

CARMELINO MENDOZA, PLAINTIFF AND APPELLANT, VS. JOSEFINA DE CASTRO, DEFENDANT AND APPELLEE.

G.R. No. 12965. April 29, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Court of First Instance of Manila, Hon. Rafael Amparo, presiding, denying a petition for the reconstitution of a supposed decision of the Court of First Instance of Manila, Branch IV, dated June 27, 1944 and signed by Hon. Gervasio Diaz, Judge.

Inasmuch as the appeal was made directly to this Court and the parties do not question the findings of fact of the court below but only the legal conclusion contained in said decision, the decision is reproduced below:

"This is a petition for reconstitution of the decision in a divorce case between plaintiff and defendant allegedly prosecuted in Manila in September 1943 and decided on or about June 27, 1944. A copy of the alleged decision is attached to the petition. The petition is based on the provision of Section 7, of Act No. 3110, which reads as follows:

"If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. In case an authentic copy cannot be found, the Court shall make a new decision as if the case had never been decided."

The law provides that "the decision shall be reconstituted by means of an authentic copy. The copy presented at the hearing by the plaintiff, Exhibit A, is a simple copy of the alleged decision dated June 27, 1944. There is no evidence, tending to establish the authenticity of this copy. It bears no initial of the stenographer or of the judge, or any seal or mark of the court. It is a simple copy without any sign that it came from the court. Authentic copy, as the court understands the term, is a copy officially served upon a party by a messenger employee, or sheriff of the court, with the date of service appearing thereon.

According to the testimony of the plaintiff, this Exhibit A was handed to him by the stenographer after the hearing of the case and after the decision was dictated by Judge Gervasio Diaz and the notes transcribed by the stenographer. Such procedure is quite irregular and not in conformity with practice, for the reason that copies of decisions are served upon the parties formally after the decision has been filed with the clerk of court and duly stamped and sealed by him the seal of the court. The defendant Josefina de Castro on the other hand testified that the petition for divorce was filed in Diliman, Quezon City and that she received from Judge Gervasio Diaz a copy of the decision in the City Hall of Manila in April, 1944. The Court takes judicial notice that all branches of the Court of First Instance of Manila were in Intramuros in April, 1944, and were moved to the City Hall after the first bombing of Manila on September 21, 1944. Furthermore, the alleged copy of the decision is dated June 27, 1944 and could not have been handed to her by Judge Diaz in April, 1944. It is also very strange that the judge himself personally would deliver to her a copy of the decision. This defendant also stated that she married for the second time on April 14, 1944 which was more than two months before the decision or decree of divorce, dated

June 27, 1944.

In the absence of an authentic copy, the law provides that "the court shall make a new decision as if the case had never been decided." There is no record of the said case in the Court of First Instance of Manila nor is there means for the parties to reconstitute said record. Hence the decision, if any, cannot be reconstituted.

PREMISES CONSIDERED, the petition for reconstitution is hereby denied, without pronouncement as to costs."

In the appeal before this Court, it is argued that as no authentic copy of the decision sought to be reconstituted can be found, the court below should have made a new decision as if the case has been newly decided. The futility of the argument becomes apparent if we consider that the court below did not believe the testimonies of both plaintiff and defendant as to the supposed divorce proceedings and judgment because of certain minor details in their testimonies which belie their claim that a case was presented and a decision therein rendered. Among these are: the fact that defendant supposedly received copy of the decision Exhibit "A" from Judge Diaz himself sometime in April, 1944 at the City Hall of Manila, when the judge below knew that the Courts of First Instance of Manila held sessions in Intramuros at that time and moved to the City Hall only after the first bombing of Manila on September 21, 1944. The Court also noted their claim that Judge Diaz personally handed them the copy of the decision, which is not the practice of courts; and that defendant married for the second time in April 14, 1944 when the supposed decision is dated June 27, 1944.

The other evidence submitted does not help the case of the appellant. During the Japanese Occupation, a peculiar way of numbering cases was adopted, but this peculiarity does not appear on the face of the supposed copy of the decision. The certificate of the Clerk of Court of Manila merely states that the supposed record of the case cannot be found. If the record is not available, what about the docket, which would have disclosed if a case had really been filed and decided. The existence of the supposed case is questionable, the simple copy of the decision presented by the plaintiff not bearing the seal of the court which issued it or the signature of the clerk who supposedly gave it. We agree with the trial court that the parties have not satisfactorily proved that the divorce case had been actually presented and decided by the court, hence the petition for reconstitution of the decision under Section 7 of Act No. 3110 cannot be granted.

Wherefore, the decision of the court below should be, as it is hereby, affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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