

**NENITA BIENVENIDO, PETITIONER, VS. HON. COURT OF APPEALS,
LUISITA CAMACHO AND LUIS FAUSTINO C. CAMACHO,
RESPONDENTS.**

G.R. No. 111717. October 24, 1994

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Court of Appeals in CA-G.R. CV No. 24893, the dispositive portion of which reads:

WHEREFORE, and upon all the foregoing, the decision of the court below dated August 29, 1989 is REVERSED. The deed of sale executed by the late Aurelio Camacho in favor of defendant Nenita T. Bienvenido and Transfer Certificate of Title No. 326681 of the Register of Deeds of Quezon City issued in her name are ANNULLED and in lieu thereof, a new transfer certificate of title in the name of the spouses Aurelio P. Camacho and Luisita C. Camacho shall ISSUE, herein declaring said spouses the owners of the property described in par. 8 of the complaint and DISMISSING the other prayers in the complaint as well as the defendant's counterclaim as baseless or without sufficient evidence in support thereof. With costs against the appellee.[2]

Petitioner filed a motion for reconsideration but her motion was denied in a resolution of the Court of Appeals promulgated on August 19, 1993.[3]

The background of this case is as follows:

Aurelio P. Camacho married Consejo Velasco in Manila on October 3, 1942. On February 6, 1962, without his marriage to Consejo Velasco being dissolved, Aurelio P. Camacho contracted another marriage with respondent Luisita C. Camacho (Luisita) with whom he had been living since 1953 and by whom he begot a child, respondent Aurelio Luis Faustino C. Camacho (Chito), born on May 22, 1961. The marriage was solemnized in Tokyo, Japan where Aurelio and Luisita had been living since 1958.

There were instances during Luisita and Aurelio's marriage when, because of their quarrels, one or the other left the dwelling place for long periods of time. In her case Luisita stayed on those occasions at various times in Davao City, Hongkong or Japan.

In 1967 Aurelio met petitioner Nenita T. Bienvenido, who had been estranged from her husband, Luis Rivera. Aurelio courted her and apparently won her heart because from June 1968 until Aurelio's death on May 28, 1988, he lived with her, the last time in a duplex apartment on 84 Scout Delgado Street, Quezon City. Petitioner's daughter, Nanette, stayed with them as did Aurelio's son, Chito, who lived with them for about a year in 1976.

On April 30, 1982, Aurelio bought the house and the lot on Delgado Street in which they were staying from the owners, Paz Lorenzo Infante and Suzette Infante-Moñozca. In the deed of sale and Transfer Certificate of Title No. 288350 of the Registry of Deeds of Quezon City, issued in his name, Aurelio was described as single.

On November 26, 1984, Aurelio executed a deed of sale of the property in favor of petitioner Nenita in consideration of the sum of P250,000.00, by virtue of which Transfer Certificate of Title No. 326681 was issued in petitioner's name on January 11, 1985.

Between 1985 and 1987 Nenita and Luisita came to know each other. How they did is the subject of conflicting versions. Luisita claims that Nenita called her (Luisita's) residence several times, looking for Aurelio because the latter had allegedly left their dwelling place. Petitioner, according to Luisita, introduced herself as Mrs. Nenita Camacho.

On the other hand petitioner claims it was the other way around — that it was respondent Luisita who had called up their residence many times, also looking for Aurelio to urge him to file an application for American citizenship.

On May 28, 1988, Aurelio died. Petitioner, using her Loyola Life Plan and Aurelio's account in the PCI Bank, took care of the funeral arrangements. Respondent Luisita was then in the United States with respondent Chito, having gone there, according to her, at the instance of Aurelio in order to look for a house in San Francisco so that Aurelio could follow and rejoin them. Upon learning of the death of Aurelio she and her son Chito came home on May 30, 1988. She had the remains of Aurelio transferred from the Loyola Memorial Chapels, first to the St. Ignatius Church and later to the Arlington Memorial Chapels. Luisita paid for the funeral services.

Respondent Luisita was granted death benefits by the Armed Forces of the Philippines as the surviving spouse of Aurelio. Soon she also claimed ownership of the house and lot on Scout Delgado Street in which Nenita had been living. The two met at a barangay conciliation meeting but efforts to settle their dispute failed.

On September 7, 1988, Luisita and her son Chito brought this case in the Regional Trial Court of Quezon City, seeking the annulment of the sale of the property to petitioner and the payment to them of damages. Luisita alleged that the deed of sale was a forgery and that in any event it was executed in fraud of her as the legitimate wife of Aurelio.

In answer petitioner claimed that she and the late Aurelio had purchased the property in question using their joint funds which they had accumulated after living together for fourteen years; that the sale of the property by the late Aurelio to her was with respondent Luisita's consent; and that she was a purchaser in good faith.

On August 29, 1989, the trial court rendered a decision upholding the sale of the property to petitioner and dismissing the complaint of Luisita. It found the deed of sale in favor of petitioner to be genuine and respondents Luisita and Chito to be in estoppel in not claiming the property until 1988 despite knowledge of the sale by the late Aurelio who had represented himself to be single. Respondents moved for a reconsideration but the trial court denied their motion.

On appeal the respondents prevailed. On June 4, 1993, the Court of Appeals reversed the decision of the trial court and declared respondents to be the owners of the house and lot in dispute. Although Luisita had admitted that as early as 1985 she knew that Nenita had been staying in the premises, the appellate court held that respondents' action was not barred by laches because Luisita allegedly did not know that Nenita had obtained title to the property. On the merit, the Court of Appeals ruled that in the absence of proof to the contrary, Aurelio's first wife must be presumed to have been absent for seven years without Aurelio having news of her being alive when Aurelio contracted a second marriage. On this premise, it held (1) that the property in dispute belonged to the conjugal partnership of Aurelio and Luisita and (2) that the sale of the property to Nenita was void for the same reason that donations between persons who are guilty of concubinage or adultery are declared void under art. 739 of the Civil Code.

Hence this petition for review of the decision of the Court of Appeals. Petitioner claims that

I THE COURT ERRED IN PRESUMING THE VALIDITY OF THE MARRIAGE BETWEEN AURELIO AND LUISITA [RESPONDENT HEREIN];

II THE COURT ERRED IN APPLYING ARTICLE 739 OF THE NCC AND DECLARING INVALID THE DEED OF SALE BETWEEN AURELIO AND NENITA [PETITIONER HEREIN];

III THE COURT ERRED IN RULING THAT THE SUBJECT PROPERTY FORMS PART OF THE CONJUGAL PROPERTIES OF AURELIO AND LUISITA.

IV THE COURT ERRED IN NOT FINDING THAT PETITIONER IS NOT (sic) A PURCHASER IN GOOD FAITH AND LAWFUL OWNER OF SUBJECT PROPERTY.

We find the petition to be meritorious.

The resolution of this case hinges on the validity of Aurelio's marriage to respondent Luisita. If that marriage was valid then the property was property of their conjugal partnership and Luisita is the proper party to question the validity of the sale to Nenita. Otherwise, if the marriage is not valid, Luisita can not bring this suit.

On the question of validity of Luisita's marriage to Aurelio, the Court of Appeals ruled:

There is no dispute on the fact of appellant Luisita's marriage in 1962 to Aurelio. What is in question is the validity of that marriage considering Aurelio's purported previous marriage to Consejo Velasco. The appellee had attacked the validity of appellant's marriage in the trial below, on account of the previous marriage of Aurelio to Consejo Velasco, presenting evidence to that effect (Exhs. 43 and 44) to bolster her claim. Appellee likewise proved that Consejo Velasco although then a resident of Australia, is still alive.

The burden of proof on the legality of appellant's marriage with Aurelio must rest on the appellee as the party who stands to benefit from a declaration of its invalidity. But appellee failed to prove that such second marriage (appellant's) was not valid because it was contracted at a time and on the assumption that the first spouse had been absent for seven years without the spouse present having news of the absentee being alive.

This Court finds that the presumption of the validity of the marriage between Aurelio and Luisita has not been successfully assailed by appellee.

The Court of Appeals thus presumed the validity of Aurelio's second marriage from the failure of petitioner to prove that at the time of such marriage Aurelio's first wife, Consejo, had not been absent for at least seven years and that Aurelio did not have news that his first wife was still alive.

Petitioner had shown that on February 6, 1962, when Aurelio married Luisita, Aurelio's previous marriage to Consejo Velasco was still subsisting and, therefore, his second marriage was bigamous. It was the burden of herein respondents to prove that, at the time of his second marriage to respondent Luisita, Aurelio's first wife, Consejo Velasco, had been absent for at least seven years and that Aurelio had no news that she was alive. To assume these facts because petitioner has not disproved them would be to stand the principle on its head.

Thus, art. 83 of the Civil Code provides:

Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) the first marriage was annulled or dissolved; or

(2) the first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391.

The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.

As this Court has already explained, the general rule is that stated in the first sentence of this provision: "Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance." The exceptions are those stated in paragraphs 1 and 2. The burden is on the party invoking any of the exceptions.[4]

Paragraph 2 mentions three cases when the subsequent marriage will not be considered void: (1) when the absent spouse has not been heard from for seven consecutive years and the present spouse has no news that he/she is alive; (2) when, although he/she has been absent for less than seven years, the absent spouse is generally considered to be dead and believed to be by the spouse present; and (3) when he/she is presumed to be dead after four years from the occurrence of any of the events enumerated in art. 391[5] of the Civil Code.

In the case at bar, the burden of proof was on respondents to show that Luisita and Aurelio's marriage falls under any of these exceptions in order to be considered valid. They failed to discharge this burden. Instead the contrary appears.

It has been held that the first exception refers to the subsequent marriage of the abandoned spouse and not the remarriage of the deserting spouse, after the period of seven years has lapsed.[6] This exception cannot be invoked in this case in order to sustain the validity of Aurelio's marriage to Luisita because apparently it was Aurelio who had left his first wife. At the time of his second marriage to Luisita, he and Luisita had already been living together as husband and wife for five years. In fact the couple begot a child, in 1961, even before their marriage in 1962.

What applies in this case, therefore, is the general rule, i.e., since Aurelio had a valid, subsisting marriage to Consejo Velasco, his subsequent marriage to respondent Luisita was void for being bigamous.

Consequently, there is no basis for holding that the property in question was property of the conjugal partnership of Luisita and the late Aurelio because there was no such partnership in the first place.

The Court of Appeals held that the sale of the property to Nenita is void on the principle embodied in art. 739(1) of the Civil Code which declares donations made between persons who are guilty of adultery or concubinage at the time of the donation to be void. In the first place, an action for declaration of the nullity of such donations can only be brought by the innocent spouse, perhaps in this case by the first wife, but certainly not by Luisita whose marriage to Aurelio is itself void. The last paragraph of art. 739 clearly provides:

In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.

In the second place, until otherwise shown in an appropriate action, the sale to petitioner must be presumed. Petitioner's ownership is evidenced by a deed of absolute sale[7] executed with all the solemnity of a public document and by Transfer Certificate of Title No. 326681 issued in due course in her name.[8] Petitioner is in possession of the property. It was error for the Court of Appeals to annul petitioner's title at the instance of one whose marriage to the seller is void.

Indeed, the property in question was acquired by Aurelio during a long period of cohabitation with petitioner which lasted for twenty years (1968-1988). While petitioner knew respondent Chito to be Aurelio's son way back in 1976, there is nothing to show that she knew Aurelio to be married to Luisita. To the contrary, Aurelio represented himself to be single. As far as petitioner was concerned, Chito could have been Aurelio's child by a

woman not his wife. There was, therefore, no basis for the Court of Appeals' ruling that Nenita was not a buyer in good faith of the property because she ought to have known that Aurelio was married to Luisita.

WHEREFORE, the decision appealed from is REVERSED and another one is entered, DISMISSING the complaint against petitioner and DECLARING the deed of sale executed in her favor and Transfer Certificate of Title No. 326681 of the Register of Deeds of Quezon City issued in her name to be VALID.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

[1] Per Cezar D. Francisco, J., and Pedro A. Ramirez and Corona Ibay- Somera; JJ., concurring; Rollo, pp. 26-43.

[2] Rollo, p. 42.

[3] Rollo, p. 44.

[4] Gomez v. Lipana, 33 SCRA 615 (1970).

[5] Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

(2) A person in the armed forces who has taken part in war, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

[6] Jackson v. Jackson, 94 Cal. 446, 29 Pac. 957, cited in 1A TOLENTINO, CIVIL CODE OF THE PHILIPPINES 274 (5th ed., 1985).

[7] Exh. 2.

[8] Exh. 3.

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