

THIRD DIVISION

[G.R. No. 200072, June 20, 2016]

PHILIP YU, PETITIONER, VS. VIVECA LIM YU, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] dated September 30, 2011 and Resolution^[2] dated January 5, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 111414 which granted the petition for the annulment of the Decision^[3] dated August 20, 2008 of the Regional Trial Court (RTC), Fourth Judicial Region, Branch 10, Balayan, Batangas.

The factual antecedents are as follows.

Petitioner Philip Yu and respondent Viveca Lim Yu were married on November 18, 1984. They had four children and maintained their conjugal home at Room 1603 Horizon Condominium, Meralco Avenue, Pasig, Metro Manila. In 1993, however, Viveca left the conjugal home with their four children and filed a Petition for Legal Separation against Philip before the RTC of Pasig City, Branch 261, for repeated physical violence, grossly abusive conduct against her and the children, sexual infidelity, and attempt on her life. She prayed for permanent custody over the children, support, and the dissolution and distribution of their conjugal partnership valued at approximately P5,000,000.00.^[4]

Philip denied the accusations against him claiming that it was Viveca who actually attacked him a few times. He narrated that his marriage to Viveca was arranged according to the Chinese tradition and that it was much later when he discovered Viveca's excessively jealous, cynical, and insecure behaviour. He countered that since she abandoned the family home, taking their four children away, she was not entitled to support. She was, likewise, unqualified to become the administrator of their conjugal funds, which had outstanding obligations. Thus, Philip prayed in his Counterclaim for the declaration of nullity of their marriage due to Viveca's psychological incapacity, rendering her incapable of complying with her marital obligations.^[5]

On April 24, 2007, however, Philip filed a Motion to Withdraw Counterclaim for Declaration of Nullity of Marriage revealing that he no longer had the desire to have his marriage declared void. Despite Viveca's fervent opposition, the Pasig RTC granted the motion.^[6]

On July 1, 2009, the RTC of Pasig City rendered a Decision^[7] dismissing the Petition for Legal Separation in the following wise:

From the facts obtaining in this case, the Court finds that the parties are in *pari delicto* warranting a denial of this petition.

Respondent's illicit relationship with Linda Daet and his repeated verbal and physical abuses towards petitioner come within the purview of pars. 8 and 1 of Art. 55 of the Family Code of the Philippines whereas petitioner's unjustifiable abandonment bringing with her their children without the knowledge and consent of respondent and her assaulting respondent with a 10-inch knife are those contemplated in pars. 10 and 9 of the same code.

Notwithstanding the foregoing Court's findings, the same becomes moot with the declaration of nullity of the marriage of the parties, on the ground of the psychological incapacity of petitioner, Viveca Yu, pursuant to the Decision of Branch 10, RTC of Balayan, Batangas, which attained its finality on October 13, 2008. Since the marriage of the parties was declared a nullity there is, therefore, no legal basis to issue a decree of legal separation to the spouses whose marriage has already been declared of no force and effect.

WHEREFORE, premises considered, this petition should be, as it is hereby DISMISSED, for lack of merit.

SO ORDERED.^[8]

Claiming to be completely unaware of the proceedings before the RTC of Balayan, Batangas, nullifying her marriage with Philip on the ground of her psychological incapacity, Viveca filed a Petition for Annulment of Judgment^[9] before the CA seeking to annul the Decision dated August 20, 2008 of said court. According to Viveca, jurisdiction over her person did not properly vest since she was not duly served with Summons. She alleged that she was deprived of her right to due process when Philip fraudulently declared that her address upon which she may be duly summoned was still at their conjugal home, when he clearly knew that she had long left said address for the United States of America. Viveca likewise maintained that had Philip complied with the legal requirements for an effective service of summons by publication, she would have been able to rightly participate in the proceedings before the Batangas court.

On September 30, 2011, the CA granted Viveca's petition ruling as follows:

The *Petition for Declaration of Nullity of Marriage* affecting the personal status of private respondent is in the nature of an action *in rem*. This is so because the term "personal status" includes family relations, particularly the relations between husband and wife.

With this premise in mind, it is beyond cavil that the court *a quo* was justified in resorting to *Summons* by publication. Petitioner is a non-resident defendant who left the Philippines with her children way back in 1997 and has now been living in the United States of America. The court *a quo* validly acquired jurisdiction to hear and decide the case given that as adumbrated, in a proceeding *in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court,

provided that the court acquires jurisdiction over the *res*.

Still and all, there is more to this case than meets the eye. Private respondent knew that petitioner left the conjugal home on account of their marital difficulties. She temporarily resided at her parent's house in Greenhills, Mandaluyong, Metro Manila. **But during the pendency of the *Legal Separation* case, she lived in Quezon City. This much was revealed by private respondent himself in the *Amended Answer with Counterclaim* filed in the *Legal Separation* suit-**

"10. After abandoning the conjugal abode on 24 August 1993, petitioner resided at her parent's house in Richbelt Condominium, Annapolis Street, Greenhills, Mandaluyong, Metro Manila, until she moved to her present address in October 1993. x x x x

This knowledge notwithstanding, private respondent declared before the court *a quo* that the "last known address" of petitioner was still her conjugal abode at Unit 1603 Horizon Condominium, Micalco Avenue, Ortigas, Pasig City. While private respondent knew that it was well-nigh impossible for petitioner to receive *Summons* and other court notices at their former conjugal home, still, he supplied the aforesaid address.

We cannot turn a blind eye to the fact that private respondent moved for the dismissal of his counterclaim for nullity of marriage in the *Legal Separation* case in 2007 as he had by then had the sinister motive of filing the *Petition for Declaration of Nullity of Marriage* before the court *a quo*. Private respondent knew that if he breathed a word on the filing and pendency of the latter *Petition*, petitioner would vigorously resist it as revealed by her tenacious opposition in the proceedings before the RTC-Pasig.

The deceitful scheme employed by private respondent deprived petitioner of her constitutional right to due process which ensued in her failure to participate in the proceedings before the court *a quo*. To Our mind, this compelling justification warrants the annulment of judgement.^[10]

In its Resolution dated January 5, 2012, the CA denied Philip's Motion for Reconsideration finding no cogent and persuasive reason to revise or reverse its Decision. Hence, this petition invoking the following grounds:

I.

THE COURT OF APPEALS ERRED WHEN IT SET ASIDE THE FINAL AND EXECUTORY DECISION OF THE COURT A QUO DESPITE ITS ACCURATE FINDINGS THAT THE COURT A QUO PROPERLY ACQUIRED JURISDICTION OVER THE ACTION IN REM THROUGH SUMMONS BY PUBLICATION.

II.

THE PUBLICATION OF THE ORDER OF THE COURT A QUO, SUMMONS, THE COMPLAINT AS WELL AS THE DECISION RENDERED THEREIN IS NOTICE TO THE WHOLE WORLD INCLUDING RESPONDENT. RESPONDENT WAS THEREFORE CONSTRUCTIVELY NOTIFIED OF THE PROCEEDINGS AND WAS NOT DENIED DUE PROCESS HAVING BEEN DULY NOTIFIED BY PUBLICATION.

III.

RESPONDENT HAS BEEN DOMICILED IN THE UNITED STATES OF AMERICA FOR MORE THAN TEN (10) YEARS AND WHOSE ADDRESS IS UNKNOWN TO PETITIONER. AS FAR AS PETITIONER IS CONCERNED, UNIT 1603 HORIZON CONDOMINIUM, MERALCO AVENUE, PASIG CITY IS THE LAST KNOWN ADDRESS OF RESPONDENT, BEING THE CONJUGAL HOME.

IV.

PETITIONER IS CURRENTLY NOT A RESIDENT OF THE CONJUGAL HOME.

V.

THE OFFICE OF THE SOLICITOR GENERAL AND/OR THE OFFICE OF THE CITY PROSECUTOR OF BALAYAN, BATANGAS, APPEARED AS COUNSEL FOR THE STATE AND FULLY PROTECTED THE INTEREST OF THE STATE INCLUDING THE INTEREST OF RESPONDENT.

VI.

PETITIONER CANNOT BE FAULTED FOR MOVING FOR THE WITHDRAWAL OF HIS COUNTER-CLAIM FOR DECLARATION OF NULLITY OF MARRIAGE, WHICH IS ALLOWED BY SECTION 2, RULE 17 OF THE NEW RULES OF COURT AS AMENDED, AND SAID WITHDRAWAL WAS EVEN APPROVED BY THE RTC OF PASIG.

VII.

THE PETITION FOR ANNULMENT OF DECISION FILED BEFORE THE COURT OF APPEALS WAS DEFECTIVE AND NOT IN ACCORDANCE WITH RULE 47 OF THE NEW RULES OF COURT, AS AMENDED, FOR HAVING FAILED TO STATE AND ALLEGE THE DEFENSES THAT RESPONDENT HAS AGAINST PETITIONER.

VIII.

EVEN ASSUMING ARGUENDO THAT THE DEFENSES THAT ARE AVAILABLE TO RESPONDENT ARE THOSE THAT WERE PRESENTED IN THE LEGAL SEPARATION CASE THAT WAS DISMISSED BY THE RTC OF PASIG CITY, SAID GROUNDS ONLY BOLSTER THE FACT THAT THE DECISION DATED AUGUST 20, 2008 OF THE RTC OF BALAYAN, BATANGAS, CORRECTLY NULLIFIED THE MARRIAGE DUE TO RESPONDENT'S PSYCHOLOGICAL

INCAPACITY.

IX.

THE COURT OF APPEALS DID NOT OBSERVE AND FOLLOW SECTIONS 6 AND 7 OF RULE 47 OF THE REVISED RULES OF COURT, AS AMENDED.

In essence, Philip questions the appellate court's judgment of setting aside the decision of the Batangas RTC despite its own finding that said court validly acquired jurisdiction when Summons was duly served on Viveca by publication. He maintains that since service of summons was properly accomplished by publication thereof in a newspaper of general circulation as well as its personal service on Viveca at her last known address, it logically follows that any and all resolutions rendered by the trial court are valid and binding on the parties. Thus, the decision of the Batangas court which acquired jurisdiction over the *res* should be immutable as it is already final and executory.^[11]

Philip also questions the appellate court's choice of supporting jurisprudence alleging them to be inapplicable to the instant case. He asserts that the teachings in *Spouses Belen v. Judge Chavez*,^[12] *Biacco v. Philippine Countryside Rural Bank*,^[13] and *Ancheta v. Judge Ancheta*^[14] fail to be instructive simply because they involve substituted service of summons whereas the mode of service in this case is by publication. Philip further asserts that said jurisprudential doctrines even teach us that in proceedings *in rem* or *quasi in rem*, such as the case at hand, jurisdiction over the defendant is not a prerequisite to confer jurisdiction on the court for as long as the court acquires jurisdiction over the *res*. Thus, summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements, which in this case was duly complied with when Viveca, who is a non-resident, not found in the Philippines, was served with summons by publication.^[15]

Hence, Philip faults the CA in finding that due to his bad faith in maliciously supplying the Batangas court with an erroneous address wherein Viveca may supposedly be summoned, she was deprived of her constitutional right to due process, warranting the annulment of the subject judgment. According to him, as far as he was concerned, Viveca's last known address was their conjugal home. This is because the addresses supplied in the proceedings of the Legal Separation case before the RTC of Pasig City were merely temporary in nature.^[16] Philip recalled that when Viveca left their conjugal abode on August 24, 1993, she temporarily stayed at her parents' house in Greenhills, Mandaluyong, for less than two months then, thereafter, stayed at her temporary residence at Domingo Street, Cubao, Quezon City, in October 1993. Considering that said addresses were merely temporary, Philip claims that he should not be faulted for using their conjugal abode as Viveca's "last known address." According to him, what is mandated by the rules as the defendant's "last known address" is his or her last known *permanent* address, and certainly not one of temporary nature.^[17]

The petition is bereft of merit.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Section