

**IGNACIO M. COINGCO, PETITIONER, VS. ROBERTA FLORES,
RESPONDENT.***G.R. Nos. L-2147-48. December 09, 1948*

Ponente: FERIA, J.

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This is a notion for reconsideration of the minute resolution of the court which dismissed the appellant's appeal by certiorari from the decision of the Court of Appeals in cases Nos. 936-R and 279-R, on the ground "that the questions involved are of fact." Because the so called questions of law is either unsubstantial or can not be passed upon by this Court on appeal.

The first question raised regarding the validity of the extrajudicial partition agreement made by both parties in which the lots in question were listed as conjugal property made before the marriage bond had been dissolved, is so unmeritorious that the, appellant's attorney after raising said question, immediately submits the question whether, assuming that it is invalid, the statement made therein regarding the ownership of said lot can not be deemed to be an admission of the parties. In this connection it is sufficient to say that we can not revise and disturb the finding of fact of the Court of Appeals to the effect that "although it is not likely that the appellee has been forcibly coerced into signing the same, we are inclined to credit her explanation that she had to do so to escape her husband's continued maltreatment (that is, that it was not voluntarily made), and that the partition was never enforced."

The second question raised in the motion for reconsideration is, whether the presumption that the properties in litigation are conjugal properties because they were acquired during coverture, may be sufficiently rebutted by any one of the following facts: (1) that the title to them are in the name of the wife alone; (2) that the husband gave his marital consent to their being mortgaged by the wife; and (3) that the wife was financially able to buy those properties. While it is true that each one of them, taken separately, may not be sufficient to overcome the above quoted presumption, established by Art. 1407 of the Civil Code, it is nonetheless true that all of them taken together, with all the other facts and circumstances established by the evidence, might be, and were, considered by the lower as sufficient to rebut the said presumption. The other facts and circumstances taken into consideration by the Court of Appeals together with the three above enumerated are, among others, that "two other lots (those mentioned in items 3 and 5) which were also acquired during coverture were put in the name of the spouses as conjugal property." We can not revise and correct the finding of the lower court that all those facts were established by the evidence.

And the third question raised is that the lots in question, assuming then to be paraphernal, automatically became conjugal from the moment that buildings were constructed thereon, although the buildings were destroyed during the recent war and before the liquidation of the conjugal partnership. We can not properly pass upon this question because; (1) it was not put in issue in the pleadings and passed upon by the Court of First Instance; (2) not assigned as erroneous on appeal to the Court of Appeals, and consequently not considered by the latter; and (3) not raised even in the petition for certiorari filed with this Court.

But although this Court does not, for the above reasons, consider it necessary to pass upon this last question, the writer of this resolution is of the opinion that it must be answered in the negative.

If there were buildings erected on the lands which were paraphernal personal property of the appellee during the latter's marriage with the appellant, and such building were destroyed by reason of the recent war, before the liquidation of the conjugal of both spouses, it is obvious that the conjugal partnership did not ipso facto acquire the land from the time of the construction of the building, so as to make afterwards the land without any building a conjugal property irrespective of the result of the liquidation of the conjugal partnership.

The principle or maxim underlying the provision of the second paragraph of Article 1404 of the Civil Code regarding the right of the conjugal partnership to acquire the land belonging to one of the spouses on which a building is constructed during the marriage, is exactly the same (but the inverse) as that on which rests the right of accession with respect to real or personal property which is united to another in such manner as to form a single object.

The general rule is that the owner of the land on which a building is built by another in good faith, has the right to acquire the thing built under the terms and conditions provided by law in order to avoid the inconvenience of the land being owned by one person and the building by another. But in order to encourage the construction of buildings during the marriage on vacant lands belonging to one of the spouses, the legislators deemed it convenient to enact said provisions of Art. 1404 as an exception to Art. 331 (*Tabotabo vs. Molero*, 22 Phil. 418), that gives the conjugal partnership the right to acquire the land by paying the value of the land. But if the building constructed on another's land is destroyed or disappeared before the owner of the land has exercised his right to appropriate the building under Art. 361 by paying the expenses or value of the thing built or before the liquidation of the conjugal partnership when payment of the value of the land should be credited to the paraphernalia or capital of the spouse to whom the land belongs, if there remain funds sufficient to cover the value of the building and land, no accession may take place because then there would be no longer a single object constituted by the union of two things belonging to different owners.

According to the provision of Article 1424 of the Civil Code "after the deductions from the inventoried estate specified in the preceding article, the remainder estate shall constitute the assets of the conjugal partnership," that is, the remainder, if any, after the dowry and the paraphernalia of the wife, the debts, charges, and obligations of the partnership, and the capital of the husband have been paid, pursuant to Articles 1422 and 1423 of the said Code.

Therefore, the construction of a building during marriage on land belonging to one of the spouses does not ipso facto make the land a conjugal property, because as the Supreme Court of Spain well said, in its sentence of May 27, 1905, quoted by Manresa in his commentary on Art. 1404 of the Civil Code, holds that, "of course, during the marriage the buildings constructed on the private land belonging to one of the spouses, are legally conjugal in nature, but upon the dissolution of the partnership, that building will or will not be conjugal, depending upon the result of the liquidation of the conjugal partnership, because it is only in that stage when profits can be spoken of, when after paying the partners and the creditors there still remain something to be divided." (Civil Code of Spain, fourth edition, Vol. 9, p. 530)

In the case decided in said sentence of the Supreme Court of Spain, a building was constructed during the marriage of Doña Agustina San Vicente Floras and Juan Bautista Arriaza y Arriaza on a land belonging to the latter. After the death of said Doña Agustina her husband sold the land and building to another, and after his death the heirs of Doña Agustina San Vicente Flores filed an action to recover half of the property sold by the deceased 'D. Juan Bautista Arriaza y Arriaza, on the ground that they were entitled to one half of the land and building because they were conjugal property, and the vendor could not have sold it validly to the purchaser. The Supreme

Court of Spain, in deciding the question in issue, held among others the following;

"Considering that although the buildings constructed during the marriage on the lot of one of the spouses, the cost of the lot being paid to the spouse who owns it, as well as all properties acquired during the marriage unless they are proven to privately belong to the husband or to the wife are conjugal, it is a settled doctrine of this Court founded before on the Revised Laws and now on the provisions of the Civil Code, that for the purpose of finding if there are any conjugal properties in a conjugal partnership, it is absolutely necessary to have the liquidation of the assets of the same, because it is only after such liquidation when it can be determined whether there is any property which is conjugal and should be owned by and assigned to the partners; and as in the present case such liquidation was not made in order to show that, after the debts, incumbrances and obligations of partnership had been settled, there still remained properties that should be delivered to the plaintiffs, and if those consisted of the very half of the house which they seek to recover, it is clear, as set forth in, the decision, that the ownership of the half of the property was not in any way established, which property is supposed by them to belong to Mrs. Agustina San Vicente, and is claimed by them as her successors in interest." (Jurisprudencia Civil, Vol. 101, pp. 475, 473; 1905.) Motion for reconsideration is therefore denied.

Motion for reconsideration is therefore denied.

Paras, Briones, and Tuason JJ., concur.

Pablo, M, concurro con la parte dispositiva de la resolucion.

Bengzon, J., I concur. But I reserve my opinion on the application of Art. 1404 of the Civil Code.

D I S S E N T I N G

PERFECTO, J.

We are of opinion that the resolution of dismissal should be set aside and the petition given due course. There cannot be any dispute that the petition raises several questions of law, as stressed in the motion for reconsideration, where, among others, petitioners say:

"But even granting, without however conceding that those lands were paraphernal, nevertheless it is admitted that buildings were constructed thereon during coverture which buildings were later destroyed.

"Is it not true that according to Article 1404 of the Civil Code those lots automatically become conjugal property from the moment that buildings were constructed thereon?"

Upon this question the members of this Court have devoted considerable time in discussing the opposing views on the matter and we are not supposed to waste time on a question which is not before our consideration.

Now we propose to state our position on the question.

The conjugal partnership is the usufructuary of wife's paraphernal and of the husband's exclusive properties. This is the basic principle underlying conjugal partnership system, for Art. 1385, Civil Code provides that the fruits of paraphernal and exclusive properties are conjugal assets, and Art. 1401, Par. 2 and 3, provide that all income, whether they are derived from the separate property of either spouse or from their industry/belong to the conjugal partnership.

Under Art. 361, Civil Code, which is the general rule on accession, the owner of the land becomes the owner of the Improvements after payment of the value of said improvements. The land is the principal and the

improvements are the accessory, and the latter therefore belong to the owner of the principal (Art. 353, 358 Civil Code). Art. 1404, Par. 2, C.G., however, is admittedly an exception to Articles 358 and 361 Civil Code—

"Observese que este precepto del segundo parrafo del Art. 1404 se aparta de la regla general sobre la materia, consignada en el articulo 358 (I), y por su indole excepcional * * *." (Sanchez Roman, Vol. 5, p. 841, *Italics ours.*)

Under the specific provision of Art. 1404, Par. 2, Civil Code, the building constructed by the partnership is the principal and the lot of either spouse is the accessory. Hence the lot, which is the accessor, follows the ownership of the principal, which is the conjugal partnership property, and the spouse owning the lot is only entitled to the payment of its value—

"Los edificios se consideran un acesorio del suelo, y contruidos a expensas de la sociedad de gananciales, cederlan, con arreglo al pirrafo primero, del articulo que nos ocupa, en favor del conyuge propietario del solar, sin perjuicio de la indemnizacion correspondiente.

"El articulo cambia la doctrina; los edificios contruidos durante el matrlmonio en suelo proplo de uno de los cduyuges son gananciales, abonandose el valor del suelo al conyuge a quien perteneaca." (Manresa, vol. 9, p. 625, *Italics ours*)

Accordingly, under said art. 1404, par. 2, Civil Code, the conjugal partnership is not the usufructuary of the lot of one of the spouses, but the conjugal partnership is the owner of said lot, and the spouse who owns the lot is only entitled to Indemnity for its value.

The view is advanced that the ownership of the lot is retained by the owner-spouse until he is paid the value or the lot. Does this mean that payment of the value is a condition sine qua non for the transfer of ownership? Such a theory would seem to be contrary to the basic principle In Civil Law that the mode of acquiring ownership (Art. 609 Civil Code) Is not payment but tradition, for what transfers ownership (Art. 609, par. 2, Civil Code) is delivery (Art. 1095 Civil Code), not payment. The actual payment of the value is not a condition precedent for the transfer of ownership. Such a transfer of title may take place even without payment, as when the sale or conveyance is made on credit and a term for payment is agreed upon. (Art. 1466, 1467 Civil Code). Title is thereby transferred, and the transferor only becomes a creditor for the value or the agreed price. Payment is not indispensable for the acquisition of title. (Art. 1468 Civil Code) The conjugal partnership upon constructing the conjugal buildings On the wife's paraphernal lot or on the husband's exclusive lot had taken actual control, possession and delivery of said lot (Art. 1462, Civil Code) sufficient to transfer ownership, which is expressly recognized by the exceptional provision of art. 1404, par. 2, Civil Code The right of of the husband or of the wife as creditor for the value the lot is likewise recognized by said provision of law—"abonandose el valor del suelo".

But what is the value of the paraphernal or exclusive lot taken by the conjugal partnership in constructing the buildings? The value must be determined as of the date of the taking. The recognized rule for determining the Indemnity to owners of land taken under the power of eminent domain may be applied by analogy and with force to the present inquiry.

"But the constitution does not require a disregard of the mode of ownership * * * it merely requires that an owner of the property taken should be paid for what is taken from him. * * * And the question is what has the owner lost, not, what has the taker gained." (Boston Chamber of Commerce vs. City of Boston, 217 U.S., 100, at 195, *Italics ours*)

"The value of the property was enhanced by the purpose for which it was taken. The owners of the land have no right to recover damages for this unearned increment resulting from the construction of the public improvement for which the land was taken. To permit them to do so would be to allow them to recover more

than the value of the land at the time when it was taken, which is the true measure of the damages, or just compensation, and would discourage the construction of important public improvements." (Provincial Government of Rizal vs. Caro de Araullo, 58 Phil., 308, p. 316, *Italics ours*)

Does the probability that the wife or the husband would not demand payment of the lot during marriage necessarily alter the basis for determining the value of indemnity due the wife or the husband for her paraphernal or exclusive lot? There is absolutely no prohibition, legal or moral, express or implied, to prevent the wife or the husband from demanding payment of the value of the lot during the marriage. Particularly so, when the wife can now freely dispose of her paraphernal property or funds, even without or against the will of her husband (Art. 1387 as amended by Act 3922.). True, that in the "normal life of a Filipino family, the wife or the husband would not probably demand payment of the value of the lot during marriage, (unless she really decides to dispose of the same without the husband's consent), because as a matter of fact she relies on her husband's management and as a matter of law, whatever fruits the paraphernal or exclusive lot would yield or whatever income is derived therefrom will perform belong to the conjugal partnership.

It is admitted that the purpose of Art. 1404, Par. 2, Civil Code is to encourage constructions by either of the spouses.

"Si artículo le presenta un cebo o estímulo para que edifique". (Manresa, vol. 9, p. 625.)

What Incentive will the spouse have, what benefit will the conjugal partnership derive, by making the construction, if the increase in value of the spouse's lot would still redound to the sole benefit of said spouse as paraphernal or exclusive increment. The interpretation that the spouse retains the ownership until the value of the land is paid to him would render art. 1404, par. 2, Civil Code, nugatory, because without said provision, the spouse would, under the general rule, retain ownership of the lot and benefit by its increase in value. Ordinarily the improvements do not increase in value with time, but on the contrary they greatly depreciate in value. The conjugal partnership, therefore, would not benefit by any increase in value of the property, because any such increase would really be due to the lot. The value of property may increase or decrease from the time of constructing the buildings. If it decreases, the loss would be suffered by the conjugal partnership. If it increases, the benefit should also inure or accrue to the conjugal partnership and not to one spouse alone. The increase is not to be enjoyed by one spouse alone, because said increase is conjugal, and both spouses share in the increase by an equal one-half.

Manresa states—

"* * * (el marido) tiene los mismos derechos y esperanzas que la mujer para ser propietario del edificio y la seguridad de que en el caso contrario se reputará ganancia todo lo que más valga el edificio por cualquier género de gasto, x" (Manresa, vol. 9, pp. 625-626)

Article 1404, par. 2, Civil Code is not a specific provision to merely repeat the general rule. It is admittedly an exception. (Dominado vs. Derayunan, 49 Phil. 452, p. 459.) Its purpose is to encourage improvements by constructing buildings on vacant lots and that purpose is best achieved by providing, as the law actually provides, that the conjugal partnership becomes the owner of the property; and, therefore, whatever increase in the value the property acquires should belong to the conjugal partnership—

"El aumento de valor por mejoras hechas en el patrimonio de uno de los cónyuges, dice el art. 1485 del Código de Venezuela, con anticipaciones de la sociedad o por la industria de cualquiera de los cónyuges, pertenece a la sociedad." (Manresa, vol. 9, p. 622, *Italics Ours*)

If the lot of one spouse were rented by a third party, the income would automatically be conjugal (Art. 1385, Art. 1408 Par. 3). The conjugal partnership that builds on said lot does not pay rent, not because the partnership is its

usufructuary but because of the exceptional reason that the conjugal partnership becomes the owner of said lot, for under the special provision of Art, 1404, Par. 2, Civil Code, the partnership is not the usufructuary but the owner of the property. The spouse owning the lot merely becomes a creditor for the value of said lot. This credit cannot, however, increase with the increase in value of the property, because any such increase or profit should accrue in favor of the conjugal partnership.

The portion of the commentary of Sanchez Roman to the effect that the rights of the spouse are remitted to the dissolution and liquidation of the conjugal partnership, expressly refers to—

"La existencia normal de la sociedad legal de gananciales".

But according to the same recognized authority on Civil Law, Articles 1404, par. 2, Civil Code is—

"Por su índole excepcional * * * se aparta de la regla general" (S.R. vol. 5, p. 841).

Article. 1404, par. 2, therefore, does not involve the normal existence of a conjugal partnership, and the general rule on dissolution cannot apply to said specific exception.

Likewise the portion of Manresa's commentary refers to "el valor fijado a los bienes," commenting on the dissolution of the conjugal partnership (art. 1418 Civil Code) It does not refer to the indemnity or reimbursement of the value of the lot under art. 1404, par. 2, Civil Code—

"Abonándose el valor del suelo".

The interpretation of article 1404, par. 2, Civil Code herein advanced is supported by Judicial authority in the case of *Lim vs. Garcia*, 7 Phil., 320. It also finds support in the case of *Rivera vs. Batallones*, 40 O. G. No. 10, p. 2095. These two cases have held that the increase in the price of the paraphernal lot and the increment to paraphernal shares of stock do not belong to the private property of said spouse, but to the conjugal partnership. There is, therefore, no doubt that such property becomes conjugal at the time of the erection of the building with conjugal funds, and the spouse who owned it does not continue to have title thereto.

"El solar origen del recurso, adquirido a título gratuito durante el matrimonio por Da Dolores Guijarro, ha entrado, como lo reconocen notario y registrador, a formar parte de los bienes gananciales, con arreglo al parrafo 2. del art. 1.º del Código Civil, por la construcción de un edificio, y este carobio en la situación jurídica, derivado de hechos exteriores al Registro, no necesita otra justificación que la implícita en las manifestaciones auténticas de los conyuges, toda vez que sus declaraciones acreditan el consentimiento de quienes, según el Registro, están autorizados para enajenar los bienes, ya se reputen gananciales, ya se estime que continúan siendo parafernales, con arreglo a la inexacta inscripción vigente." (Resol. 15 Julio, 1918 Gaceta 31 Octubre; Apendice de 1918, Enciclopedia Jurídica Española, por Mouton y Ocampo etc. p. 66.)

The disappearance of the building constructed by one spouse on a parcel of land belonging to the other, caused by fire or destruction, does not have the effect of reverting the land to the ownership of the spouse who owned it, because a reversion implies that the title thereto had been changed, as advanced in this opinion, to wit: from paraphernal or exclusive to conjugal, and because such reversion or change of title must be by virtue of law or by the will of its owner. There is no law providing for such reversion; neither is there an act of the husband, in behalf of the conjugal partnership, which would make a conjugal property paraphernal or exclusive. Even in the matter of presumptions, the law presumes the continuance of the same status of a person or thing until the contrary is proved. The proof of the change of status of a paraphernal or exclusive land which had become conjugal by the construction of a building thereon with conjugal funds, would be the act of the husband reconvening it to the wife for a consideration, or a law which provides that the disappearance of the building thus constructed has the effect of reverting the land to its status prior to its becoming conjugal.

Motion denied.

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