

TERESITA C. FRANCISCO, PETITIONER, VS. HON. COURT OF APPEALS; AND CONCHITA EVANGELISTA AND HER HUSBAND SIMEON EVANGELISTA; ARACELI F. MARILLA AND HER HUSBAND FREDDY MARILLA; ANT...

G.R. No. 102330. November 25, 1998

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari seeks to reverse respondent appellate court's decision[1] promulgated on October 7, 1991, affirming in toto the judgment of the Regional Trial Court which ruled,[2] thus:

"WHEREFORE, premises considered, this Court renders judgment in favor of the defendants and against the plaintiff, as follows:

- 1) Ordering the dismissal of the Complaint with costs against the plaintiff;
- 2) Declaring the defendant Eusebio Francisco the administrator of the properties described in paragraph eight (8) of the Complaint; and
- 3) Sentencing the plaintiff to pay the defendants the sum of P10,000.00 as and for attorney's fees.

SO ORDERED."

Petitioner is the legal wife of private respondent Eusebio Francisco (Eusebio) by his second marriage. Private respondents Conchita Evangelista, Araceli F. Marilla and Antonio Francisco are children of Eusebio by his first marriage.

Petitioner alleges that since their marriage on February 10, 1962, she and Eusebio have acquired the following: (1) a sari-sari store, a residential house and lot, and an apartment house, all situated at Col. S. Cruz St., Barangay Balite, Rodriguez (formerly Montalban), Rizal, and; (2) a house and lot at Barrio San Isidro, Rodriguez, Rizal. Petitioner further avers that these properties were administered by Eusebio until he was invalidated on account of tuberculosis, heart disease and cancer, thereby, rendering him unfit to administer them. Petitioner also claims that private respondents succeeded in convincing their father to sign a general power of attorney which authorized Conchita Evangelista to administer the house and lot together with the apartments situated in Rodriguez, Rizal.

On August 31, 1988, petitioner filed a suit for damages and for annulment of said general power of attorney, and thereby enjoining its enforcement. Petitioner also sought to be declared as the administratrix of the properties in dispute. In due course, the trial court rendered judgment in favor of private respondents. It held that the petitioner failed to adduce proof that said properties were acquired during the existence of the second conjugal partnership, or that they pertained exclusively to the petitioner. Hence, the court ruled that those properties belong exclusively to Eusebio, and that he has the capacity to administer them.

On appeal, the Court of Appeals affirmed in toto the decision of the trial court. Hence, this petition.

Petitioner raised the following errors allegedly committed by the appellate court:

"FIRST ASSIGNMENT OF ERROR

RESPONDENT COURT ERRED IN APPLYING ARTICLES 160 AND 158, UNDER TITLE VI OF THE (NEW) CIVIL CODE BECAUSE SAID TITLE, TOGETHER WITH THE OTHERS, HAVE (SIC) ALREADY BEEN REPEALED BY ARTICLE 253 OF THE FAMILY CODE.

SECOND ASSIGNMENT OF ERROR

RESPONDENT COURT FURTHER ERRED IN NOT APPLYING ARTICLE 124 OF THE FAMILY CODE."[3]

But in her reply, petitioner posed the sole issue "whether or not Article 116 of the Family Code applies to this case because Article 253 of the same Code [which] expressly repeals Arts. 158 and 160 of the Civil Code".[4]

To our mind, the crucial issue in this petition is whether or not the appellate court committed reversible error in affirming the trial court's ruling that the properties, subject matter of controversy, are not conjugal but the capital properties of Eusebio exclusively.

Indeed, Articles 158[5] and 160[6] of the New Civil Code have been repealed by the Family Code of the Philippines which took effect on August 3, 1988. The aforecited articles fall under Title VI, Book I of the New Civil Code which was expressly repealed by Article 254[7] (not Article 253 as alleged by petitioner in her petition and reply) of the Family Code. Nonetheless, we cannot invoke the new law in this case without impairing prior vested rights pursuant to Article 256[8] in relation to Article 105[9] (second paragraph) of the Family Code. Accordingly, the repeal of Articles 158 and 160 of the New Civil Code does not operate to prejudice or otherwise affect rights which have become vested or accrued while the said provisions were in force.[10] Hence, the rights accrued and vested while the cited articles were in effect survive their repeal.[11] We shall therefore resolve the issue of the nature of the contested properties based on the provisions of the New Civil Code.

Petitioner contends that the subject properties are conjugal, thus, she should administer these on account of the incapacity of her husband. On the other hand, private respondents maintain that the assets in controversy claimed by petitioner as "conjugal" are capital properties of Eusebio exclusively as these were acquired by the latter either through inheritance or through his industry prior to his second marriage. Moreover, they stress that Eusebio is not incapacitated contrary to petitioner's allegation.

We find petitioner's contention lacks merit, as hereafter elucidated.

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.[12] Proof of acquisition during the coverture is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership.[13] 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.[14] 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.[15]

In this case, petitioner failed to adduce ample evidence to show that the properties which she claimed to be conjugal were acquired during her marriage with Eusebio.

With respect to the land at Col. Cruz St., Balite, Rodriguez, Rizal, petitioner failed to refute the testimony of Eusebio that he inherited the same from his parents. Interestingly, petitioner even admitted that Eusebio brought

into their marriage the said land, albeit in the concept of a possessor only as it was not yet registered in his name.

Whether Eusebio succeeded to the property prior or subsequent to his second marriage is inconsequential. The property should be regarded as his own exclusively, as a matter of law, pursuant to Article 148[16] of the New Civil Code.

Essentially, property already owned by a spouse prior to the marriage, and brought to the marriage, is considered his or her separate property.[17] Acquisitions by lucrative title refers to properties acquired gratuitously and include those acquired by either spouse during the marriage by inheritance, devise, legacy, or donation.[18] Hence, even if it be assumed that Eusebio's acquisition by succession of the land took place during his second marriage, the land would still be his "exclusive property" because it was acquired by him, "during the marriage, by lucrative title." [19]

As regards the house, apartment and sari-sari store, private respondents aver that these properties were either constructed or established by their father during his first marriage. On the other hand, petitioner insists that the said assets belong to conjugal partnership. In support of her claim, petitioner relied on the building permits for the house and the apartment, with her as the applicant although in the name of Eusebio. She also invoked the business license for the sari-sari store issued in her name alone.

It must be emphasized that the aforementioned documents in no way prove that the improvements were acquired during the second marriage. And the fact that one is the applicant or licensee is not determinative of the issue as to whether or not the property is conjugal or not. As the appellate court aptly noted:

"x x x. And the mere fact that plaintiff-appellant [petitioner herein] is the licensee of the sari-sari store (Exhibit 'F-3'; Exhibit 'G', pp. 44-47, Record) or is the supposed applicant for a building permit does not establish that these improvements were acquired during her marriage with Eusebio Francisco, especially so when her exhibits ('D-1', 'E', 'E-1', 'T', 'T-1', 'T-2', 'U', 'U-1' and 'U-2'; pp. 38-40; 285-290, Record; TSN, January 17, 1989, page 6-7) are diametrically opposed to her pretense as they all described Eusebio Francisco as the owner of the structures (Article 1431, New Civil Code; Section 4, Rule 129, Revised Rules on Evidence).

Neither is it plausible to argue that the sari-sari store constructed on the land of Eusebio Francisco has thereby become conjugal for want of evidence to sustain the proposition that it was constructed at the expense of their partnership (second paragraph, Article 158, New Civil Code). Normally, this absence of evidence on the source of funding will call for the application of the presumption under Article 160 of the New Civil Code that the store is really conjugal but it cannot be so in this particular case again, by reason of the dearth in proof that it was erected during the alleged second marriage (5 Sanchez Roman 840-841; 9 Manresa; cited in Civil Code of the Philippines by Tolentino, Volume 1, 1983 Edition, page 421)."[20]

Regarding the property at San Isidro, Rodriguez, Rizal, private respondents assert that their father purchased it during the lifetime of their mother. In contrast, petitioner claims ownership over said property inasmuch as the title thereto is registered in the name of "Eusebio Francisco, married to Teresita Francisco."

It must be stressed that the certificate of title upon which petitioner anchors her claim is inadequate. The fact that the land was registered in the name of "Eusebio Francisco, married to Teresita Francisco", is no proof that the property was acquired during the spouses coverture. Acquisition of title and registration thereof are two different acts.[21] It is well settled that registration does not confer title but merely confirms one already existing.[22] The phrase "married to" preceding "Teresita Francisco" is merely descriptive of the civil status of Eusebio Francisco.[23]

In the light of the foregoing circumstances, the appellate court cannot be said to have been without valid basis in

affirming the lower court's ruling that the properties in controversy belong exclusively to Eusebio.

Now, insofar as the administration of the subject properties is concerned, it follows that Eusebio shall retain control thereof considering that the assets are exclusively his capital.[24] Even assuming for the sake of argument that the properties are conjugal, petitioner cannot administer them inasmuch as Eusebio is not incapacitated. Contrary to the allegation of petitioner, Eusebio, as found by the lower court, is not suffering from serious illness so as to impair his fitness to administer his properties. That he is handicapped due to a leg injury sustained in a bicycle accident, allegedly aggravated when petitioner pushed him to the ground in one of their occasional quarrels, did not render him, in the Court's view, incapacitated to perform acts of administration over his own properties.

WHEREFORE, petition is hereby DENIED. The Decision of the Court of Appeals is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug, and Panganiban, JJ., concur.

[1] Penned by Court of Appeals Associate Justice (now Supreme Court Associate Justice) Jose A.R. Melo and concurred in by JJ. Regina G. Ordonez-Benitez and Felimon H. Mendoza.

[2] RTC Decision, p. 6; CA Rollo.

[3] Petition, pp. 9-10; Rollo, pp. 15-16.

[4] Reply, p. 1; Rollo, p. 61.

[5] 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.

[6] Art. 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.

[7] Art. 254. Titles III, IV, V, VI, VII, VIII, IX, XI, and XV of Book I of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, as amended, and Articles 17, 18, 19, 27, 28, 29, 30, 31, 39, 40, 41, and 42 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended, and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed.

[8] 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.

[9] Art. 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.(n)

The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.

[10] Villones vs. Employees' Compensation Commission, 92 SCRA 320 (1979) at p. 328 citing 82 Corpus Juris Secundum 1010.

[11] Ibid.

[12] Jocson vs. Court of Appeals, 170 SCRA 333 (1989) at p. 344 citing Cobb-Perez vs. Lantin, 23 SCRA 637 (1968).

[13] Ibid.

[14] Cuenca vs. Cuenca, 168 SCRA 335 (1988) at p. 344 citing Philippine National Bank vs. Court of Appeals, 153 SCRA 435 (1987); Magallon vs. Montejo, 146 SCRA 282 (1986); and Maramba vs. Lozano, 20 SCRA 474 (1967).

[15] Tolentino, Civil Code of the Philippines, Vol. 1, 1985, p. 427, citing Magnolia Pet. Co. vs. Crigler, (La. App.) 12 So. (2d) 511; Succession of Burke, 107 La. 82, 31 So. 391.

[16] "Art. 148. The following shall be the exclusive property of each spouse:

- (1) That which is brought to the marriage as his or her own;
- (2) That which each acquires, during the marriage, by lucrative title;
- (3) That which is acquired by right of redemption or by exchange with other property belonging to only one of the spouses;
- (4) That which is purchased with exclusive money of the wife or of the husband.

[17] Tolentino, supra at p. 395.

[18] Tolentino, supra at p. 396.

[19] Villanueva vs. Intermediate Appellate Court, 192 SCRA 21 (1990) at p. 26.

[20] CA Decision, p. 3; Rollo, p. 27.

[21] Jocson vs. Court of Appeals, supra, at p. 345.

[22] Ibid., citing Torela vs. Torela, 93 SCRA 391 (1979).

[23] Ibid., citing Litam vs. Rivera, 100 Phil. 354 (1956); Stuart vs. Yatco, 4 SCRA 1143 (1962); Magallon vs. Montejo, 146 SCRA 282 (1986).

[24] Vitug, Compendium of Civil Law and Jurisprudence, 1993 ed., p. 71.

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