

**MARCIANA VILLOCINO AND PROTASIO RODRIGUEZ,
PLAINTIFFS-APPELLEES, VS. PEDRO DOYON,
DEFENDANT-APPELLANT, CLETO P. EVANGELISTA,
INTERVENOR-APPELLANT.**

G.R. No. L-28871. April 25, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

The legal issue in this appeal is whether the writ of execution issued by the Court of First Instance of Leyte, Ormoc City Branch, in Civil Case No. 362-0 varied the judgment rendered by this Court in Villocino vs. Doyon, L-19797, December 17, 1966, 64 O.G. 3249, 18 SCRA 1094 which modified the lower court's decision in that case.

Facts and fallos of the prior case. — Lots Nos. 10375 and 7924 of the Ormoc cadastre were the conjugal properties of the spouses Marciana Villocino and Bartolome Rodriguez now deceased. Without the knowledge of his wife, Rodriguez sold to Pedro Doyon one-half of Lot No. 10375 on August 7, 1951 and Lot No. 7924 on December 20, 1951. On September 6, 1957 Doyon sold Lot No. 7924 to Cleto P. Evangelista who had represented him in Civil Case No. 549.

Also without his wife's knowledge, Rodriguez sold two other lots to Emilia Conui Vda. de Aviles. He made the sales while his wife and son, Protasio, were seeking in Civil Case No. 549 of the Leyte Court of First Instance the transfer to the wife of the administration of the conjugal partnership.

The lower court in its decision in Civil Case No. 549 found that the husband, who was living with a concubine, had sold four parcels of land without his wife's consent. It transferred the administration of the conjugal partnership to the wife. The four lots were sought to be included in the order of execution. However, on motion of Doyon and Mrs. Aviles, the four lots were excluded.

On June 30, 1959 the wife, Marciana Villocino, and her son, Protasio Rodriguez, filed Civil Case No. 362-0 against Doyon to recover the possession and ownership of Lots Nos. 10375 and 7924. Evangelista intervened. He claimed ownership of Lot No. 7924.

The lower court on August 31, 1959 rendered the following decision:

"WHEREFORE, decision is hereby rendered:

“(1) declaring the plaintiffs the absolute owners with right to possess the following parcels of land, to wit:

"Parcel one: A parcel of land known as Lot No. 7924 (part only) of the Ormoc cadastre, situated in the barrio of Cagbuhangin, Ormoc City, x x x containing an area of 5,000 square meters, more or less, and is assessed at P120, per Tax Declaration No. 13792;

"Parcel Two: A parcel of land known as Lot No. 10375 of the Ormoc cadastre, covered by OCT No. 27479 in

the name of Bartolome Rodriguez and Marciana Villocino, situated in the Barrio of Naghalin, Kananga, Leyte x x x containing an area of 21,308 square meters, more or less, and is assessed at P140, per Tax Declaration No. 2131.

"(2) the defendant and intervenor are hereby ordered to immediately vacate the premises; and to deliver the possession on (of) parcels of land to the plaintiffs.

"The defendant and intervenor are hereby jointly and severally ordered to pay the plaintiffs damages at the rate of P10 a month, should they fail to vacate the premises and deliver the properties to the plaintiffs within 30 days from receipt of a copy of the decision of this Court from the expiration of such 30-day period until the two parcels of land shall have been delivered to the plaintiffs, without any pronouncement as to costs." (6-8 Record on Appeal; pp. 1-2 Appellees' brief).

Doyon and Evangelista appealed from that decision. This Court, in its aforementioned judgment of December 17, 1966; held that while the wife's consent was not necessary to the validity of her husband's sale because the lots sold had been acquired by the couple before August 30, 1950, when the Civil Code took effect (see art. 166 of the Code), it is, nevertheless, true that the husband's power to alienate conjugal properties "is not without limitation".

"For one thing, such power cannot be exercised to the prejudice of the wife or her heirs. What is more, alienations made without the knowledge of the wife are presumed to be in fraud of her. For, as conjugal properties belong equally to husband and wife, any alienation made by the husband without the consent of his wife prejudices her insofar as it includes a part or the whole of the wife's half and is, to that extent, invalid" (Villocino vs. Doyon, *supra*).

This Court noted that the administration of the conjugal partnership was transferred to Marciana Villocino because her late husband had fraudulently disposed of conjugal properties (among which were the lots in question) without her knowledge and consent and that "fraud against the wife was in issue" in Civil Case No. 549. This Court rendered the following judgment:

"We therefore hold that the sale of Lots Nos. 10375 (1/2) and 7924 to appellant Doyon and the subsequent transfer of Lot No. 7924 by appellant Doyon to appellant Evangelista are invalid to the extent that the rights of appellee Villocino to one-half are affected.

"Since any prejudice to the wife can be determined only after the liquidation of the conjugal partnership, the sales in question should be deemed subject to such contingency which should be noted in the corresponding certificate of title (Baello vs. Villanueva, 54 Phil. 213).

"The Court is aware that only one-half of Lot No. 10375 had been sold and that in all probability the wife's share has not been affected but considering that the other lot (Lot No. 7924) is unregistered, it is believed that the annotation of the condition on the certificate of title covering Lot No. 10375 is necessary to compensate for the lack of registration of the other lot.

"WHEREFORE, with the modification that the invalidity of the sales to appellants shall be deemed subject to the outcome of the liquidation of the conjugal partnership and that, in the meantime, this condition should be noted in the certificate covering Lot No. 10375, the decision appealed from is affirmed, with costs against appellants." (Villocino vs. Doyon, 18 SCRA 1094, 1098).

The execution of the foregoing judgment gave rise to the appeal in this case which is now before this Court for the second time.

Execution proceedings in the lower court; contentions of the parties. — On October 6, 1967 the lower court issued a writ of execution wherein, after quoting (a) the fallo of its decision, (b) this Court's judgment and (c) the entry of judgment, it instructed the Provincial Sheriff and his deputies not only to make the aforementioned annotation on

the title of Lot No. 10375 but also to place the widow and her son in possession of the two lots and to enforce the lower court's adjudication for damages. The pertinent portion of the writ of execution is quoted below:

"WHEREFORE, you are commanded to carry out the decision of the Honorable Supreme Court and of this Court, specifically to order defendant PEDRO DOYON and intervenor CLETO P. EVANGELISTA to vacate the premises of Lot 7924 (part only) of the Ormoc cadastre and Lot No. 10375 of the Ormoc Cadastre covered by OCT No. 27479 in the name of Bartolome Rodriguez and Marciana Villocino; and to deliver the possession of the aforesaid parcels of land to the plaintiffs, Marciana Villocino and Protasio Rodriguez; and to collect from the defendant and intervenor damages at the rate of P10 a month, should they fail to vacate the premises and deliver the properties to the plaintiffs within 30 days from receipt of a copy of the decision of this Court from the expiration of such 30-day period until the two parcels of land shall have been delivered to the plaintiffs and to collect jointly and severally from the defendant and intervenor the amount of P79 as costs of this suit; and to order the Register of Deeds of Tacloban City to annotate at the back of OCT No. 27479, covering Lot No. 10375 the following:

"That the invalidity of the sales to appellants shall be deemed subject to the outcome of the liquidation of the conjugal partnership and that, in the meantime, this condition should be noted in the certificate of title covering Lot No. 10375",

and to collect further from the defendant and intervenor the lawful fees for the service of this execution and if the defendant and intervenor fail to pay in cash the said sums of money and your lawful fees thereon, then you are hereby commanded to seize such goods and chattels which the defendant and intervenor may have for the satisfaction of the same, but if, no sufficient personal properties can be found whereof to satisfy this writ of execution and your lawful fees thereon, then we command you that of the lands and buildings of said defendant and intervenor, you make the said sums of money in the manner required by law, and deliver the same to the plaintiffs Marciana Villocino and Protasio Rodriguez aside from your lawful fees for the service of this execution, and make return of your proceedings within sixty (60) days after receipt hereof." (11-13 Record on Appeal).

Appellants Doyon and Evangelista contend that the writ of execution should be confined to the annotation of this Court's decision on the back of the title of Lot No. 10375 and the recovery of the costs. They argue that the sales to them are valid "without prejudice to the appellees proving otherwise by filing an action for liquidation of the conjugal partnership of the spouses Bartolome Rodriguez and Marciana Villocino". They point out that prior to the liquidation of the conjugal partnership, it would be premature to award the possession of the lots to the wife with damages. They underscore that the invalidity of the sales was conditioned on the showing in the liquidation of the conjugal partnership that the sales prejudiced the one-half share of the wife.

On the other hand, appellees Villocino and Rodriguez contend that the execution should include the recovery of possession and damages as directed in the writ of execution. They place emphasis on the fact that this Court affirmed the lower court's decision and that that affirmance refers to the delivery of possession and the recovery of damages while the modification refers to the statement that the "invalidity of the sales" would subject to the outcome of the liquidation of the conjugal partnership, a condition which should be annotated on the title of Lot No. 10375.

Ruling. — The original action in this case was sanctioned by the following provisions of the Civil Code:

"ART. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or to impair her interest in the conjugal partnership property. x x x (n)" (See *Bucoy vs. Paulino*, L-25775, April 26, 1968, 23 SCRA 248, which construed article 173).

The applicable substantive law is article 1413 of the old Civil Code which provides that no alienation or agreement which the husband may make with respect to the conjugal property in contravention of the said Code or "in fraud of the wife shall prejudice her or her heirs".

On the crucial question of whether the wife, Marciana Villocino, was defrauded when her husband in 1951 sold to Doyon one-half of Lot No. 10375 and Lot No. 7924 ("part only"), this Court categorically and clearly held that the sales were "invalid to the extent that" the wife's one-half interest was "affected" but that "any prejudice can be determined only after the liquidation of the conjugal partnership" and, therefore, "the sales in question should be deemed subject to such contingency which should be noted" on the title of Lot No. 10375.

This Court already intimated that, because the husband sold to Doyon only one-half of Lot No. 10375, "in all probability the wife's share has not been affected". The dictum seems to support appellants' contention that the sale of the one-half portion of Lot No. 10375 to Doyon should be respected. But then since the sale referred apparently to a pro-indiviso portion, Lot No. 10375 should be partitioned between Marciana Villocino and Doyon.

The controversy with respect to Lot No. 7924 can only be set at rest by liquidating the conjugal partnership between Marciana Villocino and Bartolome Rodriguez which was dissolved by his death. A showing has to be made by the wife that, under such a liquidation, it appears that she was defrauded by Rodriguez of her one-half share in Lot No. 7924 and that, therefore, appellant Evangelista should restore to her her one-half share in said lot.

The steps for the liquidation of the conjugal partnership are indicated in articles 179 to 189 of the Civil Code. The three remedies for the liquidation are set forth in Act No. 3176 which amended section 685 of Act No. 190 which reads:

"SEC. 685. When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof shall be paid, in the testamentary or intestate proceedings of the deceased spouse, in accordance with the provisions of this Code relative to the administration and liquidation of the estates of deceased persons, or in an ordinary liquidation and partition proceeding, unless the parties being all of age and legally capacitated, avail themselves of the right granted to them by this Code of proceeding to an extrajudicial partition and liquidation of said property.

"In case it is necessary to sell any portion of said community property in order to pay the outstanding debts and obligations of the same, such sale shall be made in the manner and with the formalities established by this Code for the sale of the property of deceased persons. Any sale, transfer, alienation or disposition of said property effected without said formalities shall be null and void, except as regards the portion that belonged to the vendor at the time the liquidation and partition was made." (Quoted in *Cruz vs. De Jesus*, 52 Phil. 870, 872).

Act No. 3176 (except the last sentence) was incorporated in section 2, Rule 73 and section 1, Rule 74 and makes reference to what is now Rule 89 of the Rules of Court.

In case a spouse dies, the conjugal partnership may be liquidated in (1) an extrajudicial settlement under section 1, Rule 74 of the Rules of Court, (2) an ordinary action of partition or (3) an intestate or testate proceeding (*Macalinao vs. Angeles*, 95 Phil. 318; *Caragay vs. Urquiza*, 53 Phil. 72).

In the instant case, as the deceased Bartolome Rodriguez is survived by his widow and child, Protasio, who is of age, and as his small estate (see pages 21 to 24 of the Rollo) presumably has no debts, the most feasible and inexpensive mode of liquidating the conjugal partnership is by means of an extrajudicial settlement. The widow and her son manifested to this Court that they "are poor". They had to file a mimeographed brief because they could not afford the cost of a printed brief. So, an ordinary partition action or an intestate proceeding is out of the question.

"It is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation" (Marquez vs. Marquez, 73 Phil. 74, 78; Keramik Industries Inc. vs. Guerrero, L-38866, November 29, 1974, 61 SCRA 265). To resolve merely the issue as to the validity of the writ of execution issued by the lower court would not terminate the dispute. The nagging question of whether the sale of the two lots to Doyon and the sale by Doyon of the other lot to his lawyer, Evangelista, prejudiced the widow, as shown in the liquidation of the conjugal partnership, would remain unresolved.

To settle all the contentious matters between the parties and in order that the widow and her son, the appellees, would not be burdened with litigation expenses, they should, as soon as practicable execute an extrajudicial settlement of the estate of Bartolome Rodriguez which would constitute a liquidation of the conjugal partnership between him and Marciana Villocino. That step should have been taken in 1967 soon after the 1966 decision of this Court became final. Justices Barredo and Antonio believe that, in the interest of justice, the lower court itself should undertake the liquidation of the estate of Bartolome Rodriguez.

A copy of the said deed of extrajudicial settlement should be presented to the lower court which should determine at the proper hearing whether on the basis of such extrajudicial settlement, the sales in question prejudiced the wife.

In this connection, the trial court and the parties should take into account the dictum laid down by this Court in its 1966 decision that inasmuch as Bartolome Rodriguez sold only one-half of the conjugal Lot No. 10375, apparently, such a sale did not prejudice the wife. That dictum is obviously incompatible with the writ of execution issued by the trial court insofar as Lot No. 10375 is concerned because that observation implies that the sale of Lot No. 10375 should be respected if possible.

However, the lower court should effect a partition of the said lot and the one-half portion, which corresponds to the wife, Marciana Villocino, should be delivered to her. Doyon should account for the net fruits, if any, corresponding to the one-half portion and pay the same to the widow.

The Court notes that in the case of the two lots, which Bartolome Rodriguez sold to Mrs. Aviles and which sale the widow also impugned, an amicable settlement was effected between the widow and Mrs. Aviles (par. 4 of Opposition; par. 4 of Answer to opposition, pp. 16 and 23, Rollo). The trial court should strive to effect a similar amicable settlement with respect to the claim of the widow for her supposed one-half portion in Lot No. 7924 which was sold to Doyon and which Doyon sold to the intervenor, Evangelista.

The trial court and the parties should take note of the fact that in the conjugal assets, if any, in the present possession of the widow or her son, Protasio, the deceased Bartolome Rodriguez had a one-half share. That circumstance should be considered in making the proper set-off or adjustment in the partition of the conjugal assets and in determining whether the sale to Evangelista, which apparently included the widow's one-half share, should no longer be disturbed.

WHEREFORE, the writ of execution dated October 6, 1967 is set aside and this case is returned to the lower court for further proceedings as above indicated. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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