

FIRST DIVISION

[G.R. No. 195432, August 27, 2014]

EDELINA T. ANDO, PETITIONER, VS. DEPARTMENT OF FOREIGN AFFAIRS, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This is a Petition for Review under Rule 45 of the Rules of Court, seeking the nullification of the Orders dated 14 January and 8 February 2011 issued by the Regional Trial Court (RTC), Third Judicial Region, Branch 45,^[1] City of San Fernando, Pampanga, in Civil Case No. 137, which dismissed the Petition for Declaratory Relief filed therein.

STATEMENT OF THE FACTS AND OF THE CASE

The pertinent facts of the case, as alleged by petitioner, are as follows:

3. On 16 September 2001, petitioner married Yuichiro Kobayashi, a Japanese National, in a civil wedding solemnized at Candaba, Pampanga. A copy of their Certificate of Marriage is hereto attached as Annex 'A' and made an integral part hereof.

4. On 16 September 2004, Yuichiro Kobayashi sought in Japan, and was validly granted under Japanese laws, a divorce in respect of his marriage with petitioner. A copy of the Divorce Certificate duly issued by the Consulate-General of Japan and duly authenticated by the Department of Foreign Affairs, Manila, is hereto as Annex 'B' and made an integral part hereof.

5. Said Divorce Certificate was duly registered with the Office of the Civil Registry of Manila. A copy of the Certification dated 28 October 2005 is hereto attached as Annex 'C' and made an integral part hereof.

6. Believing in good faith that said divorce capacitated her to remarry and that by such she reverted to her single status, petitioner married Masatomi Y. Ando on 13 September 2005 in a civil wedding celebrated in Sta. Ana, Pampanga. A copy of their Certificate of Marriage is hereto attached as Annex 'D' and made an integral part hereof.

7. In the meantime, Yuichiro Kobayashi married Ryo Miken on 27 December 2005. A copy of the Japanese Family Registry Record of Kobayashi showing

the divorce he obtained and his remarriage with Ryo Miken, duly authenticated by the Consulate-General of Japan and the Department of Foreign Affairs, Manila, is hereto attached as Annex 'E' and made an integral part hereof.

8. Recently, petitioner applied for the renewal of her Philippine passport to indicate her surname with her husband Masatomi Y. Ando but she was told at the Department of Foreign Affairs that the same cannot be issued to her until she can prove by competent court decision that her marriage with her said husband Masatomi Y. Ando is valid until otherwise declared.

x x x x

12. Prescinding from the foregoing, petitioner's marriage with her said husband Masatomi Y. Ando must therefore be honored, considered and declared valid, until otherwise declared by a competent court. Consequently, and until then, petitioner therefore is and must be declared entitled to the issuance of a Philippine passport under the name 'Edelina Ando y Tungol.' Hence, this petitioner pursuant to Rule 63 of the Rules of Court.^[2]

On 29 October 2010, petitioner filed with the RTC a Petition for Declaratory Relief, which was later raffled off to Branch 46. She impleaded the Department of Foreign Affairs (DFA) as respondent and prayed for the following reliefs before the lower court:

WHEREFORE, petitioner most respectfully prays of this Honorable Court that after proper proceedings, judgment be rendered, as follows:

(a) declaring as valid and subsisting the marriage between petitioner Edelina T. Ando and her husband Masatomi Y. Ando until otherwise declared by a competent court;

(b) declaring petitioner entitled to the issuance of a Philippine Passport under the name "Edelina Ando y Tungol"; and

(c) directing the Department of Foreign Affairs to honor petitioner's marriage to her husband Masatomi Y. Ando and to issue a Philippine Passport to petitioner under the name "Edelina Ando y Tungol".

Petitioner prays for such other just and equitable reliefs.^[3]

On 15 November 2010, in an Order dismissing the Petition for want of cause and action, as well as jurisdiction, the RTC held thus:

Records of the case would reveal that prior to petitioner's marriage to Masatomi Y. Ando, herein petitioner was married to Yuichiro Kobayashi, a Japanese National, in Candaba, Pampanga, on September 16, 2001, and that though a divorce was obtained

and granted in Japan, with respect to the their (sic) marriage, there is no showing that petitioner herein complied with the requirements set forth in Art. 13 of the Family Code – that is obtaining a judicial recognition of the foreign decree of absolute divorce in our country.

It is therefore evident, under the foregoing circumstances, that herein petitioner does not have any cause of action and/or is entitled to the reliefs prayed for under Rule 63 of the Rules of Court. In the same vein, though there is other adequate remedy available to the petitioner, such remedy is however beyond the authority and jurisdiction of this court to act upon and grant, as it is only the family court which is vested with such authority and jurisdiction.^[4]

On 3 December 2010, petitioner filed an *Ex Parte* Motion for Reconsideration of the Order dated 15 November 2010. In an Order dated 14 December 2010, the RTC granted the motion in this wise:

WHEREFORE, considering that the allegations and reliefs prayed for by the petitioner in her petition and the instant Motion for Reconsideration falls within the jurisdiction of the Special Family Court of this jurisdiction and for the interest of substantial justice, the Order of the Court dated November 15, 2010 is hereby reconsidered.

Let the record of this case be therefore referred back to the Office of the Clerk of Court for proper endorsement to the Family Court of this jurisdiction for appropriate action and/or disposition.^[5]

Thereafter, the case was raffled to Branch 45 of the RTC. On 14 January 2011, the trial court dismissed the Petition anew on the ground that petitioner had no cause of action. The Order reads thus:

The petition specifically admits that the marriage she seeks to be declared as valid is already her second marriage, a bigamous marriage under Article 35(4) of the Family Code considering that the first one, though allegedly terminated by virtue of the divorce obtained by Kobayashi, was never recognized by a Philippine court, hence, petitioner is considered as still married to Kobayashi. Accordingly, the second marriage with Ando cannot be honored and considered as valid at this time.

Petitioner's allegation of Sec. 2 (a) of A.M. No. 02-11-10-SC is misplaced. The fact that no judicial declaration of nullity of her marriage with Ando was rendered does not make the same valid because such declaration under Article 40 of the Family Code is applicable only in case of re-marriage. More importantly, the absence of a judicial declaration of nullity of marriage is not even a requisite to make a marriage valid.

In view of the foregoing, the dismissal of this case is imperative.^[6]

On 1 February 2011, petitioner filed an *Ex Parte* Motion for Reconsideration of the Order dated 14 January 2011. The motion was denied by the RTC in open court on 8 February 2011, considering that neither the Office of the Solicitor General (OSG) nor respondent was furnished with copies of the motion.

On 24 March 2011, petitioner filed the instant Petition for Review, raising the sole issue of whether or not the RTC erred in ruling that she had no cause of action.

Petitioner argues that under A.M. No. 02-11-10-SC, or the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, it is solely the wife or the husband who can file a petition for the declaration of the absolute nullity of a void marriage. Thus, as the state is not even allowed to file a direct petition for the declaration of the absolute nullity of a void marriage, with even more reason can it not collaterally attack the validity of a marriage, as in a petition for declaratory relief. Further, petitioner alleges that under the law, a marriage – even one that is void or voidable – shall be deemed valid until declared otherwise in a judicial proceeding.

Petitioner also argues that assuming a court judgment recognizing a judicial decree of divorce is required under Article 13 of the Family Code, noncompliance therewith is a mere irregularity in the issuance of a marriage license. Any irregularity in the formal requisites of marriage, such as with respect to the marriage license, shall not affect the legality of the marriage. Petitioner further claims that all the requisites for a petition for declaratory relief have been complied with.

With respect to the failure to furnish a copy of the *Ex Parte* Motion for Reconsideration to the OSG and the DFA, petitioner avers that at the time of the filing, the RTC had yet to issue a summons to respondent; thus, it had yet to acquire jurisdiction over them.

Thereafter, the DFA, through the OSG, filed a Comment on the Petition. The latter raised the following arguments: (1) the Petition was improperly verified, as the *jurat* in the Verification thereof only stated that the affiant had exhibited “her current and valid proof of identity,” which proof was not properly indicated, however; (2) prior judicial recognition by a Philippine court of a divorce decree obtained by the alien spouse is required before a Filipino spouse can remarry and be entitled to the legal effects of remarriage; (3) petitioner failed to show that she had first exhausted all available administrative remedies, such as appealing to the Secretary of the DFA under Republic Act No. (R.A.) 8239, or the Philippine Passport Act of 1996, before resorting to the special civil action of declaratory relief; and (4) petitioner’s Motion for Reconsideration before the RTC was a mere scrap of paper and did not toll the running of the period to appeal. Hence, the RTC Order dated 14 January 2011 is now final.

On 29 November 2011, petitioner filed her Reply to the Comment, addressing the issues raised therein.

THE COURT’S RULING

The Court finds the Petition to be without merit.

First, with respect to her prayer to compel the DFA to issue her passport, petitioner incorrectly filed a petition for declaratory relief before the RTC. She should have **first appealed before the Secretary of Foreign Affairs**, since her ultimate entreaty was to question the DFA's refusal to issue a passport to her under her second husband's name.

Under the Implementing Rules and Regulations (IRR) of R.A. 8239, which was adopted on 25 February 1997, the following are the additional documentary requirements before a married woman may obtain a passport under the name of her spouse:

SECTION 2. The issuance of passports to married, divorced or widowed women shall be made in accordance with the following provisions:

a) In case of a woman who is married and who decides to adopt the surname of her husband pursuant to Art. 370 of Republic Act No. 386, she must present the original or certified true copy of her marriage contract, and one photocopy thereof.

In addition thereto, a Filipino who contracts marriage in the Philippines to a foreigner, shall be required to present a Certificate of Attendance in a Guidance and Counselling Seminar conducted by the CFO when applying for a passport for the first time.

b) In case of annulment of marriage, the applicant must present a certified true copy of her annotated Marriage Contract or Certificate of Registration and the Court Order effecting the annulment.

c) In case of a woman who was divorced by her alien husband, she must present a certified true copy of the Divorce Decree duly authenticated by the Philippine Embassy or consular post which has jurisdiction over the place where the divorce is obtained or by the concerned foreign diplomatic or consular mission in the Philippines.

When the divorcee is a Filipino Muslim, she must present a certified true copy of the Divorce Decree or a certified true copy of the Certificate of Divorce from the Shari'ah Court or the OCRG.

d) In the event that marriage is dissolved by the death of the husband, the applicant must present the original or certified true copy of the Death Certificate of the husband or the Declaration of Presumptive Death by a Civil or Shari'ah Court, in which case the applicant may choose to continue to use her husband's surname or resume the use of her maiden surname.

From the above provisions, it is clear that for petitioner to obtain a copy of her passport under her married name, all she needed to present were the following: (1) the original or certified true copy of her marriage contract and one photocopy thereof; (2) a Certificate of Attendance in a Guidance and Counseling Seminar, if applicable; and (3) a

certified true copy of the Divorce Decree duly authenticated by the Philippine Embassy or consular post that has jurisdiction over the place where the divorce is obtained or by the concerned foreign diplomatic or consular mission in the Philippines.

In this case, petitioner was allegedly told that she would not be issued a Philippine passport under her second husband's name. Should her application for a passport be denied, the remedies available to her are provided in Section 9 of R.A. 8239, which reads thus:

Sec. 9. *Appeal.* — Any person who feels aggrieved as a result of the application of this Act of the implementing rules and regulations issued by the Secretary shall have the right to appeal to the Secretary of Foreign Affairs from whose decision judicial review may be had to the Courts in due course.

The IRR further provides in detail:

ARTICLE 10 Appeal

In the event that an application for a passport is denied, or an existing one cancelled or restricted, the applicant or holder thereof shall have the right to appeal in writing to the Secretary within fifteen (15) days from notice of denial, cancellation or restriction.

Clearly, she should have filed an appeal with the Secretary of the DFA in the event of the denial of her application for a passport, after having complied with the provisions of R.A. 8239. Petitioner's argument that her application "cannot be said to have been either denied, cancelled or restricted by [the DFA], so as to make her an aggrieved party entitled to appeal",^[7] as instead she "was merely told"^[8] that her passport cannot be issued, does not persuade. The law provides a direct recourse for petitioner in the event of the denial of her application.

Second, with respect to her prayer for the recognition of her second marriage as valid, petitioner should have filed, instead, a **petition for the judicial recognition of her foreign divorce from her first husband.**

In *Garcia v. Recio*,^[9] we ruled that a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided the decree is valid according to the national law of the foreigner. The presentation solely of the divorce decree is insufficient; both the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Because our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven and like any other fact. ^[10]

While it has been ruled that a petition for the authority to remarry filed before a trial court actually constitutes a petition for declaratory relief,^[11] we are still unable to grant the prayer of petitioner. As held by the RTC, there appears to be insufficient proof or evidence presented on record of both the national law of her first husband, Kobayashi, and of the validity of the divorce decree under that national law. ^[12] Hence, any declaration as to the validity of the divorce can only be made upon her complete submission of evidence proving the divorce decree and the national law of her alien spouse, in an action instituted in the proper forum.

WHEREFORE, the instant Petition is **DENIED** without prejudice to petitioner's recourse to the proper remedies available.

SO ORDERED.

*Leonardo-De Castro, Bersamin, Perez, and *Mendoza, JJ., concur.*

* Designated additional member in lieu of Associate Justice Estela M. Pelas-Bernabe per S.O. No. 1754 dated 18 August 2014.

[1] The Petition before the RTC was initially raffled to Branch 46, but was later transferred to Branch 45.

[2] *Rollo*, pp. 10-12.

[3] *Id.* at 38-39.

[4] *Id.* at 52-53.

[5] *Id.* at 60.

[6] *Id.* at 31-32.

[7] Petitioner's Reply, *rollo*, p. 138.

[8] *Id.*

[9] 418 Phil. 723 (2001).

[10] *Corpuz v. Sto. Tomas*, G.R. No. 186571, 11 August 2010, 628 SCRA 266.

[11] *Republic v. Orbecido III*, 509 Phil. 108 (2005).

[12] *Rollo*, pp. 52 and 31.



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