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THIRD DIVISION

[G.R. No. 199515, June 25, 2018]

RHODORA ILUMIN RACHO, A.K.A. "RHODORA RACHO TANAKA," PETITIONER, VS. SEIICHI TANAKA, LOCAL CIVIL REGISTRAR OF LAS PIÑAS CITY, AND THE ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE NATIONAL STATISTICS OFFICE, RESPONDENTS.

DECISION

LEONEN, J.:

Judicial recognition of a foreign divorce requires that the national law of the foreign spouse and the divorce decree be pleaded and proved as a fact before the Regional Trial Court. The Filipino spouse may be granted the capacity to remarry once our courts find that the foreign divorce was validly obtained by the foreign spouse according to his or her national law, and that the foreign spouse's national law considers the dissolution of the marital relationship to be absolute.

This is a Petition for Review on Certiorari[1] assailing the June 2, 2011 Decision[2] and October 3, 2011 Order[3] of Branch 254, Regional Trial Court, Las Piñas City, which denied Rhodora Ilumin Racho's (Racho) Petition for Judicial Determination and Declaration of Capacity to Marry.[4] The denial was on the ground that a Certificate of Divorce issued by the Japanese Embassy was insufficient to prove the existence of a divorce decree.

Racho and Seiichi Tanaka (Tanaka) were married on April 20, 2001 in Las Piñas City, Metro Manila. They lived together for nine (9) years in Saitama Prefecture, Japan and did not have any children.[5]

Racho alleged that on December 16, 2009, Tanaka filed for divorce and the divorce was granted. She secured a Divorce Certificate[6] issued by Consul Kenichiro Takayama (Consul Takayama) of the Japanese Consulate in the Philippines and had it authenticated[7] by an authentication officer of the Department of Foreign Affairs.[8]

She filed the Divorce Certificate with the Philippine Consulate General in Tokyo, Japan, where she was informed that by reason of certain administrative changes, she was required to return to the Philippines to report the documents for registration and to file the appropriate case for judicial recognition of divorce.[9]

She tried to have the Divorce Certificate registered with the Civil Registry of Manila but was refused by the City Registrar since there was no court order recognizing it. When she went to the Department of Foreign Affairs to renew her passport, she was likewise told that she needed the proper court order. She was also informed by the

National Statistics Office that her divorce could only be annotated in the Certificate of Marriage if there was a court order capacitating her to remarry.[10]

She went to the Japanese Embassy, as advised by her lawyer, and secured a Japanese Law English Version of the Civil Code of Japan, 2000 Edition.[11]

On May 19, 2010, she filed a Petition for Judicial Determination and Declaration of Capacity to Marry[12] with the Regional Trial Court, Las Piñas City.

On June 2, 2011, Branch 254, Regional Trial Court, Las Piñas City rendered a Decision,[13] finding that Racho failed to prove that Tanaka legally obtained a divorce. It stated that while she was able to prove Tanaka's national law, the Divorce Certificate was not competent evidence since it was not the divorce decree itself.[14]

Racho filed a Motion for Reconsideration,[15] arguing that under Japanese law, a divorce by agreement becomes effective by oral notification, or by a document signed by both parties and by two (2) or more witnesses.[16]

In an Order[17] dated October 3, 2011, the Regional Trial Court denied the Motion, finding that Racho failed to present the notification of divorce and its acceptance.[18]

On December 19, 2011, Racho filed a Petition for Review on Certiorari[19] with this Court. In its January 18, 2012 Resolution, this Court deferred action on her Petition pending her submission of a duly authenticated acceptance certificate of the notification of divorce.[20]

Petitioner initially submitted a Manifestation,[21] stating that a duly-authenticated acceptance certificate was not among the documents presented at the Regional Trial Court because of its unavailability to petitioner during trial. She also pointed out that the Divorce Certificate issued by ,the Consulate General of the Japanese Embassy was sufficient proof of the fact of divorce.[22] She also manifested that Tanaka had secured a marriage license on the basis of the same Divorce Certificate and had already remarried another Filipino. Nevertheless, she has endeavored to secure the document as directed by this Court.[23]

On March 16, 2012, petitioner submitted her Compliance,[24] attaching a duly authenticated Certificate of Acceptance of the Report of Divorce that she obtained in Japan.[25] The Office of the Solicitor General thereafter submitted its Comment[26] on the Petition, to which petitioner submitted her Reply.[27]

Petitioner argues that under the Civil Code of Japan, a divorce by agreement becomes effective upon notification, whether oral or written, by both parties and by two (2) or more witnesses. She contends that the Divorce Certificate stating "Acceptance Certification of Notification of Divorce issued by the Mayor of Fukaya City, Saitama Pref., Japan on December 16, 2009" is sufficient to prove that she and her husband have divorced by agreement and have already effected notification of the divorce.[28]

She avers further that under Japanese law, the manner of proving a divorce by agreement is by record of its notification and by the fact of its acceptance, both of which were stated in the Divorce Certificate. She maintains that the Divorce Certificate is signed by Consul Takayama, whom the Department of Foreign Affairs certified as duly appointed and qualified to sign the document. She also states that the Divorce Certificate has already been filed and recorded with the Civil Registry Office of Manila.[29]

She insists that she is now legally capacitated to marry since Article 728 of the Civil Code of Japan states that a matrimonial relationship is terminated by divorce.[30]

On the other hand, the Office of the Solicitor General posits that the Certificate of Divorce has no probative value since it was not properly authenticated under Rule 132, Section 24[31] of the Rules of Court. However, it states that it has no objection to the admission of the Certificate of Acceptance of the Report of Divorce submitted by petitioner in compliance with this Court's January 18, 2012 Resolution.[32]

It likewise points out that petitioner never mentioned that she and her husband obtained a divorce by agreement and only mentioned it in her motion for reconsideration before the Regional Trial Court. Thus, petitioner failed to prove that she is now capacitated to marry since her divorce was not obtained by the alien spouse. She also failed to point to a specific provision in the Civil Code of Japan that allows persons who obtained a divorce by agreement the capacity to remarry. In any case, a divorce by agreement is not the divorce contemplated in Article 26 of the Family Code.[33]

In rebuttal, petitioner insists that all her evidence, including the Divorce Certificate, was formally offered and held to be admissible as evidence by the Regional Trial Court.[34] She also argues that the Office of the Solicitor General should not have concluded that the law does not contemplate divorce by agreement or consensual divorce since a discriminatory situation will arise if this type of divorce is not recognized.[35]

The issue in this case, initially, was whether or not the Regional Trial Court erred in dismissing the Petition for Declaration of Capacity to Marry for insufficiency of evidence. After the submission of Comment, however, the issue has evolved to whether or not the Certificate of Acceptance of the Report of Divorce is sufficient to prove the fact that a divorce between petitioner Rhodora Ilumin Racho and respondent Seiichi Tanaka was validly obtained by the latter according to his national law.

I

Under Article 26 of the Family Code, a divorce between a foreigner and a Filipino may be recognized in the Philippines as long as it was validly obtained according to the foreign spouse's national law, thus:

> Article 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 have capacity to remarry under Philippine law.*[36] (Emphasis supplied)

The second paragraph was included to avoid an absurd situation where a Filipino spouse remains married to the foreign spouse even after a validly obtained divorce abroad.[37] The addition of the second paragraph gives the Filipino spouse a substantive right to have the marriage considered as dissolved, and ultimately, to grant him or her the capacity to remarry.[38]

Article 26 of the Family Code is applicable only in issues on the validity of remarriage. It cannot be the basis for any other liability, whether civil or criminal, that the Filipino spouse may incur due to remarriage.

Mere presentation of the divorce decree before a trial court is insufficient.[39] In *Garcia v. Recio*,[40] this Court established the principle that before a foreign divorce decree is recognized in this jurisdiction, a separate action must be instituted for that purpose. Courts do not take judicial notice of foreign laws and foreign judgments; thus, our laws require that the divorce decree and the national law of the foreign spouse must be pleaded and proved like any other fact before trial courts.[41] Hence, in *Corpuz v. Sto. Tomas*:[42]

> The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.[43]

II

Respondent's national law was duly admitted by the Regional Trial Court. Petitioner presented "a copy [of] the English Version of the Civil Code of Japan (Exh. "K") translated under the authorization of the Ministry of Justice and the Code of Translation Committee."[44] Article 728(1) of the Civil Code of Japan reads:

> Article 728. 1. The matrimonial relationship is terminated by divorce.[45]

To prove the *fact* of divorce, petitioner presented the Divorce Certificate issued by Consul Takayama of Japan on January 18, 2010, which stated in part:

> This is to certify that the above statement has been made on the basis of the Acceptance Certification of Notification of Divorce issued by the Mayor of Fukaya City, Saitama Pref., Japan on December 16, 2009.[46]

This Certificate only certified that the divorce decree, or the Acceptance Certification of Notification of Divorce, exists. It is not the divorce decree itself. The Regional Trial Court further clarified:

> [T]he Civil Law of Japan recognizes two (2) types of divorce, namely: (1) judicial divorce and (2) divorce by agreement.
>
> Under the same law, the divorce by agreement becomes effective by notification, orally or in a document signed by both parties and two or more witnesses of full age, in accordance with the provisions of Family Registration Law of Japan.[47]

Thus, while respondent's national law was duly admitted, petitioner failed to present sufficient evidence before the Regional Trial Court that a divorce was validly obtained according to the national law of her foreign spouse. The Regional Trial Court would not have erred in dismissing her Petition.

III

Upon appeal to this Court, however, petitioner submitted a Certificate of Acceptance of the Report of Divorce,[48] certifying that the divorce issued by Susumu Kojima, Mayor of Fukaya City, Saitama Prefecture, has been accepted on December 16, 2009. The seal on the document was authenticated by Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan.[49]

The probative value of the Certificate of Acceptance of the Report of Divorce is a question of fact that would not ordinarily be within this Court's ambit to resolve. Issues in a petition for review on certiorari under Rule 45 of the Rules of Court[50] are limited to questions of law.

In *Garcia* and *Corpuz*, this Court remanded the cases to the Regional Trial Courts for the reception of evidence and for further proceedings.[51] More recently in *Medina v. Koike*,[52] this Court remanded the case to the Court of Appeals to determine the national law of the foreign spouse:

> Well entrenched is the rule that this Court is not a trier of facts. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect and are in fact binding subject to certain exceptions. In this regard, it is settled that appeals taken from judgments or final orders rendered by RTC in the exercise of its original jurisdiction raising questions of fact or mixed questions of fact and law should be brought to the Court of Appeals (CA) in accordance with Rule 41 of the Rules of Court.
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> Nonetheless, despite the procedural restrictions on Rule 45 appeals as above-adverted, the Court may refer the case to the CA under paragraph 2, Section 6 of Rule 56 of the Rules of Court, which provides:
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> > SEC. 6. Disposition of improper appeal. - . . .
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> > An appeal by certiorari taken to the Supreme Court from the Regional Trial Court submitting issues of fact may be referred