

SECOND DIVISION

[G.R. No. 187061, October 08, 2014]

**CELERINA J. SANTOS, PETITIONER, VS. RICARDO T. SANTOS,
RESPONDENT.**

D E C I S I O N

LEONEN, J.:

The proper remedy for a judicial declaration of presumptive death obtained by extrinsic fraud is an action to annul the judgment. An affidavit of reappearance is not the proper remedy when the person declared presumptively dead has never been absent.

This is a petition for review on certiorari filed by Celerina J. Santos, assailing the Court of Appeals' resolutions dated November 28, 2008 and March 5, 2009. The Court of Appeals dismissed the petition for the annulment of the trial court's judgment declaring her presumptively dead.

On July 27, 2007, the Regional Trial Court of Tarlac City declared petitioner Celerina J. Santos (Celerina) presumptively dead after her husband, respondent Ricardo T. Santos (Ricardo), had filed a petition for declaration of absence or presumptive death for the purpose of remarriage on June 15, 2007.^[1] Ricardo remarried on September 17, 2008.^[2]

In his petition for declaration of absence or presumptive death, Ricardo alleged that he and Celerina rented an apartment somewhere in San Juan, Metro Manila; after they had gotten married on June 18, 1980.^[3] After a year, they moved to Tarlac City. They were engaged in the buy and sell business.^[4]

Ricardo claimed that their business did not prosper.^[5] As a result, Celerina convinced him to allow her to work as a domestic helper in Hong Kong.^[6] Ricardo initially refused but because of Celerina's insistence, he allowed her to work abroad.^[7] She allegedly applied in an employment agency in Ermita, Manila, in February 1995. She left Tarlac two months after and was never heard from again.^[8]

Ricardo further alleged that he exerted efforts to locate Celerina.^[9] He went to Celerina's parents in Cubao, Quezon City, but they, too, did not know their daughter's whereabouts.^[10] He also inquired about her from other relatives and friends, but no one gave him any information.^[11]

Ricardo claimed that it was almost 12 years from the date of his Regional Trial Court petition since Celerina left. He believed that she had passed away.^[12]

Celerina claimed that she learned about Ricardo's petition only sometime in October 2008 when she could no longer avail the remedies of new trial, appeal, petition for relief, or other appropriate remedies.^[13]

On November 17, 2008, Celerina filed a petition for annulment of judgment^[14] before the Court of Appeals on the grounds of extrinsic fraud and lack of jurisdiction. She argued that she was deprived her day in court when Ricardo, despite his knowledge of her true residence, misrepresented to the court that she was a resident of Tarlac City.^[15] According to Celerina, her true residence was in Neptune Extension, Congressional Avenue, Quezon City.^[16] This residence had been her and Ricardo's conjugal dwelling since 1989 until Ricardo left in May 2008.^[17] As a result of Ricardo's misrepresentation, she was deprived of any notice of and opportunity to oppose the petition declaring her presumptively dead.^[18]

Celerina claimed that she never resided in Tarlac. She also never left and worked as a domestic helper abroad.^[20] Neither did she go to an employment agency in February 1995.^[21] She also claimed that it was not true that she had been absent for 12 years. Ricardo was aware that she never left their conjugal dwelling in Quezon City.^[22] It was he who left the conjugal dwelling in May 2008 to cohabit with another woman.^[23] Celerina referred to a joint affidavit executed by their children to support her contention that Ricardo made false allegations in his petition.^[24]

Celerina also argued that the court did not acquire jurisdiction over Ricardo's petition because it had never been published in a newspaper.^[25] She added that the Office of the Solicitor General and the Provincial Prosecutor's Office were not furnished copies of Ricardo's petition.^[26]

The Court of Appeals issued the resolution dated November 28, 2008, dismissing Celerina's petition for annulment of judgment for being a wrong mode of remedy.^[27] According to the Court of Appeals, the proper remedy was to file a sworn statement before the civil registry, declaring her reappearance in accordance with Article 42 of the Family Code.^[28]

Celerina filed a motion for reconsideration of the Court of Appeals' resolution dated November 28, 2008.^[29] The Court of Appeals denied the motion for reconsideration in the resolution dated March 5, 2009.^[30]

Hence, this petition was filed.

The issue for resolution is whether the Court of Appeals erred in dismissing Celerina's petition for annulment of judgment for being a wrong remedy for a fraudulently obtained judgment declaring presumptive death.

Celerina argued that filing an affidavit of reappearance under Article 42 of the Family Code is appropriate only when the spouse is actually absent and the spouse seeking the declaration of presumptive death actually has a well-founded belief of the spouse's death.^[31] She added that it would be inappropriate to file an affidavit

of reappearance if she did not disappear in the first place.^[32] She insisted that an action for annulment of judgment is proper when the declaration of presumptive death is obtained fraudulently.^[33]

Celerina further argued that filing an affidavit of reappearance under Article 42 of the Family Code would not be a sufficient remedy because it would not nullify the legal effects of the judgment declaring her presumptive death.^[34]

In Ricardo's comment,^[35] he argued that a petition for annulment of judgment is not the proper remedy because it cannot be availed when there are other remedies available. Celerina could always file an affidavit of reappearance to terminate the subsequent marriage. Ricardo iterated the Court of Appeals' ruling that the remedy afforded to Celerina under Article 42 of the Family Code is the appropriate remedy.

The petition is meritorious.

Annulment of judgment is the remedy when the Regional Trial Court's judgment, order, or resolution has become final, and the "remedies of new trial, appeal, petition for relief (or other appropriate remedies) are no longer available through no fault of the petitioner."^[36]

The grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction.^[37] This court defined extrinsic fraud in *Stilianopulos v. City of Legaspi*:^[38]

For fraud to become a basis for annulment of judgment, it has to be extrinsic or actual. It is intrinsic when the fraudulent acts pertain to an issue involved in the original action or where the acts constituting the fraud were or could have been litigated, *It is extrinsic or collateral when a litigant commits acts outside of the trial which prevents a party from having a real contest, or from presenting all of his case, such that there is no fair submission of the controversy.*^[39] (Emphasis supplied)

Celerina alleged in her petition for annulment of judgment that there was fraud when Ricardo deliberately made false allegations in the court with respect to her residence.^[40] Ricardo also falsely claimed that she was absent for 12 years. There was also no publication of the notice of hearing of Ricardo's petition in a newspaper of general circulation.^[41] Celerina claimed that because of these, she was deprived of notice and opportunity to oppose Ricardo's petition to declare her presumptively dead.^[42]

Celerina alleged that all the facts supporting Ricardo's petition for declaration of presumptive death were false.^[43] Celerina further claimed that the court did not acquire jurisdiction because the Office of the Solicitor General and the Provincial Prosecutor's Office were not given copies of Ricardo's petition.^[44]

These are allegations of extrinsic fraud and lack of jurisdiction. Celerina alleged in her petition with the Court of Appeals sufficient ground/s for annulment of judgment.

Celerina filed her petition for annulment of judgment^[45] on November 17, 2008. This was less than two years from the July 27, 2007 decision declaring her presumptively dead and about a month from her discovery of the decision in October 2008. The petition was, therefore, filed within the four-year period allowed by law in case of extrinsic fraud, and before the action is barred by laches, which is the period allowed in case of lack of jurisdiction.^[46]

There was also no other sufficient remedy available to Celerina at the time of her discovery of the fraud perpetrated on her.

The choice of remedy is important because remedies carry with them certain admissions, presumptions, and conditions.

The Family Code provides that it is the proof of absence of a spouse for four consecutive years, coupled with a well-founded belief by the present spouse that the absent spouse is already dead, that constitutes a justification for a second marriage during the subsistence of another marriage.^[47]

The Family Code also provides that the second marriage is in danger of being terminated by the presumptively dead spouse when he or she reappears. Thus:

Article 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, *unless there is a judgment annulling the previous marriage or declaring it void ab initio*.

A *sworn statement* of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with *due notice* to the spouses of the subsequent marriage and without prejudice to the fact of *reappearance being judicially determined in case such fact is disputed*. (Emphasis supplied)

In other words, the Family Code provides the presumptively dead spouse with the remedy of terminating the subsequent marriage by mere reappearance.

The filing of an affidavit of reappearance is an admission on the part of the first spouse that his or her marriage to the present spouse was terminated when he or she was declared absent or presumptively dead.

Moreover, a close reading of the entire Article 42 reveals that the termination of the subsequent marriage by reappearance is subject to several conditions: (1) the non-existence of a judgment annulling the previous marriage or declaring it void *ab initio*; (2) recording in the civil registry of the residence of the parties to the subsequent marriage of the sworn statement of fact and circumstances of reappearance; (3) due notice to the spouses of the subsequent marriage of the fact of reappearance; and (4) the fact of reappearance must either be undisputed or judicially determined.

The existence of these conditions means that reappearance does not always immediately cause the subsequent marriage's termination. Reappearance of the absent or presumptively dead spouse will cause the termination of the subsequent marriage only when all the conditions enumerated in the Family Code are present.

Hence, the subsequent marriage may still subsist despite the absent or presumptively dead spouse's reappearance (1) if the first marriage has already been annulled or has been declared a nullity; (2) if the sworn statement of the reappearance is not recorded in the civil registry of the subsequent spouses' residence; (3) if there is no notice to the subsequent spouses; or (4) if the fact of reappearance is disputed in the proper courts of law, and no judgment is yet rendered confirming, such fact of reappearance.

When subsequent marriages are contracted after a judicial declaration of presumptive death, a presumption arises that the first spouse is already dead and that the second marriage is legal. This presumption should prevail over the continuance of the marital relations with the first spouse.^[48] The second marriage, as with all marriages, is presumed valid.^[49] The burden of proof to show that the first marriage was not properly dissolved rests on the person assailing the validity of the second marriage.^[50]

This court recognized the conditional nature of reappearance as a cause for terminating the subsequent marriage in *Social Security System v. Vda. de Bailon*.^[51] This court noted^[52] that mere reappearance will not terminate the subsequent marriage even if the parties to the subsequent marriage were notified if there was "no step . . . taken to terminate the subsequent marriage, either by [filing an] affidavit [of reappearance] or by court action[.]"^[53] "Since the second marriage has been contracted because of a presumption that the former spouse is dead, such presumption continues inspite of the spouse's physical reappearance, and by *fiction of law, he or she must still be regarded as legally an absentee until the subsequent marriage is terminated as provided by law.*"^[54]

The choice of the proper remedy is also important for purposes of determining the status of the second marriage and the liabilities of the spouse who, in bad faith, claimed that the other spouse was absent.

A second marriage is bigamous while the first subsists. However, a bigamous subsequent marriage may be considered valid when the following are present:

- 1) The prior spouse had been absent for four consecutive years;
- 2) The spouse present has a well-founded belief that the absent spouse was already dead;
- 3) There must be a summary proceeding for the declaration of presumptive death of the absent spouse; and
- 4) There is a court declaration of presumptive death of the absent spouse.^[55]

A subsequent marriage contracted in bad faith, even if it was contracted after a court declaration of presumptive death, lacks the requirement of a well-founded