

**CLARA TORELA AND SILVERIANA TORELA,
APPELLANTS-PETITIONERS, VS. FELIMON TORELA, MARCIANA
GEPANAGO AND MARCOS MAHILUM AND THE COURT OF APPEALS,
APPELLEES-RESPONDENTS.**

G.R. No. L-27843. October 11, 1979

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petitioners, whose complaint was dismissed both in the Court of First Instance of Negros Occidental and in the Court of Appeals, would have us reverse the decision of the latter and declare the land in litigation as the conjugal property of their parents so that they will be entitled to their mother's share who had died.

The decision of the Court of Appeals which was penned by Mr. Justice Hermogenes Concepcion, Jr., now a distinguished member of this Court, is reproduced hereunder in its material aspects for the factual background of the case and to enable us to identify the legal problem.

"It appears that on December 31, 1929, Decree No. 440157 was issued by the Court of First Instance of Occidental Negros in favor of Felimon Torela, married to Graciana Gallego, decreeing that he is the owner of a certain parcel of land (Lot No. 3770 of the Cad. Survey of Cauayan) described therein, and ordering that the same be registered in the name of said Felimon Torela in accordance with the provision of Land Registration Act (Exh. 3 also Exh. 4). Consequently, Original Certificate of Title No. 29257 covering said Lot No. 3770 of the Cauayan Cadastre was issued in favor of Felimon Torela. As the certificate of title (O.C.T. No. 29257) was either lost or destroyed during the last world war, Felimon Torela filed a verified petition for reconstitution, dated December 28, 1953, praying that after due publication thereof in the Official Gazette, as provided for by law, an order be issued setting the petition for hearing (Exh. A). Thereafter an order was issued on July 8, 1957, the dispositive portion of which is as follows -

'WHEREFORE, the Court, pursuant to section 13 of Republic Act No. 26, hereby orders the Register of Deeds of this province to reconstitute the original as well as the owner's duplicate of Original Certificate of Title No. 29257, covering Lot No. 3770 of Cauayan Cadastre, this province, on the basis of the above-mentioned Decree No. 440157 (Exh. D) for the said lot. All liens and incumbrances affecting the above state lot which appeared noted on the certificate of title sought to be reconstituted at the time of its loss or destruction, shall be annotated on the reconstituted certificate of title. Once the reconstitution herein ordered is duly accomplished, let a second owner's duplicate certificate be issued to the petitioner.'

Thus, Original Certificate of Title No. RO-6898 (29257) was issued in favor of Felimon Torela, in lieu of the lost and/or destroyed one (Exh. D, p. 125, Rec.).

On March 5, 1958, Felimon Torela, filed a 'Motion Ex-Parte' alleging that Lot No. 3770 of the Cauayan Cadastre having been acquired by him by way of inheritance prior to his marriage to his first wife, Graciana Gallego, the Cadastral court ordered that said land be registered in the name of Felimon Torela, married to Graciana Gallego; that his first wife died many years ago; and that he is married by second nuptial to Marciana

Gepanago. He, therefore, prayed that the court order the Register of Deeds of Negros Occidental to change his (movant's) civil status, appearing on the face of the original certificate of title, 'from Felimon Torela, married to Graciana Gallego to Felimon Torela, married to Marciana Gepanago' (Exh. E). Acting upon the Motion Ex-Parte, the court, finding no opposition thereto and with the conformity of Clara Torela, daughter of Felimon Torela by first marriage, granted the motion and ordered the Register of Deeds to change the civil status of the movant from 'Felimon Torela, married to Graciana Gallego' to 'Felimon Torela, married to Marciana Gepanago', which is the actual civil status of the movant, upon payment of the required fees. (Order of March 10, 1958, Exh. F.)

On March 4, 1958, Felimon Torela executed a definite deed of sale (Exh. 1), whereby, for and in consideration of P3,000.00, he sold Lot No. 3770 of the Cadastral Survey of Cauayan to Marcos P. Mahilum and Maria Luna Mahilum. He also stated in the deed of sale that he was a widower by first marriage to Graciana Gallego, and now married to Marciana Gepanago; that he is the registered owner of said Lot No. 3770, having acquired it by inheritance from his parents before his marriage to Graciana Gallego, deceased. The document (Exh. 1) was acknowledged before Notary Public Jose T. Tabuga. Upon registration of Exhibit 1, Transfer Certificate of Title No. T-23078 was issued to said spouses (Exh. 2).

According, however, to the plaintiffs while in their youth they had seen their father Felimon and their mother Graciana Gallego clean the lot in question, as it was then forested. And when their mother died, their father married Marciana Gepanago. In other words, the plaintiffs want us to believe that the parcel of land is a conjugal property of their father and mother (Felimon and Graciana). And since their father succeeded in changing his status and in conveying the land to another, they now assert their right to the estate appertaining to their mother, alleging that they were deprived of their corresponding share from the property thus sold.

Under the conflicting claims of the plaintiffs and their father, defendant Felimon Torela, the decisive question is whether or not the parcel of land herein involved is a conjugal property of the spouses Felimon Torela and Graciana Gallego (plaintiffs' mother).

Felimon Torela declared that he and his first wife Graciana were married in 1915 (t.s.n., p. 18). And the land in question was decreed in the name of Felimon Torela, married to Graciana Gallego (Exh. B, which is also Exh. 4). According to Article 1401 of the Old Civil Code, the following properties belong to the conjugal partnership:

1. Property acquired for a valuable consideration during the marriage at the expense of the common fund, whether the acquisition is made for the partnership or for one of the spouses only;
2. Property obtained by the industry, wages or work of the spouses or of either of them;
3. The fruits, income, or interest collected or accrued during the marriage, derived from the partnership property, or from that which belongs separately to either of the spouses.

Felimon Torela testified that he inherited the contested property from his parents. Pedro Torela and Soperiana Magbanua. True enough that plaintiff Silveriana Torela and Miguel Pedrosa declared that the land in question was jointly cleared by Felimon Torela and his first wife Graciana Gallego, but the trial court did not give credence to their testimonies for the simple reason that Silveriana was not yet born at the time when said Felimon, together with his father, started living in the land in 1905 (t.s.n., p. 18); while Miguel Pedrosa was only one year old then, considering that he was 55 years of age when he testified on February 10, 1959. It is thus plainly obvious that Silveriana and Miguel could not have known when defendant Felimon and his father moved to the land in 1905. Considering that Felimon was 81 years old when he testified on February 10, 1959, he was already 27 years in 1905, in which case he must have already helped his father in cleaning and tilling that land. As a matter of fact at the time of his marriage with his first wife, Graciana Gallego, a portion of said land had already been cultivated by him. Asked what was the condition of the land in 1915 (the date of his first marriage), he answered: 'Only a portion of the lot was plowed by me.' (t.s.n., p. 18.)

In the light of the foregoing, the property in question is not one of those enumerated in Article 1401 of the Old Civil Code. On the other hand, as it was inherited by Felimon from his parents and brought to the marriage with his first wife, the same is deemed his separate property (Art. 1396, Old Civil Code). For these reasons, defendant Felimon Torela had lawfully disposed of his property to the exclusion of his children by his first marriage. Accordingly, plaintiffs' complaint was correctly dismissed by the court below."

Petitioners allege that the Court of Appeals failed to take into account Article 1407 of the Spanish Civil Code, which now corresponds to Article 160 of the New Civil Code, and which reads as follows:

"Art. 1407. All property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife."

Petitioners claim that since the lot in question was registered in the name of Felimon Torela, married to Graciana Gallego, it must be presumed to be the conjugal property of Felimon and Graciana so that one-half thereof should be adjudicated to them as their inheritance from their mother.

While it is true that all property of the marriage is presumed to be conjugal, as above stated, nonetheless the party who invokes the presumption must first prove that the property was acquired during the marriage. This proof is a condition sine qua non for the application of the presumption. (Cobb-Perez vs. Lantin, L-22320, May 22, 1968, 23 SCRA 637; Ponce de Leon vs. RFC, L-24571, Dec. 18, 1970; 36 SCRA 289.)

In the instant case there is nothing in the record to show that the lot in question was acquired during the marriage of Felimon Torela and Graciana Gallego. On the contrary, the factual finding of the Court of Appeals is to the effect that Felimon acquired the land through inheritance and this conclusion is bolstered by that fact that one of the petitioners herein, Clara Torela, gave her conformity to her father's Ex-Parte Motion of March 5, 1958, wherein it was recited, inter alia, that Felimon Torela had acquired the property by way of inheritance prior to his marriage to his first wife, Graciana Gallego.

The circumstance that Decree No. 440157 of the Court of First Instance of Negros Occidental which confirmed the ownership of Felimon Torela over the land in question described him as married to Graciana Gallego was merely descriptive of his civil status at that time and cannot be taken as proof that the land was acquired during their coverture. The further circumstance that the land was registered during their marriage cannot in itself constitute proof that it was acquired during their marriage for land registration under Act No. 496, as amended, does not confer title; it merely confirms a title already existing and which is registerable.

WHEREFORE, finding no reversible error in the decision of the Court of Appeals, the same is hereby affirmed without any special pronouncement as to costs.

SO ORDERED.

Santos, and De Castro, JJ., concur.

Barredo, (Chairman), J., concurs. Putting it otherwise, what appears in Torrens title is a presumption that can be rebutted by contrary proof which exists in this case.

Aquino, J., concurs. If the land in question was conjugal property of the spouses Graciana Gallego and Felimon Torela, who were married in 1915, it should have been indicated in the Original Certificate of Title No. 2957, issued to Felimon Torela, as well as in the decree of registration issued in 1929, that it was the said spouses conjugal property and it should have been registered in their names. The fact that it was registered during the marriage in the husband's name alone was an indication that it was the husband's separate property (Stuart vs. Yatco, 114 Phil. 1083).

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CONCURRING OPINION

AQUINO, J.:

I concur. If the land in question was conjugal property of the spouses Graciana Gallego and Felimon Torela, who were married in 1915, it should have been indicated in the Original Certificate of Title No. 29257, issued to Felimon Torela, as well as in the decree of registration issued in 1929, that it was the said spouses' conjugal property and it should have been registered in their names. The fact that it was registered during the marriage in the husband's name alone was an indication that it was the husband's separate property (*Stuart vs. Yatco*, 114 Phil. 1083).

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