

SECOND DIVISION

[G.R. No. 145370, March 04, 2004]

**MARIETTA B. ANCHETA, PETITIONER, VS. RODOLFO S. ANCHETA,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on certiorari of the Resolution^[1] of the Court of Appeals in CA-G.R. SP No. 59550 which dismissed the petitioner's petition under Rule 47 of the 1997 Rules of Civil Procedure to annul the Order^[2] of the Regional Trial Court of Naic, Cavite, Branch 15 in Special Proceedings No. NC-662 nullifying the marriage of the petitioner and the respondent Rodolfo S. Ancheta, and of the resolution of the appellate court denying the motion for reconsideration of the said resolution.

This case arose from the following facts:

After their marriage on March 5, 1959, the petitioner and the respondent resided in Muntinlupa, Metro Manila. They had eight children during their coverture, whose names and dates of births are as follows:

- a. ANA MARIE B. ANCHETA – born October 6, 1959
- b. RODOLFO B. ANCHETA, JR. – born March 7, 1961
- c. VENANCIO MARIANO B. ANCHETA – born May 18, 1962
- d. GERARDO B. ANCHETA – born April 8, 1963
- e. KATHRINA B. ANCHETA – born October 29, 1965
- f. ANTONIO B. ANCHETA – born March 6, 1967
- g. NATASHA MARTINA B. ANCHETA – born August 2, 1968
- h. FRITZIE YOLANDA B. ANCHETA – born November 19, 1970^[3]

On December 6, 1992, the respondent left the conjugal home and abandoned the petitioner and their children. On January 25, 1994, petitioner Marietta Ancheta filed a petition with the Regional Trial Court of Makati, Branch 40, against the respondent for the dissolution of their conjugal partnership and judicial separation of property with a plea for support and support *pendente lite*. The case was docketed as Sp. Proc. No. M-3735. At that time, the petitioner was renting a house at No. 72 CRM Avenue cor. CRM Corazon, BF Homes, Almanza, Las Piñas, Metro Manila.^[4]

On April 20, 1994, the parties executed a Compromise Agreement^[5] where some of the conjugal properties were adjudicated to the petitioner and her eight children, including the following:

- b. A parcel of land (adjoining the two lots covered by TCT Nos. 120082 and TCT No. 120083-Cavite) located at Bancal, Carmona, Cavite, registered in the name of the family Ancheta. Biofood Corporation under

TCT No. 310882, together with the resort Munting Paraiso, Training Center, four-storey building, pavilion, swimming pool and all improvements. All of the shares of stocks of Ancheta Biofoods Corporation were distributed one-third (1/3) to the petitioner and the eight children one-twelfth (1/12) each.^[6]

The court rendered judgment based on the said compromise agreement. Conformably thereto, the respondent vacated, on June 1, 1994, the resort Munting Paraiso and all the buildings and improvements thereon. The petitioner, with the knowledge of the respondent, thenceforth resided in the said property.

In the meantime, the respondent intended to marry again. On June 5, 1995, he filed a petition with the Regional Trial Court of Naic, Cavite, Branch 15, for the declaration of nullity of his marriage with the petitioner on the ground of psychological incapacity. The case was docketed as Sp. Proc. No. NC-662. Although the respondent knew that the petitioner was already residing at the resort Munting Paraiso in Bancal, Carmona, Cavite, he, nevertheless, alleged in his petition that the petitioner was residing at No. 72 CRM Avenue corner CRM Corazon, BF Homes, Almanza, Las Piñas, Metro Manila, "where she may be served with summons."^[7] The clerk of court issued summons to the petitioner at the address stated in the petition.^[8] The sheriff served the summons and a copy of the petition by substituted service on June 6, 1995 on the petitioner's son, Venancio Mariano B. Ancheta III, at his residence in Bancal, Carmona, Cavite.^[9]

On June 21, 1995, Sheriff Jose R. Salvadora, Jr. submitted a Return of Service to the court stating that the summons and a copy of the petition were served on the petitioner through her son Venancio Mariano B. Ancheta III on June 6, 1995:

RETURN OF SERVICE

This is to certify that the summons together with the copy of the complaint and its annexes was received by the herein defendant thru his son Venancio M.B. Ancheta [III] as evidenced by the signature appearing on the summons. Service was made on June 6, 1995.

June 21, 1995, Naic, Cavite.

(Sgd.) JOSE R. SALVADORA,
JR.
Sheriff^[10]

The petitioner failed to file an answer to the petition. On June 22, 1995, the respondent filed an "Ex-Parte Motion to Declare Defendant as in Default" setting it for hearing on June 27, 1995 at 8:30 a.m. During the hearing on the said date, there was no appearance for the petitioner. The public prosecutor appeared for the State and offered no objection to the motion of the respondent who appeared with counsel. The trial court granted the motion and declared the petitioner in default, and allowed the respondent to adduce evidence *ex-parte*. The respondent testified in his behalf and adduced documentary evidence. On July 7, 1995, the trial court issued an Order granting the petition and declaring the marriage of the parties void *ab initio*.^[11] The clerk of court issued a Certificate of Finality of the Order of the

court on July 16, 1996.^[12]

On February 14, 1998, Valentine's Day, the respondent and Teresita H. Rodil were married in civil rights before the municipal mayor of Indang, Cavite.^[13]

On July 7, 2000, the petitioner filed a verified petition against the respondent with the Court of Appeals under Rule 47 of the Rules of Court, as amended, for the annulment of the order of the RTC of Cavite in Special Proceedings No. NC-662. The case was docketed as CA-G.R. SP No. 59550. The petitioner alleged, *inter alia*, that the respondent committed gross misrepresentations by making it appear in his petition in Sp. Proc. No. NC-662 that she was a resident of No. 72 CRM Avenue cor. CRM Corazon, BF Homes, Almanza, Las Piñas, Metro Manila, when in truth and in fact, the respondent knew very well that she was residing at Munting Paraíso, Bancal, Carmona, Cavite. According to the petitioner, the respondent did so to deprive her of her right to be heard in the said case, and ultimately secure a favorable judgment without any opposition thereto. The petitioner also alleged that the respondent caused the service of the petition and summons on her by substituted service through her married son, Venancio Mariano B. Ancheta III, a resident of Bancal, Carmona, Cavite, where the respondent was a resident. Furthermore, Venancio M.B. Ancheta III failed to deliver to her the copy of the petition and summons. Thus, according to the petitioner, the order of the trial court in favor of the respondent was null and void (1) for lack of jurisdiction over her person; and (2) due to the extrinsic fraud perpetrated by the respondent. She further contended that there was no factual basis for the trial court's finding that she was suffering from psychological incapacity. Finally, the petitioner averred that she learned of the Order of the RTC only on January 11, 2000. Appended to the petition, *inter alia*, were the affidavits of the petitioner and of Venancio M.B. Ancheta III.

The petitioner prayed that, after due proceedings, judgment be rendered in her favor, thus:

WHEREFORE, petitioner respectfully prays this Honorable Court to render Judgment granting the Petition.

1. Declaring null and void the Order dated June 7, 1995 (of the Regional Trial Court, Branch 14, Naic, Cavite).
2. Ordering respondent to pay petitioner
 - a. P1,000,000.00 as moral damages;
 - b. P500,000.00 as exemplary damages;
 - c. P200,000.00 as attorney's fees plus P7,500.00 per diem for every hearing;
 - d. P100,000.00 as litigation expenses;
 - e. Costs of suit.^[14]

On July 13, 2000, the CA issued a Resolution dismissing the petition on the following ground:

We cannot give due course to the present petition in default or in the absence of any clear and specific averment by petitioner that the

ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner. Neither is there any averment or allegation that the present petition is based only on the grounds of extrinsic fraud and lack of jurisdiction. Nor yet that, on the assumption that extrinsic fraud can be a valid ground therefor, that it was not availed of, or could not have been availed of, in a motion for new trial, or petition for relief.^[15]

The petitioner filed a motion for the reconsideration of the said resolution, appending thereto an amended petition in which she alleged, *inter alia*, that:

4. This petition is based purely on the grounds of extrinsic fraud and lack of jurisdiction.
5. This petition has not prescribed; it was filed within the four-year period after discovery of the extrinsic fraud.
6. The ground of extrinsic fraud has not been availed of, or could not have been availed of in a motion for new trial or petition for relief.
7. The ground of lack of jurisdiction is not barred by laches and/or estoppel.
8. The ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies were no longer available through no fault of petitioner; neither has she ever availed of the said remedies. This petition is the only available remedy to her.^[16]

The petitioner also alleged therein that the order of the trial court nullifying her and the respondent's marriage was null and void for the court *a quo's* failure to order the public prosecutor to conduct an investigation on whether there was collusion between the parties, and to order the Solicitor General to appear for the State.

On September 27, 2000, the CA issued a Resolution denying the said motion.

The petitioner filed a petition for review on certiorari with this Court alleging that the CA erred as follows:

1. In failing to take into consideration the kind of Order which was sought to be annulled.
2. In finding that the Petition was procedurally flawed.
3. In not finding that the Petition substantially complied with the requirements of the Rules of Court.
4. In failing to comply with Section 5, Rule 47, Rules of Court.
5. In not even considering/resolving Petitioner's Motion to Admit the Amended Petition; and in not admitting the Amended Petition.
6. In failing to apply the Rules of Procedure with liberality.^[17]

The petition is meritorious.

An original action in the Court of Appeals under Rule 47 of the Rules of Court, as amended, to annul a judgment or final order or resolution in civil actions of the RTC may be based on two grounds: (a) extrinsic fraud; or (b) lack of jurisdiction. If based on extrinsic fraud, the remedy is subject to a condition precedent, namely, the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.^[18] The petitioner must allege in the petition that the ordinary remedies of new trial, appeal, petition for relief from judgment, under Rule 38 of the Rules of Court are no longer available through no fault of hers; otherwise, the petition will be dismissed. If the petitioner fails to avail of the remedies of new trial, appeal or relief from judgment through her own fault or negligence before filing her petition with the Court of Appeals, she cannot resort to the remedy under Rule 47 of the Rules; otherwise, she would benefit from her inaction or negligence.^[19]

It is not enough to allege in the petition that the said remedies were no longer available through no fault of her own. The petitioner must also explain and justify her failure to avail of such remedies. The safeguard was incorporated in the rule precisely to avoid abuse of the remedy.^[20] Access to the courts is guaranteed. But there must be limits thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to sue anew. The prevailing party should not be vexed by subsequent suits.^[21]

In this case, the petitioner failed to allege in her petition in the CA that the ordinary remedies of new trial, appeal, and petition for relief, were no longer available through no fault of her own. She merely alleged therein that she received the assailed order of the trial court on January 11, 2000. The petitioner's amended petition did not cure the fatal defect in her original petition, because although she admitted therein that she did not avail of the remedies of new trial, appeal or petition for relief from judgment, she did not explain why she failed to do so.

We, however, rule that the Court of Appeals erred in dismissing the original petition and denying admission of the amended petition. This is so because apparently, the Court of Appeals failed to take note from the material allegations of the petition, that the petition was based not only on extrinsic fraud but also on lack of jurisdiction over the person of the petitioner, on her claim that the summons and the copy of the complaint in Sp. Proc. No. NC-662 were not served on her. While the original petition and amended petition did not state a cause of action for the nullification of the assailed order on the ground of extrinsic fraud, we rule, however, that it states a sufficient cause of action for the nullification of the assailed order on the ground of lack of jurisdiction of the RTC over the person of the petitioner, notwithstanding the absence of any allegation therein that the ordinary remedy of new trial or reconsideration, or appeal are no longer available through no fault of the petitioner.

In a case where a petition for the annulment of a judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom are no longer