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Supreme Court of the Philippines 25 6 3781 9.2720 110

11. SUMMARY PROCEEDINGS UNDER THE FAMILY CODE

1. Summary Proceedings under the Family Code

The cases shall be heard by the proper court authorized to hear family cases, if one exists, or in the regional trial court or its equivalent, sitting in the place where either of the parties or spouses resides. 241

1. Rationale

The summary remedy was thought of mainly because of separated spouses. One of them usually has difficulty obtaining the consent of the other spouse for a transaction where such consent is required. Thereafter, it was felt that this summary remedy may as well apply to other cases provided in the Family Code where court approval is needed.

2. Procedural rules

At the same time, however, there was the apprehension that some people may not accept the fact that a piece of legislation is providing for procedural rules which, according to them, is within the exclusive authority of the Supreme Court. Hence, it was provided in the Family Code that: Until modified by the Supreme Court, the procedural rules in the Family Code govern all cases provided in the Code requiring court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules. 242

3. Coverage

Summary procedure may be used in cases provided in Articles 239, 248, 223, 225, 235, 41, 51, 69, 73, 96, 124, 217, Family Code, viz:

3.1 A verified petition may be filed to seek judicial authorization for a transaction where the consent of an estranged spouse is needed.²⁴³ Claims for damages by either spouse, except costs, may be litigated only in a separate action.²⁴⁴

3.2 The petition for judicial authority to administer or encumber specific separate property of the abandoning spouse and to use the fruits or proceeds thereof for support of the family.²⁴⁵

3.3 Petitions filed under Articles 223, 225 and 236 of the Family Code involving parental authority which shall be verified, to be filed in the proper court of the place where the child resides. The court shall notify the parents or, in their absence or incapacity, the individuals, entities or institutions exercising parental authority over the child.

3.4 Summary proceedings filed under Articles 41, 51, 69, 96, 124 and 217, insofar as they are applicable.

4. Procedure

The summary procedure is set forth in certain provisions of the Family Code (Arts. 239-247, 250-252, FC) as follows:

4.1 A verified petition

A verified petition setting forth the alleged facts and attaching the proposed deed of the transaction involved.²⁴⁶

4.2 Notice to interested persons

Notice shall be given to all interested persons upon the filing of the petition.

4.3 Preliminary conference

The preliminary conference shall be conducted by the judge personally without the parties being assisted by counsel. After the initial conference, if the court deems it useful, the parties may be assisted by counsel at the succeeding conferences and hearings.²⁴⁷

4.4 Requiring appearance

In case of non-appearance of the other party, the court shall inquire into the reasons why and shall require such appearance, if possible. ²⁴⁸

4.5 Ex-parte proceeding

If attendance is not secured, then the court may proceed ex parte and render judgment as the facts and circumstances warrant, but the court shall endeavor to protect the interests of the non-appearing party.

4.6 Summary hearing

The case shall be heard on the basis of affidavits, documentary evidence or oral testimonies at the sound discretion of the court.²⁴⁹

4.7 Testimony

If testimony is needed, the court shall specify the witnesses to be heard and the subject matter of their testimonies, directing the parties to present said witnesses.²⁵⁰

4.8 Judgment

The judgment of the court shall be immediately executory.²⁵¹

²⁴¹ Family Code, Art. 241.

²⁴² Ibid, Art. 238.

²⁴³ Family Code, Article 239.

²⁴⁴ Ibid.

²⁴⁵ Family Code, Article 248.

²⁴⁶ Family Code, Article 239.

247 Ibid, Art. 243.

248 Ibid, Art. 244.

249 Family Code, Art. 246.

250 Ibid.

251 Family Code, Art. 24.

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