

OLIMPIA DIANCIN, PETITIONER, VS. COURT OF APPEALS, NORMA ESTAMPADOR BOSQUE, VEVENCIA ESTAMPADOR BEBIDOR, RAUL ESTAMPADOR, AURORA ESTAMPADOR, LUZ ESTAMPADOR BERAMO AND FE ESTAMPA...

G.R. No. 119991. November 20, 2000

Ponente: PARDO, J.

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PARDO, J.:

Petitioner appeals via certiorari from the decision[1] of the Court of Appeals, which affirmed with modification, the decision of the regional trial court declaring the initial deed of sale dated August 7, 1967, and the final deed of sale dated June 28, 1969, null and void with respect to the six-seventh (6/7) share of the one-half (1/2) conjugal share of the late Tiburcio Estampador, and ordering petitioner Olympia Diancin[2] to reconvey the six-seventh (6/7) share of the one-half (1/2) conjugal share to private respondents who are the lawful owners.

Tiburcio Estampador, Sr. and Matilde Gulmatico were married on December 30, 1933, in Barotac Nuevo, Iloilo. Out of their union, the following children were born, namely, Norma, Vevencia, Raul, Aurora, Luz and Fe, all surnamed Estampador.

On April 9, 1940, Matilde was granted Ordinary Fishpond Permit No. F-1777-0 issued pursuant to Fisheries Act No. 4003 covering an area of 10.47 hectares, situated in Barrio Jalaud, Barotac Nuevo, Iloilo. This was renewed on November 24, 1945, under Ordinary Fishpond Permit No. F-50-A. The permit was last renewed on February 24, 1972, to expire on December 31, 1972.

On March 2, 1957, Tiburcio, Sr. died. Almost one (1) year after, or on August 7, 1967, Matilde initially sold to petitioner Olympia Diancin the leasehold right on the fishpond. By virtue of a deed of sale executed on June 28, 1969, the leasehold right was fully sold to petitioner Olympia for the total amount of thirty one thousand pesos (P31,000.00).[3]

On January 3, 1989, the children (herein private respondents) of deceased Tiburcio, Sr. filed with the Regional Trial Court, Branch 33, Iloilo City a complaint against petitioner Olympia and Matilde, for declaration of nullity and recovery of one-half (1/2) conjugal share of deceased Tiburcio Estampador, Sr., in the fishpond leasehold right which Matilde had sold to petitioner.[4]

On February 27, 1990, the trial court ordered that Matilde be dropped from the case.

On March 16, 1989, petitioner Olympia filed her answer to the complaint, and alleged that the fishpond was actually government owned covered by a fishpond permit exclusively granted to Matilde Estampador.[5]

On August 13, 1990, the trial court rendered a decision, the dispositive portion of which provides:

"WHEREFORE, judgment is rendered in favor of the plaintiffs and against the defendant Olympia Diancin.

"The initial Deed of Sale, Exh. `A', dated August 7, 1967, and the final Deed of Sale, Exh. `A-2', dated June 28, 1969, are hereby declared null and void with respect to the one-half (1/2) conjugal share of the late Tiburcio Estampador. Accordingly, the defendant Olympia Diancin, is ordered to reconvey the same ½ share of the Fishpond Leasehold Right to the plaintiffs who are the lawful owners thereof.

"The plaintiffs are ordered to pay attorney's fees to Atty. Raymundo Magat in accordance with their contract, if there is any; otherwise, by quantum meruit.

"SO ORDERED." [6]

Within the reglementary period to perfect its appeal, petitioner Olimpia appealed the trial court's decision to the Court of Appeals, alleging that the court a quo erred in finding that: (a) the fishpond permit granted to Matilde G. Estampador was conjugal property pursuant to the provisions of Articles 153 and 160, Civil Code; and (b) Article 1144, Civil Code, on prescription of action did not apply to the sale of leasehold right.

On November 28, 1994, the Court of Appeals rendered its decision affirming, with modification, the decision of the trial court. The appellate court held that pursuant to Article 160, in relation to Article 153, Civil Code, the fishpond leasehold right is considered real property and is presumed to belong to the conjugal partnership having been acquired during the subsistence of the marriage of Matilde and Tiburcio, on April 9, 1940. With the death of Tiburcio on March 2, 1957, the conjugal partnership of gains was dissolved and one-half (1/2) of the fishpond leasehold property right belonged to Matilde as her share in the conjugal partnership, and another one-seventh (1/7) of the one-half (1/2) remainder as her share in the estate of her deceased spouse. Hence, Matilde had no right to dispose of the entire fishpond leasehold right. What she validly disposed of when she executed the deed of sale in favor of petitioner Olimpia was only her one-half (1/2) share in the conjugal partnership and her one-seventh (1/7) share in the estate of her deceased spouse.

In deciding the issue of prescription, the Court of Appeals ruled that an action or defense for the declaration of inexistence of a contract does not prescribe. The sale of the six-seventh (6/7) share of private respondents in the estate of their deceased father to petitioner Olimpia was null and void because Matilde had no authority to dispose of it in its entirety.

The dispositive portion of the appellate court's decision reads as follows:

"WHEREFORE, foregoing premises considered, the appealed judgment is AFFIRMED save for the modification to read as follows: The initial Deed of Sale dated August 7, 1967 and the final Deed of Sale dated June 28, 1969 are hereby declared null and void with respect to the sixth-seventh (6/7) of the one-half (1/2) conjugal share of the late Tiburcio Estampador. Accordingly, the defendant Olimpia Diancin, is ordered to reconvey the same sixth-seventh (6/7) of one-half (1/2) conjugal share of Tiburcio Estampador to the Fishpond Leasehold Right to the plaintiffs who are the lawful owner thereof.

"SO ORDERED." [7]

On December 14, 1994, petitioner moved for reconsideration of the above-cited decision; however, on March 24, 1995, the Court of Appeals denied the motion. [8]

Hence, this petition. [9]

Petitioner alleges that the Court of Appeals erred in holding that: (1) the fishpond leasehold right is part of the conjugal partnership of gains, contrary to the "exclusivity of fishpond right" under Section 63, Fishpond Act; [10] and (2) acquisitive prescription did not set in favor of petitioner. [11]

The petition has no merit.

As a general rule, all property acquired by the spouses, regardless of in whose name the same is registered, during the marriage is presumed to belong to the conjugal partnership of gains, unless it is proved that it pertains exclusively to the husband or to the wife.[12] In the case at bar, the fishpond lease right is not paraphernal having been acquired during the coverture of the marriage between Matilde and Tiburcio, which was on April 9, 1940. The fact that the grant was solely in the name of Matilde did not make the property paraphernal property. What was material was the time the fishpond lease right was acquired by the grantee, and that was during the lawful existence of Matilde's marriage to Tiburcio.[13]

As held by the Court of Appeals, this presumption is rebuttable, but only with strong, clear and convincing evidence. The burden of proving that the property belongs exclusively to the wife rests upon the party asserting it. Mere assertion of the property's paraphernal nature is not sufficient.

For Olimpia's failure to present evidence that would show that the fishpond lease right was the exclusive property of Matilde, the presumption remained un rebutted.

With regard to the disposition of the entire leasehold right made by Matilde after the death of her husband, the Court of Appeals correctly ruled that Matilde did not have the authority to dispose of it entirely. The death of Tiburcio Estampador on March 2, 1957, dissolved the conjugal partnership of gains, and part of which was the lease right on the fishpond. Only one half (1/2) of the property right pertained to Matilde as her share in the conjugal partnership of gains and another one seventh (1/7) as her share from the estate of her deceased husband, Tiburcio. Their children are entitled to the six seventh (6/7) share in the other half which formed part of the estate of Tiburcio, as his lawful heirs.

Be that as it may, the disposition made by Matilde was null and void, not only with regard to the lawful share of her children, but also with regard to her own share because the sale was made without the prior consent and approval of the Secretary of Agriculture and Natural Resources.[14]

The Fisheries Act prohibits the holder of a fishpond permit (the permittee) from transferring or subletting the fishpond granted to him, without the previous consent or approval of the Secretary of Agriculture and Natural Resources.[15] To the same effect is Condition No. 3 of the fishpond permit, which states that "The permittee shall not transfer or sublet all or any area herein granted or any rights acquired therein without the previous consent and approval of this Office."

Moreover, Section 63, Fisheries Act No. 4003 provides:

"Permits or leases entitling the holders thereof, for a certain stated period of time not to exceed twenty years, to enter upon definite tracts of a public forest land to be devoted exclusively for fishponds purposes, or to take certain fishery products or to construct fishponds within tidal, mangrove and other swamps, ponds and streams within public forest lands or proclaimed timber lands or established forest reserves may be issued or executed by the Secretary of Agriculture and Natural Resources, subject to the restrictions and limitations imposed by the forest laws and regulations, to such persons, associations or corporations as are qualified to utilize or take forest products under Act Number Thirty-six hundred and seventy four. x x x" [emphasis supplied]

The permit was granted solely for the exclusive use of the named grantee, to wit:

"This permit is subject to the Laws, Rules and Regulations now existing and to those that may later be promulgated governing utilization, protection, and conservation of fisheries and other aquatic products, and the terms and conditions stated below, on the back of this permit, and on the attached sheet, if any.

1. This permit limits in no way the right of the National Assembly to impose such terms as it may desire upon the use of such area and the collection of charges for such purposes.

2. Nonuse (sic) of the permit within a period of six months after it is granted without a satisfactory explanation or the commission of any violation of its terms by the permittee or his agent may result in the cancellation of the permit and confiscation of the bond.

3. The permittee shall not transfer or sublet all or any portion of the area herein granted or any rights acquired therein."[16] [emphasis supplied]

The permit grants the permittee the right to enter the area, occupy it, introduce improvements and make production of the area so the government can benefit from it.[17] However, he or she can not dispose of it without the prior consent and approval of the Secretary of Agriculture and Natural Resources.

Considering the void character of the disposition, prescription did not set in, as the action or defense for the declaration of inexistence of a contract is imprescriptible.[18] Contrary to the findings of the Court of Appeals, we find that the sale of the entire fishpond lease right by Matilde Estampador to Olimpia Diancin was null and void.

WHEREFORE, the Court DENIES the petition for lack of merit. The Court AFFIRMS the decision of the Court of Appeals in CA-G. R. CV No. 31057 with MODIFICATION. The Initial Deed of Sale dated August 7, 1967 and the Final Deed of Sale dated June 28, 1969 are hereby declared null and void.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In CA-G. R. CV No. 31057, promulgated on November 28, 1994, Justice Quirino Abad Santos, Jr., ponente, and Justices Pedro A. Ramirez and Eugenio S. Labitoria, concurring, Rollo, pp. 28-33.

[2] In the decision of the Regional Trial Court, the name of the petitioner was spelled Olympia and not Olimpia.

[3] RTC Record, pp. 5-6.

[4] Docketed as Civil Case No. 18412; Petition for Review, Annex "E", Rollo, pp. 51-54.

[5] Rollo, pp. 55-60.

[6] RTC Decision, Rollo, pp. 61-65.

[7] Petition for Review, Annex "A", Rollo, pp. 28-34, at. p. 32.

[8] Petition for Review, Annex "B", Rollo, p. 35.

[9] Filed on June 2, 1995, Petition, Rollo, pp. 8-101.

[10] Act No. 4003.

[11] Rollo, pp. 16-17.

[12] Heirs of Spouses Benito Gavino and Juana Euste v. Court of Appeals, 291 SCRA 495 [1998]; Article 160, Civil Code.

[13] Francisco v. Court of Appeals, 299 SCRA 188 [1998]; Estonina v. Court of Appeals, 334 Phil. 577 [1997].

[14] Deluao v. Casteel, 139 Phil. 671 [1969].

[15] Memorandum Order No. 4, January 24, 1933, Department of Agriculture and Commerce.

[16] Ordinary Fishpond Permit No. F-1777-0, RTC Record, p. 109.

[17] TSN, May 7, 1990, p. 17.

[18] Article 1410, Civil Code.

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