

IN THE MATTER OF THE PETITION FOR THE DECLARATION OF WILLIAM GUE, PRESUMPTIVELY DEAD. ANGELINA L. GUE, PETITIONER AND APPELLANT, VS. THE REPUBLIC OF THE PHILIPPINES, OPPOSITOR A...

G.R. No. 14058. March 24, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from the order of the Court of First Instance of Manila, presided by Judge Bonifacio Ysip, dismissing the petition of Angelina Gue. Involving as it does only questions of law, the appeal was taken directly to us.

On November 20, 1957, Angelina L. Gue filed a petition in the Court of First Instance of Manila, Civil Case No. 34303, alleging that she was married to William Gue; that they had a child named Anthony L. Gue; that on January 5, 1946, her husband left Manila where they were residing and went to Shanghai, China, but since then, he had not been heard of, neither had he written to her, nor in anyway communicated with her as to his whereabouts; that despite her efforts and diligence, she failed to locate him; and that they had not acquired any property during the marriage. She asked the court for a declaration of the presumption of death of William Gue, pursuant to the provisions of Article 390 of the Civil Code of the Philippines. After due publication and hearing, the trial court issued the order of dismissal, which we reproduce below;

"This is a petition filed by Angelina L. Gue to declare her husband, William Gue, presumptively dead. During the hearing of this petition, it was established by the testimony of the petitioner that she and her husband were married on October 11, 1944 in the City of Manila before the parish priest of Tondo, Manila, as shown in Exhibit B, the marriage contract. Her husband, who is a Chinese citizen, left the Philippines for Shanghai on January, 1946. The petitioner joined him in Shanghai in August of the same year. In January, 1949, the petitioner came back to the Philippines alone with her children, on which occasion her husband promised to follow her. However, up to the present time, said William Gue has not returned to the Philippines. From January, 1949, the petitioner had sent letters to her husband in Shanghai, but she never received any reply thereto. She made inquiries from the Bureau of Immigration in 1955 and 1958 as to whether her husband had already returned to the Philippines and she received Exhibit D and Exhibit E from said Office, which gave no information as to the whereabouts of her husband. It was also established by petitioner's testimony that no properties have been acquired by said spouses during their union, and during which they begot two children, named Eugenio and Anthony, surnamed Gue.

"With this evidence on record and considering the allegations in the petition, it is clear that no right had been established by the petitioner upon which a judicial decree may be predicated, and this action is not for the settlement of the estate of the absentee, as it is clear that he did not leave any.

"In the case of 'Petition for the Presumption, of Death of Nicolai Szatraw', 81 Phil., 461, a case similar to the present, the Supreme Court held:

"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, whether in an action or in a special proceeding, which is tried or heard by, and submitted for decision to, a special proceeding. In this case, there is no right to be enforced nor is there a remedy prayed for by the petitioner for the final determination of his right or status or of the ascertainment of a particular fact (*Hagans vs. 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 pretence at securing 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 the right or status of a party or established 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 is determined, 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 state 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 a 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 binds 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, then a decree of divorce that cannot be obtained or granted under the provisions 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.'

"In view of the foregoing and the doctrine of the Supreme Court laid down in the case above-cited, the Court hereby orders that this case be, as it is hereby dismissed, without pronouncement as to costs."

In her appeal, Angelina invoked the provisions of Article 380 of the New Civil Code, which for purposes of reference, we reproduce below.

"ART. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall

be presumed dead for all purposes, except for those of succession.

"The absentee shall not be presumed dead for the purpose of opening this succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened."

She contends that under Article 191 of the Old Civil Code, which reads:

"After thirty years have elapsed since disappearance of the absentee, or since he was last heard from, or ninety years from his birth, the judgment upon the petition of any party lawfully interested, shall make an order declaring that such absentee is presumed to be dead."

a person could be declared presumptively dead, but that said legal provision was repealed by the Code of Civil Procedure and continued to be repealed by the Rules of Court. Consequently, only a mere disputable presumption of death was available to any party, and that the case of Nicolai Szatraw, cited by the trial court, was decided on the law then existing, namely, the Code of Civil Procedure, and later the new Rules of Court. However, according to appellant, with the promulgation of the New Civil Code in 1950, particularly, Article 390 thereof, the Courts are now authorized to declare persons presumptively dead.

In answer to her contention, the Solicitor General, as appellee herein, correctly cites our decision in the recent case of Lourdes G. Lukban vs. Republic of the Philippines, 98 Phil., 574; 52 Oft. Gaz., No. 3, 1441, decided long after the New Civil Code went into effect, wherein we reiterated the doctrine laid down in Nicolai Szatraw, supra. We quote the pertinent portions of our decision in that case:

"This is a petition filed in the Court of First Instance of Rizal for a declaration that petitioner is a widow of her husband Francisco Chuidian who is presumed, to be dead and has no legal impediment to contract a subsequent marriage.

"The Solicitor General opposed the petition on the ground that the same is not authorized by law. After petitioner had presented her evidence, the court sustained the opposition and dismissed the petition. Hence this appeal.

"Lourdes G. Lukban, petitioner herein, contracted marriage with Francisco Chuidian on December 10, 1933 at the Paco Catholic Church, Manila. On December 27, of the same year, Francisco left Lourdes after a violent quarrel and since then he has not been heard from despite diligent search made by her. She also inquired about him from his parents and friends but no one was able to indicate his whereabouts. She has no knowledge if he is still alive, his last known address being Calle Merced, Paco, Manila. She believes that he is already dead because he had been absent for more than twenty years, and because she intends to marry again, she desires that her civil status be defined in order that she may be relieved of any liability under the law.

"We believe that the petition at bar comes within the purview of our decision in the case of Nicolai Szatraw, 46 Off. Gaz. 1st Sup. 243, wherein it was held that a petition for judicial declaration that petitioner's husband is presumed to be dead cannot be entertained because it is not authorized by law, and if such declaration cannot be made in a special proceedings similar to the present, much less can the court determine the status of petitioner as a widow since this matter must of necessity depend upon the fact of death of the husband. This the court can declare upon proper evidence, but not to decree that he is merely presumed to be dead. (Nicolai Szatraw, 48 Off. Gaz., 1st Sup. 243).

"The philosophy behind the ruling that such judicial pronouncement cannot be made in a proceeding of this nature is well expressed in the case above-cited. Thus, we there said that '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 * * *. 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."

We deem it unnecessary to further discuss the merits of the case. The appealed order dismissing the petition is hereby affirmed, with costs.

Paras, C. J., Bengzon, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David JJ., concur.

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