

**SEBASTIAN ENRIQUEZ, CRESCENCIO M. ENRIQUEZ, ESSO
PHILIPPINES INC., AND THE REGISTER OF DEEDS OF RIZAL,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND
ADALIA J. ENRIQUEZ, RE...**

G.R. No. L-48978. May 27, 1981

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BARREDO, J.:[*]

Petition for review of the decision of the Court of Appeals affirming in toto that of the trial court, Hon. Pedro A. Revilla, presiding, declaring private respondent Adalia J. Enriquez to be the co-owner of the property in question, a lot 160 square meters, more or less, with an apartment building thereon located in the Municipality of Makati, Province of Rizal.

The gripes of petitioners are contained in the following assignment of errors in their brief filed with the Appellate Court:

I

"THE COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT ON THE GROUNDS OF (1) LACK OF JURISDICTION; (2) LACK OF CAUSE OF ACTION; (3) ESTOPPEL; (4) LACHES; AND/OR (5) PRESCRIPTION.

II

THE COURT A QUO ERRED IN DECLARING THE PROPERTY IN QUESTION AS BELONGING TO THE CONJUGAL PARTNERSHIP OF ADALIA ENRIQUEZ AND SEBASTIAN ENRIQUEZ AND IN ORDERING DEFENDANT-APPELLANT CRESCENCIO ENRIQUEZ TO RECONVEY TO PLAINTIFF-APPELLEE ONE-HALF (1/2) OF THE PARCEL OF LAND DESCRIBED IN, AND COVERED BY, TCT NO. 83393 OF THE REGISTRY OF DEEDS OF RIZAL, TOGETHER WITH THE APARTMENT HOUSE ERECTED THEREON.

III

THE COURT A QUO ERRED IN DECLARING PLAINTIFF-APPELLEE ENTITLED TO THE RENTAL OF THE PROPERTY TO THE EXTENT OF ONE-HALF (1/2) THEREOF.

IV

THE COURT A QUO ERRED IN ORDERING DEFENDANTS-APPELLANTS SEBASTIAN ENRIQUEZ AND CRESCENCIO ENRIQUEZ TO PAY THE PLAINTIFF THE SUM OF P5,000.00 FOR AND BY WAY OF ATTORNEY'S FEES AND THE COSTS.

THE COURT A QUO ERRED IN NOT AWARDING TO DEFENDANTS-APPELLANTS SEBASTIAN ENRIQUEZ AND CRESCENCIO ENRIQUEZ THEIR COUNTER-CLAIMS FOR MORAL AND EXEMPLARY DAMAGES, CONSEQUENTIAL DAMAGES, ATTORNEY'S FEES, AND COSTS." (Pp.

A-C, Brief of Appellant.)

Putting aside as inconsequential some of the antecedent facts discussed in the briefs of the parties, the material facts in this case are as follows:

The land in question was originally 160 square meters with a building thereon. Petitioner Sebastian Enriquez is the father of his co-petitioner Crescencio Enriquez. On the other hand, private respondent Adalia Enriquez is the wife of Sebastian. They were married in February 1957. For reasons not disclosed in the record, they separated in 1970, Adalia claiming that she was abandoned by Sebastian.

The building was constructed, according to Crescencio, from money borrowed by him from the Philippine National Bank and later on the GSIS, using the lot itself as collateral, for it was titled in his name. On the other hand, Adalia claimed that in 1956, before their marriage, Sebastian borrowed from her, out of her income as employee of PCAV and later on in the "buy and sell" business. It was during their marriage that they acquired the property in issue,^[1] but because Sebastian, according to her, was involved in a litigation, she agreed to his suggestion that the title be issued in the name of Crescencio who was made to appear as the vendee in the deed of sale. The building consisted of six apartments, in one of which the spouses lived until their separation. Adalia claimed, and there is nothing in the record to the contrary, that she was the one collecting the rentals and that she continued to stay peacefully in the same apartment they were occupying before, until August 24, 1970, when Crescencio leased the whole property to ESSO without her knowledge, and the latter demanded her to vacate as the company was to demolish the building evidently to use the lot for other purposes.

In addition, it may be mentioned that Adalia had previously been married to one Constancio Castillo on January 29, 1944 and that six months thereafter she gave birth to a boy who was named Normando and was already in the seventh grade when she married Sebastian. She was able to do this because Constancio disappeared mysteriously shortly after their marriage, and until she married Sebastian, his whereabouts were unknown. She presumed she had been killed by the Japanese. But it is not disputed that she revealed such previous marriage to Sebastian, and, in fact, Normando lived with them in the above-mentioned apartment.

Anent the cost of constructing the apartments, the trial court's findings (in its lengthy decision) which are not contradicted in the record before Us, are as follows:

"While it may be conceded that the building originally erected on the lot of 160 square meters acquired from Feliza Buenaventura underwent a series of renovations thru several mortgage loans executed by defendant Crescencio Enriquez, said loans have been liquidated out of the fruits of the property now under litigation. It appears that on March 21, 1961, Crescencio secured a loan of P1,000.00 from the Philippine National Bank. On July 14, 1961, Crescencio Enriquez again obtained a loan of P4,000.00 from the Government Service Insurance System giving as collateral the property in question. Out of this loan of P4,000.00, the loan obtained from the Philippine National Bank was liquidated. Again, on May 28, 1968, Crescencio secured another loan of P10,000.00 from the Government Service Insurance System which loan was paid by Crescencio out of the advance rental paid by Esso Philippines, Inc. for the lease of the same property. At present, the title of the property under litigation is clear of any encumbrance (Exhibits 2, 2-A and 3-Esso). Aside from the advance rental of P11,500.00 paid by Esso under the contract of lease executed between Crescencio Enriquez and Esso Philippines, Inc. it appears that in the deed of exchange executed between the same parties on December 7, 1960, Esso Philippines, Inc. or Standard Vacuum Oil Company, predecessor of Esso, also paid Crescencio the sum of P9,000.00 a part of which was applied for the satisfaction of a mortgage loan affecting the property in the amount of P4,316.73. From the foregoing, it may be seen that although Crescencio had invested the proceeds of a consolidated mortgage loan in the amount of P10,000.00 for the improvement of the building erected on the premises, a total of P20,500.00 had

been paid by Esso for the exchange and lease of the property under consideration (Exhibit 6 and 8-Esso). It is the sense of the Court, therefore, that although defendant Crescencio had executed the mortgage contracts aforementioned, yet in reality he had never been exposed nor had he invested any funds out of his own pocket. In this respect, therefore, it may be concluded that the building erected on the land in question is also conjugal in character." (Pp. 208-210, Record on Appeal)

Upon this background, in this instance, petitioners charge that:

"a) The respondent Court of Appeals seriously erred in its findings of facts which are manifestly mistaken or otherwise grounded entirely on speculations and assumptions (Ramos v. Court of Appeals, L-25463, April 4, 1975); and

b) The respondent Court of Appeals has decided a question of substance in a way not in accord with law and the applicable decisions of the Supreme Court." (Page 10 of Petition)

Anent the first assignment of error above-quoted, We find nothing in petitioners' brief persuasive enough to warrant any different action on Our part from that of the Court of Appeals, which reads thus:

"In their first assignment of error, appellants alleged as first ground that the trial court had no jurisdiction over the instant case and in support thereof contended that:

'The court a quo as an ordinary civil court lacks power or jurisdiction to give the plaintiff ownership and possession of any part of an alleged conjugal partnership during the existence of the marriage. Obviously, from the complaint, the conjugal partnership, if any, has not yet been dissolved since the husband was named a defendant in the case. Either spouse is entitled to the ownership and possession of a share in the conjugal partnership only after the liquidation of the conjugal partnership in a probate proceedings. In the meantime, the administration of the conjugal partnership property, if any, is by law vested in the husband, unless in a separate proceedings it is declared by final judgment that there was abuse in the administration of the conjugal estate, in which eventually the private disposition to protect the interests of the estate. No such proceeding has been instituted for the purpose.

'As contended in defendants-appellants' motion to dismiss, assuming the allegations of the complaint to be true, which are not, then under Article 165 of the Civil Code, Sebastian Enriquez is the administrator, and before the dissolution of the conjugal partnership, the wife cannot claim ownership of any portion of the conjugal estate, under Article 175 of the Civil Code, (pp. 22-23, Rec. on Appeal).

'In the same motion to dismiss, it is also contended that in the absence of an express declaration in the marriage settlement, the separation of property between spouses during the marriage shall not take place save in virtue of a judicial order (Art. 190, Civil Code). It is true that either the husband or the wife may ask for the separation of property when the other spouse has been sentenced to a penalty which carry with it civil interdiction, or when the spouse has been declared absent, or when legal separation has been judicially granted (Art. 191, Civil Code). This means the filing of a special proceeding under one of the grounds above-mentioned.'

"It will be noted from the allegations of the complaint that this action was instituted for the recovery of the property belonging to the conjugal partnership of the spouses Adaiia Enriquez and Sebastian Enriquez which was registered in the name of Crescencio Enriquez who is a mere trustee. Adaiia Enriquez being a part owner of the disputed property can bring this action to protect her interest, and her right thereto exists even before the liquidation or dissolution of the conjugal partnership. Under Article 191, paragraph 2, of the Civil Code, 'in case of abuse of powers of administration of the conjugal partnership property by the husband, or in case of abandonment by the husband, separation of the property may be ordered by the court in accordance with Articles 167 and 178, No. 3 of the same code. This is precisely what the plaintiff seeks. She has established that her husband defendant Sebastian, had abandoned her for over a year before the filing of the complaint and that said

defendant had abused the powers of administration conniving with their trustee defendant Crescencio, in depriving plaintiff of her lawful share in the property and seeking even to turn her away therefrom. Certainly the trial court has jurisdiction over the suit.

"The defense of estoppel, laches and/or prescription, was never pleaded by appellants in their answer so it cannot now be raised for the first time on appeal as it is deemed waived. Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. (Section 10, Rule 9, Rules of Court; *Efondo vs. Ilaos*, CA G.R. No. 2034-R, July 24, 1957; 53 O.G. 7732; *Balcita vs. Espe*, CAG.R. No. 16115-R, April 5, 1957; 53 O.G. 4874)

"Nevertheless, the theory of plaintiff is that of an express trust so the claim that the action has prescribed is untenable. The action to compel the trustee to convey the property registered in his name for the benefit of the cestui for trust does not prescribe. (*Caladiao et al. vs. Bias*, 10 SCRA 691; *Baysa et al. vs. Baysa*, (CA) 53 O.G. 7382; *Diaz vs. Garrido*, L-11229, March 20, 1958; *Ramos vs. Ramos*, 61 SCRA 284) If at all, it is only when the trustee repudiates the trust that the period of prescription may run (*Diaz v. Garrido*, supra; *Fernandez vs. Benavidez*, 9 CA. Rep. 4341; *Valdez vs. Olorga*, 51 SCRA 71). It was only on or after May 19, 1970 when plaintiff demanded the reconveyance of her share from the defendants which was ignored by the latter when the trust may be deemed to have been repudiated. The complaint was filed on October 12, 1970.

"Neither the defense of laches or estoppel can be invoked. Plaintiff had always considered herself a co-owner of the conjugal property exercising acts of ownership as leasing the same to the Pepsi-Cola and other tenants (Exhibits H to H-3 and J), and collecting the rentals from the tenants. And when she found the design of the defendants to deprive her of the same, she immediately demanded satisfaction from defendants, and upon failing to get a favorable response, promptly brought the case to court.

"A perusal of the allegations of the complaint show that a right or interest of Adalia Enriquez over the disputed property has been violated. This is so as it was registered in the name of Crescencio Enriquez with the connivance of his father Sebastian Enriquez, yet the former refused to reconvey the same as part of the conjugal assets of the spouses Adalia Enriquez and Sebastian Enriquez to plaintiff.

'It is elementary that lack of cause of action as ground for dismissal must appear on the face of the complaint and that to determine the sufficiency of the cause of action, only the facts alleged in the complaint, and no other, should be considered.' (*Convets, Inc. vs. NDC*, No. L-10232, Feb. 28, 1958, 54 O.G. 5322)" (Pp. 44-48, Record.)

A cursory reading of petitioners' second assignment of error would disclose that basically the controversy between the parties regarding the question of whether the property in question, although titled in the name of Crescencio Enriquez, free from all liens and encumbrances, is actually owned by his father, his co-petitioner, Sebastian Enriquez or by the two of them, on the one hand, or, is the conjugal property of the spouses Sebastian and Adalia, is a factual one. The ultimate conclusion on said issue hinges on the credibility of the witnesses and the documents presented respectively by the parties. While the arguments advanced by petitioners possess some degree of plausibility, We find it difficult to overturn the common conclusions of both the trial and the Court of Appeals, what with the meticulousness and apparent care with which they have examined the evidence. Indeed, from a reading of the briefs of both parties, We feel more inclined to the view that the findings of fact of the Court of Appeals are based on substantial, not to say a convincing preponderance of the evidence.

To cite but one point, We are sufficiently impressed that Exhibits A and B belie the alleged lack of proprietary interest of private respondent in the apartments and lot under controversy.

Exhibit A, found by both lower courts to have been the genuinely written act of Sebastian, reads in part as

follows:

"... ay hahatian mo ang Tia Dalia sa ano man kalabasan ng halaga nito. Siya'y may karapatan sa ano man kabuhayan ko bilang asawa ko siya. Si Dalia ay tunay kong asawa at mahal at batid ko ang lahat lahat bago ko siya kinuha. Hindi ako nagsisisi pagpapakasal sa kanya. Siya mahabang panahon nagtiis sa mga dinaanan namin hirap sa buhay." (Page 25, Brief for Respondent, p. 108, Rec.)

On the other hand, Exhibit B is a holographic "Huling Habin" of Sebastian addressed to his co-petitioner Crescencio:

"1. Huag mo siyang paalisin sa bahay na tinitirahan namin. 2. Kapag naisipan mong ipagbili ang bahay at lupa ang kalahati ng bayad ay ibigay mo kay Dalia, ganong kasal na kami.

3. Ang bayad sa upa ng ipagagawa ko, si Dalia ang bahala pati lahat ng babayaranang utang.

4. Ang titulo ng lupa ay kami ang magtatago." (Page 26, Id.)

In connection with these documents, petitioners claim, they had been subsequently repudiated by Sebastian. The lower courts who studied the document of alleged repudiation in the light of the oral testimonies supportive thereof were not persuaded to go along with petitioners. At this stage of the proceedings, this Court can hardly be in a position to disregard or overthrow such findings. As a rule, the Court of Appeals is the final arbiter on questions of fact. The claim of petitioners that the instant case falls within the known and recognized exceptions to this general rule is not sufficiently convincing.

In brief, We have considered carefully the cause of petitioners. To be sure, We could have denied their petition outright as primarily factual. But We gave due course to it to give Us more time to ponder and deliberate. We are satisfied that the decision under review is basically correct in fact and in law. We say this not only as to the two assignments of error We have discussed above but also as to the rest of petitioners' assignments of errors, which are but corollaries of those first two.

PREMISES CONSIDERED, judgment is hereby rendered denying the petition for review, with costs against petitioners.

Aquino, Concepcion Jr., Abad Santos and De Castro, JJ., concur.

[*] Chairman of the Second Division

[1] It must be mentioned that the property originally purchased by the spouses is not the one actually in question. What happened was that the lot they originally purchased was exchanged with another property of ESSO and the building thereon was transferred to the new lot.

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