



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**MARIETTA
JOHANSEN**

PANGILINAN

G.R. No. 256951

Petitioner,

Present:

LEONEN, J.,
Chairperson,
CARANDANG,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

**OFFICE OF THE CIVIL
REGISTRAR GENERAL,
DEPARTMENT OF FOREIGN
AFFAIRS, PHILIPPINE
STATISTICS AUTHORITY, AND
OFFICE OF THE SOLICITOR
GENERAL**

Promulgated:

Respondents.

November 29, 2021

MisDCAH

X-----X

DECISION

CARANDANG, J.:

Before Us is a Petition for Review on *Certiorari*¹ filed by Marietta Pangilinan Johansen (petitioner) assailing the Decision² dated January 14, 2021 and the Order³ dated April 5, 2021 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 84, in Special Proceedings No. 73-M-2019, entitled “*In Re: Petition for Judicial Recognition of Foreign Divorce.*” The RTC dismissed the case on the ground of lack of jurisdiction.

On June 12, 2015, petitioner, a Filipino citizen, and Knul Johansen (Knul), a Norwegian national, married in Norway per the Report of Marriage

¹ *Rollo*, pp. 3-11.

² Penned by Judge Caroline Soriano Rojas; *id.* at 15-16.

³ *Id.* at 17.

9

No. 2016-5780051 of the Embassy/Consulate of the Philippines in Oslo. The spouses lived together in Norway until 2017 when they separated due to marital problems. Knul obtained a divorce decree against petitioner under Chapter 4 of the Norwegian Marriage Act. A Final Decree of Divorce dated November 30, 2018 was issued by the Counter Governor of Oslo and Akershusner and Katsuyuki duly authenticated by the Vice Consul of the Embassy of the Philippines.⁴ Thereafter, on April 25, 2019, petitioner filed a verified Petition for Recognition of Foreign Judgment of Divorce in the RTC. She asked the RTC, *inter alia*, to order the Office of the Civil Registrar General (OCRG) and/or Department of Foreign Affairs (DFA) to annotate the Decree of Divorce on the Report of Marriage. She attached the following in her petition: (1) PSA copy of the Report of Marriage between her and Knul; (2) original copy of the Decree of Divorce, with translation duly authenticated by Vice Consul of the Embassy of the Philippines in Oslo, Norway; and (3) duly authenticated copy of the Norwegian Marriage Legislation, Act No. 47 of 4 July 1991 Relating to Marriage.⁵

On May 10, 2019, the RTC declared the petition sufficient in form and substance. It ordered petitioner to furnish a copy of the petition to the OCRG, Provincial Prosecutor of Bulacan, Civil Registrar of San Miguel, Bulacan, and the Philippine Statistic Authority (PSA). The petition was published in a newspaper of general circulation for three consecutive weeks and was also posted in the Bulacan Provincial Capitol, San Miguel Municipal Hall, and in the Bulletin Board of RTC Branch 84, Malolos City. On June 28, 2019, the RTC noted the appearance of the Office of the Solicitor General and the latter's authorization for the Bulacan Provincial Prosecutor to appear in the case.⁶

On September 26, 2019, the RTC heard the petition for compliance with jurisdictional requirements. On December 5, 2019, petitioner presented evidence in support of her petition before the branch clerk of the RTC. She made a formal offer of testimonial and documentary evidence on December 13, 2019, which the RTC all admitted. The State, the PSA, and the Civil Registrar of San Miguel Bulacan did not present any evidence and did not make any objections on the petition. Hence, the case was submitted for decision on October 19, 2020.⁷

Ruling of the Regional Trial Court

In its Decision dated January 14, 2021, the RTC dismissed the case for lack of jurisdiction. It ruled that the case is being filed under Rule 108 of the Rules of Court since petitioner asked the court to direct the OCRG and /or DFA to annotate the Decree of Divorce in the Report of Marriage. Under Rule 108, the venue of the petition is at the place where the record may be found. Venue under this rule is jurisdictional. The Report of Marriage in this

⁴ Id. at 15.

⁵ Id. at 5.

⁶ Id.

⁷ Id. at 5-6.



case is found in the DFA or the OCRG, hence venue and/or jurisdiction falls with the RTC of either Pasig City or Quezon City,⁸ and not in the RTC of Malolos City, Bulacan.

Petitioner moved for reconsideration, which the RTC denied in its Order dated April 5, 2021. The RTC hastened to add that petitioner prayed not only for the recognition of foreign judgment under Rule 39, Section 48(b) but also for the correction of entry in the civil registry under Rule 108, so with the addition of that prayer, the petition became a special proceeding where venue is jurisdictional in nature.⁹

Aggrieved, petitioner directly filed the present appeal before Us.

Arguments of Petitioner

Petitioner faulted the RTC for declaring that venue in a special proceeding is jurisdictional after it has ruled on the sufficiency of the form and substance of the petition and admitted all evidence which proved compliance with the jurisdictional requirements, without any opposition from the State on either the petition or venue of the case. Citing case law, petitioner claimed that venue is procedural, not jurisdictional, hence may be waived. She alleged that she filed the case in the RTC of Malolos because it is convenient and accessible to her as she is a resident of Sibul, San Miguel, Bulacan. The RTC, in dismissing the case, is in effect ordering her to refile the petition and go through the same process of publication and notice to the public, which is prejudicial and unjust to her. The same would also defeat the purpose of recognizing foreign judgments, which is to limit repetitive litigation on claims and issues.¹⁰

Issue

The issue in this case is whether the RTC erred in ruling that venue under Rule 108 of the Rules of Court is jurisdictional.

Ruling of the Court

We deny the petition.

At the outset, the petition before Us is directly filed from the Decision of the RTC. Under Rule 41, Section 2(c) of the 1997 Rules of Court, as amended, an appeal by *certiorari* shall be taken to this Court where only questions of law are involved. A question of law arises when there is doubt as to what the law is on a certain set of facts, while there is a question of fact when the doubt arises as to the truth or falsehood of the alleged facts. The test of whether the question is one of law or fact is not the appellation given

⁸ Id. at 15.

⁹ Id. at 17.

¹⁰ Id. at 7-10.

to such question by the party raising it. Rather, it is whether the appellate court can determine the issue without reviewing or evaluating the evidence. If no review is necessary, the question is one of law. Otherwise, it is a question of fact. Here, the issue of whether the venue stated in Rule 108 of the Rules of Court is jurisdictional, is one of law. Petitioner correctly filed the appeal before Us.

Recognition of foreign decree of divorce versus cancellation or correction of civil status

The RTC held that the petition for recognition of foreign divorce decree filed by petitioner is governed by Rule 108 of the Rules of Court since it included a prayer for the correction of her civil status. The RTC is partly correct.

Case law teaches that the court's recognition of a foreign divorce decree does not, by itself, authorize the cancellation of the entry in the civil registry.¹¹ The two differs as to their nature and governing rules and procedures. A recognition of a foreign judgment is an action for Philippine courts to recognize the effectivity of a foreign judgment, which presupposes a case which was already tried and decided under foreign law.¹² A foreign judgment relating to marriage where one of the parties is a citizen of a foreign country is governed by the second paragraph of Article 26 of the Family Code, to wit:

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Petitioner needs to prove the foreign judgment as a fact under Rule 39, Section 48(b)¹³ in relation to Rule 132, Sections 24 and 25¹⁴ of the Rules

¹¹ *Corpuz v. Sto. Tomas*, 642 Phil. 420, 436 (2010).

¹² *Fujiki v. Marinay*, 712 Phil. 524, 554 (2013).

¹³ **Section 48. Effect of foreign judgments or final orders.** — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and

(b) **In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.**

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (Emphasis supplied.)

¹⁴ **Section 24. Proof of official record.** — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a)

of Court.¹⁵ On the contrary, cancellation or correction of entries in the civil registry is governed by Article 412 of the Civil Code, which states that “[n]o entry in a civil register shall be changed or corrected, without a judicial order.” Rule 108 of the Rules of Court supplements Article 412 by providing a special remedial proceeding by which entries in the civil registry may be judicially cancelled or corrected. Rule 108 states the jurisdictional and procedural requirements that must be complied with before a judgment, authorizing the cancellation or correction, may be annotated in the civil registry.¹⁶

The differences between an action for recognition of foreign judgment and a cancellation or correction of entries in the civil registry do not preclude the joining of both causes of actions in one judicial proceeding. We clarified this in *Corpuz v. Sto. Tomas*,¹⁷ to wit:

We hasten to point out, however, that this ruling should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. **The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.**¹⁸
(Emphasis supplied)

We further elaborated in *Fujiki v. Marinay*¹⁹ that since recognition of a foreign judgment or final order only requires proof of fact of the judgment, it may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court.²⁰ A foreign judgment is presumptive evidence of a right between the parties. Upon its recognition, the right becomes conclusive, and the judgment serves as the basis for the correction or cancellation of entry in the civil registry.²¹ Accordingly, in the interest of judicial economy and simplification, parties-

Section 25. What attestation of copy must state. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (26a)

¹⁵ *Fujiki v. Marinay*, supra note 12.

¹⁶ *Republic v. Cote*, G.R. No. 212860, March 14, 2018, citing *Corpuz v. Sto. Tomas*, 642 Phil. 420 (2010).

¹⁷ *Corpuz v. Sto. Tomas*, supra note 11 at 437.

¹⁸ *Id.*

¹⁹ *Fujiki v. Marinay*, supra note 12.

²⁰ *Id.* at 548.

²¹ *Id.* at 557.

in-interest who seek not only to have a foreign decree of divorce recognized in the country but also to cancel or correct their civil status in the local civil registry must file a petition under Rule 108 in relation to Rule 39 of the Rules of Court for correction/cancellation of entry in the civil registry coupled with judicial recognition of foreign judgment.

Thus, the petition of petitioner in the RTC is governed not only by Rule 108 but also by Rule 39 as to the matter pertaining to the recognition of foreign divorce decree.

Venue in Rule 108 is jurisdictional.

Rule 108 is a special proceeding or a remedy by which a party seeks to establish a right, or a particular fact. It creates a remedy to rectify facts of a person's life which are recorded by the State pursuant to the Civil Register Law or Act No. 3753. These are facts of public consequence such as birth, death or marriage, which the State has an interest in recording.²² The specific requirements for cancellation or correction of entries in the civil registry are found in Section 1 and 3 of Rules 108, viz.:

Section 1. *Who may file petition.* - Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, **with the Court of First Instance of the province where the corresponding civil registry is located.**

x x x x

Section 3. *Parties.* — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding. (Emphasis supplied)

In *Fox v. Philippine Statistics Authority*,²³ We declared that Rule 108 pertains to a special proceeding, hence the specific provisions stated therein, particularly on venue, must be observed in order to vest the court with jurisdiction. There, We sustained the Davao RTC's *motu proprio* dismissal of the petition for correction of entry under Rule 108 for lack of jurisdiction upon a finding that the Report of Birth of petitioner's daughter was registered in the PSA of Manila. Hence, the petition for correction must be filed in the RTC of Manila and not in Davao. We also underscored that the local civil registrar is an indispensable party in the petition for which no final determination of the case can be reached.

²² *Fox v. Philippine Statistics Authority*, G.R. No. 233520, March 6, 2019, citing *Fujiki v. Marinay*, 712 Phil. 524 (2013).

²³ G.R. No. 233520, March 6, 2019.

9

Petitioner failed to comply with the requirements of Rule 108.

It is undisputed that the petition filed in the RTC sought two reliefs, namely: (1) recognition of foreign decree of divorce and the corresponding (2) change or correction of entry in the civil register. Hence, petitioner must not only establish the foreign judgment as a fact in accordance with the Rules on Evidence but must also comply with the specific requirements of Rule 108. This, petitioner failed to do.

Per the Decision of the RTC, the Report of Marriage in this case is found either in the DFA or the OCRG, that is, in Pasay City or Quezon City, respectively. Pursuant to Section 1, Rule 108, the petition must be filed in the RTC where the corresponding civil registry is located. However, petitioner filed the case in the RTC of Malolos City, Bulacan because it is convenient for her as she is residing in San Miguel, Bulacan. Thus, venue was improperly laid. More, the local civil registrar of Pasay (in case the Report of Marriage is with the DFA) was not impleaded. The RTC of Malolos City, Bulacan has no authority to order the civil registrar of Pasay or Quezon City to correct the civil status of petitioner.

In fine, considering the foregoing defects in the petition, the RTC of Malolos City, Bulacan did not err in dismissing it for lack of jurisdiction. Nevertheless, the dismissal is without prejudice to the refiling of the petition in the proper court, with full compliance to the specific requirements of Rule 108. Foremost, petitioner must ascertain where her Report of Marriage was recorded to know which RTC has jurisdiction over the petition.

WHEREFORE, the petition is **DENIED**. The Decision dated January 14, 2021 and the Order dated April 5, 2021 of the Regional Trial Court of Malolos City, Bulacan, Branch 84, in Special Proceedings No. 73-M-2019 are **AFFIRMED** without prejudice to the filing of the appropriate actions.

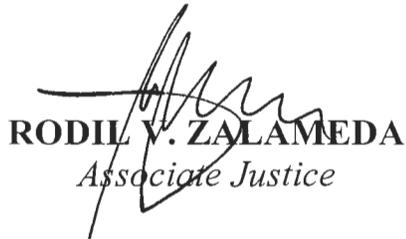
SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice