

## SECOND DIVISION

[ G.R. No. 234808, November 19, 2018 ]

**CRESCENCIO[\*] ARRIETA, PETITIONER, V. MELANIA T. ARRIETA,  
RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated July 22, 2016 and the Resolution<sup>[3]</sup> dated June 1, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 04745-MIN, which annulled and set aside the Decision<sup>[4]</sup> dated October 7, 2004 of the Regional Trial Court of Davao City, Branch 8 (RTC) in Civil Case No. 28,382-01, declaring the marriage of petitioner Crescencio Arrieta (Cris) and respondent Melania T. Arrieta (Melania) void *ab initio* on the ground of psychological incapacity pursuant to Article 36<sup>[5]</sup> of the Family Code.

#### The Facts

Cris and Melania were married in a civil wedding ceremony sometime in August 1973, and later, in a church wedding ceremony on January 1, 1974. However, sometime in November 1991, Melania left for the United States of America (US) due to her alleged "irreconcilable differences" with Cris. In 1992, she obtained a divorce decree, and subsequently, married a certain Zenon Parnawski (Zen) in San Diego, California in 1993.<sup>[6]</sup>

On January 22, 2001, Cris filed a petition<sup>[7]</sup> for the declaration of nullity of his marriage with Melania on the ground of psychological incapacity before the RTC, docketed as Civil Case No. 28,382-01. Essentially, Cris claimed that Melania was psychologically incapacitated to comply with her marital obligations since she abandoned and refused to support her family.<sup>[8]</sup>

During the proceedings, Cris filed a Motion for Issuance of Summons by Publication<sup>[9]</sup> dated May 21, 2001, because Melania, who already resided abroad, could not be personally served with summons.<sup>[10]</sup> In an Order<sup>[11]</sup> dated January 21, 2002, the RTC granted the said motion, and thereby ordered the summons to be served upon Melania by publication in a newspaper of general circulation.<sup>[12]</sup> Accordingly, the summons and copy of the petition were published in the *San Pedro Express*.<sup>[13]</sup> Meanwhile, no answer was filed by Melania.<sup>[14]</sup>

#### The RTC Ruling

In a Decision<sup>[15]</sup> dated October 7, 2004, the RTC granted the petition for declaration of nullity of marriage, declaring void *ab initio* the marriage of Cris and Melania on

the ground of the latter's psychological incapacity pursuant to Article 36 of the Family Code.<sup>[16]</sup>

On February 21, 2005, the RTC issued a Certificate of Finality<sup>[17]</sup> declaring that its Decision had become final and executory on December 3, 2004.

After more than seven (7) years from the said decision's finality or on February 13, 2012, Melania filed a petition for annulment of judgment<sup>[18]</sup> before the CA, claiming that the RTC Decision was rendered without jurisdiction and tainted with extrinsic fraud.<sup>[19]</sup>

### **The CA Ruling**

In a Decision<sup>[20]</sup> dated July 22, 2016, the CA granted the petition for annulment of judgment, and consequently, declared null and void the RTC Decision.<sup>[21]</sup>

While the CA did not find any merit in Melania's claims of lack of jurisdiction<sup>[22]</sup> and extrinsic fraud<sup>[23]</sup> – which were the grounds raised in her petition for annulment of judgment – it nonetheless granted the said petition on the ground of denial of due process, pointing out that the service of summons to her suffered from fatal defects. Among others, the CA pointed out that the *San Pedro Express* was not shown to be a newspaper of general circulation, and that Cris did not send a copy of the said summons to the last known address of Melania.<sup>[24]</sup> Anent the latter finding, the CA opined that to properly effect the service of summons to a nonresident defendant who cannot be found in the Philippines, the plaintiff must both publish and send a copy of the summons to the last known address of the defendant.<sup>[25]</sup>

With the subsequent denial<sup>[26]</sup> of his motion for reconsideration,<sup>[27]</sup> Cris elevated the matter to the Court.

### **The Issue Before the Court**

The main issue in this case is whether or not the CA erred in granting Melania's petition for annulment of judgment.

### **The Court's Ruling**

A petition for annulment of judgment is a recourse that is equitable in character. It is independent of the case and is allowed only in exceptional cases as where there is no available or other adequate remedy.<sup>[28]</sup> Section 1, Rule 47 of the Rules of Court (Rules) provides:

Section 1. *Coverage.* – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Under Section 2 of the same Rule, an action for annulment of judgment may be based on two (2) grounds, namely: (1) extrinsic fraud; and (2) lack of jurisdiction:

Section 2. *Grounds for Annulment.* – The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

However, in cases involving jurisdiction over the subject matter, the Court has consistently recognized the denial of due process as a valid ground to file a petition for annulment of judgment. This is because, as rationalized in the case of *De Pedro v. Romasan Development Corporation*<sup>[29]</sup> (*De Pedro*), the violation of one's due process rights is, after all, a defect in jurisdiction:

Due process requires that those with interest to the thing in litigation be notified and given an opportunity to defend those interests. Courts, as guardians of constitutional rights, cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.

**Violation of due process rights is a jurisdictional defect.** This court recognized this principle in *Aducayen v. Flores* [151-A Phil. 556 (1973)]. In the same case, this court further ruled that this jurisdictional defect is remedied by a petition for *certiorari*.

Similarly in *Vda. de Cuaycong v. Vda. de Sengbengco* [110 Phil. 113 (1960)], this court held that a decision that was issued in violation of a person's due process rights suffers a fatal infirmity.

The relation of due process to jurisdiction is recognized even in administrative cases wherein the standard of evidence is relatively lower. Thus, in *Montoya v. Varilla* [595 Phil. 507 (2008)]:

**The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction.** The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. **Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.**<sup>[30]</sup> (Emphases and underscoring supplied)

In this light, the Court, in *De Pedro*, held that circumstances which negate the court's acquisition of jurisdiction – such as defective service of summons – are causes for an action for annulment of judgment.<sup>[31]</sup> It is well-settled that "the service of summons is a vital and indispensable ingredient of due process and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction."<sup>[32]</sup>

Personal service of summons is the preferred mode of service of summons. However, other modes of serving summons may be done when justified. For instance, service of summons by extraterritorial service is allowed after leave of court when the defendant or respondent does not reside or is not found in the country or is temporarily out of the country.<sup>[33]</sup> Section 15, Rule 14 of the Rules sets the parameters of extraterritorial service of summons, to wit:

Section 15. *Extraterritorial service.* – When the defendant does not reside and is not found in the Philippines, and the action affects the personal

status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or **in any other manner the court may deem sufficient**. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer. (Emphasis and underscoring supplied)

Breaking down the provision, three (3) modes of extraterritorial service of summons are recognized. These are: (1) by "personal service as under Section 6 [of the Rules]"; (2) by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant; and (3) "in any other manner the court may deem sufficient."

In this case, the CA annulled and set aside the RTC Decision, declaring Melania to have been deprived of due process on account of a defective service of summons. To the CA, Cris should have not only published a copy of the summons but also sent a copy thereof to Melania's last known address. However, Cris laments that the RTC only ordered that the summons be published in a newspaper of general circulation, which mode of service falls under the third mode of extraterritorial service of summons, *i.e.*, "in any other manner the court may deem sufficient," and hence, should be differentiated from the second mode of extraterritorial service of summons which requires publication and service by registered mail to the defendant's last known address.

Cris' arguments are tenable. To recall, the RTC's January 21, 2002 Order which granted his Motion for Issuance of Summons by Publication reads:

Acting on the "Motion for Issuance of Summons by Publication" filed by the plaintiff thru counsel, the same is hereby GRANTED.

Accordingly, let summons issue in this case to be served upon defendant **by publication in a newspaper of general circulation** at the expense of the plaintiff, pursuant to Section 15, Rule 14 of the Rules of Court.

SO ORDERED.<sup>[34]</sup> (Emphasis and underscoring supplied)

As above intimated, Section 15, Rule 14 of the Rules specifically authorizes a court to effect extraterritorial service of summons "in any other manner the court may deem sufficient," "[w]hen the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff." As Cris correctly argues, this mode of service is separate and distinct from the second mode of service under the same rule, which prescribes "publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant." If the RTC intended to direct