

FIRST DIVISION

[G.R. NO. 159210, September 20, 2006]

**MOCARAL MACAWIAG, PETITIONER, VS. JUDGE RASAD
BALINDONG AND SORAIDA A. MACAWIAG, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for *certiorari* under Rule 65 of the Revised Rules of Court for the nullification of the Decision^[1] of the Shari'a District Court, Fourth Shari'a Judicial District, Marawi City and its Order^[2] denying the motion for reconsideration of the said decision. The assailed decision reversed the Decision^[3] of the Fourth Shari'a Circuit Court, Fourth Shari'a Judicial District, Iligan City, declaring that the house and lot with an area of 300 square meters located at Mahayahay, Iligan City is not a part of the fixed dower given to Soraida Macawiag, herein private respondent, and directing her to pay attorney's fees in the amount of P40,000.00.

The factual and procedural antecedents are as follows:

Private respondent Soraida Macawiag and Pangampong Macawiag contracted marriage on May 27, 1987, solemnized by Imam Macmod Ganzo. Private respondent claims that before the celebration of their marriage, the representatives of the bride and bridegroom agreed and the solemnizing officer announced, that the customary dower (*mahr*)^[4] was P20,000.00 in cash, one head of live carabao, and house and lot consisting of 300 square meters located at Mahayahay, Iligan City, covered by Transfer Certificate of Title (TCT) No. T-28, 147(a.f.). However, despite the oral and written declaration that the subject house and lot was a *mahr*, Mocaral M. Macawiag, herein petitioner, and her children, refused to recognize it as such, without valid and lawful ground.

Hence, on October 27, 1998, private respondent filed an action (*da'wa*)^[5] against Mocaral M. Macawiag and her children, for claim, declaration, change of name, and issuance of new duplicate certificate of title of *mahr* with damages and attorney's fees, before the Fourth Shari'a Circuit Court, Fourth Shari'a Judicial District, Iligan City. Private respondent prayed that:

1. The said house and lot is Mahr property and absolutely owned by and both possession and name be transferred to the Moddai (plaintiff) and her children;
2. The name appeared (sic) in the certificate of title of said house and lot be changed from Sarimanoc Macawiag to the Moddai's name and her children;
3. The Register of Deeds of Iligan City be ordered to issue duplicate

certificate of title while still in the name of Sarimanoc Macawiag, and new Transfer Certificate of Title in the name of the new owner, the Moddai and her children;

4. That the Moddaalai (defendant) shall be ordered to pay moral damages of P5,000.00, exemplary damages of P5,000.00, attorney's fee of P20,000.00, plus P500.00 per appearances (sic) in the court in the total amount of at least P30,500.00 and compensatory damages as maybe (sic) proved in the course of the trial plus cost;

And such other reliefs and remedies as are just and equitable on the premises.^[6]

Prior to the filing of the *da'wa*, Pangampong Macawiag executed an affidavit of loss of the title covering the subject house and lot. The Register of Deeds of Iligan City thereafter issued a new duplicate certificate of title.

In their Answer,^[7] petitioner and her children admitted the fact of marriage between private respondent and Pangampong Macawiag. However, they denied that the *mahr* consists of P20,000.00 cash, one head of live carabao and the house and lot subject matter of the present controversy. They alleged instead that the dowry in consideration of their marriage was cash in the amount of P5,000.00. They, likewise, averred that the title to the house and lot had not been lost; rather, it was in the possession of Antonio Camama, having been used as collateral for a loan of P500,000.00. Moreover, out of the P500,000.00 loan, P400,000.00 was given to Pangampong Macawiag which he used to buy a vehicle and merchandise and subject to the condition that the amortization would be paid. Since Pangampong Macawiag failed to pay, petitioner took possession of the vehicle.

During the hearing before the Shari'a Circuit Court, private respondent presented the following witnesses: Imam Mahmod Ganzo, who testified that before he solemnized the marriage, he asked the representatives of the parties if the *mahr* had been agreed upon, and the mother of the bride and the bridegroom said that per agreement, the *mahr* consists of the P20,000.00 cash, the head of a live carabao, and the subject house and lot;^[8] Pangampong Macawiag, who confirmed the above testimony and further testified that his marriage to private respondent was duly registered with the Office of the Shari'a Circuit Court Registrar which also specified the amount of *mahr* under Registry No. 98-137, and that his father Sarimanoc Macawiag specified in writing that the house and lot had been set aside as his *mahr*;^[9] Diora Dimacaling, the mother of the private respondent who witnessed the celebration of the marriage between Pangampong Macawiag and private respondent, and corroborated the testimonies of the two witnesses;^[10] and private respondent herself who likewise confirmed the testimonies of the first three witnesses. ^[11]

When she testified, petitioner denied that it was announced during the celebration of the marriage that the *mahr* included the subject house and lot, and that it was mortgaged to Antonio Camama who now possessed the title to the property.^[12] Antonio Camama testified that the subject house and lot was mortgaged to him, subject to the condition that if Sarimanoc Macawiag and petitioner could not comply with the agreement, the mortgage would be considered as a sale. In view of the

non-fulfillment of the agreement, a Deed of Absolute Sale was executed by Sarimanoc Macawiag in his (Antonio's) favor. He stated that Pangampong Macawiag knew of such transaction, and that the transfer certificate of title covering the subject house and lot was in his possession.^[13] Tocod Macawiag, Papiel Macawiag, Disimban Didato, and Tadmera Gandamato testified that there was no house and lot mentioned as part of the dowry.^[14]

On April 13, 2000, the Fourth Shari'a Circuit Court rendered a decision^[15] in favor of petitioner and her children. The *fallo* of the decision reads:

WHEREFORE, the house and lot with an area of 300 square meters located at Mahayahay, Iligan City, registered in the name of the deceased Sarimanoc Macawiag under Transfer Certificate of Title TCT No. T-28, 147 (a.f.) is not a part of the fixed dower (mahr musama) given to Soraida A. Macawiag, herein plaintiff, in connection with her marriage to Pangampong Macawiag.

Plaintiff is hereby directed to pay defendants P40,000.00 in attorney's fees and the cost of this proceedings.

SO ORDERED.^[16]

In finding that the subject house and lot was not part of private respondent's *mahr*, the Circuit Court ruled that, in the first place, she never acted as owner of the house and lot allegedly given to her as dowry. Even if there was a fixed dowry, it never included the house and lot under litigation, which happens to be registered under the name of Sarimanoc Macawiag. Moreover, the Circuit Court observed that private respondent's claim that the subject house and lot was part of her fixed dowry had not been annotated on the title to the property despite the lapse of considerable length of time.^[17]

Aggrieved, private respondent appealed to the Shari'a District Court, which, on March 14, 2003, reversed the decision of the Fourth Shari'a Circuit Court. The *fallo* reads:

WHEREFORE, the assailed judgment is REVERSED and another one entered:

(1) DECLARING plaintiff Soraida Abbas Macawiag the exclusive owner of the house and lot, situated at Bo. Mahayahay, Iligan City, with an area of 300 square meters, more or less covered by TCT No. T-28,147 (a.f.) which is still in the name of the late Sarimanoc Macawiag, being her mahr;

(2) ORDERING defendants jointly and severally to pay plaintiff (1) P25,000.00 as attorney's fees; P10,000.00 as litigation expenses; and the costs of suit.

SO ORDERED.^[18]

The Shari'a District Court ruled that one of the essential requisites of a marriage contract is the stipulation of customary dower (*mahr*) duly witnessed by two

competent persons. It is both an inalienable and imprescriptible right which the wife can demand from her husband. It is inalienable in the sense that even if not expressly stated in the contract of marriage, is nevertheless due to the wife and is not lost through prescription.^[19] It further held that the positive testimonies of the witnesses for private respondent should prevail over the negative testimonies of petitioner and her children. The court gave credence to the testimony of the Imam, belonging as he does to the group of the learned (the *ulama*). Lastly, the district court found that even if the property was used as collateral for a loan by the late Sarimanoc Macawiag, private respondent can still recover the same since the transaction involving her property is null and void (insofar as the private respondent is concerned).^[20]

Petitioner now comes before this Court in this special civil action for *certiorari*, on the sole ground of whether

JUDGE BALINDONG ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR EXCESS IN THE EXERCISE THEREOF WHEN HE REVERSED THE DECISION OF THE SHARI'A CIRCUIT COURT AND DENIED THE MOTION FOR RECONSIDERATION.^[21]

Petitioner insists that the ruling of the Court in *People v. Bundang*^[22] is not applicable in this case, since as against the positive declaration of the prosecution witnesses and the statements of the accused, the former ordinarily deserves more credence than the latter. In such case, mere preponderance of evidence will suffice.^[23]

Petitioner alleges that the Shari'a Circuit Court already weighed the testimonial and documentary evidence, and found preponderance of evidence in favor of petitioner; as such, this ruling should have been respected and upheld by the Shari'a District Court. Petitioner questions the credibility of the testimonies of Pangamong Macawiag and private respondent, as their testimonies are false.^[24] Petitioner likewise questions the authenticity of the Deed of Donation signed by Sarimanoc Macawiag involving the subject house and lot^[25] and the two (2) sets of Certificates of Marriage and Municipal Forms (Nos. 97-31 and 98-131) registered with the Civil Registrar. Petitioner, likewise, questions the findings of the Shari'a District Court on the credibility of Imam Ganzo.^[26]

In her Comment,^[27] private respondent contends that the petition was filed out of time; it, likewise, violates the principle of hierarchy of courts since it should have been filed before the CA.^[28] Moreover, private respondent points out that petitioner is not assailing the very jurisdiction of the Shari'a District Court, but only its findings of facts; this is a ground for an appeal and not a petition for *certiorari*.^[29] Lastly, private respondent claims that petitioner is trying to mislead the Court by including in her petition annexes/documents which were not appreciated and passed upon by the Shari'a Circuit Court.^[30]

Petitioner counters that the petition was timely filed because she received the order denying her motion for reconsideration on May 29, 2003; thus, she had sixty (60) days therefrom or until July 29, 2003. Before the period expired, she filed a motion for extension of fifteen (15) days or until August 13, 2003 within which to file the

petition. Having filed the petition on August 12, 2003, it is within the requested period of extension, and thus filed on time. Petitioner, likewise, claims that the rule on hierarchy of courts was not violated, in view of the rule on finality of decision set forth in P.D. No. 1083.^[31] As to the questioned documents presented before this Court, petitioner admits that they were not presented during the hearing before the Shari'a Circuit Court.^[32]

The parties submitted their respective Memoranda where they reiterated their earlier arguments.

The petition is dismissed.

The decision sought to be reviewed was rendered by the Shari'a District Court which is thus governed primarily by special laws. Republic Act (Rep. Act) No. 6734, "An Act Providing for the Organic Act For the Autonomous Region in Muslim Mindanao," as amended by Rep. Act No. 9054 or the "New Organic Law for the Autonomous Region in Muslim Mindanao," provides:

The Shari'a Appellate Court shall:

x x x x

b) Exercise exclusive appellate jurisdiction over all cases tried in the Shari'a District Courts as established by law.^[33]

While the Supreme Court *en banc* authorized the creation of the Shari'a Appellate Court, it has not yet been organized; in any case, it should begin with the appointments of the Presiding Justice and two Associate Justices. Consequently, aggrieved parties can come up only to this Court in view of the rule set forth in Article 145 of Presidential Decree No. 1083, viz:

Article 145. Finality of decisions. - The decisions of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.

The original and appellate jurisdiction of the Supreme Court as provided in the Constitution is not altered. Specifically, this refers to the original jurisdiction of the Supreme Court over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.^[34] It likewise refers to the power of the Supreme Court to review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in all cases in which the jurisdiction of any lower court is in issue^[35] and all cases in which only an error or question of law is involved.^[36]

In fine, the decisions of the Shari'a District Courts may reach the Supreme Court by way of special civil action under Rule 65 of the Rules of Court if there is a question of jurisdiction, or petition for review on *certiorari* as a mode of appeal under Rule 45.

From the circumstances surrounding the present case, as well as the allegations set forth in the petition, the remedy available to petitioner is a petition for review on