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[G.R. No. 221029, April 24, 2018]

REPUBLIC OF THE PHILIPPINES, PETITIONER, V. MARELYN TANEDO MANALO, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse and set aside the September 18, 2014 Decision[1] and October 12, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 100076. The dispositive portion of the Decision states:

> **WHEREFORE**, the instant appeal is **GRANTED**. The *Decision* dated 15 October 2012 of the Regional Trial Court of Dagupan City, First Judicial Region, Branch 43, in SPEC. PROC. NO. 2012-0005 is **REVERSED** and **SET ASIDE**.
>
> Let a copy of this *Decision* be served on the Local Civil Registrar of San Juan, Metro Manila.
>
> **SO ORDERED.**[3]

The facts are undisputed.

On January 10, 2012, respondent Marelyn Tanedo Manalo (*Manalo*) filed a petition for cancellation of entry of marriage in the Civil Registry of San Juan, Metro Manila, by virtue of a judgment of divorce rendered by a Japanese court.

Finding the petition to be sufficient in form and in substance, Branch 43 of the Regional Trial Court (*RTC*) of Dagupan City set the case for initial hearing on April 25, 2012. The petition and the notice of initial hearing were published once a week for three consecutive weeks in a newspaper of general circulation. During the initial hearing, counsel for Manalo marked the documentary evidence (consisting of the trial court's Order dated January 25, 2012, affidavit of publication, and issues of the Northern Journal dated February 21-27, 2012, February 28 - March 5, 2012, and March 6-12, 2012) for purposes of compliance with the jurisdictional requirements.

The Office of the Solicitor General (*OSG*) entered its appearance for petitioner Republic of the Philippines authorizing the Office of the City Prosecutor of Dagupan to appear on its behalf. Likewise, a Manifestation and Motion was filed questioning the title and/or caption of the petition considering that, based on the allegations therein, the proper action should be a petition for recognition and enforcement of a foreign judgment.

As a result, Manalo moved to admit an Amended Petition, which the court granted. The Amended Petition, which captioned that it is also a petition for recognition and

enforcement of foreign judgment, alleged:

> 2. That petitioner is previously married in the Philippines to a Japanese national named YOSHINO MINORO as shown by their Marriage Contract x x x;
>
> 3. That recently, a case for divorce was filed by herein [petitioner] in Japan and after due proceedings, a divorce decree dated December 6, 2011 was rendered by the Japanese Court x x x;
>
> 4. That at present, by virtue of the said divorce decree, petitioner and her divorced Japanese husband are no longer living together and in fact, petitioner and her daughter are living separately from said Japanese former husband;
>
> 5. That there is an imperative need to have the entry of marriage in the Civil Registry of San Juan, Metro Manila cancelled, where the petitioner and the former Japanese husband's marriage was previously registered, in order that it would not appear anymore that petitioner is still married to the said Japanese national who is no longer her husband or is no longer married to her; furthermore, in the event that petitioner decides to be remarried, she shall not be bothered and disturbed by said entry of marriage;
>
> 6. That this petition is filed principally for the purpose of causing the cancellation of entry of the marriage between the petitioner and the said Japanese national, pursuant to Rule 108 of the Revised Rules of Court, which marriage was already dissolved by virtue of the aforesaid divorce decree; [and]
>
> 7. That petitioner prays, among others, that together with the cancellation of the said entry of her marriage, that she be allowed to return and use. her maiden surname, MANALO.[4]

Manalo was allowed to testify in advance as she was scheduled to leave for Japan for her employment. Among the documents that were offered and admitted were:

> 1. Court Order dated January 25, 2012, finding the petition and its attachments to be sufficient in form and in substance;
>
> 2. Affidavit of Publication;
>
> 3. Issues of the Northern Journal dated February 21-27, 2012, February 28 - March 5, 2012, and March 6-12, 2012;
>
> 4. Certificate of Marriage between Manalo and her former Japanese husband;
>
> 5. Divorce Decree of the Japanese court;
>
> 6. Authentication/Certificate issued by the Philippine Consulate General in Osaka, Japan of the Notification of Divorce; and
>
> 7. Acceptance of Certificate of Divorce.[5]

The OSG did not present any controverting evidence to rebut the allegations of Manalo.

On October 15, 2012, the trial court denied the petition for lack of merit. In ruling that the divorce obtained by Manalo in Japan should not be recognized, it opined that, based on Article 15 of the New Civil Code, the Philippine law "does not afford Filipinos the right to file for a divorce, whether they are in the country or living abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country" and that unless Filipinos "are naturalized as citizens of another country, Philippine laws shall have control over issues related to Filipinos' family rights and duties, together with the determination of their condition and legal capacity to enter into contracts and civil relations, including marriages."[6]

On appeal, the CA overturned the RTC decision. It held that Article 26 of the Family Code of the Philippines (*Family Code*) is applicable even if it was Manalo who filed for divorce against her Japanese husband because the decree they obtained makes the latter no longer married to the former, capacitating him to remarry. Conformably with *Navarro, et al. v. Exec. Secretary Ermita, et al*.[7] ruling that the meaning of the law should be based on the intent of the lawmakers and in view of the legislative intent behind Article 26, it would be the height of injustice to consider Manalo as still married to the Japanese national, who, in turn, is no longer married to her. For the appellate court, the fact that it was Manalo who filed the divorce case is inconsequential. Cited as similar to this case was *Van Dorn v. Judge Romillo, Jr.*[8] where the marriage between a foreigner and a Filipino was dissolved through a divorce filed abroad by the latter.

The OSG filed a motion for reconsideration, but it was denied; hence, this petition.

We deny the petition and partially affirm the CA decision.

Divorce, the legal dissolution of a lawful union for a cause arising after marriage, are of two types: (1) absolute divorce or *a vinculo matrimonii*, which terminates the marriage, and (2) limited divorce or *a mensa et thoro*, which suspends it and leaves the bond in full force.[9] In this jurisdiction, the following rules exist:

> 1. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it.[10]
>
> 2. Consistent with Articles 15[11] and 17[12] of the New Civil Code, the marital bond between two Filipinos cannot be dissolved even by an absolute divorce obtained abroad.[13]
>
> 3. An absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.[14]
>
> 4. In mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry.[15]

On July 6, 1987, then President Corazon C. Aquino signed into law Executive Order (E.O.) No. 209, otherwise known as *The Family Code of the Philippines*, which took effect on August 3, 1988.[16] Shortly thereafter, E.O. No. 227 was issued on July 17, 1987.[17] Aside from amending Articles 36 and 39 of the Family Code, a second paragraph was added to Article 26.[18] This provision was originally deleted by the *Civil Code Revision Committee (Committee)*, but it was presented and approved at a Cabinet meeting after Pres. Aquino signed E.O. No. 209.[19] As modified, Article 26 now states:

> Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.
>
> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Paragraph 2 of Article 26 confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage.[20] It authorizes our courts to adopt the effects of a foreign divorce decree precisely because the Philippines does not allow divorce.[21] Philippine courts cannot try the case on the merits because it is tantamount to trying a divorce case.[22] Under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality, but the legal effects thereof, *e.g.*, on custody, care and support of the children or property relations of the spouses, must still be determined by our courts.[23]

According to Judge Alicia Sempio-Diy, a member of the *Committee*, the idea of the amendment is to avoid the absurd situation of a Filipino as still being married to his or her alien spouse, although the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law.[24] The aim was that it would solve the problem of many Filipino women who, under the New Civil Code, are still considered married to their alien husbands even after the latter have already validly divorced them under their (the husbands') national laws and perhaps have already married again.[25]

In 2005, this Court concluded that Paragraph 2 of Article 26 applies to a case where, at the time of the celebration of the marriage, the parties were Filipino citizens, but later on, one of them acquired foreign citizenship by naturalization, initiated a divorce proceeding, and obtained a favorable decree. We held in *Republic of the Phils. v. Orbecido III*:[26]

> The jurisprudential answer lies latent in the 1998 case of *Quita v. Court of Appeals*. In *Quita*, the parties were, as in this case, Filipino citizens when they got married. The wife became a naturalized American citizen in 1954 and obtained a divorce in the same year. The Court therein hinted, by way of *obiter dictum*, that a Filipino divorced by his naturalized

foreign spouse is no longer married under Philippine law and can thus remarry.

Thus, taking into consideration the legislative intent and applying the rule of reason, we hold that Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. x x x

If we are to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26.

In view of the foregoing, we state the twin elements for the application of Paragraph 2 of Article 26 as follows:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and

2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.[27]

Now, the Court is tasked to resolve whether, under the same provision, a Filipino citizen has the capacity to remarry under Philippine law after initiating a divorce proceeding abroad and obtaining a favorable judgment against his or her alien spouse who is capacitated to remarry. Specifically, Manalo pleads for the recognition and enforcement of the divorce decree rendered by the Japanese court and for the cancellation of the entry of marriage in the local civil registry "in order that it would not appear anymore that [she] is still married to the said Japanese national who is no longer her husband or is no longer married to her; [and], in the event that [she] decides to be remarried, she shall not be bothered and disturbed by said entry of marriage," and to return and to use her maiden surname.

We rule in the affirmative.

Both *Dacasin v. Dacasin*[28] and *Van Dorn*[29] already recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, respectively.

In *Dacasin*, post-divorce, the former spouses executed an Agreement for the joint custody of their minor daughter. Later on, the husband, who is a US citizen, sued his Filipino wife to enforce the Agreement, alleging that it was only, the latter who exercised sole custody of their child. The trial court dismissed the action for lack of jurisdiction, on the ground, among others, that the divorce decree is binding