

MARIETTA B. ANCHETA, PETITIONER, VS. RODOLFO S. ANCHETA, RESPONDENT.

G.R. No. 145370. March 04, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Resolution[1] of the Court of Appeals in CA-G.R. SP No. 59550 which dismissed the petitioner's petition under Rule 47 of the 1997 Rules of Civil Procedure to annul the Order[2] of the Regional Trial Court of Naic, Cavite, Branch 15 in Special Proceedings No. NC-662 nullifying the marriage of the petitioner and the respondent Rodolfo S. Ancheta, and of the resolution of the appellate court denying the motion for reconsideration of the said resolution.

This case arose from the following facts:

After their marriage on March 5, 1959, the petitioner and the respondent resided in Muntinlupa, Metro Manila. They had eight children during their coverture, whose names and dates of births are as follows:

- ANA MARIE B. ANCHETA – born October 6, 1959
- RODOLFO B. ANCHETA, JR. – born March 7, 1961
- VENANCIO MARIANO B. ANCHETA – born May 18, 1962
- GERARDO B. ANCHETA – born April 8, 1963
- KATHRINA B. ANCHETA – born October 29, 1965
- ANTONIO B. ANCHETA – born March 6, 1967
- NATASHA MARTINA B. ANCHETA – born August 2, 1968
- FRITZIE YOLANDA B. ANCHETA – born November 19, 1970[3]

On December 6, 1992, the respondent left the conjugal home and abandoned the petitioner and their children. On January 25, 1994, petitioner Marietta Ancheta filed a petition with the Regional Trial Court of Makati, Branch 40, against the respondent for the dissolution of their conjugal partnership and judicial separation of property with a plea for support and support pendente lite. The case was docketed as Sp. Proc. No. M-3735. At that time, the petitioner was renting a house at No. 72 CRM Avenue cor. CRM Corazon, BF Homes, Almanza, Las Piñas, Metro Manila.[4]

On April 20, 1994, the parties executed a Compromise Agreement[5] where some of the conjugal properties were adjudicated to the petitioner and her eight children, including the following:

- b. A parcel of land (adjoining the two lots covered by TCT Nos. 120082 and TCT No. 120083-Cavite) located at Bancal, Carmona, Cavite, registered in the name of the family Ancheta. Biofood Corporation under TCT

No. 310882, together with the resort Munting Paraiso, Training Center, four-storey building, pavilion, swimming pool and all improvements. All of the shares of stocks of Ancheta Biofoods Corporation were distributed one-third (1/3) to the petitioner and the eight children one-twelfth (1/12) each.[6]

The court rendered judgment based on the said compromise agreement. Conformably thereto, the respondent vacated, on June 1, 1994, the resort Munting Paraiso and all the buildings and improvements thereon. The petitioner, with the knowledge of the respondent, thenceforth resided in the said property.

In the meantime, the respondent intended to marry again. On June 5, 1995, he filed a petition with the Regional Trial Court of Naic, Cavite, Branch 15, for the declaration of nullity of his marriage with the petitioner on the ground of psychological incapacity. The case was docketed as Sp. Proc. No. NC-662. Although the respondent knew that the petitioner was already residing at the resort Munting Paraiso in Bancal, Carmona, Cavite, he, nevertheless, alleged in his petition that the petitioner was residing at No. 72 CRM Avenue corner CRM Corazon, BF Homes, Almanza, Las Piñas, Metro Manila, “where she may be served with summons.”[7] The clerk of court issued summons to the petitioner at the address stated in the petition.[8] The sheriff served the summons and a copy of the petition by substituted service on June 6, 1995 on the petitioner’s son, Venancio Mariano B. Ancheta III, at his residence in Bancal, Carmona, Cavite.[9]

On June 21, 1995, Sheriff Jose R. Salvadora, Jr. submitted a Return of Service to the court stating that the summons and a copy of the petition were served on the petitioner through her son Venancio Mariano B. Ancheta III on June 6, 1995:

RETURN OF SERVICE

This is to certify that the summons together with the copy of the complaint and its annexes was received by the herein defendant thru his son Venancio M.B. Ancheta [III] as evidenced by the signature appearing on the summons. Service was made on June 6, 1995.

June 21, 1995, Naic, Cavite.

(Sgd.) JOSE R. SALVADORA, JR.
Sheriff[10]

The petitioner failed to file an answer to the petition. On June 22, 1995, the respondent filed an “Ex-Parte Motion to Declare Defendant as in Default” setting it for hearing on June 27, 1995 at 8:30 a.m. During the hearing on the said date, there was no appearance for the petitioner. The public prosecutor appeared for the State and offered no objection to the motion of the respondent who appeared with counsel. The trial court granted the motion and declared the petitioner in default, and allowed the respondent to adduce evidence ex-parte. The respondent testified in his behalf and adduced documentary evidence. On July 7, 1995, the trial court issued an Order granting the petition and declaring the marriage of the parties void ab initio.[11] The clerk of court issued a Certificate of Finality of the Order of the court on July 16, 1996.[12]

On February 14, 1998, Valentine’s Day, the respondent and Teresita H. Rodil were married in civil rights before the municipal mayor of Indang, Cavite.[13]

On July 7, 2000, the petitioner filed a verified petition against the respondent with the Court of Appeals under Rule 47 of the Rules of Court, as amended, for the annulment of the order of the RTC of Cavite in Special Proceedings No. NC-662. The case was docketed as CA-G.R. SP No. 59550. The petitioner alleged, inter alia, that the respondent committed gross misrepresentations by making it appear in his petition in Sp. Proc. No. NC-662 that she was a resident of No. 72 CRM Avenue cor. CRM Corazon, BF Homes, Almanza, Las Piñas, Metro Manila, when in truth and in fact, the respondent knew very well that she was residing at Munting Paraiso,

Bancal, Carmona, Cavite. According to the petitioner, the respondent did so to deprive her of her right to be heard in the said case, and ultimately secure a favorable judgment without any opposition thereto. The petitioner also alleged that the respondent caused the service of the petition and summons on her by substituted service through her married son, Venancio Mariano B. Ancheta III, a resident of Bancal, Carmona, Cavite, where the respondent was a resident. Furthermore, Venancio M.B. Ancheta III failed to deliver to her the copy of the petition and summons. Thus, according to the petitioner, the order of the trial court in favor of the respondent was null and void (1) for lack of jurisdiction over her person; and (2) due to the extrinsic fraud perpetrated by the respondent. She further contended that there was no factual basis for the trial court's finding that she was suffering from psychological incapacity. Finally, the petitioner averred that she learned of the Order of the RTC only on January 11, 2000. Appended to the petition, inter alia, were the affidavits of the petitioner and of Venancio M.B. Ancheta III.

The petitioner prayed that, after due proceedings, judgment be rendered in her favor, thus:

WHEREFORE, petitioner respectfully prays this Honorable Court to render Judgment granting the Petition.

- Declaring null and void the Order dated June 7, 1995 (of the Regional Trial Court, Branch 14, Naic, Cavite).
- Ordering respondent to pay petitioner
- P1,000,000.00 as moral damages;
- P500,000.00 as exemplary damages;
- P200,000.00 as attorney's fees plus P7,500.00 per diem for every hearing;
- P100,000.00 as litigation expenses;
- Costs of suit.[14]

On July 13, 2000, the CA issued a Resolution dismissing the petition on the following ground:

We cannot give due course to the present petition in default or in the absence of any clear and specific averment by petitioner that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner. Neither is there any averment or allegation that the present petition is based only on the grounds of extrinsic fraud and lack of jurisdiction. Nor yet that, on the assumption that extrinsic fraud can be a valid ground therefor, that it was not availed of, or could not have been availed of, in a motion for new trial, or petition for relief.[15]

The petitioner filed a motion for the reconsideration of the said resolution, appending thereto an amended petition in which she alleged, inter alia, that:

- This petition is based purely on the grounds of extrinsic fraud and lack of jurisdiction.
- This petition has not prescribed; it was filed within the four-year period after discovery of the extrinsic fraud.
- The ground of extrinsic fraud has not been availed of, or could not have been availed of in a motion for new trial or petition for relief.
- The ground of lack of jurisdiction is not barred by laches and/or estoppel.
- The ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies were no longer available through no fault of petitioner; neither has she ever availed of the said remedies. This petition is the only available remedy to her.[16]

The petitioner also alleged therein that the order of the trial court nullifying her and the respondent's marriage

was null and void for the court a quo's failure to order the public prosecutor to conduct an investigation on whether there was collusion between the parties, and to order the Solicitor General to appear for the State.

On September 27, 2000, the CA issued a Resolution denying the said motion.

The petitioner filed a petition for review on certiorari with this Court alleging that the CA erred as follows:

- In failing to take into consideration the kind of Order which was sought to be annulled.
- In finding that the Petition was procedurally flawed.
- In not finding that the Petition substantially complied with the requirements of the Rules of Court.
- In failing to comply with Section 5, Rule 47, Rules of Court.
- In not even considering/resolving Petitioner's Motion to Admit the Amended Petition; and in not admitting the Amended Petition.
- In failing to apply the Rules of Procedure with liberality.[17]

The petition is meritorious.

An original action in the Court of Appeals under Rule 47 of the Rules of Court, as amended, to annul a judgment or final order or resolution in civil actions of the RTC may be based on two grounds: (a) extrinsic fraud; or (b) lack of jurisdiction. If based on extrinsic fraud, the remedy is subject to a condition precedent, namely, the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.[18] The petitioner must allege in the petition that the ordinary remedies of new trial, appeal, petition for relief from judgment, under Rule 38 of the Rules of Court are no longer available through no fault of hers; otherwise, the petition will be dismissed. If the petitioner fails to avail of the remedies of new trial, appeal or relief from judgment through her own fault or negligence before filing her petition with the Court of Appeals, she cannot resort to the remedy under Rule 47 of the Rules; otherwise, she would benefit from her inaction or negligence.[19]

It is not enough to allege in the petition that the said remedies were no longer available through no fault of her own. The petitioner must also explain and justify her failure to avail of such remedies. The safeguard was incorporated in the rule precisely to avoid abuse of the remedy.[20] Access to the courts is guaranteed. But there must be limits thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to sue anew. The prevailing party should not be vexed by subsequent suits.[21]

In this case, the petitioner failed to allege in her petition in the CA that the ordinary remedies of new trial, appeal, and petition for relief, were no longer available through no fault of her own. She merely alleged therein that she received the assailed order of the trial court on January 11, 2000. The petitioner's amended petition did not cure the fatal defect in her original petition, because although she admitted therein that she did not avail of the remedies of new trial, appeal or petition for relief from judgment, she did not explain why she failed to do so.

We, however, rule that the Court of Appeals erred in dismissing the original petition and denying admission of the amended petition. This is so because apparently, the Court of Appeals failed to take note from the material allegations of the petition, that the petition was based not only on extrinsic fraud but also on lack of jurisdiction over the person of the petitioner, on her claim that the summons and the copy of the complaint in Sp. Proc. No. NC-662 were not served on her. While the original petition and amended petition did not state a cause of action for the nullification of the assailed order on the ground of extrinsic fraud, we rule, however, that it states a

sufficient cause of action for the nullification of the assailed order on the ground of lack of jurisdiction of the RTC over the person of the petitioner, notwithstanding the absence of any allegation therein that the ordinary remedy of new trial or reconsideration, or appeal are no longer available through no fault of the petitioner.

In a case where a petition for the annulment of a judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom are no longer available through no fault of her own. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked,[22] unless barred by laches.[23]

In this case, the original petition and the amended petition in the Court of Appeals, in light of the material averments therein, were based not only on extrinsic fraud, but also on lack of jurisdiction of the trial court over the person of the petitioner because of the failure of the sheriff to serve on her the summons and a copy of the complaint. She claimed that the summons and complaint were served on her son, Venancio Mariano B. Ancheta III, who, however, failed to give her the said summons and complaint.

Even a cursory reading of the material averments of the original petition and its annexes will show that it is, prima facie meritorious; hence, it should have been given due course by the Court of Appeals.

In *Paramount Insurance Corporation v. Japzon*,[24] we held that jurisdiction is acquired by a trial court over the person of the defendant either by his voluntary appearance in court and his submission to its authority or by service of summons. The service of summons and the complaint on the defendant is to inform him that a case has been filed against him and, thus, enable him to defend himself. He is, thus, put on guard as to the demands of the plaintiff or the petitioner. Without such service in the absence of a valid waiver renders the judgment of the court null and void.[25] Jurisdiction cannot be acquired by the court on the person of the defendant even if he knows of the case against him unless he is validly served with summons.[26]

Summons and complaint may be served on the defendant either by handing a copy thereof to him in person, or, if he refuses to receive and sign for it, by tendering it to her.[27] However, if there is impossibility of prompt service of the summons personally on the defendant despite diligent efforts to find him, service of the summons may be effected by substituted service as provided in Section 7, Rule 14 of the said Rules:

SEC. 7. Substituted service.— If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies of defendant's office or regular place of business with some competent person in charge thereof.[28]

In *Miranda v. Court of Appeals*,[29] we held that the modes of service should be strictly followed in order that the court may acquire jurisdiction over the person of the defendant. Thus, it is only when a defendant cannot be served personally within a reasonable time that substituted service may be made by stating the efforts made to find him and personally serve on him the summons and complaint and the fact that such effort failed.[30] This statement should be made in the proof of service to be accomplished and filed in court by the sheriff. This is necessary because substituted service is a derogation of the usual method of service. It has been held that substituted service of summons is a method extraordinary in character; hence, may be used only as prescribed and in the circumstances categorized by statutes.[31]

As gleaned from the petition and the amended petition in the CA and the annexes thereof, the summons in *Sp.*

Proc. No. NC-662 was issued on June 6, 1995.[32] On the same day, the summons was served on and received by Venancio Mariano B. Ancheta III,[33] the petitioner's son. When the return of summons was submitted to the court by the sheriff on June 21, 1995, no statement was made on the impossibility of locating the defendant therein within a reasonable time, or that any effort was made by the sheriff to locate the defendant. There was no mention therein that Venancio Mariano Ancheta III was residing at No. 72 CRM Avenue cor. CRM Corazon, BF Homes, Almanza, Las Piñas, where the petitioner (defendant therein) was allegedly residing. It turned out that Venancio Mariano B. Ancheta III had been residing at Bancal, Carmona, Cavite, and that his father merely showed him the summons and the complaint and was made to affix his signature on the face of the summons; he was not furnished with a copy of the said summons and complaint.

- From the time my father started staying at Munting Paraíso, Bancal, Carmona, Cavite, I have been residing on the adjoining land consisting of two (2) lots later apportioned to my father as his share of the conjugal partnership. Since then, I have been residing therein up to the present.

- On June 6, 1995, at Bancal, Carmona, Cavite (at my residence situated on my father's lot), my father came to see me and then asked me to sign and I did sign papers which he (my father) and the Sheriff did not allow me to read. Apparently, these papers are for the Summons to my mother in the case for annulment of marriage filed by my father against her. I was not given any copy of the Summons and/or copy of the complaint/petition.[34]

We, thus, rule that the Court of Appeals acted arbitrarily in dismissing the original petition of the petitioner and the amended petition for annulment of the assailed order grounded on lack of jurisdiction over the person of the petitioner.

The action in Rule 47 of the Rules of Court does not involve the merits of the final order of the trial court. However, we cannot but express alarm at what transpired in the court a quo as shown by the records. The records show that for the petitioner's failure to file an answer to the complaint, the trial court granted the motion of the respondent herein to declare her in default. The public prosecutor condoned the acts of the trial court when he interposed no objection to the motion of the respondent. The trial court forthwith received the evidence of the respondent ex-parte and rendered judgment against the petitioner without a whimper of protest from the public prosecutor. The actuations of the trial court and the public prosecutor are in defiance of Article 48 of the Family Code, which reads:

Article 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.[35]

The trial court and the public prosecutor also ignored Rule 18, Section 6 of the 1985 Rules of Court (now Rule 9, Section 3[e] of the 1997 Rules of Civil Procedure) which provides:

Sec. 6. No defaults in actions for annulment of marriage or for legal separation.— If the defendant in an action for annulment of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.[36]

In the case of *Republic v. Court of Appeals*,[37] this Court laid down the guidelines in the interpretation and application of Art. 48 of the Family Code, one of which concerns the role of the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State:

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[38]

This Court in the case of *Malcampo-Sin v. Sin*[39] reiterated its pronouncement in *Republic v. Court of Appeals*,[40] regarding the role of the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State.[41] The trial court, abetted by the ineptitude, if not sheer negligence of the public prosecutor, waylaid the Rules of Court and the Family Code, as well as the rulings of this Court.

The task of protecting marriage as an inviolable social institution requires vigilant and zealous participation and not mere pro-forma compliance. The protection of marriage as a sacred institution requires not just the defense of a true and genuine union but the exposure of an invalid one as well.[42]

A grant of annulment of marriage or legal separation by default is fraught with the danger of collusion. Hence, in all cases for annulment, declaration of nullity of marriage and legal separation, the prosecuting attorney or fiscal is ordered to appear on behalf of the State for the purpose of preventing any collusion between the parties and to take care that their evidence is not fabricated or suppressed. If the defendant-spouse fails to answer the complaint, the court cannot declare him or her in default but instead, should order the prosecuting attorney to determine if collusion exists between the parties. The prosecuting attorney or fiscal may oppose the application for legal separation or annulment through the presentation of his own evidence, if in his opinion, the proof adduced is dubious and fabricated.

Our constitution is committed to the policy of strengthening the family as a basic social institution. Our family law is based on the policy that marriage is not a mere contract, but a social institution in which the State is vitally interested. The State can find no stronger anchor than on good, solid and happy families. The break-up of families weakens our social and moral fabric; hence, their preservation is not the concern of the family members alone.[43] Whether or not a marriage should continue to exist or a family should stay together must not depend on the whims and caprices of only one party, who claims that the other suffers psychological imbalance, incapacitating such party to fulfill his or her marital duties and obligations.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Resolutions of the Court of Appeals dated July 13, 2000 and September 27, 2000 in CA-G.R. SP No. 59550 are hereby SET ASIDE and REVERSED. Let the records of CA-G.R. SP No. 59550 be remanded to the Court of Appeals for further proceedings conformably with the Decision of this Court and Rule 47 of the Rules of Court, as amended.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.
Puno, J., (Chairman), on leave.

[1] Penned by Associate Justice Renato C. Dacdao, with Associate Justices Cancio C. Garcia (Chairman) and B.A. Adefuin-de la Cruz, concurring.

[2] Penned by Judge Enrique M. Almario.

[3] CA Rollo, pp. 26-27.

[4] Id. at 26.

[5] Rollo, pp. 95-102.

[6] CA Rollo, pp. 4-5.

[7] Id. at 49.

[8] Id. at 53.

[9] Id.

[10] Id. at 54.

[11] Id. at 57-59.

[12] Id. at 212.

[13] Id. at 213.

[14] Id. at 21.

[15] Id. at 101.

[16] Id. at 109.

[17] Rollo, p. 36.

[18] Rule 47, Section 1.

[19] Republic v. Sandiganbayan, 352 SCRA 235 (2001).

[20] Herrera, Remedial Law, Vol. III, 1997 ed., p. 549.

[21] Pacquing v. Court of Appeals, 115 SCRA 117 (1982).

[22] Ramos v. Court of Appeals, 180 SCRA 635 (1989).

[23] SEC. 3. Period for filing action.—If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

[24] 211 SCRA 879 (1992).

[25] Umandap v. Sabio, Jr., 339 SCRA 243 (2000).

[26] United Coconut Planters Bank v. Ongpin, 368 SCRA 464 (2001).

[27] Rule 14, Section 6, Rules of Court.

[28] Supra.

[29] 326 SCRA 278 (2000).

[30] Keister v. Navarro, 77 SCRA 209 (1977).

[31] Ibid.

[32] CA Rollo, p. 53.

[33] Ibid.

[34] Id. at 55-56.

[35] Supra.

[36] Supra.

[37] 268 SCRA 198 (1997).

[38] Id. at 213.

[39] 355 SCRA 285 (2001).

[40] Supra.

[41] The procedure has been modified by the Supreme Court in Administrative Matter No. 02-11-10-SC which took effect on March 15, 2003.

Sec. 8. Answer.—(1) The respondent shall file his answer within fifteen days from service of summons, or within thirty days from the last issue of publication in case of service of summons by publication. The answer must be verified by the respondent himself and not by counsel or attorney-in-fact.

(2) If the respondent fails to file an answer, the court shall not declare him or her in default.

(3) Where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

Sec. 9. Investigation report of public prosecutor.—(1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.

(2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten days from receipt of a copy of the report. The court shall set the report for hearing and, if convinced that the parties are in collusion, it shall dismiss the petition.

(3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

[42] See note 39.

[43] Tuason v. Court of Appeals, 256 SCRA 158 (1996).

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