

IN RE: PETITION FOR CANCELLATION OF ENTRIES IN THE BIRTH RECORD OF ERICA SAMPANG DIN WITH CONSEQUENT RECLASSIFICATION OF HER STATUS AND CHANGE OF SURNAME, GERALDINE M. SAMPANG, ...

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is an appeal by the Republic through the Office of the Solicitor General to the Decision dated September 8, 2011 rendered by the Regional Trial Court, Branch 52 of Guagua, Pampanga in Special Proceedings Case No. G-11-2378, the dispositive portion of which reads:

“WHEREFORE, this Court hereby (a) grants petitioner Geraldine M. Sampang's petition dated February 4, 2011; (b) orders public respondent Municipal Registrar of Guagua, Pampanga to correct the entries in the Certificate of Live Birth of Erica Sampang Din to (a) state that her (1) civil status is illegitimate; and (2) surname is Sampang; and (b) cancel the statement that her parents were married on “September 18, 1991, San Fernando, Pampanga.”

SO ORDERED.”[1]

Antecedents:

This case stemmed from the petition filed by Geraldine M. Sampang dated February 4, 2011 for change of surname of Erica Sampang Din and the cancellation of the date and place “September 18, 1991” appearing on the Certificate of Live Birth of the latter.

In the said petition[2], Geraldine Sampang stated that she is the biological mother of Erica Sampang Din; that she gave birth to Erica on October 17, 1994; that in registering her child Erica, she made it appear that she was married to Edwin Limin Din on September 18, 1991 to avoid social humiliation because her relationship with Edwin Limin Din was merely that of lovers, thus Erica was registered as Erica Sampang Din; that there is no document to prove that the biological father recognized or acknowledged his illegitimate child, thus the latter should take the surname of her mother.

The petition impleaded the Office of the Municipal Civil Registrar of Guagua, Pampanga, the Civil Registrar General of the Philippines, Edwin L. Din and Sps. Serafia and Jesus G. Din.[3]

On March 18, 2011, the trial court issued an order[4] setting the case for initial hearing on May 4, 2011 and ordering petitioner:

“(1) to cause the publication of this order in a newspaper of general publication in the Province of Pampanga at least once a week for three (3) consecutive weeks; (2) to serve within twenty four hours from receipt of this order copies of the petition in this case to the Office of the Solicitor General of the Philippines, the Office of the Provincial Prosecutor, City of San Fernando, Pampanga, the Civil Registry of Guagua, Pampanga, and the Civil Registry General; (3) to show proof of said service to this court; and (4) to serve to this court, the

Solicitor General and the Public Prosecutor Desiree S. Magno-Salomeo fifteen (15) days from receipt of this order the judicial affidavits of all her witnesses in his case, which affidavits will serve as the witnesses' testimonies on direct examination, subject to cross, redirect and re-cross examinations; (c) orders private respondents to file their comment to the petition on or before May 4, 2011; and all persons interested in this petition (1) to appear on said date and time before this court- the Regional Trial Court of Guagua, Pampanga, Branch 52, at the Hall of Justice, San Matias, Guagua, Pampanga; and (2) to show cause, if any, why the petition should not be granted; (d) orders the Solicitor General to enter his appearance in this case for the State within twenty four hours from receipt of this order; and (e) orders the branch clerk of court to furnish copies of this order to the petitioner, her counsel, the Solicitor General, the Provincial Prosecutor, Pampanga, the Civil Registry of Guagua, Pampanga and the Civil Registry General."

Despite the said order however, petitioner furnished the office of the Solicitor General a copy of the petition and its annexes only on October 10, 2011.[5]

It is extant in the records that respondents Edwin Limin-Din, together with his parents Sps. Jesus Din and Serapia Limin-Din were duly served with summons.[6]

During the hearing on May 4, 2011, the following exhibits were admitted by the trial court:

A – copy of the Order setting the case for initial hearing dated March 18, 2011

A-1 to 3- registry return receipts of the order dated March 18, 2011 sent to the OSG; local civil registrar and public prosecutor Desiree Magno-Salomeo

B- Affidavit of publication

B-1 – copy of the order dated March 18, 2011 published

C- newspaper, Pampanga Journal; C-1- the order dated March 18, 2011 as published;

D- newspaper, Pampanga Journal; D-1 – copy of the order dated March 18, 2011 as published;

E- newspaper, Pampanga Journal; E-1- copy of the order dated March 18, 2011 as published;

F- Summons dated March 25, 2011 and F-1- the Process Server's return

The trial court stated in its order dated May 4, 2011 that the court acquired jurisdiction over the case with the admission of the foregoing exhibits.[7] On May 10, 2011, the trial court received the Notice of Appearance of the OSG and its order deputizing the Office of the Provincial Prosecutor to assist the OSG in the case.[8] On August 3, 2011, petitioner finished presenting her testimony and presentation of evidence. Petitioner's evidence included a Certificate of No marriage (CENOMAR)[9] issued by the National Statistics Office (NSO) to prove that she and Edwin Limin Din were not married. The Public Prosecutor manifested that she believes the petition should be granted.[10]

The local Civil Registrar was impleaded as party respondent, however, it is extant in the records that except for the notice of initial hearing/order dated March 18, 2011[11], it was not furnished succeeding notices or copies of the summons dated March 25, 2011[12], order dated May 4, 2011[13], June 1, 2011 (order for the presentation of evidence by petitioner)[14], order dated August 3, 2011[15], order setting the case for hearing dated August 11, 2011[16] and order dated August 23, 2011 setting the case for hearing on September 8, 2011.[17]

The trial court rendered on September 8, 2011 its Decision granting the petition.[18] On September 29, 2011, the trial court issued an order directing the petitioner to furnish the OSG with a copy of the petition and to inform the court when the order has been complied with.[19]

The Office of the Solicitor General filed its Notice of Appeal on October 13, 2011.[20] The OSG contends that the Republic was denied due process: first, because the OSG was not furnished with a copy of the petition and its annexes in time for it to make the opportunity to contest the petition and second, because the the Local Civil Registrar was not summoned although it was a party respondent. Moreover, Rule 108 of the Rules of Court requires an adversarial proceeding where the filiation of a child is sought to be changed from “legitimate” to “illegitimate”. As certified to by the Special Proceedings and Land Cases Division, Docket Management Service of the OSG, it has not received a copy of the petition in Special Proceeding Case No. G-11-2378. Belatedly, however, on October 10, 2011, the OSG received a copy of the petition with annexes after the Decision has been rendered by the trial court.[21]

Stripped of non-essentials, the sole issue to be resolved in this appeal is whether or not the trial court erred in granting the petition.

The appeal is not meritorious.

Rule 108 of the Rules of Court provides the procedure whereby a person may seek cancellation or correction of an entry in the civil registry by filing a verified petition for cancellation or correction with the Regional Trial Court of the Province where the corresponding civil registry is located.[22] The following entries in the civil register maybe cancelled or corrected upon good and valid grounds: births, marriages, deaths, legal separations, judgments of annulments of marriage, judgments declaring marriages void from the beginning, legitimations, adoptions, acknowledgments of natural children, naturalization, election, loss or recovery of citizenship, civil interdiction, judicial determination of filiation, voluntary emancipation of a minor and changes of name.[23] All persons who will be affected by the correction or cancellation of entry in the civil register including the civil registrar, shall be made parties to the proceeding.[24] Sections 4 and 5 thereof state:

Sec. 4. Notice and publication.- Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

Sec. 5. Opposition.- The Civil Registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

There is no question that petitioner-appellee duly complied with the foregoing requisites of Rule 108 by having the petition published once a week for three consecutive weeks[25] and serving notice of the initial hearing to the Local Civil Registrar, OSG, the Provincial Prosecutor, the Civil Registrar General and the other respondents.[26] Such compliance under Sections 4 and 5 was sufficient to vest jurisdiction to the trial court to try and hear the petition.

The Supreme Court declared in a plethora of cases, that the procedure contemplated in Rule 108 in relation to Article 412[27] of the Civil Code, may generally be used only to correct innocuous or harmless errors such as clerical or typographical errors, misspelling or one which is visible to the eyes or obvious to the understanding.[28] When the correction sought would affect the filiation of a person from legitimate to illegitimate (vice-versa), the proceeding must be adversarial where the affected parties including the local civil registrar must be made parties and afforded the opportunity to contest the petition.[29]

“However, as repeatedly construed, changes which may affect the civil status from legitimate to illegitimate as well as sex, are substantial and controversial alterations which can only be allowed after appropriate adversary proceedings depending upon the nature of the issues involved. This opinion is predicated upon the theory that

the procedure contemplated in Article 412 is summary in nature which does not cover cases involving controversial issues. Changes which affect the civil status or citizenship of a party are substantial in character and should be threshed out in a proper action depending upon the nature of the issues in controversy and wherein all the parties who maybe affected by the entries are notified or represented and evidence is submitted to prove the allegations of the complaint and proof to the contrary admitted.”[30]

The instant petition is a clear example of a case which must be threshed out in an adversarial proceeding because the petitioner-appellee seeks to change the filiation of her biological daughter from legitimate to illegitimate which will affect hereditary rights. Thus, all the parties to the petition must be given an opportunity to pose their opposition thereto, including the Republic through the OSG and the Local Civil Registrar. Under Rule 108, the Local Civil Registrar is an indispensable party without whom no final determination of the case can be had.[31]

The appellant's assertion that the Republic and the concerned local civil registrar were both denied due process is erroneous for the following reasons:

First, it is extant in the records that the local civil registrar was impleaded as party respondent as well as notified of the initial hearing thru the notice of the initial hearing dated March 18, 2011 pursuant to Section 3, Rule 108 of the Rules of Court;

Second, the petitioner-appellee complied with the requirement of notice and publication under Section 4, Rule 108 of the Rules of Court when she caused the publication of the order for initial hearing once a week for three consecutive weeks in a newspaper of general circulation (Exhs. C, D, and E):

“The purpose precisely of Section 4, Rule 108 is to bind the whole world to the subsequent judgment on the petition. Xxx

Verily, a petition for correction is an action in rem, an action against a thing and not against a person. The decision on the petition binds not only the parties thereto but the whole world. An in rem proceeding is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.”[32]

Third, the local civil registrar and the Republic were not deprived of the opportunity to oppose the petition because they had ample time from the notice of initial hearing dated March 18, 2011 within which to file their opposition to the petition, however, for reasons unknown, they failed not do so. Moreover, it must be pointed out that the Office of the Provincial Prosecutor was duly authorized by the OSG thru the Notice of Appearance dated April 19, 2011, to represent the Republic in the proceedings.[33] It is also extant in the records that the Public Prosecutor actively participated in the trial and posted no objection to the granting of the petition, to wit:

Court:

This court admits said documents. Fiscal will you present any evidence?

Pros. Salomeo: No Your Honor.

Court: Do you believe that this court should grant the petition?

Pros. Salomeo: Yes, Your Honor.[34]

Clearly, the Public Prosecutor believed that the petitioner-appellant had substantially proven her case with the documentary and testimonial evidence presented in court.

Fourth, the Supreme Court had occasion to rule that the “ role of the court in hearing a petition to correct certain entries in the civil registry is to ascertain the truth about the facts recorded therein.[35]” It is the view of this Court that the petitioner-appellee was able to substantially establish the truth about the facts recorded in Erica's birth record. The entries in the birth certificate of Erica sought to be changed by the petitioner-appellee, to correctly state that: (1) she is illegitimate; (2) surname is Sampang; and (b) to cancel the statement that her parents were married on “ September 18, 1991, San Fernando, Pampanga were duly supported by evidence, are indeed the true facts. The CENOMAR issued by the National Statistics Office (NSO) states that there is no existing record of marriage between the petitioner-appellee and Edwin Limin Din. The NSO being the keeper of records for births, marriages and deaths for the whole country is the best source of information about the marital status of persons. Since there is no record of marriage between petitioner-appellee and Edwin Limin Din, then it only proves the fact that the petitioner-appellee and Edwin Limin Din were never married. And not being married, the entry in the birth certificate of their common child Erica should reflect only the truth: that the petitioner-appellee was unmarried, and that Erica is illegitimate. As an illegitimate child, Erica should bear the surname of her mother which is Sampang. Thus, the trial court correctly ordered the changes in the entry of Erica's birth certificate to reflect the truth as proven in the trial.

If there is a person who should object to the petition, it would be the father Edwin L. Din and/or the grandparents, Sps. Jesus G. Din and Serapia Limin Din who were properly summoned but nevertheless failed to file an opposition to the petition.

WHEREFORE, in view of the foregoing, the appealed Decision is hereby AFFIRMED. The instant appeal is hereby DISMISSED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Records, at 56-61

[2] Ibid, at 3-6

[3] Ibid, at 3

[4] Ibid, at 10

[5] Rollo, at 49-58

[6] Records, at 13-14

[7] Records, at 29

- [8] Ibid, at 32-33
- [9] Ibid, at 8, Exhibit “I”
- [10] Ibid, at 47
- [11] Ibid, at 10
- [12] Ibid, at 15
- [13] Ibid, at 29
- [14] Ibid, at 36
- [15] Ibid, at 47
- [16] Ibid, at 50
- [17] Ibid, at 53
- [18] See note 1
- [19] Records, at 64
- [20] Ibid, at 66
- [21] Rollo, at 17-42
- [22] Section 1, Rule 108, Revised Rules of Court
- [23] Section 2, *ibid*
- [24] Section 3, *ibid*
- [25] Exhibits C, D and E and submarkings
- [26] Exhibits A, A-1 to 3
- [27] Article 412 of the Civil Code: “No entry in a civil register shall be changed or corrected without a judicial order.”
- [28] Republic vs. Benemerito, 425 SCRA 488; Republic vs. Salvador, 305 SCRA 438; Labayo-Rowe vs. Republic, 168 SCRA 294; Chua Wee vs. Republic, 38 SCRA 409
- [29] *ibid*
- [30] Labayo-Rowe vs. Republic, 168 SCRA 294
- [31] Republic vs. Court of Appeals, G.R. No. 103695, March 15, 1996
- [32] Republic vs. Kho, GR No. 170340, June 29, 2007
- [33] Records, at 32
- [34] TSN, August 3, 2011, p. 8
- [35] Republic vs. Kho, GR No. 170340. June 29, 2007

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