Divorce in the Philippines

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Divorce in the Philippines, Paragraph 2 of Article 26 of the Family Code

As a general rule, a divorce obtained abroad between two Filipino citizens is not valid or recognized in the Philippines. This is due to Article 15 of the Civil Code of the Philippines, which states that "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". Moreover, Paragraph 3 of Article 17 of the same Code states that "prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country".

The only exception is found in Article 26 of the Family Code of the Philippines, which states that "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 have capacity to remarry under Philippine law."

The twin elements for the application of Paragraph 2 of Article 26 are as follows:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and

2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.

However, given a valid marriage between two Filipino citizens, where one party is later naturalized as a foreign citizen and obtains a valid divorce decree capacitating him or her to remarry, can the Filipino spouse likewise remarry under Philippine law? This was the novel question faced by the Supreme Court in the case of Republic vs. Orbecido.

On May 24, 1981, Cipriano Orbecido III married Lady Myros M. Villanueva at the United Church of Christ in the Philippines in Lam-an, Ozamis City. Their marriage was blessed with a son and a daughter, Kristoffer Simbortriz V. Orbecido and Lady Kimberly V. Orbecido. In 1986, Cipriano's wife left for the United States bringing along their son Kristoffer. A few years later, Cipriano discovered that his wife had been naturalized as an American citizen. Sometime in 2000, Cipriano learned from his son that his wife had obtained a divorce decree and then married a certain Innocent Stanley. Cipriano thereafter filed with the trial court a petition for authority to remarry invoking Paragraph 2 of Article 26 of the Family Code. No opposition was filed. Finding merit in the petition, the court granted the same. The Republic, through the Office of the Solicitor General (OSG), sought reconsideration but it was denied.

In its petition, the OSG contends that Paragraph 2 of Article 26 of the Family Code is not applicable to the instant case because it only applies to a valid mixed marriage; that is, a marriage celebrated between a Filipino citizen and an alien. The proper remedy, according to the OSG, is to file a petition for annulment or for legal separation. Furthermore, the OSG argues there is no law that governs respondent's situation. The OSG posits that this is a matter of legislation and not of judicial determination. For his part, Cipriano admits that Article 26 is not directly applicable to his case but insists that when his naturalized alien wife obtained a divorce decree which capacitated her to remarry, he is likewise capacitated by operation of law pursuant to Section 12, Article II of the Constitution.

In finding for Orbecido, the Court held that:

"Thus, taking into consideration the legislative intent and applying the rule of reason, we hold that Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent. If we are to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26."

The Court held further that:

"The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry. In this case, when Cipriano's wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between her and Cipriano. As fate would have it, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the twin requisites for the application of Paragraph 2 of Article 26 are both present in this case. Thus Cipriano, the "divorced" Filipino spouse, should be allowed to remarry."

The Court was also unable to sustain the OSG's theory that the proper remedy of the Filipino spouse is to file either a petition for annulment or a petition for legal separation. Annulment would be a long and tedious process, and in this particular case, not even feasible, considering that the marriage of the parties appears to have all the badges of validity. On the other hand, legal separation would not be a sufficient remedy for it would not sever the marriage tie; hence, the legally separated Filipino spouse would still remain married to the naturalized alien spouse.

If you do find yourself in a situation similar to that of Cipriano and want to re-marry, it would be important for you to prove your allegation that your spouse was naturalized as an American citizen and you must likewise prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. Furthermore, you must also show that the divorce decree allows your former spuse to remarry as specifically required in Article 26. Otherwise, there would be no evidence sufficient to declare that your former spouse is capacitated to enter into another marriage.