

**ZENAIDA F. DAPAR ALIAS ZENAIDA D. BIASCAN PETITIONER, VS.
GLORIA LOZANO BIASCAN AND MARIO BIASCAN RESPONDENTS.***G.R. No. 141880. September 27, 2004*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141880/>**CALLEJO, SR., J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV- No. 57306 reversing the Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 120, in Civil Case No. C-16184 and its Resolution[3] denying the motion for the reconsideration thereof.

The Antecedents

Sometime in 1966, Spouses Gloria and Mario Biascan were married in civil rights in Quezon City.[4] They were, thereafter, blessed with four (4) children, namely, Robert, Edward, Glomary, and Eric.[5]

Mario Biascan, an electrician by profession, worked in Saudi Arabia as an overseas contract worker from 1977 to 1981. It was in 1979 when he met Zenaida Dapar, who was then working as a domestic helper. That first meeting ripened into an intimate relationship. Both being lonely in a foreign land, Zenaida and Mario became lovers, which resulted in the latter's failure to give support to his wife and family.

Zenaida returned to the Philippines in 1981. Upon Mario's return to the country, he joined Zenaida to live in a rented house in Pag-asa Subdivision, Karuhatan, Valenzuela, Metro Manila. They opened a joint account with the Philippine National Bank (PNB), Valenzuela Branch, under Savings Account No. 498-514587-9[6] on March 30, 1982. Mario returned to Saudi Arabia in February 1984, while Zenaida stayed behind and worked in a garment factory. He remitted his earnings to Zenaida, and the latter deposited the said amounts in the PNB joint savings account through the Barclay Bank, PLS Athens. These remittances were credited in the said account, as well as others coming from Zenaida's relatives who were also working abroad. As of May 21, 1991, the balance of the bank account was P257,225.[7]

In the meantime, on July 8, 1985, a contract to sell was executed by and between State Land Investment Corporation, on the one hand, and "Sps. Mario M. Biascan/ & Zenaida D. Biascan," on the other, over a parcel of land consisting of 150 square meters, described as Lot 11, Block 2, Narra St., Hillcrest Village, Camarin Road, Novaliches, Caloocan City for P177,189.00.[8] A Deed of Sale[9] was, thereafter, executed in favor of the "Sps. Mario M. Biascan and Zenaida D. Biascan," as vendees, as a result of which Transfer Certificate of Title (TCT) No. 207197 was issued by the Register of Deeds of Caloocan City under their names on February 8, 1990.[10]

On November 15, 1993, Gloria L. Biascan filed a complaint against Zenaida for annulment of title, reconveyance, and damages in the RTC of Caloocan City, Branch 120, docketed as Civil Case No. C-16184. She made the following allegations:

- That said Mario M. Biascan, then an overseas worker, and with the use of his earnings, purchased a lot and

house situated at Bo. Camarin, Caloocan City, covered by Transfer Certificate of Title No. 207197, a copy of which is hereto attached as Annex "A" and made [an] integral part hereof; said properties have a total value of P104,000.00 per Tax Declaration No. 196644, a copy of which is hereto attached as Annex "B" and made integral part hereof;

- That said Transfer Certificate of Title No. 207197 (Annex "A") and Tax Declaration No. 196644 (Annex "B"), were issued to "Spouses Mario M. Biascan and Zenaida D. Biascan", thru the fraudulent misrepresentation of defendant that she is the legal wife of Mario M. Biascan;

- That the inclusion of the name of defendant in the said transfer certificate of title and tax declaration, is without any legal basis whatsoever, because defendant is not the legal wife of Mario M. Biascan, and that the money used in acquiring the lot and house belonged to Mario M. Biascan;

- That the defendant's use of the surname "Biascan" is a usurpation of surname under Article 377 of the New Civil Code of the Philippines, and as such, plaintiff, who is the legal wife of Mario M. Biascan, is entitled to recover damages from defendant;

- That by reason of defendant's illegal acts in causing the inclusion of her name in the aforesaid transfer certificate of title and tax declaration, plaintiff, the legal wife of Mario M. Biascan, is unduly deprived of her right over the property covered by said title and declaration, and to vindicate such right, she is constrained to institute the instant action and retain the services of counsel to which she has agreed to pay the sum of P20,000.00 for and as attorney's fees and the sum of P1,000.00 as appearance fee.[11]

Gloria prayed that judgment be rendered in her favor, as follows:

- 1) Declaring as null and void the issuance of Transfer Certificate of Title No. 207197 in favor of Spouses Mario M. Biascan and Zenaida D. Biascan, including Tax Declaration No. 196644;
- 2) Defendant to recover the undivided one-half (1/2) portion of the lot in question to plaintiff, who is the legal wife of Mario M. Biascan;
- 3) Defendant to pay to plaintiff the amount of Ten Thousand Pesos (P10,000.00) Philippine Currency, as damages for usurping the surname "Biascan" which rightfully belongs to the plaintiff;
- 4) Defendant to pay to plaintiff the sum of Twenty Thousand Pesos (P20,000.00) Philippine Currency, for and as attorney's fees; and
- 5) To pay the costs of this suit. Plaintiff further prays for such other relief this Honorable Court may deem just and equitable in the premises.[12]

Zenaida filed a Motion to Dismiss[13] on January 20, 1994, principally on the ground that, under Article 113 of the Civil Code and Section 4, Rule 3 of the Rules of Court, a married woman cannot sue or be sued alone without joining her husband, and that, as registered co-owner of the subject property, the latter was an indispensable party. She also alleged that she had no idea that Mario was a married man; that she tried to leave him when such fact came to her knowledge; and that Mario made repeated promises of marriage.

According to Zenaida, she was fraudulently and maliciously forced by Mario and his family to vacate the house and lot in question. Thus, on January 14, 1992, she instituted an action for partition before Branch 129 of the Regional Trial Court of Caloocan City, docketed as Civil Case No. C-259. Zenaida, likewise, alleged that she instituted an action for the enforcement of the Amicable Settlement made before the barangay, before the Metropolitan Trial Court of Caloocan City for the recovery of personal properties. Thereafter, on May 3, 1993, the RTC of Caloocan City rendered its Decision[14] in Civil Case No. C-259, declaring that she was a co-owner of the subject lot. She averred that, after receipt of the decision, Mario and Gloria sent her a Letter[15] dated May

18, 1993, persuading her to agree to a very unreasonable settlement.

Zenaida claimed that Mario filed a petition for certiorari before the Court of Appeals, docketed as CA-G.R. SP. No. 32512, which was dismissed[16] on December 17, 1993 on the ground that the decision rendered by the RTC of Caloocan City had long since become final and executory; thus, based on the doctrine of res judicata, her ownership of the one-half portion of the lot covered by TCT No. 207197 could no longer be questioned. Zenaida posited that pursuant to paragraph (c), Sec. 3 of Rule 131 of the Rules of Court, the facts and conclusions contained in the said decision are conclusively presumed to be true.

The trial court denied the motion to dismiss in an Order[17] dated March 23, 1994.

In her answer, Zenaida alleged that the trial court had no jurisdiction over the case, as the cause of action therein was barred by prior judgment. She, likewise, alleged that aside from her savings from her work in Saudi Arabia, she had other sources of income: her earnings from working as a dressmaker at the Flores Garment International Corporation; income from buying and selling jewelry; a dollar pension from her brother who was with the U.S. Navy; and financial support from her mother and older brothers. She averred that most of the money used for the amortization and purchase of the subject lot, as well as the construction of the improvements thereon, was sourced from her earnings and income and not solely from Mario Biascan. She further alleged that Mario was, in fact, unemployed from the later part of 1985 to the early part of 1988, and that they had to secure a loan in the total amount of P80,000 from her mother, which was used to pay part of the amortization of the property and, which to date, has remained unpaid.

She further alleged the following by way of counterclaim:

- That the institution of the instant case is tainted with malice, for plaintiff know[s] for a fact that the defendant is a lawful co-owner of the subject lot and the house erected thereon, because said plaintiff was always present during the hearing of the Partition case filed by the defendant before Branch 129 of this Honorable Court, docketed under Civil Case No. C-259, and of the fact that said case had already been decided in favor of the defendant;
- That plaintiff and Mario Biascan even tried to convince to settle the case although [the said] decision was already rendered, showing plaintiff knowledge of the fact that the defendant is indeed entitled to one-half of the property;
- That obviously, the institution of the case was made to delay and frustrate the immediate enforcement of the decision in Civil Case No. C-259 because plaintiff and her children, and Mario Biascan, are enjoying the use of the subject property to the prejudice of the defendant;
- That because of the baseless and malicious institution of the instant case, the defendant suffered serious anxiety, besmirched reputation, wounded feeling[s] and sleepless nights to which plaintiff should be held answerable in the sum of not less than P50,000.00 plus P25,000.00 as exemplary damages;
- That for her protection, the defendant is constrained to secure the services of the undersigned counsel at an agreed attorney's fees of P20,000.00 plus P1,000.00 per court appearances (sic) to which plaintiff should, likewise, be held answerable;
- That plaintiff, in connivance with Mario Biascan, has forcibly ousted the defendant from the premises through strategy and stealth, and because plaintiff, Mario Biascan and their children are presently occupying that portion owned by the defendant, it is but just and fair that they be adjudged to pay reasonable rent of P2,500.00 per month from date of the decision in Civil Case No. C-259 for the use thereof, up to the time said portion is surrendered to the defendant.

WHEREFORE, premises considered, it is most respectfully prayed to the Honorable Court that after due

hearing judgment be rendered in favor of the defendant and against the plaintiff, DISMISSING the complaint and GRANTING all the counterclaim[s] interposed by the defendant.

Defendant further prays for such other reliefs as are just and equitable under the premises.[18]

After the parties submitted their respective pre-trial briefs, Gloria filed an amended complaint,[19] impleading her husband Mario as party-defendant. Thereafter, in an Order[20] dated July 6, 1994, the RTC, Branch 120, issued a writ of preliminary injunction restraining and enjoining the enforcement of the writ of execution[21] issued by the RTC, Branch 129 in Civil Case No. C-259. Gloria then filed a bond in the amount of P50,000 which was duly approved by the RTC, Branch 120.[22]

After trial, the court ruled in favor of defendant Zenaida and dismissed the complaint on October 28, 1997. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the complaint is dismissed. On the counterclaim, plaintiff is ordered to pay co-defendant Zenaida Dapar:

- Attorney's fees in the sum of P20,000.00, plus P1,000.00 per court appearance
- Exemplary damages in the amount of P25,000.00; and
- To pay the costs.

SO ORDERED.[23]

The trial court ruled that the law on co-ownership governed the property relations of Mario and Zenaida, who were living in an adulterous relationship or in a state of concubinage at the time the house and lot in question was acquired. The trial court further explained that under Article 148 of the Family Code, properties acquired by both of the parties through their actual joint contribution of money shall be owned in common in proportion to their respective contributions, and in the event that the amount of such contributions could not be determined, as in the present case, they shall be presumed to be equal. The trial court concluded that the shares of Mario and Zenaida as described in TCT No. 207197 was in accordance with the sharing prescribed in Article 148. As such, there was no legal basis to order the reconveyance of the one-half share of the petitioner in favor of Gloria Biascan.

Anent Zenaida's use of the surname Biascan, the trial court ruled that Gloria was not entitled to damages since Mario consented thereto.

On appeal, however, the appellate court reversed the decision of the trial court and ruled in favor of Gloria as follows:

WHEREFORE, premises considered, the decision dated October 28, 1997 is hereby REVERSED and SET ASIDE and in lieu thereof, another judgment is hereby rendered in favor of the appellant and against the appellee as follows:

- declaring the Transfer Certificate of Title No. 207197 of the Register of Deeds for Caloocan City, registered in the name of the spouses Mario M. Biascan and Zenaida D. Biascan, null and void;
- ordering appellee to reconvey in favor of the appellant one-half (1/2) undivided portion of the property described in said title, she being the legal wife of Mario M. Biascan;
- ordering the appellee to pay the appellant attorney's fee in the amount of P20,000.00
- ordering the appellee to pay the costs.

SO ORDERED.[24]

The appellate court ruled that Zenaida's contention that Mario was unemployed from 1985 to 1988, and that she had savings and substantial earnings from her jewelry business was untenable. The appellate court also ruled that the remittances from relatives as claimed by Zenaida were not meant for her, as they were either unsigned or addressed to someone else. Clearly, the appellate court ruled, such remittances were not intended to increase Zenaida's resources to support her claim that she contributed to the payment of the house and lot in question from her own funds. The appellate court noted that the appellee's income was so meager that it was not even enough for her, and that she failed to establish, by clear and convincing evidence, that her savings and/or the remittances of her mother and brothers were deposited to the PNB joint savings account. The appellate court further ratiocinated as follows:

For failure of the appellee to prove by satisfactory evidence that she contributed money to the purchase price of the house and lot in question, there is no basis to justify her co-ownership; the same must revert to the conjugal partnership [of] Mario Biascan and his lawful wife, the appellant (Agapay v. Palang, 276 SCRA 340). The entry in the Transfer Certificate of Title No. 207197, the word "Spouses Mario M. Biascan and Zenaida D. Biascan", where the latter is not legally married to the former, is no proof that she contributed her money for the purchase of the property in question. In the case at bar, no iota of evidence was adduced to prove contribution. In the determination of the nature of the property acquired during their live-in partner status, the controlling factor is the source of the money utilized in the purchase.

Evidently, from the Contract to Sell (Exh. "2"), Mario M. Biascan was in Saudi Arabia and the appellee was probably of the impression that is she made it appear that they are spouses, the same belong to both of them. Regrettably, there is no law to support such belief.

Indeed, there was fraud, deceit and misrepresentation in the acquisition of the property in question, depriving the lawful wife, the appellant herein, the property acquired during the marriage which forms part of the conjugal partnership between Mario M. Biascan and Gloria Lozano Biascan.[25]

Zenaida's motion for reconsideration was, likewise, denied in a Resolution dated February 4, 2000.

The Present Petition

Zenaida, now the petitioner, raises the following issues for the resolution of the Court in the instant petition:

- The subject properties are acquired thru (sic) the common funds of petitioner and respondent Mario Biascan;
- Petitioner has source of income and had contributed in the purchase of the subject properties (sic);
- The subject properties (sic) were acquired in good faith by petitioner and not with fraudulent means;
- There are (sic) no proper and legal basis in the annulment of title and reconveyance of the subject properties (sic);
- No proper basis for the award of attorney's fees against petitioner; and
- The decision in Civil Case No. C-259 must be respected for being res judicata.[26]

The petitioner catalogues the deposits made in the PNB account from 1985 to November 1988,[27] and avers that such deposits could not possibly be considered as remittances of respondent Mario Biascan because he was jobless in 1983, and, thereafter, from 1985 to 1988, and was then in the Philippines wholly dependent upon her for support. The petitioner also avers that the alleged remittances cannot be considered as respondent Mario Biascan's record of employment abroad, and that based on the evidence on record, he could not have paid even one-half (½) of the purchase price of the subject property. However, since the contribution of the petitioner and respondent could not be determined, considering that no specific amounts were properly identified as actual

deposits of the parties in the joint account, such shares are presumed equal.

The petitioner also points out that Article 148 of the Family Code does not provide for an annulment of title of any of the properties acquired during an illicit relationship, but merely provides for forfeiture of the properties of the party in bad faith in accordance with the said provision.

According to the petitioner, it is, likewise, evident from the evidence presented that respondent Gloria Biascan had knowledge of the petitioner's illicit relationship with her husband, did nothing to stop it, and, in fact, benefited from such relationship. The petitioner contends that the award of attorney's fees in favor of such respondent cannot be allowed, as the appellate court made no express findings or reasons in its decision to justify such award.

Finally, the petitioner points out that the decision in Civil Case No. C-259, which was affirmed by the Court of Appeals in CA-G.R. SP No. 32512, already became final and executory, and that the court a quo issued a writ of execution on September 24, 1993. The petitioner cites the ruling of the Court in *Mendiola v. Court of Appeals*[28] to bolster her claim.

For their part, the respondents allege that the decision rendered in Civil Case No. C-259 is not *res judicata* in the instant case. While the petitioner filed a motion to dismiss invoking the defense of bar by former judgment, such motion was denied by the court a quo. According to the respondents, the petitioner did not file a motion for reconsideration or appeal, much less raise the same as an error before the appellate court. The respondents allege that the silence of the petitioner on the matter of *res judicata* before the Court of Appeals is an indication of her conformity to the correctness of the ruling of the lower court.

The respondents also posit that the petitioner employed fraud, deceit and misrepresentation in her inclusion as a co-owner of the property, as a result of which the lawful wife, respondent Gloria Biascan, was deprived of the property in question; thus, the annulment of the title and reconveyance of the property in question was legal and proper. Furthermore, due to such fraudulent and deceitful acts of the petitioner, respondent Gloria Biascan, the aggrieved party, is legally entitled to the award of attorney's fees.

The issue in the present case is whether or not the action of respondent Gloria Biascan is barred by the decision of the RTC in Civil Case No. C-259. A secondary issue is whether or not the petitioner is liable to respondent Gloria Biascan for damages for usurpation of the surname of respondent Mario Biascan under Article 377 of the Civil Code.

The Court's Ruling

We find and so hold that the action of respondent Gloria Biascan was barred by the decision of the RTC in Civil Case No. C-259.

For *res judicata* to bar the institution of subsequent action, the following requisites must concur: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions (a) identity of parties, (b) identity of subject matter, and (c) identity of cause of action.[29] The foundation principle upon which the doctrine of *res judicata* rests is that parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[30] As we ruled in *Oropeza Marketing Corporation v. Allied Banking Corporation*:[31]

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." Res judicata lays the rule that an existing final judgment or decree rendered on the

merits, and without fraud or collusion, or by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. The principle of *res judicata* has two aspects, namely: (a) “bar by prior judgment” as enunciated in Rule 39, Section 49(b) of the 1997 Rules of Civil Procedure; and (b) “conclusiveness of judgment” which is contained in Rule 39, Section 47(c).

There is “bar by prior judgment” when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as “conclusiveness of judgment.” Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[32]

Contrary to the contentions of the respondents, the petitioner consistently invoked the finality of the judgment of the RTC of Caloocan City, Branch 129, in Civil Case No. C-259 for partition of the property covered by TCT No. 207197, as well as a 1976 model Toyota car. Eighty-three (83) days after learning of the said decision,[33] respondent Mario Biascan filed a petition for relief from judgment, which the trial court dismissed, and which dismissal was affirmed by the Court of Appeals in CA-G.R. SP No. 32512 promulgated on December 17, 1993. The decision in Civil Case No. C-259 became final and executory, thus satisfying the first requisite. Furthermore, such judgment was on the merits and was rendered by a court having jurisdiction over the subject matter and the parties.

In the meantime, on October 27, 1993, respondent Gloria Biascan filed Civil Case No. C-16184 for annulment of TCT No. 207197, reconveyance and damages.

It is clear that there is identity of subject matter between the two cases; that is, the parcel of land in Caloocan City covered by TCT No. 207197. Such property was adjudicated in favor of the petitioner and the respondent, as co-owners in equal shares. It must be stressed that in a complaint for partition, the plaintiff seeks, first, a declaration that he is a co-owner of the subject properties; and second, the conveyance of his lawful shares. 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.[34] As we ruled in a recent case:[35]

To split the proceedings into declaration of nullity of the deed of sale and trial for the partition case, or to hold in abeyance the partition case pending resolution of the nullity case would result in the multiplicity of suits, duplicitous procedure and unnecessary delay, as the lower court observed. The conduct of separate trials of the parties’ respective claims would entail a substantial duplication of effort and time not only of the parties but also of the courts concerned. On the other hand, it would be in the interest of justice if the partition court hears all the actions and incidents concerning the properties subject of the partition in a single and complete proceeding.

After all, the issue of nullity can be properly ventilated before the partition court. Thus, even with the dismissal of the action for nullity, petitioner is not without recourse. She can still dispute the execution of the deed of

absolute sale and assert her rights to the properties subject of the said instrument in the partition case. There is no need for a separate case to resolve the matter.[36]

Indeed, the difference in form and nature of the two actions is immaterial and is not a reason for exemption from the effects of *res judicata*. The philosophy behind this rule prohibits the parties from litigating the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them.[37] Whatever has once been irrevocably established as the controlling legal principle in an earlier final judgment continues to be the law of the case between the same parties in another suit, as long as the facts on which such decision was predicated continue to be the facts of the dispute before the court.[38]

It may be argued that there is no identity of parties in the first and second case. In the first case for partition, the plaintiff was the petitioner, while the defendant was respondent Mario Biascan; in the second case for annulment of title and reconveyance of the same property, respondent Gloria Biascan was the plaintiff, while the defendants were the petitioner and respondent Mario Biascan. However, absolute identity of parties is not required for the principle of *res judicata* to apply. Mere substantial identity of parties, or a community of interests between a party in the first case and a party in the subsequent case, even if the latter was not impleaded in the first case, is sufficient.[39]

It cannot be ignored that the evidence presented in the two cases were substantially the same: among others, the PNB Bank account, the Contract to Sell, the Deed of Sale, and the certificates of remittances. In fact, both trial courts made similar findings, and adjudicated the property in favor of both respondent Mario Biascan and the petitioner. This cannot be done without violating the rule on finality of judgments. The Court reiterates the following pronouncement in *Gallardo-Corro v. Gallardo*: [40]

Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigation, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[41]

Indeed, it is readily apparent that the action for annulment of judgment was, in effect, a second cycle of review regarding a subject matter which has already been finally decided.[42] It is, likewise, not lost upon this Court that respondent Gloria Biascan resorted to filing the second case for annulment of title as an afterthought, after realizing her husband's failure to appeal Civil Case No. C-259, and the inevitable dismissal of the petition for relief from judgment by the trial court and, thereafter, the petition for certiorari before the appellate court.

Anent respondent Gloria Biascan's claim for damages for the petitioner's alleged usurpation of her husband's name, we rule that she is not entitled to an award therefor.

The usurpation of name under Article 377 of the Civil Code [43] implies some injury to the interests of the owner of the name. It consists in the possibility of confusion of identity between the owner and the usurper, and exists when a person designates himself by another name. The elements are as follows: (1) there is an actual use of another's name by the defendant; (2) the use is unauthorized; and (3) the use of another's name is to designate

personality or identify a person.[44] None of the foregoing exist in the case at bar. Respondent Gloria Biascan did not claim that the petitioner ever attempted to impersonate her. In fact, the trial court found that respondent Mario Biascan allowed the petitioner to use his surname, viz:

On the other cause of action referring to the use by Zenaida of the family name Biascan for which damages is prayed for by the plaintiff, there is evidence to show that defendant Mario Biascan was the one who suggested, and in fact authorized Zenaida Dapar to use said family name. It would appear that the very first time that Zenaida Dapar's name had the surname Biascan was when defendant Mario Biascan had executed the affidavit of undertaking in connection with his employment in Saudi Arabia, wherein he designated as his beneficiary Zenaida Dapar Biascan. The undertaking was sworn to by the defendant on April 7, 1982 and which also showed that his effective date of employment in Saudi Arabia was April 1982 and to expire on February 1984 (Exhibit "A"). This is an extrajudicial admission that would not allow proof to the contrary. Zenaida appeared to have no participation in the preparation of said document. Moreover, when the contract to sell and the deed of sale of the property in question were executed, Zenaida Dapar used the surname Biascan and defendant Mario Biascan did not object to the use of such surname. Also, in the joint bank account with the PNB Valenzuela, the name Zenaida Dapar Biascan is described as a joint depositor.

Defendant Zenaida Dapar testified that she used the surname Biascan because she was instructed by her co-defendant to do so and she thought the latter was not married. She only became aware of his civil status a few years later after their living together in 1981.

The use by Zenaida Dapar of the surname of her co-defendant Mario Biascan was allowed by the latter and in no case could it be considered usurpation of surname. Accordingly, co-defendant Zenaida Dapar can no longer be held liable for damages for the use thereof.[45]

The mere use of a surname cannot be enjoined; it is the use thereof coupled with the representation that one is the lawful wife, or the usurpation of the wife's status, which gives rise to an action for damages.[46]

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 57306 is REVERSED AND SET ASIDE. The complaint of respondent Gloria Biascan is DISMISSED on the ground of res judicata. The counterclaims of the petitioner against respondent Gloria Biascan are DISMISSED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.

Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Demetrio G. Demetria (retired), with Associate Justices Ramon A. Barcelona (retired) and Mercedes Gozo-Dadole, concurring.

[2] Penned by Judge Jaime D. Discaya.

[3] CA Rollo, p. 170.

[4] TSN, 3 May 1995, p. 3.

[5] TSN, 23 August 1996, p. 12.

[6] Exhibit "3," Records, pp. 281-283.

[7] Decision, Civil Case No. C-16184, Rollo, p. 78.

[8] Exhibit "2," Records, p. 280.

[9] Exhibit "C," *id.* at 16.

[10] Records, p. 60.

[11] Records, pp. 1-2.

[12] *Id.* at 2-3.

[13] *Id.* at 8-12.

[14] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the house and lot, as well as the old Toyota car involved in the case, shall be sold by plaintiff and defendant, and the proceeds thereof distributed to them equally, unless one is willing to indemnify the other for the latter's share.

Both counsels in this case diligently performed their respective tasks for the protection of their clients' interest. Pursuant to Article 2208 of the Civil Code, plaintiff shall pay her counsel P20,000 as attorney's fees. Defendant shall pay the same amount to his counsel. The attorney's fees shall come from the proceeds of the sale of the house and lot, and the old Toyota car.

No costs.

SO ORDERED (Annexes "C-1" and "C-2," Records, pp. 19-20).

[15] Annex "D," *Id.* at 21.

[16] In dismissing the complaint, the appellate court ratiocinated as follows:

But even if it was seasonably presented, the petition for relief from judgment would not have succeeded just the same. As can be gleaned from the Comment to [the] petition sent in by the private respondent; contrary to his assertion, petitioner was able to present two (2) witnesses and nineteen (19) documentary exhibits. He was accorded ample time to adduce all his testimonial and documentary evidence before respondent court decided Civil Case No. C-259. It is not therefore true that petitioner was deprived of a hearing or was prevented from taking an appeal by reason of fraud, accident, mistake or excusable negligence. From the adverse judgment sought to be set aside, petitioner could have appealed. But unfortunately counsel took the improper recourse of filing a Petition for Relief from Judgment.

WHEREFORE, the instant Petition for Certiorari is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED (Annex "E-3," Records, p. 26).

[17] Records, pp. 34-35. In resolving the Motion to Dismiss, the trial court ratiocinated as follows:

The Court, however, takes note that the parties and cause of action in the case at bar with that in Civil Case No. C-259 are not identical, hence the requisites for *res judicata* are not met.

In Civil Case No. C-259, the action for partition of the property in question was filed by Zenaida F. Dapar, as plaintiff, against defendant Mario Biascan, the lawful husband of herein plaintiff.

Here, Gloria Biascan is the plaintiff against defendant Zenaida F. Dapar, the former live-in partner of herein plaintiff's husband.

In Civil Case No. C-259, plaintiff Zenaida F. Dapar's cause of action was for the partition of a house and lot covered by TCT No. 207197, issued in the names of "Spouses Mario M. Biascan and Zenaida D. Biascan" on the

8[th] day of February 1990, by the Registry of Deeds of Caloocan City, and judgment was rendered to have the properties sold and the proceeds distributed equally, unless one indemnifies the other's share; while in the case at bar, the cause of action of plaintiff Gloria Lozano Biascan is for the annulment of title, reconveyance and damages, over the same property in question.

The recourse by a wife to question transactions of the husband without the wife's consent which defraud her of her rights, is recognized under Art. 96, Family Code, which is similarly given under Art. 173 of the Civil Code, except for the period of ten years reduced to five years within which the wife may seek redress in Court.

Well-settled is the rule that in a motion to dismiss, the allegations in the complaint are hypothetically admitted. Thus the allegations in the complaint that:

(1)

Mario M. Biascan, then an overseas worker, and with the use of his earnings purchased the property in question;

(2)

That the inclusion of defendant Zenaida F. Dapar in TCT No. 207197 in the owner's name: "Spouses Mario M. Biascan and Zenaida D. Biascan" was a fraudulent misrepresentation as defendant Zenaida D. Biascan is not the legal wife of Mario M. Biascan; and

(3)

That by reason of defendant's illegal acts in causing the inclusion of her name in the aforesaid certificate of title and tax declaration, plaintiff, the legal wife of Mario M. Biascan, is unduly deprived of her right over the property covered by said title and declaration x x x.

are all deemed admitted hypothetically.

More to the point, defendant's assertion that plaintiff's allegation that "she is living separately from her husband" is a statement of falsehood since her affidavit-complaint (Annex "A") dated September 1992 states that her husband finally returned to his legal family, is evidentiary in character.

And, finally, the defendant's assertion that plaintiff's husband is not impleaded, is not a ground for a motion to dismiss. Besides, as alleged in the complaint, plaintiff and her husband are living separately, consequently the plaintiff's husband need not be joined pursuant to Section 4 (d), Rule 3 of the Rules of Court.

WHEREFORE, the Motion to Dismiss is hereby DENIED.

SO ORDERED.

[18] Id. at 39-41.

[19] Records, pp. 56-59.

[20] Id. at 83.

[21] Annex "B," Rollo, pp. 56-57.

[22] Records, p. 94.

[23] Rollo, p. 82.

[24] CA Rollo, p. 137.

[25] Id. at 136.

[26] Rollo, p. 25.

[27] Id. at 29.

[28] 258 SCRA 492 (1996).

[29] Melchor Custodio v. Rosendo F. Corrado, G.R. No. 146082, July 30, 2004.

[30] Republic v. Court of Appeals, 387 SCRA 549 (2002).

[31] 393 SCRA 278 (2002).

[32] Id. at 284-287.

[33] Decision, CA-G.R. SP No. 32512, Rollo, p. 60.

[34] Vda. de Daffon v. Court of Appeals, 387 SCRA 427 (2002).

[35] Teresita S. Reyes-De Leon v. Vicente B. Del Rosario, G.R. No. 152862, July 26, 2004.

[36] Id. at 11.

[37] Stilianopulos v. City of Legaspi, 316 SCRA 523 (1999).

[38] Ibid.

[39] Rovels Enterprises, Inc. v. Ocampo, 391 SCRA 176 (2002).

[40] 350 SCRA 568 (2001).

[41] Id. at 578.

[42] Stilianopulos v. City of Legaspi, *supra*.

[43] Art. 377. Usurpation of a name and surname may be the subject of an action for damages and other relief.

[44] Tolentino v. Court of Appeals, 162 SCRA 66 (1988).

[45] Rollo, pp. 81-82; Records, pp. 402-403.

[46] See Silva, et al. v. Peralta, 110 Phil. 57 (1960), cited in Tolentino v. Court of Appeals, *supra*.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.