

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

[G.R. No. L-68470. October 8, 1985.]

ALICE REYES VAN DORN, *Petitioner*, v. HON. MANUEL V. ROMILLO, JR., as Presiding Judge of Branch CX, Regional Trial Court of the National Capital Region Pasay City, and RICHARD UPTON, *Respondents*.

DECISION

MELENCIO-HERRERA, J.:

In this Petition for *Certiorari* and Prohibition, petitioner Alice Reyes Van Dorn seeks to set aside the Orders, dated September 15, 1983 and August 3, 1984, in Civil Case No. 1075-P, issued by respondent Judge, which denied her Motion to Dismiss said case, and her Motion for Reconsideration of the Dismissal Order, respectively.

The basic background facts are that petitioner is a citizen of the Philippines while private respondent is a citizen of the United States; that they were married in Hongkong in 1972; that, after the marriage, they established their residence in the Philippines; that they begot two children born on April 4, 1973 and December 18, 1975, respectively; that the parties were divorced in Nevada, United States, in 1982; and that petitioner has re-married also in Nevada, this time to Theodore Van Dorn.

Dated June 8, 1983, private respondent filed suit against petitioner in Civil Case No. 1075-P of the Regional Trial Court, Branch CXV, in Pasay City, stating that petitioner's business in Ermita, Manila, (the Galleon Shop, for short), is conjugal property of the parties, and asking that petitioner be ordered to render an accounting of that business, and that private respondent be declared with right to manage the conjugal property. Petitioner moved to dismiss the case on the ground that the cause of action is barred by previous judgment in the divorce proceedings before the Nevada Court wherein respondent had acknowledged that he and petitioner had "no community property" as of June 11, 1982. The Court below denied the Motion to Dismiss in the mentioned case on the ground that the property involved is located in the Philippines so that the Divorce Decree has no bearing in the case. The denial is now the subject of this *Certiorari* proceeding.

Generally, the denial of a Motion to Dismiss in a civil case is interlocutory and is not subject to appeal. *Certiorari* and Prohibition are neither the remedies to question the propriety of an interlocutory order of the trial Court. However, when a grave abuse of discretion was patently committed, or the lower Court acted capriciously and whimsically, then it devolves upon this Court in a *certiorari* proceeding to exercise its supervisory authority and to correct the error committed which, in such a case, is equivalent to lack of jurisdiction. 1 Prohibition would then lie since it would be useless and a waste of time to go ahead with the proceedings. 2 We consider the petition filed in this case within the exception, and we have given it due course.

For resolution is the effect of the foreign divorce on the parties and their alleged conjugal property in the Philippines.

Petitioner contends that respondent is estopped from laying claim on the alleged conjugal property because of the representation he made in the divorce proceedings before the American Court that they had no community of property; that the Galleon Shop was not established through conjugal funds; and that respondent's claim is barred by prior judgment.

For his part, respondent avers that the Divorce Decree issued by the Nevada Court cannot prevail over the prohibitive laws of the Philippines and its declared national policy; that the acts and declaration of a foreign Court cannot, especially if the same is contrary to public policy, divest Philippine Courts of jurisdiction to entertain matters within its jurisdiction.

For the resolution of this case, it is not necessary to determine whether the property relations between petitioner and private respondent, after their marriage, were upon absolute or relative community property, upon complete separation of property, or upon any other regime. The pivotal fact in this case is the Nevada divorce of the parties.

The Nevada District Court, which decreed the divorce, had obtained jurisdiction over petitioner who appeared in person before the Court during the trial of the case. It also obtained jurisdiction over private respondent who, giving his address as No. 381 Bush Street, San Francisco, California, authorized his attorneys in the divorce case, Karp & Gradt, Ltd., to agree to the divorce on the ground of incompatibility in the understanding that there were neither community property nor community obligations. 3 As explicitly stated in the Power of Attorney he executed in favor of the law firm of KARP & GRAD LTD., 336 W. Liberty, Reno, Nevada, to represent him in the divorce proceedings:___

x x x

"You are hereby authorized to accept service of Summons, to file an Answer, appear on my behalf and do all things necessary and proper to represent me, without further contesting, subject to the following: ___

"1. That my spouse seeks a divorce on the ground of incompatibility.

"2. That there is no community of property to be adjudicated by the Court.

"3. That there are no community obligations to be adjudicated by the court.

x x x" 4

There can be no question as to the validity of that Nevada divorce in any of the States of the United States. The decree is binding on private respondent as an American citizen. For instance, private respondent cannot sue petitioner, as her husband, in any State of the Union. What he is contending in this case is that the divorce is not valid and binding in this jurisdiction, the same being contrary to local law and public policy.

It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, 5 only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. 6 In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which divorce dissolves the marriage. As stated by the Federal Supreme Court of the United States in Atherton v. Atherton, 45 L. Ed. 794, 799: ___

"The purpose and effect of a decree of divorce from the bond of matrimony by a court of competent jurisdiction are to change the existing status or domestic relation of husband and wife, and to free them both from the bond. The marriage tie, when thus severed as to one party, ceases to bind either. A husband without a wife, or a wife without a husband, is unknown to the law. When the law

provides, in the nature of a penalty, that the guilty party shall not marry again, that party, as well as the other, is still absolutely freed from the bond of the former marriage."___

Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.---

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, et. seq. of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private *Respondent*. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.

WHEREFORE, the Petition is granted, and respondent Judge is hereby ordered to dismiss the Complaint filed in Civil Case No. 1075-P of his Court.

Without costs.

SO ORDERED.

Teehankee (*Chairman*), Plana, Relova Gutierrez, Jr., De la Fuente and Patajo, *JJ.*, concur.

Endnotes:

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1. Sanchez v. Zosa, 68 SCRA 171 (1975); Malit v. People, 114 SCRA 348 (1982).
 2. U.S.T. v. Hon. Villanueva, Et Al., 106 Phil. 439 (1959).
 3. Annex "Y", Petition for *Certiorari*.
 4. p. 98, Rollo.
 5. "Art. 15. Laws relating to family rights and duties or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."___
 6. cf. Recto v. Harden, 100 Phil. 427 [1956]; Paras, Civil Code, 1971 ed., Vol. I, p. 52; Salonga, Private International Law, 1979 ed., p. 231.