FIRST DIVISION

[G.R. No. 202039, August 14, 2019]

ANGELITA SIMUNDAC-KEPPEL, PETITIONER, VS. GEORG KEPPEL, RESPONDENT.

D E C I S I O N

BERSAMIN, C.J.:

The courts do not take judicial notice of foreign laws. To have evidentiary weight in a judicial proceeding, the foreign laws should be alleged and proved like any other material fact.

This Case

By this appeal, the petitioner assails the decision promulgated on September 26, 2011[1] by the Court of Appeals (CA) that reversed the judgment rendered on June 21, 2006[2] by the Regional Trial Court (RTC) in Muntinlupa City in Civil Case No. 96-048.

Antecedents

As summarized by the CA, the factual antecedents are as follows:

> In November 1972, petitioner Angelita Simundac Keppel (**Angelita**) left the Philippines to work in Germany as a nurse. In the hospital where Angelita worked, she met Reynaldo Macaraig (**Reynaldo**), also a nurse and fellow Filipino who had become a naturalized German citizen. They fell in love and got married in Germany on 12 June 1976. Angelita and Reynaldo's union produced a son.
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> After a few years of marriage, Angelita became attracted to another German nurse and co-employee, Georg Keppel (Georg). Like Angelita, Georg was married to a Filipina nurse, with whom he had two children. Eventually, the attraction between Angelita and Georg developed into an intimate affair. Not long after that, Reynaldo discovered Angelita's infidelity and they separated.
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> In the meantime, in February 1986, Angelita became a naturalized German citizen. Angelita and her son left Germany to go home to the Philippines, where they planned to start over.
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> While in the Philippines, Angelita continued communicating with Georg through letters and telephone calls. In July 1987, Georg's wife divorced him, and so Georg felt free to come to the Philippines to meet Angelita's family in September 1987.

In December 1987, Angelita returned to Germany to file divorce proceedings against Reynaldo, and she obtained the divorce decree she sought in June 1988. Shortly thereafter, Angelita and Georg got married in Germany on 30 August 1988. On 21 November 1989, Angelita gave birth in Germany to a daughter, whom they named Liselotte.

In 1991, Angelita and Georg entered into an agreement for the complete separation of their properties. At that time, Georg resigned from his job. To make matters worse, Georg was diagnosed with early multiple sclerosis and could not work. Since Angelita's income was barely enough to support them all, they decided to return and settle permanently in the Philippines in 1992.

Angelita bought a lot in Muntinlupa on which they had a house built in 1993. She also put up a commercial building – which earned rentals – on another lot in Muntinlupa, which she and her first husband, Reynaldo, previously bought together. The rest of Angelita's savings from Germany went into putting up a school with her other family members and relatives.

Angelita earned a considerable income from her business ventures, which she shared with Georg. However, Angelita stopped giving Georg money in 1994 when she discovered that Georg was having extramarital affairs.

Claiming that Georg was beating her up, Angelita and her two children left their home in March 1996. Being the registered owner of their family home, Angelita sold the same to her sister. Despite said sale, Georg refused to vacate the house.

On 26 March 1996, Angelita filed the instant petition for annulment of marriage on the ground of Georg's alleged psychological incapacity. Georg opposed the petition, insisting that the court should only issue a decree of legal separation with the consequent division of their properties and determination of Liselotte's custody. Angelita countered that there were no properties to divide between them because all the real properties that she acquired in the Philippines belong solely to her as a consequence of the agreement for complete separation of property that they previously executed in Germany in 1991.

During trial, Angelita presented evidence of Georg's psychological incapacity through medical reports and the like, as well as the contract for separation of property. On the other hand, Georg presented evidence of the properties that they acquired during their marriage that he thinks should be divided equally between them.[3]

Judgment of the RTC

On June 21, 2006, the RTC rendered judgment declaring the marriage of Angelita and Georg null and void, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

a) [T]he marriage between spouses ANGELITA SIMUNDAC and GEORG KEPPEL which was solemnized on August 30, 1988 in Dulsburg, Germany, is hereby declared as null and void in view of the psychological incapacity of defendant to perform the essential marital obligations;

b) [A]ll the real and personal properties including the businesses subject of the instant suit is (sic) hereby declared as forming part of the paraphernal property of petitioner;

c) [T]he spouses are directed to equally support their minor child Lisselotte Angela Keppel;

d) [T]he custody of the minor child is hereby declared as belonging to herein petitioner, the mother, without prejudice to the visitorial rights accorded by law to defendant, unless the said minor child chooses her father's custody, herein defendant.

SO ORDERED.[4]

The RTC found both of the parties psychologically incapacitated but considered Georg's incapacity to be more severe on the basis of the clinical finding that he had manifested an anti-social or psychopathic type of personality that translated to the symptomatic tendency to deceive and injure Angelita. The RTC declared that as to the properties of the parties to be distributed after the dissolution of the marriage, the business and personal properties should be allocated to Angelita pursuant to the "Matrimony Property Agreement;" and that the lands should exclusively belong to Angelita inasmuch as Georg, being a German citizen, was absolutely prohibited from owning lands pursuant to Section 7, Article XVII of the Constitution.

Decision of the CA

On September 26, 2011, the CA promulgated its decision on appeal, reversing the RTC's findings, and thereby dismissing the complaint, disposing thusly:

> ***WHEREFORE***, the *Decision*, dated 21 June 2006, of the Regional Trial Court, Branch 256, Muntinlupa City in Civil Case No. 96-048 for Annulment of Marriage and Custody of Minor Child is **REVERSED** and **SET ASIDE**, except for the trial court's declaration that all properties acquired in the Philippines by Angelita Simundac Keppel belong to her alone. The complaint is **DISMISSED**.
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> ***SO ORDERED***.[5]

The CA observed that Angelita did not prove the allegations in her complaint because she did not present the original of her divorce decree from Reynaldo Macaraig, her first spouse; that she did not also prove the German law that capacitated her to marry

Georg; that in the eyes of the court, therefore, there could be no annulment of the marriage between Angelita and Georg to speak of because under Philippine law, Angelita had remained married to Reynaldo; that Angelita's evidence was insufficient to prove that either of the parties herein had been psychologically incapacitated to comply with essential marital obligations inasmuch as anti-social behavior did not equate to psychological incapacity; and that the properties of the couple exclusively belonged to Angelita because Georg could not own lands in the Philippines.

Issues

In this appeal, Angelita posits that the CA erred in not declaring her marriage with Georg null and void inasmuch as Georg was suffering from psychological incapacity that rendered him incapable to fulfill his essential marital obligations as borne out by the medical findings; that being then a German citizen, she need not prove the dissolution of her marriage with Reynaldo, or the validity of her marriage with Georg because Philippine law did not apply in both instances; and that as alleged in her petition she had recently re-acquired her Filipino citizenship.[6]

Georg counters that the evidence presented was not sufficient basis to conclude that he was psychologically incapacitated to perform his essential marital obligations; and that the prohibition against land ownership by aliens did not apply because the bulk of the properties of the spouses consisted of personal properties that were not covered by the Constitutional prohibition.

Did the CA err in sustaining the validity of the marriage of the parties? Are the lower courts correct in awarding all the properties of the spouses in favor of Angelita?

Ruling of the Court

The appeal fails to impress.

I.
Under the Nationality Principle, the petitioner cannot invoke Article 36 of the Family Code unless there is a German law that allows her to do so

A fundamental and obvious defect of Angelita's petition for annulment of marriage is that it seeks a relief improper under Philippine law in light of both Georg and Angelita being German citizens, not Filipinos, at the time of the filing thereof. Based on the Nationality Principle, which is followed in this jurisdiction, and pursuant to which laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad,[7] it was the pertinent German law that governed. In short, Philippine law finds no application herein as far as the family rights and obligations of the parties who are foreign nationals are concerned

In *Morisono v. Morisono*,[8] we summarized the treatment of foreign divorce judgments in this jurisdiction, thus:

> The rules on divorce prevailing in this jurisdiction can be summed up as follows: *first*, Philippine laws do not provide for absolute divorce, and hence,

> the courts cannot grant the same; *second*, consistent with Articles 15 and 17 of the Civil Code, the marital bond between two (2) Filipino citizens cannot be dissolved even by an absolute divorce obtained abroad; *third*, **an absolute 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;** and *fourth*, in mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry. [Bold underscoring supplied for emphasis]

Accordingly, the petition for annulment initiated by Angelita fails scrutiny through the lens of the Nationality Principle.

Firstly, what governs the marriage of the parties is German, not Philippine, law, and this rendered it incumbent upon Angelita to allege and prove the applicable German law. We reiterate that our courts do not take judicial notice of foreign laws; hence, the existence and contents of such laws are regarded as questions of fact, and, as such, must be alleged and proved like any other disputed fact.[9] Proof of the relevant German law may consist of any of the following, namely: (1) official publications of the law; or (2) copy attested to by the officer having legal custody of the foreign law. If the official record is not kept in the Philippines, the 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.[10] Angelita did not comply with the requirements for pleading and proof of the relevant German law.

And, secondly, Angelita overlooked that German and Philippine laws on annulment of marriage *might not be* the same. In other words, the remedy of annulment of the marriage due to psychological incapacity afforded by Article 36 of the *Family Code* might not be available for her. In the absence of a showing of her right to this remedy in accordance with German law, therefore, the petition should be dismissed.

II.
Assuming the remedy was proper, the petitioner did not prove the respondent's psychological incapacity

Even if we were now to adhere to the concept of processual presumption,[11] and assume that the German law was similar to the Philippine law as to allow the action under Article 36 of the *Family Code* to be brought by one against the other party herein, we would still affirm the CA's dismissal of the petition brought under Article 36 of the *Family Code*.

Notable from the RTC's disquisition is the fact that the psychiatrists found that both parties had suffered from anti-social behavior that became the basis for the trial court's conclusion that they had been both psychologically incapacitated to perform the essential martial obligations. Therein lay the reason why we must affirm the CA.

Jurisprudentially speaking, psychological incapacity under Article 36 of the *Family Code* contemplates an incapacity or inability to take cognizance of and to assume basic

marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will. The disorder consists of: *(a)* a true inability to commit oneself to the essentials of marriage; *(b)* the inability must refer to the essential obligations of marriage, that is, the conjugal act, the community of life and love, the rendering of mutual help, and the procreation and education of offspring; and *(c)* the inability must be tantamount to a psychological abnormality. Proving that a spouse did not meet his or her responsibility and duty as a married person is not enough; it is essential that he or she must be shown to be incapable of doing so because of some psychological illness.[12]

Psychological incapacity is unlike any other disorder that would invalidate a marriage. It should refer to a mental incapacity that causes a party to be incognitive of the basic marital covenants such as those enumerated in Article 68 of the *Family Code* and must be characterized by gravity, juridical antecedence and incurability.[13]

In *Republic v. Court of Appeals*,[14] the Court issued the following guidelines for the interpretation and application of Article 36 of the *Family Code*, to wit:

> (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.
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> The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence, inviolability and solidarity*.
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> (2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.
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> (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

Here, however, the petitioner presented no evidence to show that the anti-social behavior manifested by both parties had been grave, and had existed at the time of the celebration of the marriage as to render the parties incapable of performing all the essential marital obligations provided by law. As the records bear out, the medical experts merely concluded that the behavior was grave enough as to incapacitate the parties from the performance of their essential marital relationship because the parties exhibited symptoms of an anti-social personality disorder. Also, the incapacity was not established to have existed at the time of the celebration of the marriage. In short, the conclusion about the parties being psychologically incapacitated was not founded on sufficient evidence.

III.
Former Filipinos have the limited right to own public agricultural lands in the Philippines

We next deal with the ownership of lands by aliens.

Properties accumulated by a married couple may either be real or personal. While the RTC awarded herein all personal properties in favor of Angelita pursuant to the "Matrimonial Property Agreement" executed in Germany, it ignored that such agreement was governed by the national law of the contracting parties; and that the forms and solemnities of contracts, wills, and other public instruments should be governed by the laws of the country in which they are executed.[15]

Angelita did not allege and prove the German law that allowed her to enter into and adopt the regime of complete separation of property through the "Matrimonial Property Agreement." In the absence of such allegation and proof, the German law was presumed to be the same as that of the Philippines.

In this connection, we further point out Article 77 of the *Family Code* declares that marriage settlements and any modification thereof shall be made in writing and signed by the parties *prior* to the celebration of the marriage. Assuming that the relevant German law was similar to the Philippine law, the "Matrimonial Property Agreement," being entered into by the parties in 1991, or a few years *after* the celebration of their marriage on August 30, 1988, could not be enforced for being in contravention of a mandatory law.[16]

Also, with the parties being married on August 30, 1988, the provisions of the *Family Code* should govern. Pursuant to Article 75 of the *Family Code*, the property relations between the spouses were governed by the absolute community of property. This would then entitle Georg to half of the personal properties of the community property.

As to the real properties of the parties, several factual considerations were apparently overlooked, or were not established.

Section 7, Article XII of the 1987 Constitution states that: "Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain." It seems clear, however, that the lower courts were too quick to pronounce that Georg, being a German citizen, was automatically disqualified from owning lands in the Philippines. Without disputing the inherent validity of the pronouncement, we nonetheless opine that the lower courts missed to take note of the fact that Angelita, in view of her having admitted that she herself had been a German citizen, suffered the same disqualification as Georg. Consequently, the lower courts' pronouncement awarding all real properties in favor of Angelita could be devoid of legal basis as to her.

At best, an alien could have enjoyed a limited right to own lands. Section 8, Article XII of the Constitution provides: "Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law." Section 5 of Republic Act No. 8179 (*An Act Amending the Foreign Investments Act of 1991*) also states:

> Sec. 10. *Other Rights of Natural Born Citizen Pursuant to the Provisions of Article XII, Section 8 of the Constitution*. — Any natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land to be used by him for business or other purposes. In the case of married couples, one of them may avail of the privilege herein granted: *Provided*, That if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.

> In case the transferee already owns urban or rural land for business or other purposes, he shall still be entitled to be a transferee of additional urban or rural land for business or other purposes which when added to those already owned by him shall not exceed the maximum areas herein authorized.
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> A transferee under this Act may acquire not more than two (2) lots which should be situated in different municipalities or cities anywhere in the Philippines: *Provided*, That the total land area thereof shall not exceed five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land for use by him for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land area and vice versa.

As the foregoing indicates, Angelita did not have any unlimited right to own lands. On the other hand, the records were not clear on whether or not she had owned real property as allowed by law. It was imperative for the lower courts to determine so. Hence, remand for further proceedings is called for.

It is true that Angelita stated in her petition that she had meanwhile re-acquired Filipino citizenship.[17] This statement remained unsubstantiated, but the impact thereof would be far reaching if the statement was true, for there would then be no need to determine whether or not Angelita had complied with Section 5 of R.A. No. 8179. Thus, the remand of the case will enable the parties to adduce evidence on this aspect of the case, particularly to provide factual basis to determine whether or not Angelita had validly re-acquired her Filipino citizenship; and, if she had, to ascertain what would be the extent of her ownership of the real assets pertaining to the marriage. If the remand should establish that she had remained a foreigner, it must next be determined whether or not she complied with the limits defined or set by R.A. No. 8179 regarding her land ownership. The trial court shall award her the real property that complied with the limits of the law, and inform the Office of the Solicitor General for purposes of a proper disposition of any excess land whose ownership violated the law.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on September 26, 2011 by the Court of Appeals in CA-G.R. CV No. 89297 subject to the **MODIFICATION** that the personal properties of the parties are to be equally divided between them; and **REMANDS** the case to the court of origin for the determination of the issues deriving from the petitioner's re-acquisition of her Filipino citizenship as far as the ownership of the land pertaining to the parties is concerned consistent with this decision.

No pronouncement on costs of suit.

SO ORDERED.

Perlas-Bernabe, Jardeleza, Gesmundo, and *Carandang, JJ.,* concur.

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[1] *Rollo*, pp. 54-69; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justice Marlene Gonzales-Sison and Associate Justice Danton Q. Bueser.

[2] Id. at 339-345; penned by Presiding Judge Alberto L. Lerma.

[3] Id. at 12-14.

[4] Id. at 345.

[5] Id. at 25.

[6] Id. at 18.

[7] Article 15, *Civil Code*.

[8] G.R. No. 226013, July 2, 2018.

[9] *Manufacturers Hanover Trust Co., v. Guerrero*, G.R. No. 136804, February 19, 2003, 397 SCRA 709, 715.

[10] *Juego-Sakai v. Republic*, G.R. No. 224015, July 23, 2018.

[11] Under this doctrine, if the foreign law involved is not properly pleaded and proved, our courts will presume that the foreign law is the same as our local or domestic or internal law (*Del Socorro v. Van Wilsem,* G.R. No. 193707, December 10, 2014, 744 SCRA 516, 528).

[12] *Republic v. Court of Appeals (Ninth Division)*, G.R. No. 159594, November 12, 2012, 685 SCRA 33, 41.

[13] *Republic v. Court of Appeals,* G.R. No. 108763, February 13, 1997, 268 SCRA 198, 209-213.

[14] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

[15] Article 17, *Civil Code*.

[16] Article 5, *Civil Code*.

[17] *Rollo*, p. 48.