

EUSTAQUIO MALLILIN, JR., PETITIONER, VS. MA. ELVIRA CASTILLO, RESPONDENT.

G.R. No. 136803. June 16, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the amended decision[1] of the Court of Appeals dated May 7, 1998 in CA G.R. CV No. 48443 granting respondent's motion for reconsideration of its decision dated November 7, 1996, and of the resolution dated December 21, 1998 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On February 24, 1993, petitioner Eustaquio Mallilin, Jr. filed a complaint[2] for "Partition and/or Payment of Co-Ownership Share, Accounting and Damages" against respondent Ma. Elvira Castillo. The complaint, docketed as Civil Case No. 93-656 at the Regional Trial Court in Makati City, alleged that petitioner and respondent, both married and with children, but separated from their respective spouses, cohabited after a brief courtship sometime in 1979 while their respective marriages still subsisted. During their union, they set up the Superfreight Customs Brokerage Corporation, with petitioner as president and chairman of the board of directors, and respondent as vice-president and treasurer. The business flourished and petitioner and respondent acquired real and personal properties which were registered solely in respondent's name. In 1992, due to irreconcilable differences, the couple separated. Petitioner demanded from respondent his share in the subject properties, but respondent refused alleging that said properties had been registered solely in her name.

In her Amended Answer,[3] respondent admitted that she engaged in the customs brokerage business with petitioner but alleged that the Superfreight Customs Brokerage Corporation was organized with other individuals and duly registered with the Securities and Exchange Commission in 1987. She denied that she and petitioner lived as husband and wife because the fact was that they were still legally married to their respective spouses. She claimed to be the exclusive owner of all real and personal properties involved in petitioner's action for partition on the ground that they were acquired entirely out of her own money and registered solely in her name.

On November 25, 1994, respondent filed a Motion for Summary Judgment,[4] in accordance with Rule 34 of the Rules of Court.[5] She contended that summary judgment was proper, because the issues raised in the pleadings were sham and not genuine, to wit:

A.

The main issue is -- Can plaintiff validly claim the partition and/or payment of co-ownership share, accounting and damages, considering that plaintiff and defendant are admittedly both married to their respective spouses under still valid and subsisting marriages, even assuming as claimed by plaintiff, that they lived together as husband and wife without benefit of marriage? In other words, can the parties be considered as co-owners of the properties, under the law, considering the present status of the parties as both married and incapable of marrying each other, even assuming that they lived together as husband and wife (?)

B.

As a collateral issue, can the plaintiff be considered as an unregistered co-owner of the real properties under the Transfer Certificates of Title duly registered solely in the name of defendant Ma. Elvira Castillo? This issue is also true as far as the motor vehicles in question are concerned which are also registered in the name of defendant.[6]

On the first point, respondent contended that even if she and petitioner actually cohabited, petitioner could not validly claim a part of the subject real and personal properties because Art. 144 of the Civil Code, which provides that the rules on co-ownership shall govern the properties acquired by a man and a woman living together as husband and wife but not married, or under a marriage which is void ab initio, applies only if the parties are not in any way incapacitated to contract marriage.[7] In the parties' case, their union suffered the legal impediment of a prior subsisting marriage. Thus, the question of fact being raised by petitioner, i.e., whether they lived together as husband and wife, was irrelevant as no co-ownership could exist between them.

As to the second issue, respondent maintained that petitioner can not be considered an unregistered co-owner of the subject properties on the ground that, since titles to the land are solely in her name, to grant petitioner's prayer would be to allow a collateral attack on the validity of such titles.

Petitioner opposed respondent's Motion for Summary Judgment.[8] He contended that the case presented genuine factual issues and that Art. 144 of the Civil Code had been repealed by the Family Code which now allows, under Art. 148, a limited co-ownership even though a man and a woman living together are not capacitated to marry each other. Petitioner also asserted that an implied trust was constituted when he and respondent agreed to register the properties solely in the latter's name although the same were acquired out of the profits made from their brokerage business. Petitioner invoked the following provisions of the Civil Code:

Art. 1452. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

Art. 1453. When the property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another grantor, there is an implied trust in favor of the person whose benefit is contemplated.

On January 30, 1995, the trial court rendered its decision[9] granting respondent's motion for summary judgment. It ruled that an examination of the pleadings shows that the issues involved were purely legal. The trial court also sustained respondent's contention that petitioner's action for partition amounted to a collateral attack on the validity of the certificates of title covering the subject properties. It held that even if the parties really had cohabited, the action for partition could not be allowed because an action for partition among co-owners ceases to be so and becomes one for title if the defendant, as in the present case, alleges exclusive ownership of the properties in question. For these reasons, the trial court dismissed Civil Case No. 93-656.

On appeal, the Court of Appeals on November 7, 1996, ordered the case remanded to the court of origin for trial on the merits. It cited the decision in *Roque v. Intermediate Appellate Court*[10] to the effect that an action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved. If the defendant asserts exclusive title over the property, the action for partition should not be dismissed. Rather, the court should resolve the case and if the plaintiff is unable to sustain his claimed status as a co-owner, the court should dismiss the action, not because the wrong remedy was availed of, but because no basis exists for requiring the defendant to submit to partition. Resolving the issue whether petitioner's action for partition was a collateral attack on the validity of the certificates of title, the Court of Appeals held that since petitioner sought to compel respondent to execute documents necessary to effect transfer

of what he claimed was his share, petitioner was not actually attacking the validity of the titles but in fact, recognized their validity. Finally, the appellate court upheld petitioner's position that Art. 144 of the Civil Code had been repealed by Art. 148 of the Family Code.

Respondent moved for reconsideration of the decision of the Court of Appeals. On May 7, 1998, nearly two years after its first decision, the Court of Appeals granted respondent's motion and reconsidered its prior decision. In its decision now challenged in the present petition, it held --

Prefatorily, and to better clarify the controversy on whether this suit is a collateral attack on the titles in issue, it must be underscored that plaintiff-appellant alleged in his complaint that all the nine (9) titles are registered in the name of defendant-appellee, Ma. Elvira T. Castillo, except one which appears in the name of Eloisa Castillo (see par. 9, Complaint). However, a verification of the annexes of such initiatory pleading shows some discrepancies, to wit:

1. TCT No. 149046 (Annex A) = Elvira T. Castillo, single
2. TCT No. 168208 (Annex B) = ...-do-
3. TCT No. 37046 (Annex C) = ...-do-
4. TCT No. 37047 (Annex D) = ...-do-
5. TCT No. 37048 (Annex E) = ...-do-
6. TCT No. 30368 (Annex F) = Steelhaus Realty & Dev. Corp.
7. TCT No. 30369 (Annex G) = ...-do-
8. TCT No. 30371 (Annex F) = ...-do-
9. TCT No. (92323) 67881 (Annex I) = Eloisa Castillo

In this action, plaintiff-appellant seeks to be declared as 1/2 co-owner of the real properties covered by the above listed titles and eventually for their partition [par. (a), Prayer; p. 4 Records]. Notably, in order to achieve such prayer for a joint co-ownership declaration, it is unavoidable that the individual titles involved be altered, changed, canceled or modified to include therein the name of the appellee as a registered 1/2 co-owner. Yet, no cause of action or even a prayer is contained in the complaint filed. Manifestly, absent any cause or prayer for the alteration, cancellation, modification or changing of the titles involved, the desired declaration of co-ownership and eventual partition will utterly be an indirect or collateral attack on the subject titles in this suit.

It is here that We fell into error, such that, if not rectified will surely lead to a procedural lapse and a possible injustice. Well settled is the rule that a certificate of title cannot be altered, modified or canceled except in a direct proceeding in accordance with law.

In this jurisdiction, the remedy of the landowner whose property has been wrongfully or erroneously registered in another name is, after one year from the date of the decree, not to set aside the decree, but respecting it as incontrovertible and no longer open to review, to bring an action for reconveyance or, if the property had passed into the hands of an innocent purchaser for value, for damages. Verily, plaintiff-appellant should have first pursued such remedy or any other relief directly attacking the subject titles before instituting the present partition suit. Apropos, the case at bench appears to have been prematurely filed.

Lastly, to grant the partition prayed for by the appellant will in effect rule and decide against the properties registered in the names of Steelhouse Realty and Development Corporation and Eloisa Castillo, who are not parties in the case. To allow this to happen will surely result to injustice and denial of due process of law. . . .[11]

Petitioner moved for reconsideration but his motion was denied by the Court of Appeals in its resolution dated December 21, 1998. Hence this petition.

Petitioner contends that: (1) the Court of Appeals, in its first decision of November 7, 1996, was correct in applying the Roque ruling and in rejecting respondent's claim that she was the sole owner of the subject properties and that the partition suit was a collateral attack on the titles; (2) the Court of Appeals correctly ruled in its first decision that Art. 148 of the Family Code governs the co-ownership between the parties, hence, the complaint for partition is proper; (3) with respect to the properties registered in the name of Steelhouse Realty, respondent admitted ownership thereof and, at the very least, these properties could simply be excluded and the partition limited to the remaining real and personal properties; and (4) the Court of Appeals erred in not holding that under the Civil Code, there is an implied trust in his favor.[12]

The issue in this case is really whether summary judgment, in accordance with Rule 35 of the Rules of Court, is proper. We rule in the negative.

First. Rule 35, §3 of the Rules of Court provides that summary judgment is proper only when, based on the pleadings, depositions, and admissions on file, and after summary hearing, it is shown that except as to the amount of damages, there is no veritable issue regarding any material fact in the action and the movant is entitled to judgment as a matter of law.[13] Conversely, where the pleadings tender a genuine issue, i.e., an issue of fact the resolution of which calls for the presentation of evidence, as distinguished from an issue which is sham, fictitious, contrived, set-up in bad faith, or patently unsubstantial, summary judgment is not proper.[14]

In the present case, we are convinced that genuine issues exist. Petitioner anchors his claim of co-ownership on two factual grounds: first, that said properties were acquired by him and respondent during their union from 1979 to 1992 from profits derived from their brokerage business; and second, that said properties were registered solely in respondent's name only because they agreed to that arrangement, thereby giving rise to an implied trust in accordance with Art. 1452 and Art. 1453 of the Civil Code. These allegations are denied by respondent. She denies that she and petitioner lived together as husband and wife. She also claims that the properties in question were acquired solely by her with her own money and resources. With such conflicting positions, the only way to ascertain the truth is obviously through the presentation of evidence by the parties.

The trial court ruled that it is immaterial whether the parties actually lived together as husband and wife because Art. 144 of the Civil Code can not be made to apply to them as they were both incapacitated to marry each other. Hence, it was impossible for a co-ownership to exist between them.

We disagree.

Art. 144 of the Civil Code provides:

When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership.

This provision of the Civil Code, applies only to cases in which a man and a woman live together as husband and wife without the benefit of marriage provided they are not incapacitated or are without impediment to marry each other,[15] or in which the marriage is void ab initio, provided it is not bigamous. Art. 144, therefore, does not cover parties living in an adulterous relationship. However, Art. 148 of the Family Code now provides for a limited co-ownership in cases where the parties in union are incapacitated to marry each other. It states:

In cases of cohabitation not falling under the preceding article,[16] only the properties acquired by both of the parties through their actual joint contribution of money, property or industry shall be owned by them in

common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credits.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

It was error for the trial court to rule that, because the parties in this case were not capacitated to marry each other at the time that they were alleged to have been living together, they could not have owned properties in common. The Family Code, in addition to providing that a co-ownership exists between a man and a woman who live together as husband and wife without the benefit of marriage, likewise provides that, if the parties are incapacitated to marry each other, properties acquired by them through their joint contribution of money, property or industry shall be owned by them in common in proportion to their contributions which, in the absence of proof to the contrary, is presumed to be equal. There is thus co-ownership even though the couple are not capacitated to marry each other.

In this case, there may be a co-ownership between the parties herein. Consequently, whether petitioner and respondent cohabited and whether the properties involved in the case are part of the alleged co-ownership are genuine and material. All but one of the properties involved were alleged to have been acquired after the Family Code took effect on August 3, 1988. With respect to the property acquired before the Family Code took effect if it is shown that it was really acquired under the regime of the Civil Code, then it should be excluded.

Petitioner also alleged in paragraph 7 of his complaint that:

Due to the effective management, hardwork and enterprise of plaintiff assisted by defendant, their customs brokerage business grew and out of the profits therefrom, the parties acquired real and personal properties which were, upon agreement of the parties, listed and registered in defendant's name with plaintiff as the unregistered co-owner of all said properties.[17]

On the basis of this, he contends that an implied trust existed pursuant to Art. 1452 of the Civil Code which provides that "(I)f two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each." We do not think this is correct. The legal relation of the parties is already specifically covered by Art. 148 of the Family Code under which all the properties acquired by the parties out of their actual joint contributions of money, property or industry shall constitute a co-ownership. Co-ownership is a form of trust and every co-owner is a trustee for the other.[18] The provisions of Art. 1452 and Art. 1453 of the Civil Code, then are no longer material since a trust relation already inheres in a co-ownership which is governed under Title III, Book II of the Civil Code.

Second. The trial court likewise dismissed petitioner's action on the ground that the same amounted to a collateral attack on the certificates of title involved. As already noted, at first, the Court of Appeals ruled that petitioner's action does not challenge the validity of respondent's titles. However, on reconsideration, it reversed itself and affirmed the trial court. It noted that petitioner's complaint failed to include a prayer for the alteration, cancellation, modification, or changing of the titles involved. Absent such prayer, the appellate court ruled that a declaration of co-ownership and eventual partition would involve an indirect or collateral attack on the titles. We disagree.

A torrens title, as a rule, is conclusive and indefeasible. Proceeding from this, P.D. No. 1529,[19] §48 provides that a certificate of title shall not be subject to collateral attack and can not be altered, modified, or canceled except in a direct proceeding. When is an action an attack on a title? It is when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of an action or proceeding is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[20]

In his complaint for partition, consistent with our ruling in Roque regarding the nature of an action for partition, petitioner seeks first, a declaration that he is a co-owner of the subject properties; and second, the conveyance of his lawful shares. He does not attack respondent's titles. Petitioner alleges no fraud, mistake, or any other irregularity that would justify a review of the registration decree in respondent's favor. His theory is that although the subject properties were registered solely in respondent's name, but since by agreement between them as well as under the Family Code, he is co-owner of these properties and as such is entitled to the conveyance of his shares. On the premise that he is a co-owner, he can validly seek the partition of the properties in co-ownership and the conveyance to him of his share.

Thus, in Guevara v. Guevara,[21] in which a parcel of land bequeathed in a last will and testament was registered in the name of only one of the heirs, with the understanding that he would deliver to the others their shares after the debts of the original owner had been paid, this Court ruled that notwithstanding the registration of the land in the name of only one of the heirs, the other heirs can claim their shares in "such action, judicial or extrajudicial, as may be necessary to partition the estate of the testator." [22]

Third. The Court of Appeals also reversed its first decision on the ground that to order partition will, in effect, rule and decide against Steelhouse Realty Development Corporation and Eloisa Castillo, both strangers to the present case, as to the properties registered in their names. This reasoning, however, ignores the fact that the majority of the properties involved in the present case are registered in respondent's name, over which petitioner claims rights as a co-owner. Besides, other than the real properties, petitioner also seeks partition of a substantial amount of personal properties consisting of motor vehicles and several pieces of jewelry. By dismissing petitioner's complaint for partition on grounds of due process and equity, the appellate court unwittingly denied petitioner his right to prove ownership over the claimed real and personal properties. The dismissal of petitioner's complaint is unjustified since both ends may be amply served by simply excluding from the action for partition the properties registered in the name of Steelhouse Realty and Eloisa Castillo.

WHEREFORE, the amended decision of the Court of Appeals, dated May 7, 1998, is REVERSED and the case is REMANDED to the Regional Trial Court, Branch 59, Makati City for further proceedings on the merits.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and De Leon, Jr., JJ., concur.

Buena, J., no part. Per curiam

[1] Per Justice Conrado M. Vazquez, Jr., and concurred in by Justice (now Supreme Court Justice) Arturo B. Buena and Justice Angelina Sandoval Gutierrez.

[2] Annex "C"; Id., p. 44.

[3] Annex "D"; Id., p. 49.

[4] Annex "E"; Id., p. 60.

[5] Now Rule 35 after the 1997 amendments.

[6] Rollo, p. 66. (Emphasis in the original.)

[7] Citing *Lesaca v. Lesaca*, 91 Phil. 135 (1952) and *Marata v. Dionisio*, G.R. No. 24449, unpublished.

[8] Annex "E-1"; Id., p. 74.

[9] Annex "F"; Id., p. 80.

[10] 165 SCRA 118 (1988)

[11] Amended Decision of the Court of Appeals, pp. 2-4; Rollo, pp. 38-40 (Citations omitted and emphasis added.)

[12] Petition, pp. 12 - 25; Id., pp. 18-31.

[13] See *Tarnate v. Gatchalian*, 241 SCRA 254 (1995)

[14] *Galicia v. Polo*, 179 SCRA 371 (1989); *Garcia v. Court of Appeals*, 167 SCRA 815 (1988)

[15] See *Juaniza v. Jose*, 89 SCRA 306 (1979)

[16] Referring to Art. 147 of the Family Code which provides that -

When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriages or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership. (Emphasis added)

[17] Complaint, p. 2; Rollo, p. 45 (Emphasis added.)

[18] *Castrillo v. Court of Appeals*, 10 SCRA 549 (1964); *Sotto v. Teves*, 86 SCRA 154 (1978)

[19] The Property Registration Decree.

[20] See *Co v. Court of Appeals*, 196 SCRA 705 (1991)

[21] 74 Phil 479 (1943)

[22] Id., at p. 495.

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