

**WILHELMINA JOVELLANOS, MERCY JOVELLANOS-MARTINEZ AND
JOSE HERMILO JOVELLANOS, PETITIONERS, VS. THE COURT OF
APPEALS, AND ANNETTE H. JOVELLANOS, FOR AND IN HER BEHALF,
AND IN REP...**

G.R. No. 100728. June 18, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for review on certiorari seeks to reverse and set aside the decision [1] promulgated by respondent court on June 28, 1991 in CA-G.R. CV No. 27556 affirming with some modifications the earlier decision of the Regional Trial Court of Quezon City, Branch 85, which inter alia, awarded one-half (1/2) of the property subject of Civil Case No. Q-52058 therein to private respondent Annette H. Jovellanos and one-sixth (1/6) each of the other half of said property to the three private respondents, all as pro indiviso owners of their aforesaid respective portions.

As found by respondent court,[2] on September 2, 1955. Daniel Jovellanos and Philippine American Life Insurance Company (Philamlife) entered into a contract denominated as a lease and conditional sale agreement over Lot 8, Block 3 of the latter's Quezon City Community Development Project, including a bungalow thereon, located at and known as No. 55 South Maya Drive, Philamlife Homes, Quezon City. At that time, Daniel Jovellanos was married to Leonor Dizon, with whom he had three children, the petitioners herein. Leonor Dizon died on January 2, 1959. On May 30, 1967, Daniel married private respondent Annette H. Jovellanos with whom he begot two children, her herein corespondents.

On December 18, 1971, petitioner Mercy Jovellanos married Gil Martinez and, at the behest of Daniel Jovellanos, they built a house on the back portion of the premises. On January 8, 1975, with the lease amounts having been paid, Philamlife executed to Daniel Jovellanos a deed of absolute sale and, on the next day, the latter donated to herein petitioners all his rights, title and interests over the lot and bungalow thereon. On September 8, 1985, Daniel Jovellanos died and his death spawned the present controversy, resulting in the filing by private respondents of Civil Case No. Q-52058 in the court below.

Private respondent Annette H. Jovellanos claimed in the lower court that the aforesaid property was acquired by her deceased husband while their marriage was still subsisting, by virtue of the deed of absolute sale dated January 8, 1975 executed by Philamlife in favor of her husband, Daniel Jovellanos, who was issued Transfer Certificate of Title No. 212286 of the Register of Deeds of Quezon City and which forms part of the conjugal partnership of the second marriage. Petitioners, on the other hand, contend that the property, specifically the lot and the bungalow erected thereon, as well as the beneficial and equitable title thereto, were acquired by their parents during the existence of the first marriage under their lease and conditional sale agreement with Philamlife of September 2, 1955.

On December 28, 1989, the court a quo rendered judgment[3] with the following dispositions:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering the liquidation of the partnership of the second marriage and directing the reimbursement of the amount advanced by the partnership of the first marriage as well (as) by the late Daniel Jovellanos and the defendants spouses Gil and Mercia* J. Martinez in the acquisition of the lot and bungalow described in the Lease and Conditional Sale Agreement (Exhs. D and 1);
2. After such liquidation and reimbursement, declaring the plaintiff Annette Jovellanos as pro-indiviso owner of 1/2 of the property described in TCT No. 212268 (sic) and the bungalow erected therein;
3. Declaring the plaintiff Annette Jovellanos, as well as the minors Anna Marie and Ma. Jeannette (sic) both surnamed Jovellanos and the herein defendants, as owners pro indiviso of 1/6 each of the other half of said property;
4. Declaring the defendants spouses Gil and Mercia Martinez as exclusive owners of the two-storey house erected on the property at the back of the said bungalow, with all the rights vested in them as builders in good faith under Article 448 of the New Civil Code;
5. Ordering the parties to make a partition among themselves by proper instruments of conveyances, subject to the confirmation of this Court, and if they are unable to agree upon the partition, ordering that the partition should be made by not more than three (3) competent and disinterested persons as commissioners who shall make the partition in accordance with Sec. 5, Rule 69 of the Revised Rules of Court;
6. Ordering the defendant(s) to pay plain-tiffs, jointly and severally, the sum of P5,000.00 as attorney's fees, plus costs.

SO ORDERED." [4]

Respondent Court of Appeals, in its challenged decision, held that the lease and conditional sale agreement executed by and between Daniel Jovellanos and Philamlife is a lease contract and, in support of its conclusion, reproduced as its own the following findings of the trial court:

"It is therefore incumbent upon the vendee to comply with all his obligations, i.e., the payment of the stipulated rentals and adherence to the limitations set forth in the contract before the legal title over the property is conveyed to the lessee-vendee. This, in effect, is a pactum reservati dominii which is common in sales on installment plan of real estate whereby ownership is retained by the vendor and payment of the agreed price being a condition precedent before full ownership could be transferred (Wells vs. Samonte, 38768-R, March 23, 1973; Perez vs. Erlanger and Galinger Inc., CA 54 OG 6088). The dominion or full ownership of the subject property was only transferred to Daniel Jovellanos upon full payment of the stipulated price giving rise to the execution of the Deed of Absolute Sale on January 8, 1975 (Exh. 2) when the marriage between the plaintiff and Daniel Jovellanos was already in existence.

"The contention of the defendants that the jus in re aliena or right in the property of another person (Gabuya vs. Cruz, 38 SCRA 98) or beneficial use and enjoyment of the property or the equitable title has long been vested in the vendee-lessee Daniel Jovellanos upon execution of Exh. '1' is true. But the instant case should be differentiated from the cited cases of Pugeda v. Trias, et al., 4 SCRA 849; and Alvarez vs. Espiritu, G.R. L-18833, August 14, 1965, which cannot be applied herein even by analogy. In Pugeda, the subject property refers solely to friar lands and is governed by Act 1120 wherein the certificate of sale is considered a conveyance of ownership subject only to the resolutory condition that the sale may be rescinded if the agreed price has not been paid in full; in the case at bar, however, payment of the stipulated price is a condition precedent before ownership could be transferred to the vendee." [5]

With the modification that private respondents should also reimburse to petitioners their proportionate shares in the proven hospitalization and burial expenses of the late Daniel Jovellanos, respondent Court of Appeals

affirmed the judgment of the trial court, applying Article 118 of the Family Code which provides:

"Art.118. Property bought on installment paid partly from exclusive funds of either or both spouses and partly from conjugal funds belongs to the buyer or buyers if full ownership was vested before the marriage and to the conjugal partnership if such ownership was vested during the marriage. In either case, any amount advanced by the partnership or by either or both spouses shall be reimbursed by the owner or owners upon liquidation of the partnership."

Petitioners now seek this review, invoking their assignment of errors raised before the respondent court and which maybe capsulized into two contentions, namely, that (1) the lower court erred in holding that the lot and bunga-low covered by the lease and conditional sale agreement (Exhibit 1) is conjugal property of the second marriage of the late Daniel Jovellanos; and (2) the lower court erred in holding that the provisions of the Family Code are applicable in resolving the rights of the parties herein.[6]

It is petitioners' position that the Family Code should not be applied in determining the successional rights of the party litigants to the estate of Daniel Jovellanos, for to do so would be to impair their vested property rights over the property in litigation which they have acquired long before the Family Code took effect. [7]

To arrive at the applicable law, it would accordingly be best to look into the nature of the contract entered into by the contracting parties. As appositely observed by respondent court, the so-called lease agreement is, therefore, very much in issue. Preliminarily, we do not lose sight of the basic rule that a contract which is not contrary to law, morals, good customs, public order or public policy has the force of law between the contracting parties and should be complied with in good faith.[8] Its provisions are binding not only upon them but also upon their heirs and assigns.[9]

The contract entered into by the late Daniel Jovellanos and Philamlife is specifically denominated as a "Lease and Conditional Sale Agreement" over the property involved with a lease period of twenty years at a monthly rental of P288.87, by virtue of which the former, as lessee-vendee, had only the right of possession over the property.[10] In a lease agreement, the lessor transfers merely the temporary use and enjoyment of the thing leased.[11] In fact, Daniel Jovellanos bound himself there-in, among other things, to use the property solely as a residence, take care thereof like a good father of a family, permit inspection thereof by representatives of Philamlife, and abide by all rules and regulations of Philamlife in regard to the use and preservation of the property.[12]

It is specifically provided, however, that "(i)f, at the expiration of the lease period herein agreed upon, the LESSEE-VENDEE shall have fully and faithfully complied with all his obligations herein stipulated, the LESSOR-VENDOR shall immediately sell, transfer and convey to the LESSEE-VENDEE the property which is the subject matter of this agreement; x x x."[13]

The conditional sale agreement in said contract is, therefore, also in the nature of a contract to sell, as contradistinguished from a contract of sale. In a contract to sell or a conditional sale, ownership is not transferred upon delivery of the property but upon full payment of the purchase price.[14] Generally, ownership is transferred upon delivery, but even if delivered, the ownership may still be with the seller until full payment of the price is made, if there is a stipulation to this effect. The stipulation is usually known as a pactum reservati dominii, or contractual reservation of title, and is common in sales on the installment plan.[15] Compliance with the stipulated payments is a suspensive condition,[16] the failure of which prevents the obligation of the vendor to convey title from acquiring binding force. [17]

Hornbook lore from civilists clearly lays down the distinctions between a contract of sale in which the title passes to the buyer upon delivery of the thing sold, and a contract to sell where, by agreement, the ownership is reserved in the seller and is not to pass until full payment of the purchase price. In the former, non-payment of the price is a

negative resolutory condition: in the latter, full payment is a positive suspensive condition. In the former, the vendor loses and cannot recover the ownership of the thing sold until and unless the contract of sale is rescinded or set aside; in the latter, the title remains in the vendor if the vendee does not comply with the condition precedent of making full payment as specified in the contract.

Accordingly, viewed either as a lease contract or a contract to sell, or as a contractual amalgam with facets of both, what was vested by the aforestated contract in petitioners' predecessor in interest was merely the beneficial title to the property in question. His monthly payments were made in the concept of rentals, but with the agreement that if he faithfully complied with all the stipulations in the contract the same would in effect be considered as amortization payments to be applied to the predetermined price of the said property. He consequently acquired ownership thereof only upon full payment of the said amount hence, although he had been in possession of the premises since September 2, 1955, it was only on January 8, 1975 that Philamlife executed the deed of absolute sale thereof in his favor.

The conditions of the aforesaid agreement also bear notice, considering the stipulations therein that Daniel Jovellanos, as lessee-vendee, shall not -

x x x

"(b) Sublease said property to a third party;

(c) Engage in business or practice any profession within the property;

x x x

(f) Make any alteration or improvement on the property without the prior written consent of the LESSOR-VENDOR;

(g) Cut down, damage, or remove any tree or shrub, or remove or quarry any stone, rock or earth within the property, without the prior written consent of the LESSOR-VENDOR;

(h) Assign to another his right, title and interest under and by virtue of this Agreement, without the prior written consent and approval of the LESSOR-VENDOR." [18]

The above restrictions further bolster the conclusion that Daniel Jovellanos did not enjoy the full attributes of ownership until the execution of the deed of sale in his favor. The law recognizes in the owner the right to enjoy and dispose of a thing, without other limitations than those established by law, [19] and, under the contract, Daniel Jovellanos evidently did not possess or enjoy such rights of ownership.

We find no legal impediment to the application in this case of the rule of retroactivity provided in the Family Code to the effect that ?

"Art. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws."

The right of Daniel Jovellanos to the property under the contract with Philamlife was merely an inchoate and expectant right which would ripen into a vested right only upon his acquisition of ownership which, as aforestated, was contingent upon his full payment of the rentals and compliance with all his contractual obligations thereunder. A vested right is an immediate fixed right of present and future enjoyment. It is to be distinguished from a right that is expectant or contingent. [20] It is a right which is fixed, unalterable, absolute, complete and unconditional to the exercise of which no obstacle exists, [21] and which is perfect in itself and not dependent upon a contingency. [22] Thus, for a property right to be vested, there must be a transition from the potential or contingent to the actual, and the proprietary interest must have attached to a thing; it must have

become fixed or established and is no longer open to doubt or controversy.[23]

The trial court, which was upheld by respondent court, correctly ruled that the cases cited by petitioners are inapplicable to the case at bar since said cases involved friar lands which are governed by a special law, Act 1120, which was specifically enacted for the purpose. In the sale of friar lands, upon execution of the contract to sell, a certificate of sale is delivered to the vendee and such act is considered as a conveyance of ownership, subject only to the resolutory condition that the sale may be rescinded if the agreed price shall not be paid in full. In the instant case, no certificate of sale was delivered and full payment of the rentals was a condition precedent before ownership could be transferred to the vendee. [24]

We have earlier underscored that the deed of absolute sale was executed in 1975 by Philamlife, pursuant to the basic contract between the parties, only after full payment of the rentals. Upon the execution of said deed of absolute sale, full ownership was vested in Daniel Jovellanos. Since, as early as 1967, he was already married to Annette H. Jovellanos, this property necessarily belonged to his conjugal partnership with his said second wife.

As found by the trial court, the parties stipulated during the pre-trial conference in the case below that the rentals/installments under the lease and conditional sale agreement were paid as follows: (a) from September 2, 1955 to January 2, 1959, by conjugal funds of the first marriage; (b) from January 3, 1959 to May 29, 1967, by capital of Daniel Jovellanos; (c) from May 30, 1967 to 1971, by conjugal funds of the second marriage; and (d) from 1972 to January 8, 1975, by conjugal funds of the spouses Gil and Mercy Jovellanos-Martinez.[25] Both courts, therefore, ordered that reimbursements should be made in line with the pertinent provision of Article 118 of the Family Code that "any amount advanced by the partnership or by either or both spouses shall be reimbursed by the owner or owners upon liquidation of the partnership."

ACCORDINGLY, finding no reversible error in the judgment of respondent court, the same is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., Paras, and Padilla, JJ., concur.
Nocon, J., on leave.

[1] Serafin E. Camilon, J., ponente; Celso L. Magsino and Artemon D. Luna, JJ., concurring.

[2] Rollo, 23-24, 28.

[3] Per Judge Bernardo P. Abesamis, Presiding Judge.

* She testified under this name but is named in the pleadings as Mercy Jovellanos-Martinez.

[4] Rollo, 93-94.

[5] Ibid., 30-31.

[6] Ibid., 11.

[7] Ibid., 13.

[8] Arts. 1159 and 1306, Civil Code.

[9] Art. 1311, id.

[10] Original Record, 20-24.

- [11] Art. 1643, Civil Code.
- [12] Original Record, 21, Par. IV.
- [13] Ibid., 22, Par. X.
- [14] Joseph & Sons Enterprises, Inc. vs. Court of Appeals, et al., 143 SCRA 663 (1986).
- [15] See Moreno, Philippine Law Dictionary (1982), 670; cf. Arts. 1475, 1478 and 1503, Civil Code.
- [16] Alfonso vs. Court of Appeals, et al., 186 SCRA 400 (1990).
- [17] Roque vs. Lapuz, et al., 96 SCRA 741 (1980).
- [18] Original Record, 21.
- [19] II A. Tolentino, Commentaries and Jurisprudence on the Civil Code, 43-45 (1987).
- [20] Benguet Consolidated Mining Co. vs. Pineda, etc., et al., 98 Phil. 711, 722 (1956).
- [21] Luque, et al. vs. Villegas, etc., et al., 30 SCRA 408, 417 (1969).
- [22] Development Bank of the Philippines vs. Court of Appeals, et al., 96 SCRA 342, 359 (1980).
- [23] Balboa vs. Farrales, 51 Phil. 498 (1928).
- [24] Rollo, 89.
- [25] Ibid., 90.

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