Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-32026. January 16, 1986]

RE: PETITION FOR DECLARATION OF ABSENCE OF ROBERTO L. REYES.

ERLINDA REYNOSO REYES, *petitioner, vs.* **HON. JOSE P. ALEJANDRO, in his capacity as Judge, Court of First Instance of Cavite, Branch II, Cavite City,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PERSONS; ABSENCE; PURPOSE OF JUDICIAL DECLARATION'—** "A perusal of Rule 107 of the Rules of Court on absentees reveals that it is based on the provisions of Title XIV of the New Civil Code on absence. And the reason and purpose of the provisions of the New Civil Code on absence (Arts. 381 to 396) are: (1) The interest of the person himself who has disappeared; (2) The rights of third parties against the absentee, especially those who have rights which would depend upon the death of the absentee; and (3) The general interest of society which may require that property does not remain abandoned without someone representing it and without an owner (Civil Code by Francisco, Vol. 2, pp. 930-931, 1953 Ed.). The need to have a person judicially declared an absentee is when he has properties which have to be taken cared of or administered by a representative appointed by the Court (Article 384, Civil Code); the spouse of the absentee is asking for separation of property (Article 191, Civil Code) or his wife is asking the Court that the administration of all classes of property in the marriage be transferred to her (Article 196, Civil Code). The petition to declare the husband an absentee and the petition to place the management of the conjugal properties in the hands of the wife may be combined and adjudicated in the same proceedings, *Peyer vs. Martinez*, 88 Phil. 72, 80).

2. **REMEDIAL LAW; SPECIAL PROCEEDINGS; ABSENTEE; JUDICIAL DECLARATION THEREOF NOT NECESSARY**

Supreme Court E-Library

WHEN SAID PERSON HAS NO RIGHT OR INTEREST IN THE PHILIPPINES.— As this Court said in *Jones vs. Hortiguela*, 64 Phil. 197: "x x x For the purposes of the civil marriage law, it is not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose to enable the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former spouse has been absent for seven consecutive years at the time of the second marriage, that the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage (section III, paragraph 2, General Orders, No. 68)." (On page 183).

3. **ID.; ID.; ID.; ID.; RULE IN CASE OF CIVIL MARRIAGE PURPOSES.**— It will thus be noted that said provisions of the New Civil Code are concerned with absence only with reference to its effects on property (2 Manresa, 101-102, Civil Code by Francisco, Vol. 2, p. 932, 1953 Ed.). Article 384, New Civil Code, which is reproduced from Article 184 of the old Code, and relied upon by herein petitioner, refers to the second period or stage of absence, and specifically indicates the precise moment when the same may begin. Thus, this article provides that after the lapse of two (2) years without any news about the absentee or since the receipt of the last news, and five (5) years in case the absentee has left a person in charge of the administration of his property, his absence may be declared by the Court. The primordial purpose of this declaration is to provide for an administrator of the property of the absentee. It cannot be said that because of the comma (,) between the words 'news' and 'and', the two-year period mentioned in the first part of the law has no reference to or bearing on the property of the absentee. Manresa states that the only reason for the different periods is because in one case (2 years) the absentee has not left a person in charge of the administration of his property, and in the other case (5 years) the absentee has provided for his absence by appointing an administrator of his property dispensing in a way the giving of news about himself (2 Manresa, 127-128). It is worth to note, in this connection, that the first

Supreme Court E-Library

period or stage of absence as covered by Article 381 of the New Civil Code provides for provisional measures — the appointment by the Court of a person to represent the absentee 'in all that may be necessary' — when a mere presumption of his absence arises. It should be noted that the appointment of a 'representative' of the absentee is for the protection of the interest of the latter. This is clear from the provisions of Article 382 which enjoins the judge to 'take the necessary measures to safeguard the rights and interests of the absentee x x x.' Moreover, it is not enough that a person is declared an absentee. The law (see Articles 381, 382 and 383) requires the judge to appoint a representative for the absentee precisely to safeguard the property or interest of the latter. It is thus imperative that the declaration of absence be for a specific purpose, and that purpose can be no other than the protection of the interest or property of the absentee. Castan, in his commentary, emphatically states that there must be an immediate necessity for the representation of the absentee in some specific urgent matters (Vol. 1, pp. 182-183). The same observation and commentary can be said of the corresponding complimenting provisions of Rule 107 of the Rules of Court, particularly Sections 6 and 7 thereof which make it mandatory upon the Court to appoint a representative, trustee or administrator who shall safeguard the rights and interest of the absentee. Considering that neither the petition alleges, nor the evidence shows, that Roberto L. Reyes has any rights, interest or property in the Philippines, there is no point in judicially declaring him an absentee."

DECISION

PATAJO, *J.*:

This is an appeal from an order of the Court of First Instance of Cavite dismissing the petition filed by petitioner-appellant Erlinda Reynoso Reyes to have her husband Roberto L. Reyes declared an absentee.

In a petition filed on October 25, 1969 Erlinda Reynoso prayed for the declaration of the absence of her husband Roberto L. Reyes alleging that her husband had been absent from their

Supreme Court E-Library

conjugal dwelling since April 1962 and since then had not been heard from and his whereabouts unknown. The petition further alleged that her husband left no will nor any property in his name nor any debts.

The evidence presented by petitioner in support of her petition established that she and Roberto L. Reyes were married on March 20, 1960; that sometime in April 1962 her husband left the conjugal home due to some misunderstanding over personal matters; that since then petitioner has not received any news about the whereabouts of her husband; that they have not acquired any properties during their marriage and that they have no outstanding obligation in favor of anyone; that her only purpose in filing the petition is to establish the absence of her husband, invoking the provisions of Rule 107 of the New Rules of Court and Article 384 of the Civil Code.

After hearing the Court *a quo* dismissed the petition on the ground that since Roberto L. Reyes left no properties there was no necessity to declare him judicially an absentee. It said:

"A perusal of Rule 107 of the Rules of Court on absentees reveals that it is based on the provisions of Title XIV of the New Civil Code on absence. And the reason and purpose of the provisions of the New Civil Code on absence (Arts. 381 to 396) are: (1) The interest of the person himself who has disappeared; (2) The rights of third parties against the absentee, especially those who have rights which would depend upon the death of the absentee; and (3) The general interest of society which may require that property does not remain abandoned without someone representing it and without an owner (Civil Code by Francisco, Vol. 2, pp. 930-931, 1953 Ed.).

It will thus be noted that said provisions of the New Civil Code are concerned with absence only with reference to its effects on property (2 Manresa, 101-102, Civil Code by Francisco, Vol. 2, p. 932, 1953 Ed.). Article 384, New Civil Code, which is reproduced from Article 184 of the old Code, and relied upon by herein petitioner, refers to the second period or stage of absence, and specifically indicates the precise moment when the same may begin. Thus, this article provides that after the lapse of two (2) years without any news about the absentee or since the receipt of the last news, and five (5) years in case the absentee has left a person in charge of the administration of his property,

Supreme Court E-Library

his absence may be declared by the Court. The primordial purpose of this declaration is to provide for an administrator of the property of the absentee. It cannot be said that because of the comma (,) between the words 'news' and 'and', the two-year period mentioned in the first part of the law has no reference to or bearing on the property of the absentee. Manresa states that the only reason for the different periods is because in one case (2 years) the absentee has not left a person in charge of the administration of his property, and in the other case (5 years) the absentee has provided for his absence by appointing an administrator of his property dispensing in a way the giving of news about himself (2 Manresa, 127-128). It is worth to note, in this connection, that the first period or stage of absence as covered by Article 381 of the New Civil Code provides for provisional measures - the appointment by the Court of a person to represent the absentee 'in all that may be necessary' - when a mere presumption of his absence arises. It should be noted that the appointment of a 'representative' of the absentee is for the protection of the interest of the latter. This is clear from the provisions of Article 382 which enjoins the judge to 'take the necessary measures to safeguard the rights and interests of the absentee x x x.' Moreover, it is not enough that a person is declared an absentee. The law (see Articles 381, 382 and 383) requires the judge to appoint a representative for the absentee precisely to safeguard the property or interest of the latter. It is thus imperative that the declaration of absence be for a specific purpose, and that purpose can be no other than the protection of the interest or property of the absentee. Castan, in his commentary, emphatically states that there must be an immediate necessity for the representation of the absentee in some specific urgent matters (Vol. 1, pp. 182-183).

The same observation and commentary can be said of the corresponding complimenting provisions of Rule 107 of the Rules of Court, particularly Sections 6 and 7 thereof which make it mandatory upon the Court to appoint a representative, trustee or administrator who shall safeguard the rights and interest of the absentee.

Considering that neither the petition alleges, nor the evidence shows, that Roberto L. Reyes has any rights, interest or property in the Philippines, there is no point in judicially declaring him an absentee."

We affirm the order of the lower Court dismissing the petition. As this Court said in *Jones vs. Hortiguela*, 64 Phil. 197:

Supreme Court E-Library

"x x x For the purposes of the civil marriage law, it is not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose to enable the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former spouse has been absent for seven consecutive years at the time of the second marriage, that the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage (Section III, paragraph 2, General Orders, No. 68)." (On page 183).

The need to have a person judicially declared an absentee is when he has properties which have to be taken cared of or administered by a representative appointed by the Court (Article 384, Civil Code); the spouse of the absentee is asking for separation of property (Article 191, Civil Code) or his wife is asking the Court that the administration of all classes of property in the marriage be transferred to her (Article 196, Civil Code). The petition to declare the husband an absentee and the petition to place the management of the conjugal properties in the hands of the wife may be combined and adjudicated in the same proceedings, *Peyer vs. Martinez*, 88 Phil. 72, 80).

IN VIEW OF THE FOREGOING, judgment is hereby rendered AFFIRMING the order of the lower Court dismissing the petition to declare Roberto L. Reyes an absentee. With costs against petitioner-appellant.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, Gutierrez, Jr., and *De la Fuente, JJ.*, concur.