

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. FERVENTINO U. TANGO, RESPONDENT.

G.R. No. 161062. July 31, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari of the Decision[1] dated November 28, 2003 of the Court of Appeals in CA-G.R. CV No. 76387 which denied the Republic's appeal from the Order[2] dated July 23, 2002 of the Regional Trial Court (RTC) of Ligao City, Branch 11 in Special Proceeding No. 357. The trial court had declared the wife of respondent Ferventino U. Tango (Ferventino), Maria Jose Villarba (Maria), presumptively dead under Article 41[3] of the Family Code.

The present controversy arose from the following facts:

On March 9, 1987, Ferventino and Maria were married[4] in civil rites before then Mayor Ignacio Bunye of Muntinlupa City. None of Maria's relatives witnessed the ceremony as they were opposed to her relationship with Ferventino. The two had only spent a night together and had been intimate once when Maria told Ferventino that she and her family will soon be leaving for the United States of America (USA). Maria assured Ferventino, however, that she will file a petition so he can live with her in the USA. In the event that said petition is denied, she promised to return to the Philippines to live with him. On March 13, 1987, Maria and her family flew to Seattle, USA.

Ferventino alleges that Maria kept in touch for a year before she stopped responding to his letters. Out of resentment, he burned all the letters Maria wrote him. He claims to have forgotten her address since.

Ferventino recounts the efforts he made to find Maria. Upon inquiry from the latter's uncle, Antonio Ledesma, in Las Piñas, Ferventino learned that even Maria's relatives were unaware of her whereabouts. He also solicited the assistance of a friend in Texas, Capt. Luis Aris of the U.S. Air Force, but to no avail. Finally, he sought the aid of his parents Antonio and Eusebia in Los Angeles, and his aunt Anita Castro-Mayor in Seattle. Like, Ledesma though, their attempts to find Maria proved fruitless. The next 14 years went by without any news of Maria.

On the belief that his wife had died, Ferventino filed a verified petition[5] dated October 1, 2001 before the Ligao City RTC for the declaration of presumptive death of Maria within the contemplation of Article 41 of the Family Code.

When the case was called for initial hearing on January 8, 2002, nobody entered any opposition. On July 22, 2002, Ferventino presented evidence ex parte and testified in court about the details of his search. On July 23, 2002, Branch 11 of the Ligao City RTC issued an Order, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered, declaring MARIA JOSE V. VILLARBA, wife of FERVENTINO U. TANGO, presumptively dead within the meaning of Article 41 of the Family Code.

SO ORDERED. [6]

This prompted the Office of the Solicitor General (OSG), for the Republic, to file a Notice of Appeal.[7] Acting thereon, Presiding Judge Romulo SG. Villanueva of the Ligao City RTC had the records of the case transmitted to the Court of Appeals.

The Court of Appeals, treating the case as an ordinary appealed case under Rule 41 of the Rules of Court, affirmed the RTC's Order. It held that Maria's absence for 14 years without information about her location despite diligent search by Ferventino was sufficient to support a well-founded belief of her death. The appellate court observed that neither the OSG nor the Assistant Provincial Prosecutor objected to the evidence which Ferventino presented on trial. It noted, in particular, that the OSG did not dispute the adequacy of Ferventino's basis to engender a well-founded belief that Maria is dead. Hence, in a Decision dated November 28, 2003, the Court of Appeals denied the Republic's appeal in this tenor:

WHEREFORE, the appeal is hereby DENIED. Accordingly, the July 23, 2002 Order of the Regional Trial Court of Ligao City, Branch 11 in Spec. Proc. No. 357 is AFFIRMED.

SO ORDERED.[8]

Before us, petitioner anchors this petition for review on certiorari on the following two grounds:

I.

THE TESTIMONY OF RESPONDENT ON THE ALLEGED EFFORTS MADE BY HIS FRIEND AND RELATIVES IN LOCATING HIS MISSING WIFE IN SEATTLE, UNITED STATES, IS HEARSAY AND DEVOID OF PROBATIVE VALUE[; AND]

II.

EVEN ASSUMING THAT THE AFORESAID TESTIMONY MAY BE CONSIDERED IN EVIDENCE, THE ALLEGED EFFORTS OF RESPONDENT'S FRIEND AND RELATIVES IN LOCATING HIS MISSING WIFE IN SEATTLE, UNITED STATES, DO NOT SUFFICIENTLY SUPPORT A "WELL-FOUNDED BELIEF" THAT RESPONDENT'S ABSENT SPOUSE IS PROBABLY DEAD.[9]

Unadorned, the issues for our determination are: (1) whether the testimony of respondent Ferventino is hearsay; and (2) whether respondent Ferventino has established a basis to form a well-founded belief that his absent spouse is already dead.

The Republic, through the OSG, contests the appellate court's holding that the absence of respondent's wife Maria for 14 years provides sufficient basis to entertain a well-founded belief that she is dead. The OSG discounts respondent's testimony, on the steps he took to find Maria, as hearsay because none of the persons who purportedly helped in his search testified in court. Notably, the OSG observes that only Capt. Aris gave a detailed account of his efforts to track down Maria. According to Capt. Aris, he went over the Seattle phone directory for Maria's name and inquired about her from the registrar's office in Seattle, but both efforts proved to be in vain.

The OSG belittles its failure to object to the admissibility of respondent's testimony during trial. Instead, it invokes Constitutional provisions that advocate the state policy of preserving marital institutions.

On March 16, 2007, respondent's counsel, Atty. Richie R. Regala, manifested to this Court his intent to withdraw as counsel for respondent. According to Atty. Regala, he received a letter by which respondent expressed a desire to withdraw from the proceeding.[10] In view of this, the Court issued a Resolution[11] on April 21, 2008 which deemed as waived the filing of respondent's comment on the petition. Previously, the Court of Appeals had also issued a Resolution[12] dated October 15, 2003 submitting the case for decision and ordering its re-raffling for respondent's failure to file an appellee's brief. In other words, apart from the verified petition for the declaration of

presumptive death of Maria dated October 1, 2001, which respondent filed before the Ligao City RTC, he has not submitted any other pleading in connection with the petition.

Respondent's apparent lack of desire to pursue the proceedings notwithstanding, the Court is inclined to rule against the Republic.

This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

ART 247. The judgment of the court shall be immediately final and executory.

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of certiorari is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum.^[13] From the decision of the Court of Appeals, the losing party may then file a petition for review on certiorari under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.^[14]

In the case before us, petitioner committed a serious procedural lapse when it filed a notice of appeal in the Court of Appeals instead of a petition for certiorari. The RTC equally erred in giving due course to said appeal and ordering the transmittal of the records of the case to the appellate court. By no means did the Court of Appeals acquire jurisdiction to review the judgment of the RTC which, by express provision of law, was immediately final and executory.

Adding to the confusion, the Court of Appeals entertained the appeal and treated the same as an ordinary appeal under Rule 41 of the Rules of Court. As it were, the Court of Appeals committed grave reversible error when it failed to dismiss the erroneous appeal of the Republic on the ground of lack of jurisdiction because, by express provision of the law, the judgment was not appealable.^[15]

Before us, petitioner filed a petition for review on certiorari under Rule 45 of the Rules of Court. But, even if petitioner used the correct mode of appeal at this level, the hands of the Court are tied. Without a doubt, the decision of the trial court had long become final.

Deeply ingrained in our jurisprudence is the principle that a decision that has acquired finality becomes immutable and unalterable. As such, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[16] In light of the foregoing, it would be unnecessary, if not useless, to discuss the issues raised by petitioner.

The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. The only exceptions to the general rule are the correction of clerical errors, the so-called nunc pro tunc entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[17] None of the exceptions obtains here to merit the review sought.

WHEREFORE the instant petition is DENIED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,**] and Peralta,***] JJ., concur.

[*] Designated member of the Second Division per Special Order No. 658.

**] Designated member of the Second Division per Special Order No. 635.

***] Designated member of the Second Division per Special Order No. 664.

[1] Rollo, pp. 28-33. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a member of this Court) concurring.

[2] Id. at 34-36. Penned by Pairing Judge Romulo SG. Villanueva.

[3] Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

[4] Records, p. 41.

[5] Id. at 2-3.

[6] Rollo, p. 36.

[7] Records, p. 46.

[8] Rollo, p. 33.

[9] Id. at 13.

[10] Id. at 54.

[11] Id. at 65.

[12] CA rollo, p. 40.

[13] *Flaminiano v. Adriano*, G.R. No. 165258, February 4, 2008, 543 SCRA 605, 610.

[14] *Heirs of Maura So v. Obliosca*, G.R. No. 147082, January 28, 2008, 542 SCRA 406, 417.

[15] *Republic v. Bermudez-Lorino*, G.R. No. 160258, January 19, 2005, 449 SCRA 57, 64.

[16] *Heirs of Maura So v. Obliosca*, *supra* at 418.

[17] Id.

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