

FIRST DIVISION

[G.R. No. 150656, April 29, 2003]

MARGARITA ROMUALDEZ-LICAROS, PETITIONER, VS. ABELARDO B. LICAROS, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review on *certiorari*^[1] to annul the Decision^[2] dated 9 August 2001 of the Court of Appeals in CA-G.R. SP No. 58487, as well as the Resolution dated 23 October 2001 denying the motion for reconsideration. The Court of Appeals dismissed the petition to annul the following decisions^[3] rendered by Branch 143 of the Regional Trial Court of Makati:

- (1) The Decision dated 27 December 1990^[4] granting the dissolution of the conjugal partnership of gains of the spouses Abelardo B. Licaros and Margarita Romualdez-Licaros;
- (2) The Decision dated 8 November 1991^[5] declaring the marriage between the same spouses null and void.

The Facts

The antecedent facts as found by the Court of Appeals are as follows:

x x x Abelardo Licaros (**Abelardo**, for short) and Margarita Romualdez-Licaros (**Margarita**, hereafter) were lawfully married on December 15, 1968. Out of this marital union were born Maria Concepcion and Abelardo, Jr. Ironically, marital differences, squabbles and irreconcilable conflicts transpired between the spouses, such that sometime in 1979, they agreed to separate from bed and board.

In 1982, Margarita left for the United States and there, to settle down with her two (2) children. In the United States, on April 26, 1989, Margarita applied for divorce before the Superior Court of California, County of San Mateo (**Annex "1", Rejoinder, pp. 164-165**) where she manifested that she does not desire counseling at that time (**Quotation, p. 166, Rollo**). On August 6, 1990, Margarita was granted the decree of divorce (**Annex 2, Answer, p. 108, Rollo**) together with a distribution of properties between her and Abelardo (**pp. 167-168, Rollo**).

Not long after, on August 17, 1990, Abelardo and Margarita executed an "Agreement of Separation of Properties" (**pp. 60-64, Rollo**). This was followed-up by a petition filed on August 21, 1990 before the Regional Trial Court of Makati for the dissolution of the conjugal partnership of gains of the spouses and for the approval of the agreement of separation of their properties. This was docketed as Special Proceeding No. 2551. On December 27, 1990, a decision was issued granting the petition and approving the separation of property agreement.

For his part, on June 24, 1991, Abelardo commenced Civil Case No. 91-1757, for the declaration of nullity of his marriage with Margarita, based on psychological incapacity under the New Family Code. As Margarita was then residing at 96 Mulberry Lane, Atherton, California, U.S.A., Abelardo initially moved that summons be served through the International Express Courier Service. The court *a quo* denied the motion. Instead, it ordered that summons be served by publication in a newspaper of general circulation once a week for three (3) consecutive weeks, at the same time furnishing respondent a copy of the order, as well as the corresponding summons and a copy of the petition at the given address in the United States through the Department of Foreign Affairs, all at the expense of Abelardo. Respondent was given sixty (60) days after publication to file a responsive pleading.

On July 15, 1991, Process Server, Maximo B. Dela Rosa, submitted his Officer's Return quoted hereunder:

"OFFICER'S RETURN

THIS IS TO CERTIFY that on July 3, 1991, I have served a copy of summons and complaint with annexes together with order dated June 28, 1991 issued by the Court in the above-entitled case upon defendant Margarita Romualdez-Licaros c/o DFA. (sent by Mail) thru Pat G. Martines receiving Clerk of Department of Foreign Affairs a person authorized to receive this kind of process who acknowledged the receipt thereof at ADB Bldg., Roxas Blvd., Pasay City, Metro Manila." (**p. 40, Rollo**)

As required by law, the case was referred to Trial Prosecutor Bruselas, Jr. to find out any possible collusion between the parties in the case. Thereafter, with the negative report of collusion, Abelardo was allowed to present his evidence ex-parte. On November 8, 1991, the Decision (**Annex "A", Petition**) was handed down in Civil Case No. 91-1757 declaring the marriage between Abelardo and Margarita null and void.

Almost nine (9) years later, on April 28, 2000, the petition at bench was commenced when Margarita received a letter dated November 18, 1991 from a certain Atty. Angelo Q. Valencia informing her that she no longer has the right to use the family name "**Licaros**" inasmuch as her marriage to Abelardo had already been judicially dissolved by the Regional Trial Court of Makati on November 8, 1991. Asseverating to have immediately made some verifications and finding the information

given to be true, petitioner commenced the instant petition on the following grounds:

(A) THERE WAS EXTRINSIC FRAUD IN THE PREPARATION AND FILING BY ABELARDO OF THE PETITION FOR DISSOLUTION OF THE CONJUGAL PARTNERSHIP OF GAINS AND ITS ANNEX, THE AGREEMENT OF SEPARATION OF PROPERTIES.

(B) THE TRIAL COURT LACKED JURISDICTION TO HEAR AND DECIDE THE PETITION FOR DECLARATION OF NULLITY OF MARRIAGE. ^[6]

The Ruling of the Court of Appeals

The Court of Appeals debunked the claim of Margarita that there was extrinsic fraud in the preparation and filing by Abelardo of the *Petition for Dissolution of Conjugal Partnership of Gains* and its annex, the *Agreement of Separation of Properties*. The Court of Appeals stated:

x x x, the extrinsic fraud alluded to consists of Abelardo coercing Margarita into signing the petition to dissolve their conjugal partnership of gains together with the agreement of separation of properties, by threatening to cut-off all financial and material support of their children then still studying in the United States; that petitioner had no hand directly or indirectly in the preparation of the petition and agreement of separation of properties; that petitioner never met the counsel for the petitioner, nor the notary public who notarized the deed; and, petitioner never received any notice of the pendency of the petition nor a copy of the decision.

Antithetically, a meticulous perusal of the controversial petition (***Annex "B-1"***) and the agreement of separation of properties (***pp. 60-64, Rollo***) readily shows that the same were signed by the petitioner on the proper space after the prayer and on the portion for the verification of the petition. The same is true with the agreement of separation of properties. What is striking to note is that on August 6, 1990, Margarita appeared before Amado P. Cortez, Consul of the Republic of the Philippines at the San Francisco, California, United States Consulate Office, to affirm and acknowledge before said official that she executed the agreement of separation of properties of her own free will and deed, after being informed of the contents thereof. And yet, there is no showing that Abelardo was with her at the Philippine Consulate Office in confirming the separation of property agreement. Moreover, on page 2 of the same agreement, it is specifically stated that such property separation document shall be "subject to approval later on by the proper court of competent jurisdiction." The clear import of this is that the agreement must have to be submitted before the proper court for approval, which explains and confirms petitioner's signature on the petition filed in court.

In main, We see no indication nor showing of coercion or fraud from

these facts, which could very well be considered as extrinsic or collateral fraud to justify a petition under Rule 47. From all indications, the pretended coerced documents were rather freely and voluntarily executed by the parties therein knowing fully well the imports thereof. This conclusion finds more weight if We consider the fact that the separation of property was fully implemented and enforced, when apparently both parties correspondingly received the properties respectively assigned to each of them under the said document.^[7]

The Court of Appeals also rejected Margarita's claim that the trial court lacked jurisdiction to hear and decide the *Petition for Declaration of Nullity of Marriage* for improper service of summons on her. The case involves the marital status of the parties, which is an action *in rem* or *quasi in rem*. The Court of Appeals ruled that in such an action the purpose of service of summons is not to vest the trial court with jurisdiction over the person of the defendant, but "only" to comply with due process. The Court of Appeals concluded that any irregularity in the service of summons involves due process which does not destroy the trial court's jurisdiction over the res which is the parties' marital status. Neither does such irregularity invalidate the judgment rendered in the case. Thus, the Court of Appeals dismissed the petition for annulment of judgment, stating that:

At bar, the case involves the personal (marital) status of the plaintiff and the defendant. This status is the res over which the Philippine court has acquired jurisdiction. This is also the kind of action which the Supreme Court had ruled that service of summons may be served extraterritorially under Section 15 (**formerly Section 17**) of Rule 14 and where such service of summons is not for the purpose of vesting the trial court with jurisdiction over the person of the defendant but only for the purpose of complying with the requirements of fair play and due process. **A fortiori**, the court **a quo** had properly acquired jurisdiction over the person of herein petitioner-defendant when summons was served by publication and a copy of the summons, the complaint with annexes, together with the Order of June 28, 1991, was served to the defendant through the Department of Foreign Affairs by registered mail and duly received by said office to top it all. Such mode was upon instruction and lawful order of the court and could even be treated as 'any other manner the court may deem sufficient'.^[8]

Hence, the instant petition.

The Issues

The issues raised by Margarita are restated as follows:

- I. Whether Margarita was validly served with summons in the case for declaration of nullity of her marriage with Abelardo;
- II. Whether there was extrinsic fraud in the preparation and filing by Abelardo of the Petition for Dissolution of the Conjugal Partnership of Gains and its annex, the Agreement of Separation of Properties.

The Court's Ruling