

FIRST DIVISION

[G.R. No. 195432, August 27, 2014]

EDELINA T. ANDO, PETITIONER, VS. DEPARTMENT OF FOREIGN AFFAIRS, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This is a Petition for Review under Rule 45 of the Rules of Court, seeking the nullification of the Orders dated 14 January and 8 February 2011 issued by the Regional Trial Court (RTC), Third Judicial Region, Branch 45,^[1] City of San Fernando, Pampanga, in Civil Case No. 137, which dismissed the Petition for Declaratory Relief filed therein.

STATEMENT OF THE FACTS AND OF THE CASE

The pertinent facts of the case, as alleged by petitioner, are as follows:

3. On 16 September 2001, petitioner married Yuichiro Kobayashi, a Japanese National, in a civil wedding solemnized at Candaba, Pampanga. A copy of their Certificate of Marriage is hereto attached as Annex 'A' and made an integral part hereof.

4. On 16 September 2004, Yuichiro Kobayashi sought in Japan, and was validly granted under Japanese laws, a divorce in respect of his marriage with petitioner. A copy of the Divorce Certificate duly issued by the Consulate-General of Japan and duly authenticated by the Department of Foreign Affairs, Manila, is hereto as Annex 'B' and made an integral part hereof.

5. Said Divorce Certificate was duly registered with the Office of the Civil Registry of Manila. A copy of the Certification dated 28 October 2005 is hereto attached as Annex 'C' and made an integral part hereof.

6. Believing in good faith that said divorce capacitated her to remarry and that by such she reverted to her single status, petitioner married Masatomi Y. Ando on 13 September 2005 in a civil wedding celebrated in Sta. Ana, Pampanga. A copy of their Certificate of Marriage is hereto attached as Annex 'D' and made an integral part hereof.

7. In the meantime, Yuichiro Kobayashi married Ryo Miken on 27 December 2005. A copy of the Japanese Family Registry Record of Kobayashi showing the divorce he obtained and his remarriage with Ryo Miken, duly authenticated by the Consulate-General of Japan and the

Department of Foreign Affairs, Manila, is hereto attached as Annex 'E' and made an integral part hereof.

8. Recently, petitioner applied for the renewal of her Philippine passport to indicate her surname with her husband Masatomi Y. Ando but she was told at the Department of Foreign Affairs that the same cannot be issued to her until she can prove by competent court decision that her marriage with her said husband Masatomi Y. Ando is valid until otherwise declared.

x x x x

12. Prescinding from the foregoing, petitioner's marriage with her said husband Masatomi Y. Ando must therefore be honored, considered and declared valid, until otherwise declared by a competent court. Consequently, and until then, petitioner therefore is and must be declared entitled to the issuance of a Philippine passport under the name 'Edelina Ando y Tungol.' Hence, this petitioner pursuant to Rule 63 of the Rules of Court.^[2]

On 29 October 2010, petitioner filed with the RTC a Petition for Declaratory Relief, which was later raffled off to Branch 46. She impleaded the Department of Foreign Affairs (DFA) as respondent and prayed for the following reliefs before the lower court:

WHEREFORE, petitioner most respectfully prays of this Honorable Court that after proper proceedings, judgment be rendered, as follows:

(a) declaring as valid and subsisting the marriage between petitioner Edelina T. Ando and her husband Masatomi Y. Ando until otherwise declared by a competent court;

(b) declaring petitioner entitled to the issuance of a Philippine Passport under the name "Edelina Ando y Tungol"; and

(c) directing the Department of Foreign Affairs to honor petitioner's marriage to her husband Masatomi Y. Ando and to issue a Philippine Passport to petitioner under the name "Edelina Ando y Tungol".

Petitioner prays for such other just and equitable reliefs.^[3]

On 15 November 2010, in an Order dismissing the Petition for want of cause and action, as well as jurisdiction, the RTC held thus:

Records of the case would reveal that prior to petitioner's marriage to Masatomi Y. Ando, herein petitioner was married to Yuichiro Kobayashi, a Japanese National, in Candaba, Pampanga, on September 16, 2001, and that though a divorce was obtained and granted in Japan, with respect to the their (sic) marriage, there is no showing that petitioner herein complied with the requirements set forth in Art. 13 of the Family Code – that is obtaining a judicial recognition of the foreign decree of

absolute divorce in our country.

It is therefore evident, under the foregoing circumstances, that herein petitioner does not have any cause of action and/or is entitled to the reliefs prayed for under Rule 63 of the Rules of Court. In the same vein, though there is other adequate remedy available to the petitioner, such remedy is however beyond the authority and jurisdiction of this court to act upon and grant, as it is only the family court which is vested with such authority and jurisdiction.^[4]

On 3 December 2010, petitioner filed an *Ex Parte* Motion for Reconsideration of the Order dated 15 November 2010. In an Order dated 14 December 2010, the RTC granted the motion in this wise:

WHEREFORE, considering that the allegations and reliefs prayed for by the petitioner in her petition and the instant Motion for Reconsideration falls within the jurisdiction of the Special Family Court of this jurisdiction and for the interest of substantial justice, the Order of the Court dated November 15, 2010 is hereby reconsidered.

Let the record of this case be therefore referred back to the Office of the Clerk of Court for proper endorsement to the Family Court of this jurisdiction for appropriate action and/or disposition.^[5]

Thereafter, the case was raffled to Branch 45 of the RTC. On 14 January 2011, the trial court dismissed the Petition anew on the ground that petitioner had no cause of action. The Order reads thus:

The petition specifically admits that the marriage she seeks to be declared as valid is already her second marriage, a bigamous marriage under Article 35(4) of the Family Code considering that the first one, though allegedly terminated by virtue of the divorce obtained by Kobayashi, was never recognized by a Philippine court, hence, petitioner is considered as still married to Kobayashi. Accordingly, the second marriage with Ando cannot be honored and considered as valid at this time.

Petitioner's allegation of Sec. 2 (a) of A.M. No. 02-11-10-SC is misplaced. The fact that no judicial declaration of nullity of her marriage with Ando was rendered does not make the same valid because such declaration under Article 40 of the Family Code is applicable only in case of re-marriage. More importantly, the absence of a judicial declaration of nullity of marriage is not even a requisite to make a marriage valid.

In view of the foregoing, the dismissal of this case is imperative.^[6]

On 1 February 2011, petitioner filed an *Ex Parte* Motion for Reconsideration of the Order dated 14 January 2011. The motion was denied by the RTC in open court on 8 February 2011, considering that neither the Office of the Solicitor General (OSG) nor