reason she is or may feel free to enter into a new marriage contract. The framers of the rules of court, by the presumption provided for in the rule of evidence in question, did not intend and mean that a judicial declaration based solely upon that presumption may be made. A petition for a declaration such as the one filed in this case may be made in collusion with the other spouse. If that were the case, that a decree of divorce that cannot be obtained or granted under the provision of the Divorce Law (Act No. 2710) could easily be secured by means of a judicial decree declaring a person unheard from in seven years to be presumptively dead. This is another strong reason why a petition such as the one presented in this case should not be countenanced and allowed. What cannot be obtained directly under the provisions of the Divorce Law could indirectly be secured under the provisions of Rule 123, section 69 (x). Obviously, the latter must not be made to prevail over the former.

The order appealed from is affirmed. No pronouncement as to costs is made, because no adverse party appeared in this Court and in the court below.

Paras, Actg. C. J., Feria, Pablo, Perfecto, Bengzon, Briones, and Tuason, JJ., concur.

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