

**DIVERSIFIED CREDIT CORPORATION, PLAINTIFF-APPELLEE, VS.
FELIPE ROSADO AND LUZ JAYME ROSADO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-27933. December 24, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This appeal from a decision of the Court of first Instance of Bacolod City, Negros Occidental (Civ. Case No. 7516 of that Court) was certified to us by the Court of Appeals (Second Division) because the same involves no questions of fact.

The case had its origin in the Municipal Court of Bacolod City, when the Diversified Credit Corporation filed an action to compel the spouses Felipe Rosado and Luz Jayme Rosado to vacate and restore possession of a parcel of land in the City of Bacolod (Lot 62-B of Subdivision plan LRC-Psd-33823) that forms part of Lot No. 62 of the Bacolod Cadastre, and is covered by Transfer Certificate of Title No. 27083 in the name of plaintiff. After answer, claiming that the lot was defendants' conjugal property, the Municipal Court ordered defendants to surrender and vacate the land in litigation; to pay P100.00 a month from the filing of the complaint up to the actual vacating of the premises; to pay P500.00 attorneys' fees and costs. Upon appeal to the Court of First Instance, the case was submitted on the following stipulation of facts (Rec. on App., pp. 59-60):

1. That Lot No. 62-B of Bacolod Cadastre belongs to the thirteen co-owners, including the wife of the de-fendant herein, who owns 1/13th part pro-indiviso;
2. That on May 11, 1964, Luz Jayme Rosado, wife of the defendant Felipe Rosado, signed a Deed of Sale together with the co-owners of the property to the plaintiff as shown by Exh. "A" for the plaintiff;
3. That on the lot in question the defendant Felipe Rosado had built a house sometime in 1957 without the whole property having been previously partitioned among the thirteen (13) co-owners;
4. That the title of the property has already been transferred to the plaintiff upon registration of the Deed of Sale in June, 1964, with the Office of the Register of Deeds;
5. That demand was made by the plaintiff upon the de-fendant Felipe Rosado and his wife Luz Jayme Rosado on October 19, 1964, but until now the defendant Felipe Rosado has refused to vacate the premises or to remove his house thereon as shown by Exh. "B" for the plaintiff, on the grounds as he alleged in his answer that he had built on the lot in question a conjugal house worth P8,000.00 which necessarily makes the lot an which it stands subject to Article 158 of the Civil Code and on the point of view of equity that the wife of the defendant Felipe Rosado received an aliquot share of P2,400.00 only from the share and if the house were demolished the defendant would suffer damage in the amount of P8,000.00;
6. That the portion of the lot on which the house stands, would earn a monthly rental of P50.00;
7. That Felipe Rosado, husband of Luz Jayme, did not give his conformity to the Deed of Sale, Exh. "A".

8. That on October 31, 1964, the defendant Felipe Rosado requested the plaintiff in the letter, Exh. "C" for the plaintiff, for a period of six (6) months within which to vacate the premises.

9. That the letter was not answered by the plaintiff and they did not accept the offer, and on November 25, 1964, they filed a complaint before the Municipal Court which proves that plaintiff neglected the offer;

The Court of first Instance in its decision rejected the claim of ownership advanced by Rosado, based upon the construction of a house on the disputed lot by the conjugal partnership of the Rosado spouses, which allegedly converted the land into conjugal property under Article 158, paragraph 2 of the present Civil Code of the Philippines; further held that defendants were in estoppel to claim title in view of the letter Exhibit "C" requesting for six (6) months within which to vacate the premises, and affirmed the decision of the Inferior Court. Defendant Felipe Rosado resorted to the Court of Appeals, and his appeal (CA-G. R. No. 37398-R) is the one now before us. He assigns four alleged errors:

(a) The lower court erred in not holding that Exhibit "A" is null and void, since upon the construction of the conjugal dwelling thereon, the conjugal partnership of the defendant-appellant Felipe Rosado and Luz Jayme became the owner of the share of Luz Jayme in Lot No. 62-B, Bacolod Cadastre;

(b) The trial court erred in ordering the defendant-appellant to vacate Lot No. 62-B and in not holding that Exhibit "A" is null and void because as the legal usufructuary of the share of Luz Jayme Rosado in Lot 62-B, Bacolod Cadastre, the conjugal partnership, managed and administered by the defendant-appellant Felipe Rosado can not be deprived of its usufructuary rights by any contract between Luz Jayme and the plaintiff-appellee;

(c) The trial court erred in not holding that the defendant-appellant should be reimbursed the value of the conjugal house constructed on Lot 62-B; and

(d) The lower court erred in ordering the defendant-appellant to pay attorneys' fees in the amount of five hundred (P500.00) pesos.

It can be seen that the key question is whether by the construction of a house on the lot owned in common by the Jaymes, and sold by them to the appellant corporation, the land in question or a 1/13th part of it became conjugal property.

Appellant, husband of vendor Luz Jayme, claims the affirmative invoking the second paragraph of Article 158 of the Civil Code of the Philippines, prescribing that:

"ART. 158. Improvements, whether for utility or adornment, made on the separate property of the spouses through advancements from the partnership or through the industry of either the husband or the wife, belong to the conjugal partnership.

"Buildings constructed, at the expense of the partnership, during the marriage on land belonging to one of the spouses, also pertain to the partnership, but the value of the land shall be reimbursed to the spouse who owns the same."

Rosado further contends that as the building of the house at the expense of the conjugal partnership converted the 1/13 undivided share on his wife in Lot 62-B into property of the community, the deed of sale of May 11, 1964 in favor of the appellee corporation was void in so far as said 1/13 share is concerned, because his wife, Luz Jayme, had ceased to own such share from and after the building of the house; and Rosado, as manager of the conjugal partnership, had not participated in the sale, nor subsequently ratified the same.

We find appellant's thesis legally untenable. For it is a basic principle in the law of co-ownership, both under the present Civil Code as in the Code of 1889, that no individual co-owner can claim title to any definite portion of

the land or thing owned in common until the partition thereof. Prior to that time, all that the co-owner has is an ideal, or abstract, quota or proportionate share in the entire thing owned in common by all the co-owners. The principle is emphasized by the rulings of this Court. In *Lopez vs. Ilustre*, 5 Phil. 567, it was held that while a co-owner has the right to freely sell and dispose of his undivided interest, he has no right to sell a divided part of the real estate owned in common. "If he is the owner of an undivided half of a tract of land, he has the right to sell and convey an undivided half, but he has no right to divide the lot into two parts, and convey the whole of one part by metes and bounds." The doctrine was reiterated in *Mercado vs. Liwanag*, L-14429, June 20, 1962, holding that a co-owner may not convey a physical portion of the land owned in common. And in *Santos vs. Buenconsejo*, L-20136, June 23, 1965, it was ruled that a co-owner may not even adjudicate to himself any determinate portion of land owned in common.

Since the share of the wife, Luz Jayme, was at no time physically determined, it can not be validly claimed that the house constructed by her husband was built on land belonging to her, and Article 158 of the Civil Code can not apply. Certainly, on her 1/13 ideal or abstract undivided share, no house could be erected. Necessarily, the claim of conversion of the wife's share from paraphernal to con-jugal in character as a result of the construction must be rejected for lack of factual or legal basis.

It is the logical consequence of the foregoing ruling that the lower court did not err in holding that the appellant was bound to vacate the land without reimbursement, since he knew that the land occupied by the house did not belong exclusively to his wife, but to the other owners as well, and there is no proof on record that the house occupied only 1/13th of the total area. The construction was not done in good faith.

WHEREFORE, the judgment of the Court of first Instance is affirmed. Costs against appellant Felipe Rosado.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

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