

ROSA SURLA, PLAINTIFF-APPELLANT, VS. THE CHILDREN OF THE DECEASED BENJAMIN VELASQUEZ, NAMELY: ALFREDO, ELISEO, BENJAMIN JR., ANTONIO AND LEVY, ALL SURNAMED VELASQUEZ, DEFENDANTS...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal filed by plaintiff-appellant Rosa Surla from the decision dated February 10, 2010[1] and order dated October 29, 2010[2] of the Regional Trial Court of Morong, Rizal, Br. 78 in Civil Case No. 02-1429-M.

The factual antecedents are as follows:

On August 23, 2002, plaintiff-appellant filed with the Regional Trial Court (RTC) of Morong, Rizal a complaint for specific performance with damages[3] against defendants-appellees alleging that she is the second wife and surviving widow of defendants-appellees' father, Benjamin Velasquez, who died on August 8, 2000; that before they were wed on April 21, 1997, plaintiff-appellant purchased a parcel of land from the deceased on April 6, 1999 with a total area of three hundred sixty (360) square meters located at Pililla, Rizal as evidenced by a deed of absolute sale[4]; that said land forms part of a 21,853 square-meter parcel of land registered under the name of the deceased as evidenced by Transfer Certificate of Title No. M-1358[5]; that plaintiff-appellant has been residing in said place since then and has paid the corresponding fees required to effect the transfer of the property in her name but transfer cannot be done since the owner's duplicate copy of TCT No. M-1358 is under the joint custody and effective control of the defendants-appellees; that despite demand[6], defendants-appellees continuously refused to surrender the owner's duplicate copy of TCT No. M-1358 to effect the registration of the subject property in her name.

In their answer[7], defendants-appellees alleged that the RTC has no jurisdiction over the subject matter of the complaint since they were not privy to the deed of absolute sale between plaintiff-appellant and the deceased; that the complaint fails to state any cause of action against defendants-appellees since they have no obligation to respect or adhere to the demand of the plaintiff-appellant; that the deed of sale is null and void or otherwise inexistent for want of consideration and that the deceased was not in his full mental capacity to execute said deed; and that the deed of absolute sale is non-registerable since plaintiff-appellant lacks the required documents to effect the registration of the property.

After trial, the RTC issued a decision dated February 10, 2010[8], dismissing the case on the ground that plaintiff-appellant has no cause of action against the defendants-appellees since the latter were not parties to the deed of absolute sale.

Plaintiff-appellant filed on May 4, 2010 a motion for reconsideration[9] of the decision dated February 10, 2010 but the RTC issued an order dated October 29, 2010[10], denying the motion for reconsideration and declaring the deed of absolute sale as null and void. The RTC found that the deed of absolute sale is null and void since the proscription against sale of property between spouses under Articles 1352, 1409, and 1490[11] of the New Civil

Code of the Philippines apply to common law relationships in line with the ruling in the case of Calimlim-Canullas vs. Hon. Fortun, etc., et. al.[12] and plaintiff-appellant admitted that she and the deceased were living together during the time when the sale took place[13].

In this appeal[14], plaintiff-appellant claims that while she was the concubine of the deceased during the time when the deed of absolute sale was executed, the deed of absolute sale is valid since the circumstances present in Calimlim-Canullas vs. Hon. Fortun, etc., et. al. are not present in the instant case. In support thereof, plaintiff-appellant claims that: 1) in the case of Calimlim-Canullas, the husband left the family home and sold the conjugal home to his concubine, while in the instant case what was sold by the deceased was a measly 360 square-meter portion of the 21,853 square-meter property covered by TCT No. M-1358, which is neither the family home of the defendants-appellees nor the source of their income; and 2) the subject property is not conjugal in nature since TCT No. M-1358 was registered solely in the name of the deceased and the property was acquired through inheritance. In addition, plaintiff-appellant claims that defendants-appellees have not asserted that the deed of absolute sale is null and void on the ground that the cause, object, or purpose is contrary to law, morals, good customs or public policy; and that the basis for their claim that said deed was null and void is another ground, i.e., want of consideration and that the deceased was not in his full mental capacity when the deed was executed. Plaintiff-appellant also contends that since the deed of absolute sale is valid, defendants-appellees should be compelled to surrender TCT No. M-1358, even if they are not privy to the deed of absolute sale, since said sale creates not a personal but a real right enforceable against the whole world, which in turn imposes an obligation on the part of whomsoever is in physical possession or custody of the certificate of title to surrender the same to the buyer.

This Court finds no reason to amend, much less reverse, the ruling of the RTC that the deed of absolute sale is null and void. Contrary to plaintiff-appellant's claim, this Court finds that the ruling in Calimlim-Canullas vs. Hon. Fortun, etc., et. al.[15] applies in the case at bar. In said case the Supreme Court stated that:

“Article 1409 of the Civil Code states inter alia that: contracts whose cause, object, or purpose is contrary to law, morals, good customs, public order, or public policy are void and inexistent from the very beginning.

Article 1352 also provides that: "Contracts without cause, or with unlawful cause, produce no effect whatsoever. The cause is unlawful if it is contrary to law, morals, good customs, public order, or public policy."

Additionally, the law emphatically prohibits the spouses from selling property to each other subject to certain exceptions. Similarly, donations between spouses during marriage are prohibited. And this is so because if transfers or conveyances between spouses were allowed during marriage, that would destroy the system of conjugal partnership, a basic policy in civil law. It was also designed to prevent the exercise of undue influence by one spouse over the other, as well as to protect the institution of marriage, which is the cornerstone of family law. The prohibitions apply to a couple living as husband and wife without benefit of marriage, otherwise, "the condition of those who incurred guilt would turn out to be better than those in legal union." Those provisions are dictated by public interest and their criterion must be imposed upon the wig of the parties. That was the ruling in Buenaventura vs. Bautista, also penned by Justice JBL Reyes (CA) 50 O.G. 3679, and cited in Matabuena vs. Cervantes. We quote hereunder the pertinent dissertation on this point:

We reach a different conclusion. While Art. 133 of the Civil Code considers as void a donation between the spouses during the marriage, policy considerations of the most exigent character as well as the dictates of morality require that the same prohibition should apply to a common-law relationship.

As announced in the outset of this opinion, a 1954 Court of Appeals decision, *Buenaventura vs. Bautista*, 50 OG 3679, interpreting a similar provision of the old Civil Code speaks unequivocally. If the policy of the law is, in the language of the opinion of the then Justice J.B.L. Reyes of that Court, 'to prohibit donations in favor of the other consort and his descendants because of fear of undue influence and improper pressure upon the donor, a prejudice deeply rooted in our ancient law, ..., then there is every reason to apply the same prohibitive policy to persons living together as husband and wife without benefit of nuptials. For it is not to be doubted that assent to such irregular connection for thirty years bespeaks greater influence of one party over the other, so that the danger that the law seeks to avoid is correspondingly increased'. Moreover, as pointed out by Ulpian (in his lib 32 ad Sabinum, fr. 1), "It would not be just that such donations — should subsist, lest the conditions of those who incurred guilt should turn out to be better." So long as marriage remains the cornerstone of our family law, reason and morality alike demand that the disabilities attached to marriage should likewise attach to concubinage (Emphasis supplied)" [Emphasis supplied.]

The above proscription against sale between common-law spouses is reiterated in the case of *Maria B. Ching vs. Joseph C. Goyanko, Jr., et.al.*[16], where the father executed a deed of sale covering a parcel of land in favor of his common-law wife but the sale was discovered by his children only upon his death.

Considering the above principles, the fact that plaintiff-appellant admitted to be the concubine or live-in partner of the deceased when she purchased the subject property is sufficient justification to apply the jurisprudence on the matter. Defendants-appellees' failure to raise the issue of the illegality of the deed of absolute sale does not constitute a waiver in line with Art. 1409 of the New Civil Code, which expressly provides that the right to set up the defense of illegality cannot be waived.

At this point, this Court shall no longer discuss the other issues raised in this appeal.

WHEREFORE, the appeal is DENIED. The order dated October 29, 2010 issued by the Regional Trial Court of Morong, Rizal, Br. 78 in Civil Case No. 02-1429-M is AFFIRMED.

SO ORDERED.

[1] Rollo, pp. 38-41.

[2] Rollo, pp. 42-46.

[3] Records, pp. 2-5.

[4] Records, p. 7.

[5] Records, p. 8.

[6] Records, pp. 9-10.

[7] Records, pp. 15-18.

[8] Supra note 1.

[9] Records, pp. 136-139.

[10] Supra note 2.

[11] ART. 1352. Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy.

ART. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

ART. 1490. The husband and the wife cannot sell property to each other, except:

- (1) When a separation of property was agreed upon in the marriage settlements; or
- (2) When there has been a judicial separation or property under Article 191. (1458a)

[12] G.R. No. L-57499 June 22, 1984.

[13] TSN dated October 26, 2006, p. 2.

[14] Rollo, pp. 19-37.

[15] G.R. No. L-57499 June 22, 1984.

[16] G.R. No. 165879, November 10, 2006.

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