

PEREGRINA MACUA VDA. DE AVENIDO, PETITIONER, VS. TECLA HOYBIA AVENIDO, RESPONDENT.

G.R. No. 173540. January 22, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the 31 August 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 79444, which reversed the 25 March 2003 Decision[2] of the Regional Trial Court (RTC), Branch 8 of Davao City, in a complaint for Declaration of Absolute Nullity of Marriage docketed as Civil Case No. 26, 908-98.

The Facts

This case involves a contest between two women both claiming to have been validly married to the same man, now deceased.

Respondent Tecla Hoybia Avenido (Tecla) instituted on 11 November 1998, a Complaint for Declaration of Nullity of Marriage against Peregrina Macua Vda. de Avenido (Peregrina) on the ground that she (Tecla), is the lawful wife of the deceased Eustaquio Avenido (Eustaquio). In her complaint, Tecla alleged that her marriage to Eustaquio was solemnized on 30 September 1942 in Talibon, Bohol in rites officiated by the Parish Priest of the said town. According to her, the fact of their marriage is evidenced by a Marriage Certificate recorded with the Office of the Local Civil Registrar (LCR) of Talibon, Bohol. However, due to World War II, records were destroyed. Thus, only a Certification[3] was issued by the LCR.

During the existence of Tecla and Eustaquio's union, they begot four (4) children, namely: Climaco H. Avenido, born on 30 March 1943; Apolinario H. Avenido, born on 23 August 1948; Editha A. Ausa, born on 26 July 1950, and Eustaquio H. Avenido, Jr., born on 15 December 1952. Sometime in 1954, Eustaquio left his family and his whereabouts was not known. In 1958, Tecla and her children were informed that Eustaquio was in Davao City living with another woman by the name of Buenaventura Sayson who later died in 1977 without any issue.

In 1979, Tecla learned that her husband Eustaquio got married to another woman by the name of Peregrina, which marriage she claims must be declared null and void for being bigamous – an action she sought to protect the rights of her children over the properties acquired by Eustaquio.

On 12 April 1999, Peregrina filed her answer to the complaint with counterclaim,[4] essentially averring that she is the legal surviving spouse of Eustaquio who died on 22 September 1989 in Davao City, their marriage having been celebrated on 30 March 1979 at St. Jude Parish in Davao City. She also contended that the case was instituted to deprive her of the properties she owns in her own right and as an heir of Eustaquio.

Trial ensued.

Tecla presented testimonial and documentary evidence consisting of:

1) Testimonies of Adelina Avenido-Ceno (Adelina), Climaco Avenido (Climaco) and Tecla herself to substantiate her alleged prior existing and valid marriage with (sic) Eustaquio;

2) Documentary evidence such as the following:

- Certification of Loss/Destruction of Record of Marriage from 1900 to 1944 issued by the Office of the Civil Registrar, Municipality of Talibon, Bohol;[5]

- Certification of Submission of a copy of Certificate of Marriage to the Office of the Civil Registrar General, National Statistics Office (NSO), R. Magsaysay Blvd., Sta Mesa, Manila;[6]

- Certification that Civil Registry records of births, deaths and marriages that were actually filed in the Office of the Civil Registrar General, NSO Manila, started only in 1932;[7]

- Certification that Civil Registry records submitted to the Office of the Civil Registrar General, NSO, from 1932 to the early part of 1945, were totally destroyed during the liberation of Manila;[8]

- Certification of Birth of Apolinario Avenido;[9]

- Certification of Birth of Eustaquio Avenido, Jr.;[10]

- Certification of Birth of Editha Avenido;[11]

- Certification of Marriage between Eustaquio Sr., and Tecla issued by the Parish Priest of Talibon, Bohol on 30 September 1942;[12]

- Certification that record of birth from 1900 to 1944 were destroyed by Second World War issued by the Office of the Municipal Registrar of Talibon, Bohol, that they cannot furnish as requested a true transcription from the Register of Birth of Climaco Avenido;[13]

- Certificate of Baptism of Climaco indicating that he was born on 30 March 1943 to spouses Eustaquio and Tecla;[14]

- Electronic copy of the Marriage Contract between Eustaquio and Peregrina.[15]

On the other hand, Peregrina testified on, among others, her marriage to Eustaquio that took place in Davao City on 3 March 1979; her life as a wife and how she took care of Eustaquio when he already had poor health, as well as her knowledge that Tecla is not the legal wife, but was once a common law wife of Eustaquio.[16] Peregrina likewise set forth documentary evidence to substantiate her allegations and to prove her claim for damages, to wit:

1)

Marriage Contract[17] between Peregrina and the late Eustaquio showing the date of marriage on 3 March 1979;

2)

Affidavit of Eustaquio executed on 22 March 1985 declaring himself as single when he contracted marriage with the petitioner although he had a common law relation with one Tecla Hoybia with whom he had four (4) children namely: Climaco, Tiburcio, Editha and Eustaquio, Jr., all surnamed Avenido;[18]

3)

Letter of Atty. Edgardo T. Mata dated 15 April 2002, addressed to the Civil Registrar of the Municipality of Alegria, Surigao del Norte;[19] and

4)

Certification dated 25 April 2002 issued by Colita P. Umipig, in her capacity as the Civil Registrar of Alegria, Surigao del Norte.[20]

In addition, as basis for the counterclaim, Peregrina averred that the case was initiated in bad faith so as to deprive her of the properties she owns in her own right and as an heir of Eustaquio; hence, her entitlement to damages and attorney's fees.

On 25 March 2003, the RTC rendered a Decision[21] denying Tecla's petition, as well as Peregrina's counter-claim. The dispositive portion thereof reads:

For The Foregoing, the petition for the "DECLARATION OF NULLITY OF MARRIAGE" filed by petitioner TECLA HOYBIA AVENIDO against respondent PEREGRINA MACUA is hereby DENIED.

The "COUNTERCLAIM" filed by respondent PEREGRINA MACUA against petitioner TECLA HOYBIA AVENIDO is hereby DISMISSED.[22]

Not convinced, Tecla appealed to the CA raising as error the trial court's alleged disregard of the evidence on the existence of her marriage to Eustaquio.

In its 31 August 2005 Decision,[23] the CA ruled in favor of Tecla by declaring the validity of her marriage to Eustaquio, while pronouncing on the other hand, the marriage between Peregrina and Eustaquio to be bigamous, and thus, null and void. The CA ruled:

The court a quo committed a reversible error when it disregarded (1) the testimonies of [Adelina], the sister of EUSTAQUIO who testified that she personally witnessed the wedding celebration of her older brother EUSTAQUIO and [Tecla] on 30 September 1942 at Talibon, Bohol; [Climaco], the eldest son of EUSTAQUIO and [Tecla], who testified that his mother [Tecla] was married to his father, EUSTAQUIO, and [Tecla] herself; and (2) the documentary evidence mentioned at the outset. It should be stressed that the due execution and the loss of the marriage contract, both constituting the condition sine qua non, for the introduction of secondary evidence of its contents, were shown by the very evidence the trial court has disregarded.[24]

Peregrina now questions the said ruling assigning as error, among others, the failure of the CA to appreciate the validity of her marriage to Eustaquio. For its part, the Office of the Solicitor General (OSG), in its Memorandum[25] dated 5 June 2008, raises the following legal issues:

- Whether or not the court can validly rely on the "presumption of marriage" to overturn the validity of a subsequent marriage;
- Whether or not secondary evidence may be considered and/or taken cognizance of, without proof of the execution or existence and the cause of the unavailability of the best evidence, the original document; and
- Whether or not a Certificate of Marriage issued by the church has a probative value to prove the existence of a valid marriage without the priest who issued the same being presented to the witness stand.[26]

Our Ruling

Essentially, the question before us is whether or not the evidence presented during the trial proves the existence of the marriage of Tecla to Eustaquio.

The trial court, in ruling against Tecla's claim of her prior valid marriage to Eustaquio relied on Tecla's failure to present her certificate of marriage to Eustaquio. Without such certificate, the trial court considered as useless the certification of the Office of the Civil Registrar of Talibon, Bohol, that it has no more records of marriages during the period 1900 to 1944. The same thing was said as regards the Certification issued by the National Statistics

Office of Manila. The trial court observed:

Upon verification from the NSO, Office of the Civil Registrar General, Manila, it, likewise, issued a Certification (Exhibit “B”) stating that: records from 1932 up to early part of 1945 were totally destroyed during the liberation of Manila on February 4, 1945. What are presently filed in this office are records from the latter part of 1945 to date, except for the city of Manila which starts from 1952. Hence, this office has no way of verifying and could not issue as requested, certified true copy of the records of marriage between [Eustaquio] and [Tecla], alleged to have been married on 30th September 1942, in Talibon, Bohol.[27]

In the absence of the marriage contract, the trial court did not give credence to the testimony of Tecla and her witnesses as it considered the same as mere self-serving assertions. Superior significance was given to the fact that Tecla could not even produce her own copy of the said proof of marriage. Relying on Section 3 (a) and Section 5, Rule 130 of the Rules of Court, the trial court declared that Tecla failed to prove the existence of the first marriage.

The CA, on the other hand, concluded that there was a presumption of lawful marriage between Tecla and Eustaquio as they deported themselves as husband and wife and begot four (4) children. Such presumption, supported by documentary evidence consisting of the same Certifications disregarded by the trial court, as well as the testimonial evidence especially that of Adelina Avenido-Ceno, created, according to the CA, sufficient proof of the fact of marriage. Contrary to the trial court’s ruling, the CA found that its appreciation of the evidence presented by Tecla is well in accord with Section 5, Rule 130 of the Rules of Court.

We uphold the reversal by the CA of the decision of the trial court. Quite recently, in *Añonuevo v. Intestate Estate of Rodolfo G. Jalandoni*,[28] we said, citing precedents, that:

While a marriage certificate is considered the primary evidence of a marital union, it is not regarded as the sole and exclusive evidence of marriage. Jurisprudence teaches that the fact of marriage may be proven by relevant evidence other than the marriage certificate. Hence, even a person’s birth certificate may be recognized as competent evidence of the marriage between his parents.

The error of the trial court in ruling that without the marriage certificate, no other proof of the fact can be accepted, has been aptly delineated in *Vda de Jacob v. Court of Appeals*. [29] Thus:

It should be stressed that the due execution and the loss of the marriage contract, both constituting the *conditio sine qua non* for the introduction of secondary evidence of its contents, were shown by the very evidence they have disregarded. They have thus confused the evidence to show due execution and loss as “secondary” evidence of the marriage. In *Hernaez v. Mcgrath*, the Court clarified this misconception thus:

x x x [T]he court below was entirely mistaken in holding that parol evidence of the execution of the instrument was barred. The court confounded the execution and the contents of the document. It is the contents, x x x which may not be prove[n] by secondary evidence when the instrument itself is accessible. Proofs of the execution are not dependent on the existence or non-existence of the document, and, as a matter of fact, such proofs of the contents: due execution, besides the loss, has to be shown as foundation for the introduction of secondary evidence of the contents.

x x x x

Evidence of the execution of a document is, in the last analysis, necessarily collateral or primary. It generally consists of parol testimony or extrinsic papers. Even when the document is actually produced, its authenticity is not necessarily, if at all, determined from its face or recital of its contents but by parol evidence. At the most, failure to produce the document, when available, to establish its execution may effect the weight of the evidence presented but not the admissibility of such evidence.

The Court of Appeals, as well as the trial court, tried to justify its stand on this issue by relying on *Lim Tanhu v. Ramolete*. But even there, we said that “marriage may be prove[n] by other competent evidence.

Truly, the execution of a document may be proven by the parties themselves, by the swearing officer, by witnesses who saw and recognized the signatures of the parties; or even by those to whom the parties have previously narrated the execution thereof. The Court has also held that “[t]he loss may be shown by any person who [knows] the fact of its loss, or by any one who ha[s] made, in the judgment of the court, a sufficient examination in the place or places where the document or papers of similar character are usually kept by the person in whose custody the document lost was, and has been unable to find it; or who has made any other investigation which is sufficient to satisfy the court that the instrument [has] indeed [been] lost.”

In the present case, due execution was established by the testimonies of Adela Pilapil, who was present during the marriage ceremony, and of petitioner herself as a party to the event. The subsequent loss was shown by the testimony and the affidavit of the officiating priest, Monsignor Yllana, as relevant, competent and admissible evidence. Since the due execution and the loss of the marriage contract were clearly shown by the evidence presented, secondary evidence—testimonial and documentary—may be admitted to prove the fact of marriage.[30]

As correctly stated by the appellate court:

In the case at bench, the celebration of marriage between [Tecla] and EUSTAQUIO was established by the testimonial evidence furnished by [Adelina] who appears to be present during the marriage ceremony, and by [Tecla] herself as a living witness to the event. The loss was shown by the certifications issued by the NSO and LCR of Talibon, Bohol. These are relevant, competent and admissible evidence. Since the due execution and the loss of the marriage contract were clearly shown by the evidence presented, secondary evidence – testimonial and documentary – may be admitted to prove the fact of marriage. In *PUGEDA v. TRIAS*, the Supreme Court held that “marriage may be proven by any competent and relevant evidence. The testimony by one of the parties to the marriage or by one of the witnesses to the marriage has been held to be admissible to prove the fact of marriage. The person who officiated at the solemnization is also competent to testify as an eyewitness to the fact of marriage.”

x x x x

The court a quo committed a reversible error when it disregarded (1) the testimonies of [Adelina], the sister of EUSTAQUIO who testified that she personally witnessed the wedding celebration of her older brother EUSTAQUIO and [Tecla] on 30 September 1942 at Talibon, Bohol; [Climaco], the eldest son of EUSTAQUIO and [Tecla], who testified that his mother [Tecla] was married to his father, EUSTAQUIO, and [Tecla] herself; and (2) the documentary evidence mentioned at the outset. It should be stressed that the due execution and the loss of the marriage contract, both constituting the condition sine qua non for the introduction of secondary evidence of its contents, were shown by the very evidence the trial court has disregarded.[31]

The starting point then, is the presumption of marriage.

As early as the case of *Adong v. Cheong Seng Gee*,[32] this Court has elucidated on the rationale behind the presumption:

The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and

of law. A presumption established by our Code of Civil Procedure is that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. (Sec. 334, No. 28) *Semper – praesumitur pro matrimonio* – Always presume marriage.

In the case at bar, the establishment of the fact of marriage was completed by the testimonies of Adelina, Climaco and Tecla; the un rebutted fact of the birth within the cohabitation of Tecla and Eustaquio of four (4) children coupled with the certificates of the children's birth and baptism; and the certifications of marriage issued by the parish priest of the Most Holy Trinity Cathedral of Talibon, Bohol.

WHEREFORE, the Petition is DENIED and the assailed Decision of the Court of Appeals in CA-G.R. CV No. 79444 is AFFIRMED. The marriage between petitioner Peregrina Macua Avenido and the deceased Eustaquio Avenido is hereby declared NULL and VOID. No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 10-24; Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello concurring.

[2] *Id.* at 225-232; Penned by Judge Salvador M. Ibarreta, Jr.

[3] Records, p. 116; Exhibit "A," the certification states:

x x x [T]he records of marriages during the period 1900 to 1944 were totally destroyed by Second World War. Hence, we cannot issue as requested a true transcription from the Register of Marriages or true copy of the Certificate of Marriage between [EUSTAQUIO] and [TECLA], who are alleged to have been married on September 30, 1942 in this city/municipality.

[4] *Id.* at 22-28.

[5] *Id.* at 116; Exhibit "A."

[6] *Id.*; Exhibit A-1."

[7] *Id.* at 117; Exhibit "B."

[8] *Id.*; Exhibit "B-1."

[9] *Id.* at 118; Exhibit "C."

[10] *Id.* at 119; Exhibit "D."

[11] *Id.* at 120; Exhibit "E."

[12] *Id.* at 121; Exhibit "F."

[13] *Id.* at 122; Exhibit "G."

[14] *Id.* at 123; Exhibit "G-1."

[15] *Id.* at 124; Exhibit "H."

[16] TSN, 25 July 2001, pp. 11-12.

[17] Records, p. 12; Exhibit "1."

[18] Id. at 143; Exhibit “2.”

[19] Id. at 144; Exhibit “3.”

[20] Id. at 145; Exhibit “4.”

[21] Id. at 150-156.

[22] Id. at 156.

[23] Rollo, pp. 10-24.

[24] Id. at 22.

[25] Id. at 361-385.

[26] Id. at 373.

[27] Id. at 229-230.

[28] G.R. No. 178221, 1 December 2010, 636 SCRA 420, 429-430.

[29] 371 Phil. 693 (1999).

[30] Id. at 705-707.

[31] Rollo, pp. 20-22.

[32] 43 Phil. 43, 56 (1922).

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