

ALFONSO TAN AND ETERIA TEVES TAN, PETITIONER, VS. COURT OF APPEALS, SPOUSES CELESTINO U. TAN AND ROSARIO DY KUSHIN AND SPOUSES MAXIMO U. TAN AND TERESITA SY TAN, RESPONDENTS.

G.R. No. 120594. June 10, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals in CA-G.R. CV No. 37224 dated June 20, 1994 which reversed and set aside the decision of the Regional Trial Court of Cebu City, Branch 10, the decretal portion of which reads:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered ordering the defendants-spouses Celestino U. Tan and Rosario Dy, and Maximo U. Tan and Teresita Sy to partition the house and lot covered by TCT No. 46249, deliver to plaintiff Eteria Teves Tan the one-third share of plaintiffs-spouses Alfonso U. Tan and Eteria Teves Tan; to pay Eteria Teves Tan P10,000.00 as attorney's fees; P5,000.00 as litigation expenses; and to pay the costs.

SO ORDERED.[1]

The antecedents are as follows:

On April 17, 1989, a case for partition and accounting was instituted by the spouses Alfonso and Eteria Tan against herein private respondents who are the Alfonso's brothers, Celestino and Maximo, and their respective wives, Rosario and Teresita. It was alleged in the complaint that the parties are co-owners of a 906-square meter residential lot with improvements thereon situated at Banaue, Cebu City acquired sometime in 1970. Pursuant to the provisions of Article 494 of the New Civil Code, the spouses Alfonso and Eteria Tan, being co-owners to the extent of one-third (1/3) portion of the aforesaid lot, sought partition of the same. Anent the action for accounting, the spouses claimed that on August 15, 1963, the brothers together with other siblings put up a business which they registered as Bel Air Auto Supply Company and was engaged in the sale and distribution of auto spare parts. They alleged that they are entitled to the fruits, proceeds and profits of the said family business, so that, an accounting of the assets and liabilities of the partnership, as well as the interests and participation of each member, is proper in the premises.[2]

On October 16, 1989, private respondents filed their answer alleging that an accounting is not feasible because the company had long been dissolved by the partners on September 30, 1982 on account of financial losses and that whatever was due to each partner was already given him. It was further alleged that Alfonso mismanaged the business during his incumbency as manager and, as a consequence thereof, incurred advances and indebtedness from the partnership in the amount of P130,000.00. Finally, private respondents asserted that Alfonso's one-third (1/3) share of the subject property was mortgaged by him to his sister, Lolita Tan-Go, in order to secure a loan he obtained from her.[3]

On January 16, 1990, Alfonso U. Tan filed a Manifestation and Motion to Dismiss contending that the case was filed only at the instance of his estranged wife, Eteria, and that he had no claim whatsoever against his brothers insofar as the family business is concerned. He prayed that the case be dismissed.[4] The trial court, in its Order dated July 4, 1990, denied Alfonso's motion but recognized his reluctance to prosecute.[5]

Eteria Teves Tan testified that she is married to Alfonso U. Tan but they were now living separately by virtue of a decree of legal separation rendered by the then Juvenile and Domestic Relations Court on August 31, 1977;[6] that during their marriage, they bought a residential lot consisting of 906 square meters covered by Transfer Certificate of Title No. 46249[7] and that the funds used in the construction of the house standing thereon were drawn from a loan she and her husband secured, although it was her husband and mother-in-law who drew the loan.[8]

Celestino and Maximo Tan and their spouses, on their part, tried to establish the following: (a) that the family business, Bel Air Auto Supply Company, was dissolved on September 25, 1982 on account of mismanagement brought about by Alfonso's incompetence; (b) that Alfonso had no more claim against the family business because he borrowed heavily on his equity in the family business and from his brothers and sisters; (c) that the subject property was inherited by them from their mother, Trinidad Uy; (d) that Alfonso borrowed money from their sister, Lolita, and as a consequence thereof, mortgaged his share of the disputed property to her; (e) that Alfonso failed to pay said loan; and (f) that the house on the lot in question was constructed using funds from a loan contracted by their mother from the Social Security System (SSS).[9] No documentary evidence, however was submitted during the trial with respect to the allegation that the property was inherited from their mother.

As above-stated, a Decision[10] dated July 12, 1991 was rendered after trial finding that the 906-square meter lot with improvements was acquired by the three (3) brothers by sale through installments and so it should be partitioned equally among them and their respective wives. Consequently, since the lot was acquired during the marriage of petitioner and Alfonso, the former could not be deprived of her share of the one-third portion which is the conjugal property of the spouses. However, with respect to the business dealing in auto spare parts, the same had been dissolved due to losses.

On September 19, 1991, private respondents filed a Motion for Reconsideration[11] of the decision contending that the 906-square meter lot, together with other properties, was actually inherited by the Tan brothers and their sisters from their mother who died intestate on December 15, 1968 but said lot was adjudicated to the three (3) brothers in a notarized "Extrajudicial Declaration of Heirs and Adjudication of Properties" executed by the heirs on September 8, 1969, xerox copy of which was attached to the motion.[12] The lot was described in the document as:

A parcel of land (lot 6448-C-5 of the subdivision plan (LRC) Psd-21849 being a portion of Lot 6448-C with an area of 906 sq. meters and described on Transfer Certificate of Title No. 38759. Tax declaration No. 022318. Assessed at P2,800.00.

The trial court denied the motion for reconsideration on the ground that the Extrajudicial Declaration of Heirs which was the basis of private respondents' claim that they inherited the lot in question from their mother was not presented as part of their evidence during the trial.[13]

Aggrieved by the ruling, private respondents, the spouses Celestino and Rosario Tan and the spouses Maximo and Teresita Tan, interposed an appeal to the Court of Appeals which, in turn, reversed and set aside the said judgment. Respondent court ruled that although the subject property was acquired during the marriage of the spouses Eteria and Alfonso, it was established by the Tan brothers that the same was inherited from their mother, hence, their exclusive property.

We quote the pertinent portion of the decision:

x x x. It is true that under the New Civil Code, all properties of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains to the husband or to the wife (Art. 160, NCC). The provision of law on presumption of the conjugal nature of the property requires the party who invoked it to prove first that the property in controversy was acquired during marriage. In other words, proof of acquisition during coverture is a condition sine qua non for the operation of the presumption in favor of conjugal ownership (*Cobb-Perez vs. Lantin*, L-22300, May 22, 1960, 23 SCRA 637-644).

On the other hand, the herein appellants, thru Maximo Tan, insist that the property in dispute was acquired by inheritance from their late mother Trinidad Uy Tan, who died on 15 November 1968 (pp. 17-17-a, TSN; Dec. 21, 1990). There is documentary proof to support the testimony of Maximo Tan that indeed the property in dispute was inherited by Alfonso, Celestino and Maximo from their late mother, Trinidad Uy Tan. We note that the 906-square meter lot is registered in the name of: ALFONSO U. TAN, Filipino, of legal age, married to Eteria Teves of Bulacao, Pardo, Cebu City; CELESTINO U. TAN, Filipino, of legal age, married to Rosario Dy Kushin of Banawa, Hill No. 2; and MAXIMO U. TAN, Filipino, of legal age, single; of Banawa, Hill No. 2, of Cebu City, Philippines, with equal shares. From the very wording of the title, it can be deduced that 1/3 portion of the property solely belongs to Alfonso Tan. The property is registered in the names of the three brothers as married to their respective spouses. In this regard, the Supreme Court observed:

(H)ad the property been acquired by them (spouses) during coverture, it would have been registered in the name not of Francisco Soriano, married to Tomasa Rodriguez' but the spouses 'Francisco Soriano and Tomasa Rodriguez' (*Ponce de Leon vs. R.F.C.*, 36 SCRA 289, 312).

The title further states that the property is subject to the 'liabilities imposed by Section 4, Rule 74 of the Rules of Court, for a period of two (2) years, from January 9, 1970, against the estate of the deceased Trinidad Uy'. (Exh. 'A') [underlines Ours]. This condition supports the contention of the herein appellants that the lot was inherited by Alfonso, Celestino and Maximo from their late mother. It shows that the 1/3 portion of the property belongs exclusively to Alfonso U. Tan, and that it is not part of the conjugal partnership of gains.[14]

From this ruling, Eteria Teves Tan seeks a second assessment of the case in the present petition for review raising the following errors, to wit:

1. That since respondent Court of Appeals had already ruled that 1/3 portion of the lot in litigation was acquired by Alfonso Tan while said Alfonso Tan and his wife Eteria were still living together, the presumption of conjugality remains and it is not petitioner but private respondents who have the burden of proof to prove otherwise.
2. The ruling of respondent Court of Appeals that the 1/3 portion of the lot in question exclusively belongs to Alfonso Tan simply because the Certificate of Title states that the lot is registered in the name of 'ALFONSO U. TAN, xxx married to Eteria Teves xxx; CELESTINO U. TAN xxx married to Rosario Dy Kushin xxx and MAXIMO U. TAN' is against well-settled jurisprudence in our jurisdiction.[15]

The petition is not impressed with merit.

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.[16] It is not necessary, to prove that the property was acquired with funds of the partnership.[17] So that when an immovable was acquired by purchase during the marriage, it is considered as conjugal property.[18] In fact, even when the manner in which the property was acquired does not appear, the presumption applies and it will be considered conjugal property.[19]

Said presumption is, however, rebuttable with strong clear, categorical, and convincing evidence that the property

belongs exclusively to one of the spouses and the burden of proof rests upon the party asserting it.[20]

In the case at bar, conclusive evidence points to the fact that the undivided one-third (1/3) of the parcel of land in question is not the conjugal partnership property of the spouses Alfonso Tan and Eteria Teves Tan. It is the former's exclusive property which he had inherited from his mother, Trinidad Uy, the original owner of the property. The property is registered in the name of Alfonso U. Tan, married to Eteria Teves, Celestino U. Tan, married to Rosario Dy Kuchin and Maximo U. Tan, single, under TCT No. 46249. It is clear from TCT No. 46249 that the title was entered on January 9, 1970 and a transfer from TCT No. 38759, when the latter covered the 906-square meter lot which was one of the properties left by the late Trinidad Uy to her children when she died intestate and which property was adjudicated to her three sons as appearing in the Extrajudicial Declaration of Heirs and Adjudication of Properties. While this document was not admitted as evidence because it was submitted only as an annex to private respondents' motion for reconsideration of the decision of the trial court, the source of the property can be reasonably and materially inferred from TCT No. 46249 which contains a provision that the property is subject to the "liabilities imposed by Section 4, Rule 74 of the Rules of Court for a period of two (2) years, from January 9, 1979 against the estate of the deceased Trinidad Uy." [21] Such imposition on property is for the benefit of the heirs who may have been deprived of their lawful participation of the estate of the decedent. The presence of the imposition in TCT No. 46249, which was carried over from its predecessor TCT No. 38759 presupposes the existence of summary settlement of an estate from where the property was derived, that of private respondents' deceased mother. There can be no doubt then, that although acquired during Alfonso's marriage to Eteria, the one-third portion of the property should be regarded as Alfonso's own exclusively, as a matter of law pursuant to Article 148 of the Civil Code which provides that:

Article 148: The following shall be the exclusive property of each spouse:

(2) That which each acquires, during the marriage, by lucrative title.

In *Villanueva v. Intermediate Appellate Court*, [22] we ruled that the husband's acquisition by succession of a parcel of land during his marriage to his wife simply means that the lot is his exclusively property because it was acquired by him during the marriage by lucrative title pursuant to the provisions of Article 148 of the Civil Code.

On the other hand, petitioner had adduced no evidence at all that the lot was acquired by her and her husband with their funds. Neither was her allegation that the house was constructed with the loan she and her husband obtained duly substantiated. From whom the loan was obtained was not even revealed.

The foregoing disquisitions adequately answer the second issue raised by petitioner.

ACCORDINGLY, the petition is hereby DENIED and the decision of the Court of Appeals dated June 20, 1994 is AFFIRMED.

SO ORDERED.

Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

Padilla, (Chairman), J., on leave.

[1] Records, p. 175.

[2] *Id.*, at 1-6.

[3] *Id.*, at 37-38.

[4] *Id.*, at 58.

[5] Id., at 93-94.

[6] TSN, September 25, 1990, pp. 4-5; 9-10.

[7] Id., at 14.

[8] Id., at 15-16.

[9] TSN, December 21, 1990, pp. 3-20.

[10] Records, pp. 173-175.

[11] Id., at 177-180.

[12] Id., at 181-184.

[13] Id., at 192.

[14] Id., at 23-24.

[15] Rollo, pp. 23-25.

[16] See also *Salvador v. Court of Appeals*, 243 SCRA 239 1995.

[17] Tolentino, Volume I, 1987, p. 425 citing *De Arrastia v. Quiles*, 65 Porto Rico 857.

[18] *Laluan v. Malpaya*, 65 SCRA 494 [1975].

[19] *Viloria v. Aquino*, 28 Phil. 258 [1914].

[20] See Note 18, *supra*, p. 427.

[21] SEC. 4 Liability of distributees and estate. - If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or unlawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the proceeding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made.

[22] 192 SCRA 21 [1992].

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