

MARGARITA ROMUALDEZ-LICAROS, PETITIONER, VS. ABELARDO B. LICAROS, RESPONDENT.

G.R. No. 150656. April 29, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari[1] to annul the Decision[2] dated 9 August 2001 of the Court of Appeals in CA-G.R. SP No. 58487, as well as the Resolution dated 23 October 2001 denying the motion for reconsideration. The Court of Appeals dismissed the petition to annul the following decisions[3] rendered by Branch 143 of the Regional Trial Court of Makati:

(1)

The Decision dated 27 December 1990[4] granting the dissolution of the conjugal partnership of gains of the spouses Abelardo B. Licaros and Margarita Romualdez-Licaros;

(2)

The Decision dated 8 November 1991[5] declaring the marriage between the same spouses null and void.

The Facts

The antecedent facts as found by the Court of Appeals are as follows:

x x x Abelardo Licaros (Abelardo, for short) and Margarita Romualdez-Licaros (Margarita, hereafter) were lawfully married on December 15, 1968. Out of this marital union were born Maria Concepcion and Abelardo, Jr. Ironically, marital differences, squabbles and irreconcilable conflicts transpired between the spouses, such that sometime in 1979, they agreed to separate from bed and board.

In 1982, Margarita left for the United States and there, to settle down with her two (2) children. In the United States, on April 26, 1989, Margarita applied for divorce before the Superior Court of California, County of San Mateo (Annex “1”, Rejoinder, pp. 164-165) where she manifested that she does not desire counseling at that time (Quotation, p. 166, Rollo). On August 6, 1990, Margarita was granted the decree of divorce (Annex 2, Answer, p. 108, Rollo) together with a distribution of properties between her and Abelardo (pp. 167-168, Rollo).

Not long after, on August 17, 1990, Abelardo and Margarita executed an “Agreement of Separation of Properties” (pp. 60-64, Rollo). This was followed-up by a petition filed on August 21, 1990 before the Regional Trial Court of Makati for the dissolution of the conjugal partnership of gains of the spouses and for the approval of the agreement of separation of their properties. This was docketed as Special Proceeding No. 2551. On December 27, 1990, a decision was issued granting the petition and approving the separation of property agreement.

For his part, on June 24, 1991, Abelardo commenced Civil Case No. 91-1757, for the declaration of nullity of

his marriage with Margarita, based on psychological incapacity under the New Family Code. As Margarita was then residing at 96 Mulberry Lane, Atherton, California, U.S.A., Abelardo initially moved that summons be served through the International Express Courier Service. The court a quo denied the motion. Instead, it ordered that summons be served by publication in a newspaper of general circulation once a week for three (3) consecutive weeks, at the same time furnishing respondent a copy of the order, as well as the corresponding summons and a copy of the petition at the given address in the United States through the Department of Foreign Affairs, all at the expense of Abelardo. Respondent was given sixty (60) days after publication to file a responsive pleading.

On July 15, 1991, Process Server, Maximo B. Dela Rosa, submitted his Officer's Return quoted hereunder:

"OFFICER'S RETURN

THIS IS TO CERTIFY that on July 3, 1991, I have served a copy of summons and complaint with annexes together with order dated June 28, 1991 issued by the Court in the above-entitled case upon defendant Margarita Romualdez-Licaros c/o DFA. (sent by Mail) thru Pat G. Martines receiving Clerk of Department of Foreign Affairs a person authorized to receive this kind of process who acknowledged the receipt thereof at ADB Bldg., Roxas Blvd., Pasay City, Metro Manila." (p. 40, Rollo)

As required by law, the case was referred to Trial Prosecutor Bruselas, Jr. to find out any possible collusion between the parties in the case. Thereafter, with the negative report of collusion, Abelardo was allowed to present his evidence ex-parte. On November 8, 1991, the Decision (Annex "A", Petition) was handed down in Civil Case No. 91-1757 declaring the marriage between Abelardo and Margarita null and void.

Almost nine (9) years later, on April 28, 2000, the petition at bench was commenced when Margarita received a letter dated November 18, 1991 from a certain Atty. Angelo Q. Valencia informing her that she no longer has the right to use the family name "Licaros" inasmuch as her marriage to Abelardo had already been judicially dissolved by the Regional Trial Court of Makati on November 8, 1991. Asseverating to have immediately made some verifications and finding the information given to be true, petitioner commenced the instant petition on the following grounds:

(A)

THERE WAS EXTRINSIC FRAUD IN THE PREPARATION AND FILING BY ABELARDO OF THE PETITION FOR DISSOLUTION OF THE CONJUGAL PARTNERSHIP OF GAINS AND ITS ANNEX, THE AGREEMENT OF SEPARATION OF PROPERTIES.

(B)

THE TRIAL COURT LACKED JURISDICTION TO HEAR AND DECIDE THE PETITION FOR DECLARATION OF NULLITY OF MARRIAGE.[6]

The Ruling of the Court of Appeals

The Court of Appeals debunked the claim of Margarita that there was extrinsic fraud in the preparation and filing by Abelardo of the Petition for Dissolution of Conjugal Partnership of Gains and its annex, the Agreement of Separation of Properties. The Court of Appeals stated:

x x x, the extrinsic fraud alluded to consists of Abelardo coercing Margarita into signing the petition to dissolve their conjugal partnership of gains together with the agreement of separation of properties, by threatening to cut-off all financial and material support of their children then still studying in the United States; that petitioner had no hand directly or indirectly in the preparation of the petition and agreement of separation of properties; that petitioner never met the counsel for the petitioner, nor the notary public who notarized the

deed; and, petitioner never received any notice of the pendency of the petition nor a copy of the decision.

Antithetically, a meticulous perusal of the controversial petition (Annex “B-1”) and the agreement of separation of properties (pp. 60-64, Rollo) readily shows that the same were signed by the petitioner on the proper space after the prayer and on the portion for the verification of the petition. The same is true with the agreement of separation of properties. What is striking to note is that on August 6, 1990, Margarita appeared before Amado P. Cortez, Consul of the Republic of the Philippines at the San Francisco, California, United States Consulate Office, to affirm and acknowledge before said official that she executed the agreement of separation of properties of her own free will and deed, after being informed of the contents thereof. And yet, there is no showing that Abelardo was with her at the Philippine Consulate Office in confirming the separation of property agreement. Moreover, on page 2 of the same agreement, it is specifically stated that such property separation document shall be “subject to approval later on by the proper court of competent jurisdiction.” The clear import of this is that the agreement must have to be submitted before the proper court for approval, which explains and confirms petitioner’s signature on the petition filed in court.

In main, We see no indication nor showing of coercion or fraud from these facts, which could very well be considered as extrinsic or collateral fraud to justify a petition under Rule 47. From all indications, the pretended coerced documents were rather freely and voluntarily executed by the parties therein knowing fully well the imports thereof. This conclusion finds more weight if We consider the fact that the separation of property was fully implemented and enforced, when apparently both parties correspondingly received the properties respectively assigned to each of them under the said document.[7]

The Court of Appeals also rejected Margarita’s claim that the trial court lacked jurisdiction to hear and decide the Petition for Declaration of Nullity of Marriage for improper service of summons on her. The case involves the marital status of the parties, which is an action in rem or quasi in rem. The Court of Appeals ruled that in such an action the purpose of service of summons is not to vest the trial court with jurisdiction over the person of the defendant, but “only” to comply with due process. The Court of Appeals concluded that any irregularity in the service of summons involves due process which does not destroy the trial court’s jurisdiction over the res which is the parties’ marital status. Neither does such irregularity invalidate the judgment rendered in the case. Thus, the Court of Appeals dismissed the petition for annulment of judgment, stating that:

At bar, the case involves the personal (marital) status of the plaintiff and the defendant. This status is the res over which the Philippine court has acquired jurisdiction. This is also the kind of action which the Supreme Court had ruled that service of summons may be served extraterritorially under Section 15 (formerly Section 17) of Rule 14 and where such service of summons is not for the purpose of vesting the trial court with jurisdiction over the person of the defendant but only for the purpose of complying with the requirements of fair play and due process. A fortiori, the court a quo had properly acquired jurisdiction over the person of herein petitioner-defendant when summons was served by publication and a copy of the summons, the complaint with annexes, together with the Order of June 28, 1991, was served to the defendant through the Department of Foreign Affairs by registered mail and duly received by said office to top it all. Such mode was upon instruction and lawful order of the court and could even be treated as ‘any other manner the court may deem sufficient’.[8]

Hence, the instant petition.

The Issues

The issues raised by Margarita are restated as follows:

- Whether Margarita was validly served with summons in the case for declaration of nullity of her marriage with Abelardo;
- Whether there was extrinsic fraud in the preparation and filing by Abelardo of the Petition for Dissolution of

the Conjugal Partnership of Gains and its annex, the Agreement of Separation of Properties.

The Court's Ruling

The petition is bereft of merit.

First Issue: Validity of the Service of Summons on Margarita

Margarita insists that the trial court never acquired jurisdiction over her person in the petition for declaration of nullity of marriage since she was never validly served with summons. Neither did she appear in court to submit voluntarily to its jurisdiction.

On the other hand, Abelardo argues that jurisdiction over the person of a non-resident defendant in an action in rem or quasi in rem is not necessary. The trial and appellate courts made a clear factual finding that there was proper summons by publication effected through the Department of Foreign Affairs as directed by the trial court. Thus, the trial court acquired jurisdiction to render the decision declaring the marriage a nullity.

Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person.[9]

As a rule, when the defendant does not reside and is not found in the Philippines, Philippine courts cannot try any case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court. But when the case is one of actions in rem or quasi in rem enumerated in Section 15,[10] Rule 14 of the Rules of Court, Philippine courts have jurisdiction to hear and decide the case. In such instances, Philippine courts have jurisdiction over the res, and jurisdiction over the person of the non-resident defendant is not essential.[11]

Actions in personam[12] and actions in rem or quasi in rem differ in that actions in personam are directed against specific persons and seek personal judgments. On the other hand, actions in rem or quasi in rem are directed against the thing or property or status of a person and seek judgments with respect thereto as against the whole world.[13]

At the time Abelardo filed the petition for nullity of the marriage in 1991, Margarita was residing in the United States. She left the Philippines in 1982 together with her two children. The trial court considered Margarita a non-resident defendant who is not found in the Philippines. Since the petition affects the personal status of the plaintiff, the trial court authorized extraterritorial service of summons under Section 15, Rule 14 of the Rules of Court. The term "personal status" includes family relations, particularly the relations between husband and wife.[14]

Under Section 15 of Rule 14, a defendant who is a non-resident and is not found in the country may be served with summons by extraterritorial service in four instances: (1) when the action affects the personal status of the plaintiff; (2) when the action relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; or (4) when the property of the defendant has been attached within the Philippines.

In these instances, extraterritorial service of summons may be effected under any of three modes: (1) by personal service out of the country, with leave of court; (2) by publication and sending a copy of the summons and order of the court by registered mail to the defendant's last known address, also with leave of court; or (3) by any other means the judge may consider sufficient.

Applying the foregoing rule, the trial court required extraterritorial service of summons to be effected on

Margarita in the following manner:

x x x, service of Summons by way of publication in a newspaper of general circulation once a week for three (3) consecutive weeks, at the same time, furnishing respondent copy of this Order as well as the corresponding Summons and copy of the petition at her given address at No. 96 Mulberry Lane, Atherton, California, U.S.A., thru the Department of Foreign Affairs, all at the expense of petitioner.[15] (Emphasis ours)

The trial court's prescribed mode of extraterritorial service does not fall under the first or second mode specified in Section 15 of Rule 14, but under the third mode. This refers to "any other means that the judge may consider sufficient."

The Process Server's Return of 15 July 1991 shows that the summons addressed to Margarita together with the complaint and its annexes were sent by mail to the Department of Foreign Affairs with acknowledgment of receipt. The Process Server's certificate of service of summons is prima facie evidence of the facts as set out in the certificate.[16] Before proceeding to declare the marriage between Margarita and Abelardo null and void, the trial court stated in its Decision dated 8 November 1991 that "compliance with the jurisdictional requirements hav(e) (sic) been duly established." We hold that delivery to the Department of Foreign Affairs was sufficient compliance with the rule. After all, this is exactly what the trial court required and considered as sufficient to effect service of summons under the third mode of extraterritorial service pursuant to Section 15 of Rule 14.

Second Issue: Validity of the Judgment Dissolving the Conjugal Partnership of Gains

Margarita claims that Abelardo coerced her into signing the Petition for Dissolution of the Conjugal Partnership of Gains ("Petition") and its annex, the Agreement of Separation of Properties ("Agreement"). Abelardo allegedly threatened to cut off all financial and material support to their children if Margarita did not sign the documents.

The trial court did not find anything amiss in the Petition and Agreement that Abelardo filed, and thus the trial court approved the same. The Court of Appeals noted that a meticulous perusal of the Petition and Agreement readily shows that Margarita signed the same on the proper space after the prayer and on the portion for the verification of the petition. The Court of Appeals observed further that on 6 August 1990, Margarita appeared before Consul Amado Cortez in the Philippine Consulate Office in San Francisco, California, to affirm that she executed the Agreement of her own free will. There was no showing that Abelardo was at that time with her at the Philippine Consulate Office. Abelardo secured judicial approval of the Agreement as specifically required in the Agreement.

The Court is bound by the factual findings of the trial and appellate courts that the parties freely and voluntarily executed the documents and that there is no showing of coercion or fraud. As a rule, in an appeal by certiorari under Rule 45, the Court does not pass upon questions of fact as the factual findings of the trial and appellate courts are binding on the Court. The Court is not a trier of facts. The Court will not examine the evidence introduced by the parties below to determine if the trial and appellate courts correctly assessed and evaluated the evidence on record.[17]

The due and regular execution of an instrument acknowledged before an officer authorized to administer oaths cannot be overthrown by bare allegations of coercion but only by clear and convincing proof.[18] A person acknowledging an instrument before an officer authorized to administer oaths acknowledges that he freely and voluntarily executed the instrument, giving rise to a prima facie presumption of such fact.

In the instant case, Margarita acknowledged the Agreement before Consul Cortez. The certificate of

acknowledgment signed by Consul Cortez states that Margarita personally appeared before him and “acknowledged before me that SHE executed the same of her own free will and deed.”[19] Thus, there is a prima facie presumption that Margarita freely and voluntarily executed the Agreement. Margarita has failed to rebut this prima facie presumption with clear and convincing proof of coercion on the part of Abelardo.

A document acknowledged before a notary public is prima facie evidence of the due and regular execution of the document.[20] A notarized document has in its favor the presumption of regularity in its execution, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant.[21]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP No. 58487 dismissing the petition to annul judgment is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Teodoro P. Regino and Edgardo P. Cruz concurring.

[3] Penned by Judge Silverio S. Tayao.

[4] Rendered in Special Proceeding No. M-2551 entitled “In the Matter of the Dissolution of the Conjugal Partnership of Spouses Abelardo B. Licaros and Margarita Romualdez-Licaros, Spouses Abelardo B. Licaros and Margarita Romualdez-Licaros, Petitioners.”

[5] Rendered in Civil Case No. 91-1757 entitled “Abelardo B. Licaros, Petitioner vs. Margarita Romualdez-Licaros, Respondent.”

[6] Rollo, pp. 54-56.

[7] Ibid., pp. 57-59.

[8] Ibid., pp. 63-64.

[9] *Cano-Gutierrez v. Gutierrez*, G.R. No. 138584, 2 October 2000, 341 SCRA 670.

[10] Formerly Section 17, to wit: “SEC. 17. Extraterritorial service. – When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.” Now Section 15, Rule 14 of the 1997 Rules of Civil Procedure.

[11] *Valmonte v. Court of Appeals*, G.R. No. 108538, 22 January 1996, 252 SCRA 92.

[12] In an action in personam, personal service of summons or, if this is not possible and he cannot be personally served, substituted service, as provided in Sections 7 and 8 of Rule 14 of the Rules of Court is essential for the acquisition by the court of jurisdiction over the person of a defendant who does not voluntarily submit himself to the authority of the court. If defendant cannot be served with summons because he is temporarily abroad, but otherwise he is a Philippine resident, service of summons may, by leave of court, be made by publication in accordance with Sections 17 and 18 of the same Rule, see *Asiavest Limited v. Court of Appeals*, G.R. No. 128803, 25 September 1998, 296 SCRA 538.

[13] *Ching v. Court of Appeals*, G.R. No. 59731, 11 January 1990, 181 SCRA 9.

[14] *Tenchavez v. Escano*, 122 Phil. 752 (1965).

[15] Order dated 28 June 1991, CA Rollo, p. 36.

[16] *Madrigal v. Court of Appeals*, G.R. No. 129955, 26 November 1999, 319 SCRA 331.

[17] *Concepcion v. Court of Appeals*, G.R. No. 120706, 31 January 2000, 324 SCRA 85.

[18] *Ibid.*

[19] Rollo, p. 131; italics supplied.

[20] Section 30, Rule 132; *Caoili v. Court of Appeals*, G.R. No. 128325, 14 September 1999, 314 SCRA 345.

[21] *Ibid.*

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