

GUILLERMA TUMLOS, PETITIONER, VS. SPOUSES MARIO FERNANDEZ AND LOURDES FERNANDEZ, RESPONDENTS.

G.R. No. 137650. April 12, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Under Article 148 of the Family Code, a man and a woman who are not legally capacitated to marry each other, but who nonetheless live together conjugally, may be deemed co-owners of a property acquired during the cohabitation only upon proof that each made an actual contribution to its acquisition. Hence, mere cohabitation without proof of contribution will not result in a co-ownership.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the November 19, 1998 Decision of the Court of Appeals [1] (CA), which reversed the October 7, 1997 Order of the Regional Trial Court (RTC). [2] The dispositive part of the CA Decision reads:

"WHEREFORE, the instant petition is GRANTED, and the questioned orders of the court a quo dated October 7, 1997 and November 11, 1997, are hereby REVERSED and SET ASIDE. The judgment of the court a quo dated June 5, 1997 is hereby REINSTATED. Costs against the private respondents." [3]

The assailed Order of the RTC disposed as follows:

"Wherefore, the decision of this Court rendered on June 5, 1997 affirming in toto the appealed judgment of the [MTC] is hereby reconsidered and a new one is entered reversing said decision of the [MTC] and dismissing the complaint in the above-entitled case." [4]

Petitioner also assails the February 14, 1999 CA Resolution denying the Motion for Reconsideration.

The Facts

The Court of Appeals narrates the facts as follows:

"[Herein respondents] were the plaintiffs in Civil Case No. 6756, an action for ejectment filed before Branch 82 of the MTC of Valenzuela, Metro Manila against [herein Petitioner] Guillerma Tumlos, Toto Tumlos, and Gina Tumlos. In their complaint dated July 5, 1996, the said spouses alleged that they are the absolute owners of an apartment building located at ARTE SUBDIVISION III, Lawang Bato, Valenzuela, Metro Manila; that through tolerance they had allowed the defendants-private respondents to occupy the apartment building for the last seven (7) years, since 1989, without the payment of any rent; that it was agreed upon that after a few months, defendant Guillerma Tumlos will pay P1,600.00 a month while the other defendants promised to pay P1,000.00 a month, both as rental, which agreement was not complied with by the said defendants; that they have demanded several times [that] the defendants x x x vacate the premises, as they are in need of the property for the construction of a new building; and that they have also demanded payment of P84,000.00 from Toto and Gina Tumlos representing rentals for seven (7) years and payment of P143,600.00 from Guillerma Tumlos as unpaid rentals for seven (7) years, but the said demands went unheeded. They then prayed that the

defendants be ordered to vacate the property in question and to pay the stated unpaid rentals, as well as to jointly pay P30,000.00 in attorney's fees.

"[Petitioner] Guillerma Tumlos was the only one who filed an answer to the complaint. She averred therein that the Fernandez spouses had no cause of action against her, since she is a co-owner of the subject premises as evidenced by a Contract to Sell wherein it was stated that she is a co-vendee of the property in question together with [Respondent] Mario Fernandez. She then asked for the dismissal of the complaint.

"After an unfruitful preliminary conference on November 15, 1996, the MTC required the parties to submit their affidavits and other evidence on the factual issues defined in their pleadings within ten (10) days from receipt of such order, pursuant to section 9 of the Revised Rule on Summary Procedure. [Petitioner] Guillerma Tumlos submitted her affidavit/position paper on November 29, 1996, while the [respondents] filed their position paper on December 5, 1996, attaching thereto their marriage contract, letters of demand to the defendants, and the Contract to Sell over the disputed property. The MTC thereafter promulgated its judgment on January 22, 1997[.]

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"Upon appeal to the [RTC], [petitioner and the two other] defendants alleged in their memorandum on appeal that [Respondent] Mario Fernandez and [Petitioner] Guillerma had an amorous relationship, and that they acquired the property in question as their 'love nest.' It was further alleged that they lived together in the said apartment building with their two (2) children for around ten(10) years, and that Guillerma administered the property by collecting rentals from the lessees of the other apartments, until she discovered that [Respondent Mario] deceived her as to the annulment of his marriage. It was also during the early part of 1996 when [Respondent Mario] accused her of being unfaithful and demonstrated his baseless [jealousy].

"In the same memorandum, [petitioner and the two other] defendants further averred that it was only recently that Toto Tumlos was temporarily accommodated in one of the rooms of the subject premises while Gina Tumlos acted as a nanny for the children. In short, their presence there [was] only transient and they [were] not tenants of the Fernandez spouses.

"On June 5, 1997, the [RTC] rendered a decision affirming in toto the judgment of the MTC.

"The [petitioner and the two other defendants] seasonably filed a motion for reconsideration on July 3, 1997, alleging that the decision of affirmance by the RTC was constitutionally flawed for failing to point out distinctly and clearly the findings of facts and law on which it was based vis-à-vis the statements of issues they have raised in their memorandum on appeal. They also averred that the Contract to Sell presented by the plaintiffs which named the buyer as 'Mario P. Fernandez, of legal age, married to Lourdes P. Fernandez,' should not be given credence as it was falsified to appear that way. According to them, the Contract to Sell originally named 'Guillerma Fernandez' as the spouse of [Respondent Mario]. As found by the [RTC] in its judgment, a new Contract to Sell was issued by the sellers naming the [respondents] as the buyers after the latter presented their marriage contract and requested a change in the name of the vendee-wife. Such facts necessitate the conclusion that Guillerma was really a co-owner thereof, and that the [respondents] manipulated the evidence in order to deprive her of her rights to enjoy and use the property as recognized by law.

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"The [RTC], in determining the question of ownership in order to resolve the issue of possession, ruled therein that the Contract to Sell submitted by the Fernandez spouses appeared not to be authentic, as there was an alteration in the name of the wife of [Respondent] Mario Fernandez. Hence, the contract presented by the [respondents] cannot be given any weight. The court further ruled that Guillerma and [Respondent Mario] acquired the property during their cohabitation as husband and wife, although without the benefit of marriage. From such findings, the court concluded that [Petitioner] Guillerma Tumlos was a co-owner of the subject property and could not be ejected therefrom.

"The [respondents] then filed a motion for reconsideration of the order of reversal, but the same was denied by the [RTC]." [5]

As earlier stated, the CA reversed the RTC. Hence, this Petition filed by Guillerma Tumlos only. [6]

Ruling of the Court of Appeals

The CA rejected petitioner's claim that she and Respondent Mario Fernandez were co-owners of the disputed property. The CA ruled:

"From the inception of the instant case, the only defense presented by private respondent Guillerma is her right as a co-owner of the subject property[.]

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This claim of co-ownership was not satisfactorily proven by Guillerma, as correctly held by the trial court. No other evidence was presented to validate such claim, except for the said affidavit/position paper. As previously stated, it was only on appeal that Guillerma alleged that she cohabited with the petitioner-husband without the benefit of marriage, and that she bore him two (2) children. Attached to her memorandum on appeal are the birth certificates of the said children. Such contentions and documents should not have been considered by the x x x (RTC), as they were not presented in her affidavit/position paper before the trial court (MTC).

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"However, even if the said allegations and documents could be considered, the claim of co-ownership must still fail. As [herein Respondent] Mario Fernandez is validly married to [Respondent] Lourdes Fernandez (as per Marriage Contract dated April 27, 1968, p. 45, Original Record), Guillerma and Mario are not capacitated to marry each other. Thus, the property relations governing their supposed cohabitation is that found in Article 148 of Executive Order No. 209, as amended, otherwise known as the Family Code of the Philippines[.]

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"It is clear that actual contribution is required by this provision, in contrast to Article 147 of the Family Code which states that efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry (Agapay v. Palang, 276 SCRA 340). The care given by one party [to] the home, children, and household, or spiritual or moral inspiration provided to the other, is not included in Article 148 (Handbook on the Family Code of the Philippines by Alicia V. Sempio-Diy, 1988 ed., p. 209). Hence, if actual contribution of the party is not proved, there will be no co-ownership and no presumption of equal shares (Agapay, supra at p. 348, citing Commentaries and Jurisprudence on the Civil Code of the Philippines Volume I by Arturo M. Tolentino, 1990 ed., p. 500).

"In the instant case, no proof of actual contribution by Guillerma Tumlos in the purchase of the subject property was presented. Her only evidence was her being named in the Contract to Sell as the wife of [Respondent] Mario Fernandez. Since she failed to prove that she contributed money to the purchase price of the subject apartment building, We find no basis to justify her co-ownership with [Respondent Mario]. The said property is thus presumed to belong to the conjugal partnership property of Mario and Lourdes Fernandez, it being acquired during the subsistence of their marriage and there being no other proof to the contrary (please see Article 116 of the Family Code).

"The court a quo (RTC) also found that [Respondent Mario] has two (2) children with Guillerma who are in her custody, and that to eject them from the apartment building would be to run counter with the obligation of the former to give support to his minor illegitimate children, which indispensably includes dwelling. As previously discussed, such finding has no leg to stand on, it being based on evidence presented for the first time on appeal.

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"Even assuming *arguendo* that the said evidence was validly presented, the RTC failed to consider that the need for support cannot be presumed. Article 203 of the Family Code expressly provides that the obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand. x x x.

"In contrast to the clear pronouncement of the Supreme Court, the RTC instead presumed that Guillerma and her children needed support from [Respondent Mario]. Worse, it relied on evidence not properly presented before the trial court (MTC).

"With regard to the other [defendants], Gina and Toto Tumlos, a close perusal of the records shows that they did not file any responsive pleading. Hence, judgment may be rendered against them as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein, as provided for in Section 6 of the Revised Rules on Summary Procedure. There was no basis for the public respondent to dismiss the complaint against them." [7] (emphasis in the original)

The Issues

In her Memorandum, petitioner submits the following issues for the consideration of the Court:

"I. The Court of Appeals gravely erred and abused its discretion in not outrightly dismissing the petition for review filed by respondents.

"II. The Court of Appeals erred in finding that petitioner is not the co-owner of the property in litis.

"III. Corollary thereto, the Court of Appeals erred in applying Art. 148 of the Family Code in the case at bar.

"IV. The Court of Appeals erred in disregarding the substantive right of support vis-à-vis the remedy of ejectment resorted to by respondents." [8]

In resolving this case, we shall answer two questions: (a) Is the petitioner a co-owner of the property? (b) Can the claim for support bar this ejectment suit? We shall also discuss these preliminary matters: (a) whether the CA was biased in favor of respondents and (b) whether the MTC had jurisdiction over the ejectment suit.

The Court's Ruling

The Petition has no merit.

Preliminary Matters

Petitioner submits that the CA exhibited partiality in favor of herein respondents. This bias, she argues, is manifest in the following:

1. The CA considered the respondents' Petition for Review [9] despite their failure to attach several pleadings as well as the explanation for the proof of service, despite the clear mandate of Section 11 [10] of Rule 13 of the Revised Rules of Court and despite the ruling in *Solar Team Entertainment, Inc. v. Ricafort*. [11]
2. It allowed respondents to submit the pleadings that were not attached.
3. It considered respondents' Reply dated May 20, 1998, which had allegedly been filed out of time.
4. It declared that the case was submitted for decision without first determining whether to give due course to the Petition, pursuant to Section 6, Rule 42 of the Rules of Court. [12]

The CA, for its part, succinctly dismissed these arguments in this wise:

"It is too late in the day now to question the alleged procedural error after we have rendered the decision. More importantly, when the private respondent filed their comment to the petition on April 26, 1998, they failed to question such alleged procedural error. Neither have they questioned all the resolutions issued by the Court

after their filing of such comment. They should, therefore, be now considered in estoppel to question the same." [13]

We agree with the appellate court. Petitioner never raised these matters before the CA. She cannot be allowed now to challenge its Decision on grounds of alleged technicalities being belatedly raised as an afterthought. In this light, she cannot invoke Solar [14] because she never raised this issue before the CA.

More important, we find it quite sanctimonious indeed on petitioner's part to rely, on the one hand, on these procedural technicalities to overcome the appealed Decision and, on the other hand, assert that the RTC may consider the new evidence she presented for the first time on appeal. Such posturing only betrays the futility of petitioner's assertion, if not its absence of merit.

One other preliminary matter. Petitioner implies that the court of origin, the Municipal Trial Court (MTC), did not have jurisdiction over the "nature of the case," alleging that the real question involved is one of ownership. Since the issue of possession cannot be settled without passing upon that of ownership, she maintains that the MTC should have dismissed the case.

This contention is erroneous. The issue of ownership may be passed upon by the MTC to settle the issue of possession. [15] Such disposition, however, is not final insofar as the issue of ownership is concerned, [16] which may be the subject of another proceeding brought specifically to settle that question.

Having resolved these preliminary matters, we now move on to petitioner's substantive contentions.

First Issue:

Petitioner as Co-owner

Petitioner's central theory and main defense against respondents' action for ejectment is her claim of co-ownership over the property with Respondent Mario Fernandez. At the first instance before the MTC, she presented a Contract to Sell indicating that she was his spouse. The MTC found this document insufficient to support her claim. The RTC, however, after considering her allegation that she had been cohabiting with Mario Fernandez as shown by evidence presented before it, [17] ruled in her favor.

On the other hand, the CA held that the pieces of evidence adduced before the RTC could no longer be considered because they had not been submitted before the MTC. Hence, the appellate court concluded that "[t]he claim of co-ownership was not satisfactorily proven x x x." [18]

We agree with the petitioner that the RTC did not err in considering the evidence presented before it. Nonetheless, we reject her claim that she was a co-owner of the disputed property.

Evidence Presented on

Appeal Before the RTC

In ruling that the RTC erred in considering on appeal the evidence presented by petitioner, the CA relied on the doctrine that issues not raised during trial could not be considered for the first time during appeal. [19]

We disagree. In the first place, there were no new matters or issues belatedly raised during the appeal before the RTC. The defense invoked by petitioner at the very start was that she was a co-owner. To support her claim, she presented a Contract to Sell dated November 14, 1986, which stated that Mario Fernandez was legally married to her. The allegation that she was cohabiting with him was a mere elaboration of her initial theory.

In the second place, procedural rules are generally premised on considerations of fair play. Respondents never objected when the assailed evidence was presented before the RTC. Thus, they cannot claim unfair surprise or prejudice. Scmis

Petitioner Not a Co-Owner

Under Article 144 of the Civil Code

Even considering the evidence presented before the MTC and the RTC, we cannot accept petitioner's submission that she is a co-owner of the disputed property pursuant to Article 144 of the Civil Code. [20] As correctly held by the CA, the applicable law is not Article 144 of the Civil Code, but Article 148 of the Family Code which provides:

"Art. 148. In cases of cohabitation not falling under the preceding Article, [21] 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 credit.

"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."

Article 144 of the Civil Code applies only to a relationship between a man and a woman who are not incapacitated to marry each other, [22] or to one in which the marriage of the parties is void [23] from the beginning. [24] It does not apply to a cohabitation that amounts to adultery or concubinage, for it would be absurd to create a co-ownership where there exists a prior conjugal partnership or absolute community between the man and his lawful wife. [25]

Based on evidence presented by respondents, as well as those submitted by petitioner herself before the RTC, it is clear that Mario Fernandez was incapacitated to marry petitioner because he was legally married to Lourdes Fernandez. It is also clear that, as readily admitted by petitioner, she cohabited with Mario in a state of concubinage. Therefore, Article 144 of the Civil Code is inapplicable.

As stated above, the relationship between petitioner and Respondent Mario Fernandez is governed by Article 148 of the Family Code. Justice Alicia V. Sempio-Diy points out [26] that "[t]he Family Code has filled the hiatus in Article 144 of the Civil Code by expressly regulating in its Article 148 the property relations of couples living in a state of adultery or concubinage."

Hence, petitioner's argument -- that the Family Code is inapplicable because the cohabitation and the acquisition of the property occurred before its effectivity -- deserves scant consideration. Suffice it to say that the law itself states that it can be applied retroactively if it does not prejudice vested or acquired rights. [27] In this case, petitioner failed to show any vested right over the property in question. Moreover, to resolve similar issues, we have applied Article 148 of the Family Code retroactively. [28]

No Evidence of Actual Joint

Contribution

Another consideration militates against petitioner's claim that she is a co-owner of the property. In *Agapay*, [29] the Court ruled:

"Under Article 148, 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. It must be stressed that the actual contribution is required by this provision, in contrast to Article 147 which

states that efforts in the care and maintenance of the family and household, are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. If the actual contribution of the party is not proved, there will be no co-ownership and no presumption of equal shares." (emphasis ours)

In this case, petitioner fails to present any evidence that she had made an actual contribution to purchase the subject property. Indeed, she anchors her claim of co-ownership merely on her cohabitation with Respondent Mario Fernandez.

Likewise, her claim of having administered the property during the cohabitation is unsubstantiated. In any event, this fact by itself does not justify her claim, for nothing in Article 148 of the Family Code provides that the administration of the property amounts to a contribution in its acquisition.

Clearly, there is no basis for petitioner's claim of co-ownership. The property in question belongs to the conjugal partnership of respondents. Hence, the MTC and the CA were correct in ordering the ejectment of petitioner from the premises.

Second Issue:

Support versus Ejectment

Petitioner contends that since Respondent Mario Fernandez failed to repudiate her claim regarding the filiation of his alleged sons, Mark Gil and Michael Fernandez, his silence on the matter amounts to an admission. Arguing that Mario is liable for support, she advances the theory that the children's right to support, which necessarily includes shelter, prevails over the right of respondents to eject her.

We disagree. It should be emphasized that this is an ejectment suit whereby respondents seek to exercise their possessory right over their property. It is summary in character and deals solely with the issue of possession of the property in dispute. Here, it has been shown that they have a better right to possess it than does the petitioner, whose right to possess is based merely on their tolerance.

Moreover, Respondent Mario Fernandez' alleged failure to repudiate petitioner's claim of filiation is not relevant to the present case. Indeed, it would be highly improper for us to rule on such issue. Besides, it was not properly taken up below. [30] In any event, Article 298 [31] of the Civil Code requires that there should be an extrajudicial demand. [32] None was made here. The CA was correct when it said:

"Even assuming *arguendo* that the said evidence was validly presented, the RTC failed to consider that the need for support cannot be presumed. Article [298] of the [New Civil Code] expressly provides that the obligation to give support shall be demandable from the time the person who has a right to receive the same need it for maintenance, but it shall not be paid except from the date of judicial and extrajudicial demand." [33]

WHEREFORE, the Petition is DENIED and the appealed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Purisima, and Gonzaga-Reyes, JJ., concur.

Vitug, J., abroad-on official business.

[1] Fifth Division. The Decision was written by J. Delilah Vidallon-Magtolis with the concurrence of JJ Artemon D. Luna (chairman) and Rodrigo V. Cosico (member).

[2] Issued by Judge Floro P. Alejo. This Order effectively reversed the earlier Decision of Judge Alejo affirming in toto the MTC's judgment.

[3] CA Decision, p. 7; rollo, p. 37.

[4] Rollo, pp. 67-68.

[5] CA Decision, pp. 1-4; rollo, pp. 31-34.

[6] The case was deemed submitted for resolution on December 24, 1999, upon receipt by this Court of petitioner's Memorandum, which was signed by Atty. Dante A. Diaz. Respondents' Memorandum, which was signed by Atty. Rodolfo P. Liwanag, was received on November 24, 1999.

[7] CA Decision, pp. 4-7; rollo, pp. 34-37.

[8] Petitioner's Memorandum, p. 7; rollo, p. 164.

[9] See CA Resolution dated March 31, 1998.

[10] "Sec. 11. Priorities in modes of service and filing. - Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed."

[11] 293 SCRA 661, August 5, 1998.

[12] "Sec. 6. Due course. - If upon the filing of the comment or such other pleadings as the court may allow or require, or after the expiration of the period for the filing thereof without such comment or pleading having been submitted, the Court of Appeals finds prima facie that the lower court has committed an error of fact or law that will warrant a reversal of modification of the appealed decision, it may accordingly give due course to the petition."

[13] CA Resolution dated February 19, 1999; rollo, pp. 40-41.

[14] Supra.

[15] "SEC. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases. -

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2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession;" (Sec. 33, B.P. 129)

"Sec. 16. Resolving defense of ownership. -- When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession." (Sec. 16, Rule 70, 1997 Revised Rules of Civil Procedure)

[16] For an extensive discussion of the subject matter, see *Refugia v. CA*, 258 SCRA 347, July 5, 1996. See also *Dizon v. CA* 264 SCRA 391, November 19, 1996.

[17] See Petitioner's Memorandum on Appeal; records, pp. 97-106.

[18] CA Decision, p. 5; rollo, p. 35.

[19] See *Solid Homes, Inc. v. CA*, 275 SCRA 267, July 8, 1997; *Roman Catholic Archbishop of Manila v. CA*, 269 SCRA 145, March 3, 1997.

[20] "Art. 144 [Civil Code]. 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." (NCC.)

[21] Article 147 of the Family Code provides that "When a man and a woman are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage 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.

"In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household."

[22] *Juaniza v. Jose*, 89 SCRA 306, March 30, 1979.

[23] *Agapay v. Palang*, 276 SCRA 340, July 28, 1997.

[24] Vitug, *Compendium of Civil Law and Jurisprudence*, pp. 68-69, 1993 ed., Sempio-Diy, *Handbook on the Family Code of the Philippines*, pp. 228-234, 1997 ed. See also Tolentino, *Civil Code of the Philippines*, Vol. I, p. 391, 1987 ed. Cf. Tolentino, *Civil Code of the Philippines*, Vol. I, p. 498, 1990 ed.

[25] Tolentino, *supra.*, 1987 ed.

[26] Sempio-Diy, *supra.* at p. 228. See also Vitug, *supra.* at pp. 210-211.

[27] Article 256, Family Code.

[28] *Agapay v. Palang*, *supra.*

[29] *Ibid.*, at 348, per Romero, J.

[30] See *Solid Homes, Inc. v. CA*, *supra.*; *Roman Catholic Archbishop of Manila v. CA*.

[31] "Art. 298. The obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date it is extrajudicially demanded.

Payment shall be made monthly in advance, and when the recipient dies, his heirs shall not be obliged to return what he has received in advance."

This provision is substantially reproduced in Article 203 of the Family Code.

[32] See *Jocson v. The Empire Insurance Company*, 103 Phil. 580, April 30, 1958.

[33] CA Decision, pp. 6-7; rollo, pp. 36-37.

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