418 Phil. 723

THIRD DIVISION

[G.R. No. 138322, October 02, 2001]

GRACE J. GARCIA, A.K.A. GRACE J. GARCIA-RECIO, PETITIONER,VS. REDERICK A. RECIO, RESPONDENT.

D E C I S I O N

PANGANIBAN, J.:

A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. However, the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, seeking to nullify the January 7, 1999 Decision[1] and the March 24, 1999 Order[2] of the Regional Trial Court of Cabanatuan City, Branch 28, in Civil Case No. 3026-AF. The assailed Decision disposed as follows:

"WHEREFORE, this Court declares the marriage between Grace J. Garcia and Rederick A. Recio solemnized on January 12, 1994 at Cabanatuan City as dissolved and both parties can now remarry under existing and applicable laws to any and/or both parties."[3]

The assailed Order denied reconsideration of the above-quoted Decision.

The Facts

Rederick A. Recio, a Filipino, was married to Editha Samson, an Australian citizen, in Malabon, Rizal, on March 1, 1987.[4] They lived together as husband and wife in Australia. On May 18, 1989, [5] a decree of divorce, purportedly dissolving the marriage, was issued by an Australian family court.

On June 26, 1992, respondent became an Australian citizen, as shown by a "Certificate of Australian Citizenship" issued by the Australian government.[6] Petitioner -- a Filipina -- and respondent were married on January 12, 1994 in Our Lady of Perpetual Help Church in Cabanatuan City.[7] In their *application* for a marriage license, respondent was declared as "single" and "Filipino."[8]

Starting October 22, 1995, petitioner and respondent lived separately without prior

judicial dissolution of their marriage. While the two were still in Australia, their conjugal assets were divided on May 16, 1996, in accordance with their Statutory Declarations secured in Australia.[9]

On March 3, 1998, petitioner filed a Complaint for Declaration of Nullity of Marriage[10] in the court *a quo,* on the ground of bigamy -- respondent allegedly had a prior subsisting marriage at the time he married her on January 12, 1994. She claimed that she learned of respondent's marriage to Editha Samson only in November, 1997.

In his Answer, respondent averred that, as far back as 1993, he had revealed to petitioner his prior marriage *and* its subsequent dissolution.[11] He contended that his first marriage to an Australian citizen had been validly dissolved by a divorce decree obtained in Australia in 1989;[12] thus, he was legally capacitated to marry petitioner in 1994.

On July 7, 1998 -- or about five years after the couple's wedding and while the suit for the declaration of nullity was pending -- respondent was able to secure a divorce decree from a family court in Sydney, Australia because the "marriage ha[d] irretrievably broken down."[13]

Respondent prayed in his Answer that the Complaint be dismissed on the ground that it stated no cause of action.[14] The Office of the Solicitor General agreed with respondent.[15] The court marked and admitted the documentary evidence of both parties.[16] After they submitted their respective memoranda, the case was submitted for resolution.[17]

Thereafter, the trial court rendered the assailed Decision and Order.

Ruling of the Trial Court

The trial court declared the marriage dissolved on the ground that the divorce issued in Australia was valid and recognized in the Philippines. It deemed the marriage ended, but not on the basis of any defect in an essential element of the marriage; that is, *respondent's alleged lack of legal capacity to remarry*. Rather, it based its Decision on the divorce decree obtained by respondent. The Australian divorce had ended the marriage; thus, there was no more marital union to nullify or annul.

Hence, this Petition.[18]

Issues

Petitioner submits the following issues for our consideration:

"1

> The trial court gravely erred in finding that the divorce decree obtained in Australia by the respondent *ipso facto* terminated his first marriage to Editha Samson thereby capacitating him to contract a second marriage

with the petitioner.

"2

The failure of the respondent, who is now a naturalized Australian, to present a certificate of legal capacity to marry constitutes absence of a substantial requisite voiding the petitioner's marriage to the respondent

"3

The trial court seriously erred in the application of Art. 26 of the Family Code in this case.

"4

The trial court patently and grievously erred in disregarding Arts. 11, 13, 21, 35, 40, 52 and 53 of the Family Code as the applicable provisions in this case.

"5

The trial court gravely erred in pronouncing that the divorce decree obtained by the respondent in Australia *ipso facto* capacitated the parties to remarry, without first securing a recognition of the judgment granting the divorce decree before our courts."[19]

The Petition raises five issues, but for purposes of this Decision, we shall concentrate on two pivotal ones: (1) whether the divorce between respondent and Editha Samson was proven, and (2) whether respondent was proven to be legally capacitated to marry petitioner. Because of our ruling on these two, there is no more necessity to take up the rest.

The Court's Ruling

The Petition is partly meritorious.

First Issue:
Proving the Divorce Between
Respondent and Editha Samson

Petitioner assails the trial court's recognition of the divorce between respondent and Editha Samson. Citing *Adong v. Cheong Seng Gee,*[20] petitioner argues that the divorce decree, like any other foreign judgment, may be given recognition in this jurisdiction only upon proof of the existence of (1) the foreign law allowing absolute divorce and (2) the alleged divorce decree itself. She adds that respondent miserably failed to establish these elements.

Petitioner adds that, based on the first paragraph of Article 26 of the Family Code, marriages solemnized abroad are governed by the law of the place where they were celebrated (the *lex loci celebrationis*). In effect, the Code requires the presentation of the foreign law to show the conformity of the marriage in question to the legal

requirements of the place where the marriage was performed.

At the outset, we lay the following basic legal principles as the take-off points for our discussion. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it.[21] A marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad, because of Articles 15[22] and 17[23] of the Civil Code.[24] In mixed marriages involving a Filipino and a foreigner, Article 26[25] of the Family Code allows the former to contract a subsequent marriage in case the divorce is "validly obtained abroad by the alien spouse capacitating him or her to remarry."[26] A 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.[27]

A comparison between marriage and divorce, as far as pleading and proof are concerned, can be made. *Van Dorn v. Romillo Jr.* decrees that "aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law."[28] Therefore, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.[29] Presentation solely of the divorce decree is insufficient.

Divorce as a Question of Fact

Petitioner insists that before a divorce decree can be admitted in evidence, it must first comply with the registration requirements under Articles 11, 13 and 52 of the Family Code. These articles read as follows:

> "ART. 11. Where a marriage license is required, each of the contracting parties shall file separately a sworn application for such license with the proper local civil registrar which shall specify the following:
>
> x x x x x x x
>
> "(5) If previously married, how, when and where the previous marriage was dissolved or annulled;
>
> x x x x x x x
>
> "ART. 13. In case either of the contracting parties has been previously married, the applicant shall be required to
>
> "ART. 13. In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse or the judicial decree of the absolute divorce, or the judicial decree of annulment or declaration of nullity of his or her previous marriage. x x x.

> "ART. 52. The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect their persons."

Respondent, on the other hand, argues that the Australian divorce decree is a public document -- a written official act of an Australian family court. Therefore, it requires no further proof of its authenticity and due execution.

Respondent is getting ahead of himself. Before a foreign judgment is given presumptive evidentiary value, the document must first be presented and admitted in evidence.[30] A divorce obtained abroad is proven by the divorce decree itself. Indeed the best evidence of a judgment is the judgment itself.[31] The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country.[32]

Under Sections 24 and 25 of Rule 132, on the other hand, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested[33] by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office. [34]

The divorce decree between respondent and Editha Samson appears to be an authentic one issued by an Australian family court.[35] However, appearance is not sufficient; compliance with the aforementioned rules on evidence must be demonstrated.

Fortunately for respondent's cause, when the divorce decree of May 18, 1989 was submitted in evidence, counsel for petitioner objected, not to its admissibility, but only to the fact that it had not been registered in the Local Civil Registry of Cabanatuan City.[36] The trial court ruled that it was admissible, subject to petitioner's qualification.[37] Hence, it was admitted in evidence and accorded weight by the judge. Indeed, petitioner's failure to object properly rendered the divorce decree admissible as a written act of the Family Court of Sydney, Australia. [38]

Compliance with the quoted articles (11, 13 and 52) of the Family Code is not necessary; respondent was no longer bound by Philippine personal laws after he acquired Australian citizenship in 1992.[39] Naturalization is the legal act of adopting an alien and clothing him with the political and civil rights belonging to a citizen.[40] Naturalized citizens, freed from the protective cloak of their former states, don the attires of their adoptive countries. By becoming an Australian, respondent severed his allegiance to the Philippines and the *vinculum juris* that had tied him to Philippine personal laws.

Burden of Proving Australian Law