

HEIRS OF SERGIO CONOPIO, SR., NAMELY: SERGIO CONOPIO, JR., ELENA CONOPIO, NATIVIDAD RICANA, MAGNOLIA, CRISTY, MORE, EPIFANIO, JR., HANS & ALVIN, ALL SURNAMED CLITAR & EPIFANIO C...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

Before us is an Appeal[1] from the January 27, 2005 Decision[2] of the Regional Trial Court, 7[th] Judicial Region, Branch 5, Cebu City in Civil Case No. CEB-21458 for Accounting, the dispositive portion thereof reads:

"WHEREFORE, with the foregoing consideration, Judgment is rendered in favor of the defendant and against the plaintiffs. Consequently, the instant complaint is hereby DISMISSED for want of cause of action.

Defendant's counterclaim is likewise dismissed for lack of evidence.

NO PRONOUNCEMENT AS TO COST."

The facts of the case as culled from the decision of the RTC are as follows:

"Plaintiffs allege they are heirs of the late Sergio Conopio, Sr. and ask the court to order Ellen Viscayno to render an accounting of the properties allegedly left to her by Serge Conopio, Sr., her erstwhile live-in partner. The plaintiffs also allege that at the time of the death of their father Sergio Conopio, Sr. on December 7, 1997, he left the following properties, to wit:

- a. A jewelry business known as SERG's Jewelry Store at Calderon St., Freedom Park, Cebu City;
- b. A parcel of land known as Lot 5351-L-3 situated in Barangay[3] Pardo, Cebu City with an area of 376 square meters covered by TCT No. 112506;
- c. A parcel of land known as Lot 5337-A-9 situated in Cebu City with an area of 369 square meters covered by TCT No. 95098;
- d. A parcel of land known as Lot 5337-D situated in Cebu City with an area of 427 square meters covered by TCT No. 96868;
- e. A parcel of land known as Lot 5337-A-8 situated in Cebu City with an area of 361 square meters covered by TCT No. 120208;[4]
- f. A parcel of land known as Lot 5337-C situated in Cebu City with an area of 383 square meters covered by TCT No. 120640;
- g. Two adjoining houses and lots located in Maslog, Danao City and a gold plated Cal. 45 pistol; and
- h. Civic Honda car and an assembled Tamaraw vehicle.

Plaintiffs further alleged the following: the above-mentioned properties have a total assessed value of not less than P500,000.00 and they are all in the possession of defendant Viscayno, except the SERG's Jewelry Store in

Cebu City; there are undetermined amounts of bank deposits in the name of defendant or in the name of Sergio Conopio, Sr.; defendant and the late Sergio, Sr. cohabited from 1990 and until his death in 1997 in Maslog, Danao City, Cebu; in 1990 defendant took advantage of the business of Sergio, Sr., including the proceeds of SERG's Jewelry Store, together with some parcels of land and houses plus other personal properties; defendant attempted to completely take over SERG's jewelry store, now managed and operated by his son Sergio Conopio, Jr.; defendant, without authority or right, executed a deed of real estate mortgage together with Sergio Conopio, Sr. involving four lots in favor of the Direct Funders Management and Consultancy, Inc. to secure a loan of P3,120,000.00; demands were made by plaintiffs upon defendant to account for, deliver and re-convey to plaintiffs the possession and ownership of the aforesaid properties of the late Sergio Conopio, Sr., but she refused.

Plaintiffs pray for attorney's fees of not less than P50,000.00, expenses of litigation of not less than P30,000.00, moral and exemplary damages of not less than P100,000.00 and P50,000.00, respectively.

Plaintiffs also pray for the issuance of a writ of preliminary injunction to enjoin the defendant, or any of her agents or representatives from selling, disposing and making encumbrance in whatever manner of the real and personal properties mentioned in the complaint.

In her Answer, defendant Ellen Viscayno denied the material allegations in the complaint, claiming, among others, that she lived with Sergio Conopio, Sr. because the latter told her he already separated [from] his wife Natividad Ricaña in the 1960's after he cohabited with four (4) other women with whom he has children, Sergio, Sr. also told her that plaintiff Natividad Ricaña has [other] men in her life.

Defendant opposed the application for preliminary injunction, contending that she has no property to sell, dispose of or encumber and that she had not sold or encumbered any properties under co-ownership between her and the late Sergio, Sr. In fact, she did not resist when Sergio, Jr. forcibly took possession and control of the Serge Jewelry Store a day after Sergio, Sr. breathed his last, thus depriving her of employment because she was illegally dismissed by Sergio, Jr., one of the plaintiffs.

By way of affirmative and special defenses, defendant contended that the complaint does not state or lack of cause of action because upon the death of Sergio, Sr., she gave to Sergio, Jr., the following properties, to wit:

Rolex Solid Gold Original 18 Karats Watch;
Rado Diastar Watch;
Japanese Gold 18 Karats Bracelet;
Ring with nine (9) Diamond made of 22 Karats Gold;
Ring of 21 Karats without Diamond; and
Cash in the amount of P100,000.00.

She told Sergio, Jr. that the parcels of land described in paragraphs 4b, 4c, 4f of the complaint, including the land covered by TCT No. 112811, were all mortgaged to Direct Funders Management and Consultancy, Inc., by Sergio Conopio, Sr. and the proceeds thereof were used by him in the SERG's Jewelry and Store; she also told Sergio, Jr. that the parcels of land described in paragraphs 4c and 4d were mortgaged by Sergio, Sr. to a certain Danny Arcenas, but she does not know where the deceased placed the proceeds because he was supporting the children of his previous concubines; furthermore, she told Sergio, Jr. that the lot and the adjoining houses located at Maslog, Danao City were purchased and built by her out of her personal income; besides, Sergio Conopio, Sr. had already executed a Deed of Waiver and Quitclaim giving to her and her two children the said properties; the properties described in paragraph 4h are all her personal properties which she acquired through her personal income; she informed Sergio, Jr. about the bank deposit of Sergio, Sr., specifically under Account No. 6006-11793-1 at Metrobank, Plaridel Branch, Cebu City; she was the one who raised the money so that Sergio, Sr. could be given a decent burial; with respect to plaintiffs' demand for accounting, she can only mention of the properties she co-own with Sergio, Sr., pursuant to Article 148 of the Family Code, pertaining to the properties

they acquired through their joint efforts and income while they were still living together; plaintiff Natividad Ricana[5] has no cause of action against her because the said plaintiff did not contribute anything to the acquisition of said properties; her participation in the execution of the Deed of Mortgage is only as a co-maker of Sergio, Sr.

By way of compulsory counterclaim, defendant alleges that as a result of her cohabitation with Sergio, Sr., she has two children, namely: Rhoniel Vincent Viscayno Conopio and Stephanie Marie Viscayno Conopio, some of the properties they acquired during their cohabitation through their joint effort were turned over to Sergio, Jr. to be mortgaged to augment the amount for the burial expenses of the late Sergio Sr.; plaintiff Sergio, Jr., after receiving the properties from her, refused to issue a receipt and did not also raise the needed amount for the funeral expenses of his father, he even misappropriated and converted the properties she turned over to him for his personal gain; she asked Sergio, Jr. to spare some amounts to her children, but Sergio, Jr. refused, instead he filed the instant case; she and her children are deprived of her share in the business improvements in the Serg's Jewelry and Store, which she helped grow; finally, she prays for the dismissal of the complaint and that plaintiffs be made to give her shares as co-owner of the properties she and the late Sergio, Sr. acquired during their cohabitation and for her two children with the late Sergio, Sr.

Defendant also asked the court that plaintiff Sergio, Jr. be ordered to pay her back wages as a result of her illegal dismissal from the SERG's Jewelry Store, plus moral damages in the amount of P30,000.00, exemplary damages in the amount of P30,000.00, attorney's fees in the amount of P30,000.00, P1,000.00 per hearing plus litigation expenses of not less than P20,000.00."[6]

On August 12, 1998 a pre-trial conference was conducted but no amicable settlement was reached. Thereafter, trial ensued. Plaintiffs presented the following as their witnesses: Dr. Gerardo Ypil,[7] Vilma Ortega, Sergio Conopio, Jr.,[8] Victorino Jundilla, Ernesto Gacrama,[9] Rommel Conopio and Benilda Nazareno.[10] Dr. Benjamin Go[11] was also presented by the plaintiffs. Their testimonies are herein summarized as follows:

DR. GERARDO YPIL

He was the doctor of Sergio Conopio, Sr. from 1976 until the latter's death in 1997. He testified on the latter's ailments through the years which included diabetes, hypertension, hemia, heart complications, urinary tract infection and blood poisoning (December 1991), coronary artery problem (February 29, 1994) and paralysis (December 4, 1997) which lead to his death (December 7, 1997). Dr. Ypil also testified that there was no occasion when Sergio Conopio, Sr. affixed his signatures in his office and that the weakness on the left side of his body could not have affected his handwriting. The witness also identified the medical certificate of Sergio Conopio, Sr. as well as the copy of the latter's medical record.[12]

WILMA ORTEGA

She is the head of the Medical Records Section of Cebu Doctor's Hospital. She testified and presented the complete medical records of Sergio Conopio, Sr.[13]

SERGIO CONOPIO, JR. He is the son of Sergio Conopio, Sr. and Natividad Ricana who are married to each other.[14] His other siblings are Annabelle and Elena. The latter is already deceased and survived by her children, Magnolia, Cristy, More, Epifanio, Hans and Alvin, all surnamed Clitar. Sergio Conopio, Sr. and Natividad Ricana have been separated in fact way back in 1972. Since then, Natividad Ricana lived with his common law husband abroad while Sergio Conopio, Sr. cohabited with several women to whom he sired several children namely: Dante, Gina, Lemy, Susana, Rommel, Marilou, Michael and Kitsha, all surnamed Conopio. The witness, Natividad Ricana and the above named children of Sergio Conopio, Sr. are the plaintiffs in this case.

Defendant Ellen Viscayno is the common law wife of Sergio Conopio, Sr. prior to his death. They have two children during their cohabitation, namely: Rhoniel Vincent Conopio and Stephanie Marie Conopio. The witness was introduced to the defendant by his father in 1990, at that time, defendant and his father were already living together.

During his lifetime, Sergio Conopio, Sr. owned a business known as Serg's Jewelry Store. It was established in 1970 (Sergio Conopio, Sr. was then cohabiting with a certain Epifania Albarida) and continues to operate up to the present under the management of herein witness. The witness has been helping his father run the store when his father was still alive but he left the same sometime in 1991 when his father was already cohabiting with the defendant because he could not work with the latter. The defendant was also helping his father in the store because she had no employment and just stayed at home. Witness' half-brother Dante, helped his father ran the store when herein witness left the same. The witness believed that the store was doing good business because his father was able to support three families and his brothers and sisters.

The witness also testified that his father also owned other properties during his lifetime and while his marriage with his mother, Natividad Ricana, was still subsisting. He presented various Transfer Certificates of Title of parcels of land owned by his father.[15] He claimed that his father also owned a parcel of land with two houses built thereon in Danao City. Though he could not present any document to prove that his father owned the same (the land being declared under the name of the defendant), he is of the opinion that the same is owned by his father because the same was acquired and the house was built thereon, while the defendant and his father were living together.

The witness also claimed that his father owned a Honda Civic car despite the fact that the receipt of payment showed that the defendant was the one who remitted payment for it. He also claimed that a Ford Mustang car is also owned by his father because the latter owned one similar to it.

Lastly, the witness testified that he had been busy running his own business and has not seen his father for a while. He only knew that his father was seriously sick a day before the latter's death. He visited his father in the hospital but the latter did not recognize him anymore.

VICTORINO JUNDILLA

He is the bookkeeper of Sergio Conopio, Sr. from 1993 until his death in December 1997. Sometime in October 1997, he went to Serg's Jewelry Store to get Sergio's signature for certain documents. The defendant had to guide Sergio since the latter could no longer see his printed name.

ERNESTO GACRAMA

He is a certified public accountant and on June 29, 1994, he prepared a brief summary of the financial status of Sergio Conopio, Sr. in support of a loan application which the latter signed in his presence. He cannot attest to its correctness though because the value of the properties indicated thereat were merely supplied by Sergio Conopio, Sr. and he did not make an evaluation of the properties himself. He made an ocular inspection though of the properties located in Pardo, Cebu City but not the house and lot in Danao City. He did not see it but he was told about it. As to the accounts receivable reflected in the summary, it was based on a handwritten report by Sergio Conopio, Sr. which was signed by debtors. As to the inventories of gold and silver, he saw the said items but he does not know how to assess them but he was again told of its value.

ROMMEL CONOPIO

He is one of the illegitimate children of the late Sergio Conopio, Sr. with Epifania Alvareda but his parents eventually separated. He then lived with his father but when he was in Grade IV, he lived with another of his father's mistress, Wilma Flores. His other illegitimate siblings also came to live with them. His father separated with Wilma Flores when herein witness was about thirteen years old and Sergio Conopio, Sr. cohabited with herein defendant. He and his sister Maria Lourdes then lived with defendant in Maslog Danao City. First, in the house of defendant's mother where defendant's sister, her husband and their children also lived. It was a small dilapidated house made of bamboo and wood with nipa roof. The defendant was pregnant at that time with Rhoniel Vincent whom Sergio Conopio, Sr. acknowledged as his son.

He narrated that when his father is courting a woman, he shows off his money. With proceeds from the sale of a parcel of land in Lapulapu City, Sergio Conopio, Sr. constructed a sari-sari store and a house for the defendant in a lot owned by the latter's uncle in Maslog, Danao City. The lot was eventually bought by his father in the name of herein defendant from the latter's uncle. The house was eventually developed into a concrete house with tiles and marble flooring with G.I. roofing and rented out. A bigger two storey house was also constructed thereat sometime in 1993 or 1994, all with his father's money. The defendant was unemployed at that time because Sergio Conopio, Sr. did not allow her to work but was given an allowance. The defendant was not also an employee of Serg's Goldsmith and Jewelry Store as she was not included in the payroll although she frequently goes there with Sergio Conopio, Sr. who owns it for almost thirty-five years already.

The witness likewise testified that Sergio Conopio, Sr. also owned the following properties: a Honda car bought in the name of the defendant (defendant has no income to buy it); almost one hectare of land in Bulacao, Pardo, Cebu City which was later subdivided and sold or foreclosed; accounts in different banks; a safety deposit box at Far East Bank, Manalili Branch, Cebu; various gold and silver which quantity is unknown to him; a house located in Pardo, Cebu City which was rented out and the rentals were collected by the defendant, the lot on which it is built was mortgaged to a certain Dr. Arcenas.

BENILDA NAZARENO

She presented in Court the original copies of the real estate mortgage dated April 30, 1987 executed by Sergio Conopio, Sr. in favor of Dr. Ramon Arcenas over four parcels of land.[16] She also presented a copy of the promissory note[17] dated April 30, 1987 for P250,000.00, executed by Sergio, Sr. in favor of Dr. Arcenas and a promissory note[18] dated October 30, 1987 for P250,000.00, superseding the previous promissory note. In addition, she presented in Court a loan discount statement[19] and receipts[20] showing payments made by Sergio, Sr. to Dr. Arcenas, together with statement of due accounts,[21] listing of Serg's Jewelry Store stock on hand[22] as of April 28, 1997 and an appraisal report of his property.[23]

On cross-examination, Benilda Nazareno admitted that all the documents she brought to court were all turned over to her by Mr. Daniel Arcenas and the transactions found in their record pertain to the April 30, 1987 promissory note signed by the late Sergio, Sr. The last transaction pertains to the account on March 12, 1993 for the payment of P300,000.00 covered by said promissory note.[24]

Defendant, on the other hand, testified[25] for her defense together with Victor Aguilar.[26] Their testimonies are hereunder summarized as follows:

VICTOR AGUILAR

He was the one who sold the parcel of land with an area of approximately 500 square meters in Maslog, Danao City to herein defendant who is his niece. The sale was covered by a Deed of Sale dated February 2, 1994 for P60,000.00 which was paid in two equal installments. Defendant has been living thereat even before she was able to buy the same and even before she started living with Sergio Conopio, Sr. At the time of the sale, the defendant was already living with Sergio Conopio, Sr., a well-off jewelry merchant, but defendant was also employed then at Mitsumi, Danao City. She resigned from her job later but she was engaged in raising pigs. She personally handed the payment to herein witness and the latter did not know where the money came from.

ELLEN VISCAYNO

She is the defendant in this case and she knows the plaintiffs as the children and the wife of her live-in partner for almost seven years, from 1990 to 1997, Sergio Conopio, Sr. She has two children with the latter namely, Rhoniell Vincent, born on November 14, 1991[27] and Stephanie Marie, born on December 24, 1992.[28] She is aware that Sergio Conopio, Sr. is still married to Natividad Ricaña. Her mother and her sisters are helping her support her two children and they also rely on the rental coming from the rented house. The relatives and families of Sergio Conopio, Sr. never helped them and neither did she ask for their help. She has not claimed her children's share in the estate of Sergio Conopio, Sr. and is appealing to the latter's children not to disturb her anymore with respect to the property in Danao City.

She used to work with Mitsumi with a salary of P89.00 per day but Sergio Conopio, Sr. asked her to resign with promises to double her salary. She then worked at Serg's Jewelry Store from 8 am to 5 pm, refining gold. She was not given any salary though, she was only given an allowance for viand and sometimes to buy her personal needs. There were no other employees in the store because Sergio Conopio, Sr. was a very jealous person and personally handled and managed the store with the occasional help of an accountant or a bookkeeper when it is already time to renew his business permit. She has no other source of funds except for the allowance that was given to her for food. She had to support the other children of Sergio Conopio, Sr. who came to live with them.

During their cohabitation, they were able to acquire, through their joint effort, a parcel of land in Maslog, Danao City for P60,000.00 per Deed of Sale[29] dated February 2, 1994. but was able to pay only P40,000.00. She used her own money to pay for it, it came from her income from her piggery business. Sergio Conopio, Sr. may have contributed money for the property but it was she who paid. They were able to construct two houses thereon. Sergio Conopio, Sr. executed a notarized quitclaim and waiver[30] in her favor, leaving the property to her and their children in the event of his demise. The lawyer who prepared the document was against it but Sergio Conopio, Sr. insisted because he wanted to ensure that his other children will not claim the property. This is the only lot she is in possession of and she is the one paying the real property taxes thereon. The other lots mentioned in the complaint are not in her possession. She admitted having signed a Deed of Real Estate Mortgage over four parcels of land upon the request of Sergio Conopio, Sr. in favor of Direct Funders Management and Consultancy. She merely signed the same and has no idea about the mortgage at all. The proceeds went to Sergio Conopio, Sr.'s bank account as the latter kept his own money. She also does not know if Sergio Conopio, Jr. was informed about the mortgage as she does not usually talk to him and his siblings.

Serg's Jewelry Store is now managed by Sergio Conopio, Jr. as herein defendant has turned it over to the former upon the death of Sergio Conopio, Sr. She also turned over various jewelries namely, a gold watch, bracelet and two rings as well as P100,000.00 cash. Sergio Conopio, Jr. did not issue an acknowledgment receipt for the said items. She does not know where the gold plated caliber .45 pistol is but she heard that it was mortgaged by Sergio, Sr. to his friend.

With regard the Honda Civic car, defendant claimed the same as her own inasmuch as it was bought for her, given to her and registered in her name. It was Sergio Sr.'s money though which was used to buy the car. She used to have an account at Banco del Norte but not anymore because the bank has already ceased operation. She did not have a joint account with Sergio Conopio, Sr. On January 27, 2005, the court a quo rendered the assailed Decision in favor of the defendant. Displeased with the ruling of the court a quo, plaintiffs, now appellants, interposed the instant appeal and in their Appellants' Brief,[31] the following assignments of errors were made, to wit:

I. THE LOWER COURT ERRED IN DISMISSING THE CASE IN ITS DECISION DATED JANUARY 27, 2005;

II. THE LOWER COURT ERRED IN APPLYING ARTICLE 148 OF THE FAMILY CODE AND AWARDING ONE-HALF OF THE PROPERTIES TO DEFENDANT-APPELLEE.

Appellants contend that contrary to the findings of the court a quo, appellee, as co-maker, is legally bound to account for the proceeds of the mortgage over the subject parcels of land and deliver them to the appellants considering that the said parcels of land belong to the conjugal partnership of Sergio Conopio, Sr. and Natividad Ricana.

Appellants further contend that the same is true with regard the proceeds of a Honda car sold by herein appellee. Although the car was registered in appellee's name, it was acquired during her co-habitation with Sergio Conopio, Sr. and since the former has no financial capacity to acquire the same, it must have been Sergio Conopio, Sr. who paid for the purchase. Since his marriage with Natividad Ricana was subsisting then, the car also belongs to their conjugal partnership.

With regard the parcel of land in Maslog, Danao City as well as the houses built thereon, appellants contend that these also form part of the conjugal partnership of Sergio Conopio, Sr. and Natividad Ricana. The same were acquired with the use of Sergio Conopio, Sr.'s money as appellee had no money to pay for, not being gainfully employed and with no viable source of income. The quitclaim and waiver executed by the late Sergio Conopio Sr. in favor of appellee is not valid as the same covers property which belongs to the conjugal partnership.

Lastly, appellants argued that the court a quo erred in ruling that appellee is entitled to half of the value of the properties of Sergio Conopio, Sr. under Article 148 of the Family Code inasmuch as appellee failed to present evidence of her actual contribution in acquiring the said properties. Moreover, appellee had no money and no source of income during their cohabitation.

Ruling:

We do not agree with appellants.

The Civil Code of the Philippines, the law in force at the time of the celebration of the marriage between Sergio Conopio, Sr. and Natividad Ricana in 1956, provides that:

"Article 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."

Article 153 of the Civil Code also provides:

"Art. 153. The following are conjugal partnership property:

- (1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
- (2) That which is obtained by the industry, or work, or as salary of the spouses, or of either of them;
- (3) The fruits, rents or interests received or due during the marriage, coming from the common property or

from the exclusive property of each spouse."

Article 117 of the Family Code also contained a similar provision, to wit:

"Art. 117. The following are conjugal partnership properties:

- (1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
- (2) Those obtained from the labor, industry, work or profession of either or both of the spouses;
- (3) The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;
- (4) The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;
- (5) Those acquired through occupation such as fishing or hunting;
- (6) Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and
- (7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse.

Article 116 further provides that:

"Art. 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved."

The above provisions establish the presumption of conjugality. But the presumption in favor of conjugality does not operate if there is no showing when the property alleged to be conjugal was acquired.[32] The party who invokes the presumption that the properties belong to the conjugal partnership must first prove that the same were acquired during the marriage. Proof of acquisition during the existence of the marriage is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership. This is in accordance with the ruling of the Supreme Court in the case of *TERESITA C. FRANCISCO VS. HON. COURT OF APPEALS; AND CONCHITA EVANGELISTA AND HER HUSBAND SIMEON EVANGELISTA; ARACELI F. MARILLA AND HER HUSBAND FREDDY MARILLA; ANTONIO V. FRANCISCO; AND EUSEBIO FRANCISCO*,[33] to wit:

"Article 160 of the New Civil Code provides that 'all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.' However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition during the coverture is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove said time element. Needless to say, the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired. Moreover, this presumption in favor of conjugality is rebuttable, but only with strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses."

In the instant case, plaintiffs claimed the following properties as conjugal properties of Sergio Conopio, Sr. and Natividad Ricana:

- SERG's Jewelry Store
- Lot 5351-L-3 covered by TCT No. 112506
- Lot 5337-A-9 covered by TCT No. 95098

- Lot 5337-D covered by TCT No. 96868
- Lot 5337-A-8 covered by TCT No. 120208
- Lot 5337-C covered by TCT No. 120640
- Two adjoining houses and lot located in Maslog, Danao City
- Gold plated Cal. 45 pistol
- Honda Civic car and an assembled Tamaraw vehicle.

We note that with regard items No. 1 to 6 above as well as Item No. 8, the record is bereft of evidence establishing the date the said properties were acquired. For instance, for Serg's Jewelry Store, appellants only presented the following documents: application for renewal of mayor's permit,[34] various receipts of payment of license fees[35] and various receipts of rentals for public stalls.[36] The original or the first permit was not presented. No evidence was also presented showing when the pistol and the Tamaraw vehicle were acquired. For Lots 5351-L-3, 5337-A-9 ,5337-D, 5337-A-8 and 5337-C, only the transfer certificates of title were presented. The deeds of sale were not presented and there is no indication at all as to when were these properties acquired. The Supreme Court, in the case of *EVANGELINE D. IMANI VS. METROPOLITAN BANK & TRUST COMPANY*,[37] has ruled that:

"Similarly, the certificate of title could not support petitioner's assertion. As aptly ruled by the CA, the fact that the land was registered in the name of Evangelina Dazo-Imani married to Sina Imani is no proof that the property was acquired during the spouses' coverture. Acquisition of title and registration thereof are two different acts. It is well settled that registration does not confer title but merely confirms one already existing."

Likewise, in the case of *METROPOLITAN BANK AND TRUST CO. vs. NICHOLSON PASCUAL a.k.a. NELSON PASCUAL*,[38] the Supreme Court has ruled that:

"...(I)f proof obtains on the acquisition of the property during the existence of the marriage, then the presumption of conjugal ownership applies. The correct lesson of *Francisco and Jocson* is that proof of acquisition during the marital coverture is a condition sine qua non for the operation of the presumption in favor of conjugal ownership. When there is no showing as to when the property was acquired by the spouse, the fact that a title is in the name of the spouse is an indication that the property belongs exclusively to said spouse."

As in the instant case, title to Lots 5351-L-3, 5337-A-9 ,5337-D, 5337-A-8 and 5337-C is in the name of Sergio Conopio Sr. only and this is an indication that these lots belong exclusively to him as it was not shown when these lots were acquired.

In the case of *HEIRS OF NICOLAS JUGALBOT, Represented by LEONILA B. JUGALBOT vs. COURT OF APPEALS and HEIRS OF VIRGINIA A. ROA, Represented by LOLITA R. GOROSPE, Administratrix*,[39] the Supreme Court opined:

"Spouses *Estonina v. Court of Appeals*[40] held that the presumption under civil law that all property of the marriage belongs to the conjugal partnership applies only when there is proof that the property was acquired during the marriage. Otherwise stated, proof of acquisition during the marriage is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership.[41] In *Spouses Estonina*, petitioners were unable to present any proof that the property in question was acquired during the marriage of Santiago and Consuelo Garcia. The fact that when the title over the land in question was issued, Santiago Garcia was already married to Consuelo as evidenced by the registration in the name of "Santiago Garcia married to Consuelo Gaza," does not suffice to establish the conjugal nature of the property.[42]

In the instant case, the Court of Appeals correctly held that the phrase "married to" appearing in certificates of title is no proof that the properties were acquired during the spouses' coverture and are merely descriptive of the marital status of the person indicated therein. The clear import from the certificate of title is that Virginia is the owner of the property, the same having been registered in her name alone, and being "married to Pedro N. Roa" was merely descriptive of her civil status.[43] Since no proof was adduced that the property was acquired during the marriage of Pedro and Virginia Roa, the fact that when the title over the land in question was issued, Virginia Roa was already married to Pedro N. Roa as evidenced by the registration in the name of "Virginia A. Roa married to Pedro N. Roa," does not suffice to establish the conjugal nature of the property."

Moreover, as correctly pointed out by the court a quo, it was not duly established that the above properties are under the control and possession of herein appellee. Hence, she cannot be compelled to account for the same.

With regard the Honda Civic car and the lot in Maslog, Danao City with houses built thereon, we note that the same are under the name of appellee. But it was duly established that the same were acquired by appellee during her cohabitation with Sergio Conopio, Sr. That being the case, Article 148 of the Family Code is applicable. It provides that:

"Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article."

Our perusal of the records of the case reveals that herein appellee was able to present documents showing her contribution or payment for the purchase price of the said properties. For the Honda Civic car, appellee was able to present an official receipt[44] of her downpayment in the amount of P494,305.00. For the lot in Maslog, Danao City, appellee was able to present the Deed of Absolute Sale[45] covering her purchase thereof in the amount of P60,000.00. Appellants on the other hand, did not present any evidence at all as to the amount of the actual contribution of Sergio Conopio, Sr. Instead, appellants rely on the allegation that it was Sergio Conopio Sr. who was financially well-off while appellee did not appear to have a high salary or is not financially capable of acquiring the said properties.

Instructive is the ruling of the Supreme Court in the case of LUPO ATIENZA vs. YOLANDA DE CASTRO,[46]

"It is the petitioner's posture that the respondent, having no financial capacity to acquire the property in question, merely manipulated the dollar bank accounts of his two (2) corporations to raise the amount needed therefor. Unfortunately for petitioner, his submissions are burdened by the fact that his claim to the property contradicts duly written instruments, i.e., the Contract to Sell dated March 24, 1987, the Deed of Assignment of Redemption dated March 27, 1987 and the Deed of Transfer dated April 27, 1987, all entered into by and between the respondent and the vendor of said property, to the exclusion of the petitioner. As aptly pointed out by the CA:

Contrary to the disquisition of the trial court, [Lupo] failed to overcome this burden. Perusing the records of the case, it is evident that the trial court committed errors of judgment in its findings of fact and appreciation of evidence with regard to the source of the funds used for the purchase of the disputed property and ultimately the rightful owner thereof. Factual findings of the trial court are indeed entitled to respect and shall not be disturbed, unless some facts or circumstances of weight and substance have been overlooked or misinterpreted

that would otherwise materially affect the disposition of the case.

In making proof of his case, it is paramount that the best and most complete evidence be formally entered. Rather than presenting proof of his actual contribution to the purchase money used as consideration for the disputed property, [Lupo] diverted the burden imposed upon him to [Yolanda] by painting her as a shrewd and scheming woman without the capacity to purchase any property. Instead of proving his ownership, or the extent thereof, over the subject property, [Lupo] relegated his complaint to a mere attack on the financial capacity of [Yolanda]. He presented documents pertaining to the ins and outs of the dollar accounts of ENRICO and EURASIAN, which unfortunately failed to prove his actual contribution in the purchase of the said property. The fact that [Yolanda] had a limited access to the funds of the said corporations and had repeatedly withdrawn money from their bank accounts for their behalf do not prove that the money she used in buying the disputed property, or any property for that matter, came from said withdrawals.

As it is, the disquisition of the court a quo heavily rested on the apparent financial capacity of the parties. On one side, there is [Lupo], a retired sea captain and the President and General Manager of two corporations and on the other is [Yolanda], a Certified Public Accountant. Surmising that [Lupo] is financially well heeled than [Yolanda], the court a quo concluded, sans evidence, that [Yolanda] had taken advantage of [Lupo]. Clearly, the court a quo is in error. (Words in brackets supplied.)

As we see it, petitioner's claim of co-ownership in the disputed property is without basis because not only did he fail to substantiate his alleged contribution in the purchase thereof but likewise the very trail of documents pertaining to its purchase as evidentiary proof redounds to the benefit of the respondent. In contrast, aside from his mere say so and voluminous records of bank accounts, which sadly find no relevance in this case, the petitioner failed to overcome his burden of proof. Allegations must be proven by sufficient evidence. Simply stated, he who alleges a fact has the burden of proving it; mere allegation is not evidence."

Likewise in the case of PROCOPIO VILLANUEVA, NICOLAS RETUYA AND PACITA VILLANUEVA VS. COURT OF APPEALS AND THE HEIRS OF EUSEBIA NAPISA RETUYA,[47] the Supreme Court has ruled that:

"Finally, petitioners' reliance on Article 148 of the Family Code is misplaced. A reading of Article 148 readily shows that there must be proof of "actual joint contribution" by both the live-in partners before the property becomes co-owned by them in proportion to their contribution. The presumption of equality of contribution arises only in the absence of proof of their proportionate contributions, subject to the condition that actual joint contribution is proven first. Simply put, proof of actual contribution by both parties is required, otherwise there is no co-ownership and no presumption of equal sharing. Petitioners failed to show proof of actual contribution by Pacita in the acquisition of Lot No. 152. In short, petitioners failed to prove that Pacita bought Lot No. 152 with her own money, or that she actually contributed her own money to acquire it." (Emphasis original.)

Hence, since herein appellants were unable to present proof of Sergio Conopio Sr.'s actual contribution to the purchase money used as consideration for the mentioned properties then it follows that the said properties are exclusively owned by herein appellee.

With regard the residential house built on the lot in appellee's lot in Maslog, Danao City covered by Tax Declaration No. 97-0261841, we note that the same was declared under the name of herein appellee only. Sergio Conopio, Sr.'s actual contribution for the building of the said house was not established by any evidence on record. Hence, the same exclusively pertains to herein appellee.

With regard the other residential house declared under Tax Declaration No. 97-0260494 under the names of Sergio Conopio, Sr. and herein appellee Ellen Viscayno, the same is clearly indicated by the tax declaration as co-owned by them. The extent of their respective contributions though was not established hence, it is presumed that they co-own the same, equally. Since Sergio Conopio, Sr., was validly married to Natividad Ricana, his share

in the co-ownership shall accrue to the conjugal partnership.

As an aside, we note though that contrary to the findings of the court a quo, the waiver and quitclaim executed by Sergio Conopio, Sr. is void and will not validly effect transfer of the property to herein appellee pursuant to Article 87 of the Family Code which provides thus:

"Art. 87. Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage."

In sum, the court a quo did not err in ruling that herein appellee cannot be compelled to account for the properties mentioned in the complaint for the reasons elucidated above except for the residential house covered by Tax Declaration No. 97-0260494.

WHEREFORE, on the view above taken, the January 27, 2005 Decision of the Regional Trial Court of Cebu City, 7[th] Judicial Region, Branch 5, in Civil Case No. CEB-21458 is hereby AFFIRMED with modification in that herein appellee Ellen Viscayno is ordered to account for the share of Sergio Conopio, Sr. in the residential house covered by Tax Declaration No. 97-0260494.

SO ORDERED.

Francisco, R.C., and Lopez, J.Y.,[*] JJ., concur.

[*] Acting Junior Member in lieu of J. Pamela Ann Abella Maxino who is on Wellness Leave as per Office Order No. 24-14-GTI dated 23 September 2014.

[1] Notice of Appeal, Records at pp. 364-365.

[2] Records at pp. 345-363.

[3] Original spelled as "barangay."

[4] Erroneously written as TCT No. 120640 in the Decision.

[5] Erroneously written as Ricana in the Decision.

[6] Words in bracket supplied.

[7] Transcripts of Stenographic Notes dated September 24, 1889 and December 3, 1998.

[8] Transcripts of Stenographic Notes dated October 15, 1998, December 2, 1998 and January 6, 1999.

[9] Transcript of Stenographic Notes dated March 3, 1999.

[10] Transcript of Stenographic Notes dated April 12, 1999.

[11] Transcript of Stenographic Notes dated September 13, 2000.

[12] Exhibits "A" and "B" for the plaintiffs, records at pp. 105-106.

[13] Decision at p. 100 of records. Medical records (Exhibit "C"), records at p. 107.

[14] Records at p. 7.

- [15] Exhibit "G" to "K" records at pp. 8-12.
- [16] Exhibit "QQ," Records at pp. 166-167.
- [17] Exhibit "QQ-2," Records at p. 168.
- [18] Exhibit "QQ-3," Records at p. 169.
- [19] Exhibit "QQ-7," Records at p. 173.
- [20] Exhibits "QQ-8" to "QQ-11" Records at pp. 174-179.
- [21] Exhibit "RR," Records at p. 180-181.
- [22] Exhibit "UU," Records at p. 184.
- [23] Decision at p. 104 of records.
- [24] Ibid.
- [25] Transcripts of Stenographic Notes dated February 14, 2002 and April 12, 2002.
- [26] Transcript of Stenographic Notes dated May 18, 1999.
- [27] Records at p. 313.
- [28] Records at p. 312.
- [29] Records at pp. 310-311.
- [30] Records at pp. 316-317.
- [31] Rollo at pp. 66-82.
- [32] Phil. National Bank v. CA, 153 SCRA 435, August 31, 1987 cited in Spouses JOSEPHINE MENDOZA GO & HENRY GO vs. LEONARDO YAMANE G.R. No. 160762, May 3, 2006.
- [33] G.R. No. 102330, November 25, 1998.
- [34] Records at p. 109.
- [35] Records at p. 110-111.
- [36] Records at p. 120.
- [37] G.R. No. 187023, November 17, 2010 .
- [38] G.R. No. 163744 , February 29, 2008.
- [39] G.R. No. 170346, March 12, 2007.
- [40] 334 Phil. 577 (1997).
- [41] Id. at 586.
- [42] Id.
- [43] Rollo, p. 39.
- [44] Records at p. 314.

[45] Records at pp. 310-311.

[46] G.R. No. 169698, November 29, 2006.

[47] G.R. No. 143286, April 14, 2004.

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