

## **FIRST DIVISION**

**[ G.R. NO. 162580, January 27, 2006 ]**

**ELMAR O. PEREZ, PETITIONER, VS. COURT OF APPEALS, FIFTH DIVISION, TRISTAN A. CATINDIG AND LILY GOMEZ-CATINDIG, RESPONDENTS.**

### **D E C I S I O N**

#### **YNARES-SANTIAGO, J.:**

This petition for certiorari and prohibition under Rule 65 of the Rules of Court assails the July 25, 2003 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 74456 which set aside and declared as null and void the September 30, 2002 Order<sup>[2]</sup> of the Regional Trial Court of Quezon City, Branch 84, granting petitioner's motion for leave to file intervention and admitting the Complaint-in-Intervention<sup>[3]</sup> in Civil Case No. Q-01-44847; and its January 23, 2004 Resolution<sup>[4]</sup> denying the motion for reconsideration.

Private respondent Tristan A. Catindig married Lily Gomez Catindig<sup>[5]</sup> twice on May 16, 1968. The first marriage ceremony was celebrated at the Central Methodist Church at T.M. Kalaw Street, Ermita, Manila while the second took place at the Lourdes Catholic Church in La Loma, Quezon City. The marriage produced four children.

Several years later, the couple encountered marital problems that they decided to separate from each other. Upon advice of a mutual friend, they decided to obtain a divorce from the Dominican Republic. Thus, on April 27, 1984, Tristan and Lily executed a Special Power of Attorney addressed to the Judge of the First Civil Court of San Cristobal, Dominican Republic, appointing an attorney-in-fact to institute a divorce action under its laws.<sup>[6]</sup>

Thereafter, on April 30, 1984, the private respondents filed a joint petition for dissolution of conjugal partnership with the Regional Trial Court of Makati. On June 12, 1984, the civil court in the Dominican Republic ratified the divorce by mutual consent of Tristan and Lily. Subsequently, on June 23, 1984, the Regional Trial Court of Makati City, Branch 133, ordered the complete separation of properties between Tristan and Lily.

On July 14, 1984, Tristan married petitioner Elmar O. Perez in the State of Virginia in the United States<sup>[7]</sup> and both lived as husband and wife until October 2001. Their union produced one offspring.<sup>[8]</sup>

During their cohabitation, petitioner learned that the divorce decree issued by the court

in the Dominican Republic which "dissolved" the marriage between Tristan and Lily was not recognized in the Philippines and that her marriage to Tristan was deemed void under Philippine law. When she confronted Tristan about this, the latter assured her that he would legalize their union after he obtains an annulment of his marriage with Lily. Tristan further promised the petitioner that he would adopt their son so that he would be entitled to an equal share in his estate as that of each of his children with Lily.  
[9]

On August 13, 2001, Tristan filed a petition for the declaration of nullity of his marriage to Lily with the Regional Trial Court of Quezon City, docketed as Case No. Q-01-44847.

Subsequently, petitioner filed a Motion for Leave to File Intervention<sup>[10]</sup> claiming that she has a legal interest in the matter in litigation because she knows certain information which might aid the trial court at a truthful, fair and just adjudication of the annulment case, which the trial court granted on September 30, 2002. Petitioner's complaint-in-intervention was also ordered admitted.

Tristan filed a petition for certiorari and prohibition with the Court of Appeals seeking to annul the order dated September 30, 2002 of the trial court. The Court of Appeals granted the petition and declared as null and void the September 30, 2002 Order of the trial court granting the motion for leave to file intervention and admitting the complaint-in-intervention.

Petitioner's motion for reconsideration was denied, hence this petition for certiorari and prohibition filed under Rule 65 of the Rules of Court. Petitioner contends that the Court of Appeals gravely abused its discretion in disregarding her legal interest in the annulment case between Tristan and Lily.

The petition lacks merit.

Ordinarily, the proper recourse of an aggrieved party from a decision of the Court of Appeals is a petition for review on certiorari under Rule 45 of the Rules of Court. However, if the error subject of the recourse is one of jurisdiction, or the act complained of was granted by a court with grave abuse of discretion amounting to lack or excess of jurisdiction, as alleged in this case, the proper remedy is a petition for certiorari under Rule 65 of the said Rules.<sup>[11]</sup> This is based on the premise that in issuing the assailed decision and resolution, the Court of Appeals acted with grave abuse of discretion, amounting to excess of lack of jurisdiction and there is no plain, speedy and adequate remedy in the ordinary course of law. A remedy is considered plain, speedy, and adequate if it will promptly relieve the petitioner from the injurious effect of the judgment and the acts of the lower court.<sup>[12]</sup>

It is therefore incumbent upon the petitioner to establish that the Court of Appeals acted with grave abuse of discretion amounting to excess or lack of jurisdiction when it promulgated the assailed decision and resolution.

We have previously ruled that grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.

By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>[13]</sup> The word "capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of certiorari, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.<sup>[14]</sup>

The Rules of Court laid down the parameters before a person, not a party to a case can intervene, thus:

*Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.<sup>[15]</sup>

The requirements for intervention are: [a] legal interest in the matter in litigation; and [b] consideration must be given as to whether the adjudication of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not.<sup>[16]</sup>

Legal interest, which entitles a person to intervene, must be in the matter in litigation and of *such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment.*<sup>[17]</sup> Such interest must be actual, direct and material, and not simply contingent and expectant.<sup>[18]</sup>

Petitioner claims that her status as the wife and companion of Tristan for 17 years vests her with the requisite legal interest required of a would-be intervenor under the Rules of Court.

Petitioner's claim lacks merit. Under the law, petitioner was never the legal wife of Tristan, hence her claim of legal interest has no basis.

When petitioner and Tristan married on July 14, 1984, Tristan was still lawfully married to Lily. The divorce decree that Tristan and Lily obtained from the Dominican Republic never dissolved the marriage bond between them. It is basic that 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.<sup>[19]</sup> Regardless of where a citizen of the Philippines might be, he or she will be governed by Philippine laws with respect to his or her family rights and duties, or to his or her status, condition and legal capacity. Hence, if a Filipino regardless of whether he or she was married here or abroad, initiates a petition abroad to obtain an absolute divorce from spouse

and eventually becomes successful in getting an absolute divorce decree, the Philippines will not recognize such absolute divorce.<sup>[20]</sup>

When Tristan and Lily married on May 18, 1968, their marriage was governed by the provisions of the Civil Code<sup>[21]</sup> which took effect on August 30, 1950. In the case of *Tenchavez v. Escano*<sup>[22]</sup> we held:

(1) That a foreign divorce between Filipino citizens, sought and decreed after the effectivity of the present Civil Code (Rep. Act No. 386), is not entitled to recognition as valid in this jurisdiction; **and neither is the marriage contracted with another party by the divorced consort, subsequently to the foreign decree of divorce, entitled to validity in the country.** (Emphasis added)

Thus, petitioner's claim that she is the wife of Tristan even if their marriage was celebrated abroad lacks merit. Thus, petitioner never acquired the legal interest as a wife upon which her motion for intervention is based.

Since petitioner's motion for leave to file intervention was bereft of the indispensable requirement of legal interest, the issuance by the trial court of the order granting the same and admitting the complaint-in-intervention was attended with grave abuse of discretion. Consequently, the Court of Appeals correctly set aside and declared as null and void the said order.

**WHEREFORE**, the petition is **DISMISSED**. The assailed Decision dated July 25, 2003 and Resolution dated January 23, 2004 of the Court of Appeals in CA-G.R. SP No. 74456 are **AFFIRMED**.

No pronouncement as to costs.

**SO ORDERED.**

*Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.  
Panganiban, C.J., (Chairman), in the result.*

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<sup>[1]</sup> Rollo, pp. 26-31. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong.

<sup>[2]</sup> *Id.* at 74. Penned by Judge Mariflor P. Punzalan Castillo.

<sup>[3]</sup> *Id.* at 49-58.

<sup>[4]</sup> *Id.* at 33.

<sup>[5]</sup> Referred as Lily Corazon Catindig in some parts of the records.

[6] Rollo, p. 27.

[7] *Id.* at 34.

[8] *Id.* at 35.

[9] *Id.* at 28.

[10] *Id.* at 45-48.

[11] *Delgado v. Court of Appeals*, G.R. No. 137881, December 21, 2004, 447 SCRA 402, 411.

[12] *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, G.R. No. 152568, February 16, 2004, 423 SCRA 122, 132.

[13] *Banal III v. Panganiban*, G.R. No. 167474, November 15, 2005.

[14] *Olanolan v. Commission on Elections*, G.R. No. 165491, March 31, 2005, 454 SCRA 807, 814.

[15] RULES OF COURT, Rule 19, Sec. 1.

[16] *Nordic Asia Limited v. Court of Appeals*, G.R. No. 111159, July 13, 2004, 434 SCRA 195, 198.

[17] *Id.* at 199.

[18] *Pagtalunan v. Tamayo*, G.R. No. 54281, March 19, 1990, 183 SCRA 252, 257.

[19] CIVIL CODE, Art. 15.

[20] Sta. Maria, *Persons and Family Relations*, Fourth Edition, p. 23.

[21] Republic Act No. 386 (1950).

[22] 122 Phil. 752, 765 (1965).



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