831 Phil. 245

THIRD DIVISION

[G.R. No. 230751, April 25, 2018]

ESTRELLITA TADEO-MATIAS, PETITIONER, V. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

This is an appeal[1] assailing the Decision[2] dated November 28, 2016 and Resolution[3] dated March 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 129467.

The facts are as follows:

On April 10, 2012, petitioner Estrellita Tadeo-Matias filed before the Regional Trial Court (RTC) of Tarlac City a petition for the declaration of presumptive death of her husband, Wilfredo N. Matias (Wilfredo).[4] The allegations of the petition read:

1. [Petitioner] is of legal age, married to [Wilfredo], Filipino and curr[e]ntly a resident of 106 Molave street, Zone B, San Miguel, Tarlac City;
2. [Wilfredo] is of legal age, a member of the Philippine Constabulary and was assigned in Arayat, Pampanga since August 24, 1967[;]
3. The [petitioner and [Wilfredo] entered into a lawful marriage on January 7, 1968 in Imbo, Anda, Pangasinan x x x;
4. After the solemnization of their marriage vows, the couple put up their conjugal home at 106 Molave street, Zone B, San Miguel, Tarlac City;
5. [Wilfredo] continued to serve the Philippines and on September 15, 1979, he set out from their conjugal home to again serve as a member of the Philippine Constabulary;
6. [Wilfredo] never came back from his tour of duty in Arayat, Pampanga since 1979 and he never made contact or communicated with the [p]etitioner nor to his relatives;
7. That according to the service record of [Wilfredo] issued by the National Police Commission, [Wilfredo] was already declared missing since 1979 x x x;
8. Petitioner constantly pestered the then Philippine Constabulary for any news regarding [her] beloved husband [Wilfredo], but the Philippine Constabulary had no answer to his whereabouts, [neither] did they have any news of him going AWOL, all they know was he was assigned to a place frequented by the New People's Army;
9. [W]eeks became years and years became decades, but the [p]etitioner never gave up hope, and after more than three (3) decades of waiting, the [petitioner is still hopeful, but the times had been tough on her, specially with a meager source of income coupled with her age, it is now necessary for her to request for the benefits that rightfully belong to her in order to survive;
10. [T]hat one of the requirements to attain the claim of benefits is for a proof of death or at least a declaration of presumptive death by the Honorable Court;

11. That this petition is being filed not for any other purpose but solely to claim for the benefit under P.D. No. 1638 as amended.

The petition was docketed as Spec. Proc. No. 4850 and was raffled to Branch 65 of the Tarlac City RTC. A copy of the petition was then furnished to the Office of the Solicitor General (OSG).

Subsequently, the OSG filed its notice of appearance on behalf of herein respondent Republic of the Philippines (Republic).[5]

On January 15, 2012, the RTC issued a Decision[6] in Spec. Proc. No. 4850 granting the petition. The dispositive portion of the Decision reads:[7]

> WHEREFORE, in view of the foregoing, the Court hereby declared (*sic*) WILFREDO N. MATIAS absent or presumptively dead **under Article 41 of the Family Code of the Philippines** for purposes of claiming financial benefits due to him as former military officer.
>
> x x x x
>
> SO ORDERED. (Emphasis supplied)

The Republic questioned the decision of the RTC *via* a petition for *certiorari*.[8]

On November 28, 2012, the CA rendered a decision granting the *certiorari* petition of the Republic and setting aside the decision of the RTC. It accordingly disposed:

> WFIEREFORE, premises considered, the petition for certiorari is GRANTED. The Decision dated January 15, 2012 of the Regional Trial Court, branch 65, Tarlac City, in Special Proceeding no. 4850 is ANNULLED and SET ASIDE, and the petition is DISMISSED.

The CA premised its decision on the following ratiocinations:

1. The RTC erred when it declared Wilfredo presumptively dead on the basis of Article 41 of the Family Code (FC). Article 41 of the FC does not apply to the instant petition as it was clear that petitioner does not seek to remarry. If anything, the petition was invoking the presumption of death established under Articles 390 and 391 of the Civil Code, and not that provided for under Article 41 of the FC.

2. Be that as it may, the petition to declare Wilfredo presumptively dead should have been dismissed by the RTC. The RTC is without authority to take cognizance of a petition whose sole purpose is to have a person declared presumptively dead under either Article 390 or Article 391 of the Civil Code. As been held by jurisprudence, Articles 390 and 391 of the Civil Code merely express rules of evidence that allow a court or a tribunal to presume that a person is dead—which presumption may be invoked in any action or proceeding, but itself cannot be the subject of an independent action or proceeding.

Petitioner moved for reconsideration, but the CA remained steadfast. Hence, this appeal.

Our Ruling

We deny the appeal.

I

The CA was correct. The petition for the declaration of presumptive death filed by the petitioner is not an authorized suit and should have been dismissed by the RTC. The RTC's decision must, therefore, be set aside.

RTC Erred in Declaring the Presumptive Death of Wilfredo under Article 41 of the FC; Petitioner's Petition for the Declaration of Presumptive Death Is Not Based on Article 41 of the FC, but on the Civil Code

A conspicuous error in the decision of the RTC must first be addressed.

It can be recalled that the RTC, in the *fallo* of its January 15, 2012 Decision, granted the petitioner's petition by declaring Wilfredo presumptively dead "*under Article 41 of the FC.*" By doing so, the RTC gave the impression that the petition for the declaration of presumptive death filed by petitioner was likewise filed pursuant to Article 41 of the FC.[9] This is wrong.

The petition for the declaration of presumptive death filed by petitioner is not an action that would have warranted the application of Article 41 of the FC because petitioner was not seeking to remarry. A reading of Article 41 of the FC shows that the presumption of death established therein is only applicable for the purpose of *contracting a valid subsequent marriage* under the said law. Thus:

> **Art. 41.** A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.
>
> For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

Here, petitioner was forthright that she was not seeking the declaration of the presumptive death of Wilfredo as a prerequisite for remarriage. In her petition for the declaration of presumptive death, petitioner categorically stated that the same was filed "*not for any other purpose but solely to claim for the benefit under P.D. No. 1638 as amended*."[10]

Given that her petition for the declaration of presumptive death was *not* filed for the purpose of remarriage, **petitioner was clearly relying on the presumption of death under either Article 390 or Article 391 of the Civil Code**[11] **as the**

basis of her petition. Articles 390 and 391 of the Civil Code express the general rule regarding presumptions of death for any civil purpose, to wit:

> **Art. 390.** After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.
>
> The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.
>
> **Art. 391.** The following shall be presumed dead for all purposes, including the division of the estate among the heirs:
>
> (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;
>
> (2) A person in the armed forces who has taken part in war, and has been missing for four years;
>
> (3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

Verily, the RTC's use of Article 41 of the FC as its basis in declaring the presumptive death of Wilfredo was misleading and grossly improper. **The petition for the declaration of presumptive death filed by petitioner was based on the Civil Code, and not on Article 41 of the FC.**

Petitioner's Petition for Declaration of Presumptive Death Ought to Have Been Dismissed; A Petition Whose Sole Objective is to Declare a Person Presumptively Dead Under the Civil Code, Like that Filed by the Petitioner Before the RTC, Is Not a Viable Suit in Our Jurisdiction

The true fault in the RTC's decision, however, goes beyond its misleading *fallo*. The decision *itself* is objectionable.

Since the petition filed by the petitioner merely seeks the declaration of presumptive death of Wilfredo under the Civil Code, the RTC should have dismissed such petition outright. This is because, in our jurisdiction, a petition whose *sole objective* is to have a person declared presumptively dead under the Civil Code is *not* regarded as a valid suit and no court has any authority to take cognizance of the same.

The above norm had its conceptual roots in the 1948 case of *In re: Petition for the Presumption of Death of Nicolai Szatraw*.[12] In the said case, we held that a rule creating a presumption of death[13] is merely one of evidence that—while may be invoked in any action or proceeding—cannot be the lone subject of an independent action or proceeding. *Szatraw* explained:

> The rule invoked by the latter is merely one of evidence which permits the court to presume that a person is dead after the fact that such person had been unheard from in seven years had been established. This presumption may arise and be invoked and made in a case, either in an action or in a special proceeding, which is tried or heard by, and submitted for decision to, a competent court. **Independently of such an action or special proceeding, the presumption of death cannot be invoked, nor can it be made the subject of an action or special proceeding. In this case, there is no right to be enforced nor is there a remedy prayed for by the petitioner against her absent husband.** Neither is there a prayer for the final determination of his right or status or for the ascertainment of a particular fact, for the petition does not pray for a declaration that the petitioner's husband is dead, but merely asks for a declaration that he be presumed dead because he had been unheard from in seven years. If there is any pretense at securing a declaration that the petitioner's husband is dead, such a pretension cannot be granted because it is unauthorized. **The petition is for a declaration that the petitioner's husband is presumptively dead. But this declaration, even if judicially made, would not improve the petitioner's situation, because such a presumption is already established by law. A judicial pronouncement to that effect, even if final and executory, would still be a *prima facie* presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or matter involved in a case, or upon which a competent court has to pass.** The latter must decide finally the controversy between the parties, or determine finally the right or status of a party or establish finally a particular fact, out of which certain rights and obligations arise or may arise; and once such controversy is decided by a final judgement, or such right or status determined, or such particular fact established, by a final decree, then the judgement on the subject of the controversy, or the decree upon the right or status of a party or upon the existence of a particular fact, becomes res judicata, subject to no collateral attack, except in a few rare instances especially provided by law. It is, therefore, clear that a judicial declaration that a person is presumptively dead, because he had been unheard from in seven years, being a presumption juris tantum only, subject to contrary proof, cannot reach the stage of finality or become final. (Citations omitted and emphasis supplied)

The above ruling in *Szatraw* has since been used by the subsequent cases of *Lukban v. Republic*[14] and *Gue v. Republic*[15] in disallowing petitions for the declaration of presumptive death based on Article 390 of the Civil Code (and, implicitly, also those based on Article 391 of the Civil Code).

Dissecting the rulings of *Szatraw*, *Gue* and *Lukban* collectively, we are able to ascertain the considerations why a petition for declaration of presumptive death based on the Civil Code was disallowed in our jurisdiction, viz:[16]

1. Articles 390 and 391 of the Civil Code merely express rules of evidence that only allow a court or a. tribunal to presume that a person is dead upon the