

PROCOPIO VILLANUEVA, NICOLAS RETUYA AND PACITA VILLANUEVA, PETITIONERS, VS. COURT OF APPEALS AND THE HEIRS OF EUSEBIA NAPISA RETUYA, RESPONDENTS.

G.R. No. 143286. April 14, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

This petition for review on certiorari[1] seeks the reversal of the Court of Appeals' Decision dated 31 January 2000 as well as its Resolution dated 25 April 2000 in CA-G.R. No. CV-46716. The assailed Decision dismissed petitioners' appeal of the Decision of the Regional Trial Court, Branch 55, Mandaue City ("trial court").

On 13 October 1988, Eusebia Napisa Retuya ("Eusebia") filed a complaint before the trial court against her husband Nicolas Retuya ("Nicolas"), Pacita Villanueva ("Pacita"), and Nicolas' son with Pacita, Procopio Villanueva ("Procopio"). Eusebia sought the reconveyance from Nicolas and Pacita of several properties listed in paragraph 2 of the complaint ("subject properties"), claiming the subject properties are her conjugal properties with Nicolas. Eusebia also prayed for accounting, damages and the delivery of rent and other income from the subject properties.

Antecedent Facts

The facts as found by the trial court are as follows:

Plaintiff Eusebia Napisa Retuya, is the legal wife of defendant Nicolas Retuya, having been married to the latter on October 7, 1926. Out of the lawful wedlock, they begot five (5) children, namely, Natividad, Angela, Napoleon, Salome, and Roberta. Spouses Retuya resided at Tipolo, Mandaue City. During their marriage they acquired real properties and all improvements situated in Mandaue City, and Consolacion, Cebu, more particularly described as follows:

- '1. A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24951;
2. A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24952;
3. A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24953;
4. A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24954;
5. A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24956;
6. A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24957;
7. A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24958;
8. A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01042;
9. A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01043;

10. A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01046;
11. A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01041;
12. A parcel of land located at Nawanao-Subangdaku, Mandaue City covered by tax dec. No. 01488;
13. A parcel of land located at Baklid, Mandaue City, covered by tax dec. No. 00492;
14. A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01044;
15. A residential house located at Tipolo, Mandaue City covered by tax dec. No. 01050;
16. A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01048;
17. A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01051;
18. A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01047;
19. A parcel of land located at Banilad, Mandaue City covered by tax dec. No. 02381;
20. A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01049;
21. A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01045;
22. A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01450 (in the name of Pacita Villanueva).’

Also, defendant, Nicolas Retuya, is co-owner of a parcel of land situated in Mandaue City which he inherited from his parents Esteban Retuya and Balbina Solon as well as the purchasers of hereditary shares of approximately eight (8) parcels of land in Mandaue City.

Some of these properties above-mentioned earn income from coconuts and the other lands/houses are leased to the following:

- a) Mandaue Food Products Company – for Lot 121-F, Lot 121-G and Lot 121-H under TCT No. 11300 at an annual rental of P10,800.00;
- b) Barben Wood Industries, Inc. – for Lot 148 covered by TCT No. 1731 for an annual rental of P21,600.00;
- c) Metaphil, Inc. – parcel of land consisting of 2,790.51 sq. meters at the rate of P2,700.00 annually for the first five (5) years, and P3,240.00 for the second years;
- d) Benedicto Development Corp. – for a portion of Lot 148 covered by TCT No. 1731 for a period of 20 years at an annual rate of P3,500.00 renewable for another 20 years after April 1, 1995 at an annual rate of P4,000.00;
- e) Benedicto Development Corporation – for a portion of Lot No. 148 covered by Certificate of Title No. 1731 over an area of 6,000 sq. meters for an annual rental of P9,500.00 for a period of 2 years from June 1, 1982;
- f) Visayan Timber and Machinery Corp. – over a parcel of land at Nawanao, Mandaue City, for a period of 2 years from June 1, 1987 and renewable for another 12 years at an annual income of P4,000.00;
- g) House lessees listed in Exhibit “13” with total monthly rentals of P1,975.00 a month for the 24 lessees or P24,700.00 annually. (Exhs. “7” to “13”)

In 1945, defendant Nicolas Retuya no longer lived with his legitimate family and cohabited with defendant, Pacita Villanueva, wherein defendant, Procopio Villanueva, is their illegitimate son. Nicolas, then, was the only person who received the income of the above-mentioned properties.

Defendant, Pacita Villanueva, from the time she started living in concubinage with Nicolas, has no occupation, she had no properties of her own from which she could derive income.

In 1985, Nicolas suffered a stroke and cannot talk anymore, cannot walk anymore and they have to raise him up in order to walk. Natividad Retuya knew of the physical condition of her father because they visited him at the hospital. From the time defendant Nicolas Retuya suffered a stroke on January 27, 1985 and until the present, it is defendant Procopio Villanueva, one of Nicolas' illegitimate children who has been receiving the income of these properties. Witness Natividad Retuya went to Procopio to negotiate because at this time their father Nicolas was already senile and has a childlike mind. She told defendant, Procopio that their father was already incapacitated and they had to talk things over and the latter replied that it was not yet the time to talk about the matter.

Plaintiff, then, complained to the Barangay Captain for reconciliation/mediation but no settlement was reached, hence, the said official issued a certification to file action. Written demands were made by plaintiff, through her counsel, to the defendants, including the illegitimate family asking for settlement but no settlement was reached by the parties.

Further, plaintiff's witness, Natividad Retuya, testified that the parcel of land covered by tax declaration marked Exhibit "T" was the property bought by her father from Adriano Marababol for at the time of purchase of the property, defendant Pacita Villanueva had no means of livelihood (TSN, p. 6).

The trial court rendered its Decision on 16 February 1994 in favor of Eusebia. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing considerations, judgment is rendered in favor of the plaintiff Eusebia Napisa Retuya and against defendants Procopio Villanueva, Nicolas Retuya and Pacita Villanueva:

- Declaring the properties listed in paragraph 2 of the amended complaint as conjugal properties of the spouses plaintiff Eusebia Retuya and the defendant Nicolas Retuya;
- Ordering the transfer of the sole administration of conjugal properties of the spouses Eusebia Retuya and Nicolas Retuya in accordance with Art. 124 of the Family Code to the plaintiff Eusebia Napisa Retuya;
- Ordering defendant Procopio Villanueva to account and turnover all proceeds or rentals or income of the conjugal properties from January 27, 1985 when he took over as 'administrator' thereof and until he shall have ceased administering the same in accordance with the judgment of this Court;
- Ordering defendants jointly and severally to reconvey the parcel of land situated at Tipolo, Mandaue City now in the name of defendant Pacita Villanueva under tax dec. No. 01450 and transfer the same into the names of the conjugal partners Eusebia N. Retuya and Nicolas Retuya;
- Ordering the City Assessor's Office of Mandaue City to cancel tax declaration No. 01450 in the name of Pacita Villanueva and direct the issuance of a new title and tax declaration in the names of Eusebia Napisa Retuya and Nicolas Retuya;
- Ordering defendants jointly and severally to reconvey that certain building of strong materials located at Tipolo, Mandaue City under tax dec. No. 01450 into the names of Eusebia Retuya and Nicolas Retuya;
- Ordering defendants jointly and severally to pay plaintiff the sum of P50,000.00 by way of attorney's fees and expenses of litigation in the sum of P5,000.00 plus the costs.

SO ORDERED.

Petitioners appealed the trial court's decision to the Court of Appeals. Eusebia died on 23 November 1996. Thereafter, Eusebia's heirs substituted her pursuant to the resolution of the Court of Appeals dated 7 April 1997.

The Court of Appeals eventually upheld the Decision of the trial court but deleted the award of attorney's fees, ruling in this wise:

WHEREFORE, the decision dated February 16, 1994 is AFFIRMED with the modification that the award of attorney's fees of P50,000.00 is deleted.

SO ORDERED.

Petitioners filed a Motion for Reconsideration on 23 February 2000 which the Court of Appeals denied in a Resolution dated 11 May 2000.

Hence, this petition.

The Trial Court's Ruling

The trial court applied Article 116 of the Family Code, which reads:

Art. 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed conjugal unless the contrary is proved.

The trial court ruled that the documents and other evidence Eusebia presented constitute "solid evidence" which proved that the subject properties were acquired during her marriage with Nicolas. This made the presumption in Article 116 applicable to the subject properties. Thus, the trial court ruled that Eusebia had proved that the subject properties are conjugal in nature. On the other hand, the trial court found that petitioners failed to meet the standard of proof required to maintain their claim that the subject properties are paraphernal properties of Nicolas. The trial court added that Pacita presented no "factual solidity" to support her claim that she bought Lot No. 152[2] exclusively with her own money.

The Court of Appeals' Ruling

The Court of Appeals concurred with the findings of the trial court. The appellate court found that Pacita failed to rebut the presumption under Article 116 of the Family Code that the subject properties are conjugal. The appellate court dismissed Pacita's defense of prescription and laches since she failed to have the issue included in the pre-trial order after raising it in her answer with her co-petitioners.

The Issues

Petitioners Nicolas, Pacita and Procopio contend that both the trial and appellate courts erred in ruling in favor of Eusebia. They seek a reversal and raise the following issues for resolution:

- WHETHER THE COURT OF APPEALS ERRED IN SUSTAINING THE DECLARATION OF THE TRIAL COURT THAT THE PROPERTIES LISTED IN PARAGRAPH 2 OF THE COMPLAINT ARE CONJUGAL PROPERTIES OF NICOLAS RETUYA AND EUSEBIA RETUYA ALTHOUGH THIS WAS NOT ONE OF THE CAUSES OF ACTION IN EUSEBIA'S COMPLAINT.
- WHETHER THE COURT OF APPEALS ERRED IN APPLYING THE PRESUMPTION THAT PROPERTIES ACQUIRED DURING THE EXISTENCE OF THE MARRIAGE OF NICOLAS RETUYA AND EUSEBIA RETUYA ARE CONJUGAL.
- WHETHER THE COURT OF APPEALS ERRED IN NOT APPLYING INSTEAD THE PRESUMPTION UNDER ARTICLE 148 OF THE FAMILY CODE IN FAVOR OF CO-OWNERSHIP BETWEEN NICOLAS RETUYA AND PACITA VILLANUEVA.
- WHETHER THE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE ACTION FOR

RECONVEYANCE OVER LOT NO. 152 IS ALREADY BARRED BY PRESCRIPTION OR LACHES.[3]

The Ruling of the Court

The petition lacks merit.

First Issue: On the Alleged Failure

To Claim that the Properties are Conjugal

Petitioners' contention that Eusebia's complaint failed to state that the subject properties are conjugal is absolutely without basis. A cursory reading of the complaint readily shows that the complaint maintains that the subject properties are conjugal.[4] The first sentence of the second paragraph of the complaint states:

- The plaintiff Eusebia Retuya and defendant Nicolas Retuya are husband and wife and conjugal owners of real properties and all improvements thereon situated in Mandaue City and Consolacion, Cebu more particularly described as follows: (Emphasis added)

The same claim is restated and repleaded throughout the complaint. Petitioners should know better than to clutter their appeal with useless arguments such as this.

The other issues petitioners raise contest in essence the finding that the subject properties are conjugal in nature. Apart from this, the only other issue raised is whether prescription or laches bars Eusebia's complaint. We shall resolve first the issue of prescription and laches.

Second Issue: Prescription and Laches

We agree with the Court of Appeals' observation that while petitioners did raise the issue of prescription and laches in their Answer,[5] they failed to have the same included in the pre-trial order for consideration during the trial. Now, petitioners wish to raise the issue on appeal by relying on Section 1, Rule 9 of the Rules of Court, which provides:

Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Petitioners are mistaken.

The determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal.[6] Section 1 of Rule 9 covers situations where a defense or objection is not raised in a motion to dismiss or an answer. What we have before us is the exact opposite. Here, petitioners in fact raised in their answer the defense of prescription and laches. However, despite raising the defense of prescription and laches in their answer, petitioners failed to include this defense among the issues for consideration during the trial. The non-inclusion of this defense in the pre-trial order barred its consideration during the trial. Clearly, Section 1 of Rule 9 does not apply to the present case.

Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case.[7] The parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters.[8] Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are

impliedly included in the issues raised or inferable from the issues raised by necessary implication.[9] The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.[10]

Petitioners argue that in past instances we have reviewed matters raised for the first time during appeal. True, but we have done so only by way of exception involving clearly meritorious situations.[11] This case does not fall under any of those exceptions. The fact that the case proceeded to trial, with the petitioners actively participating without raising the necessary objection, all the more requires that they be bound by the stipulations they made at the pre-trial.[12] Petitioners were well aware that they raised the defense of prescription and laches since they included it in their answer. However, for reasons of their own, they did not include this defense in the pre-trial.

Able counsels represented both parties. We see no claim that either counsel erred or was negligent. This could only mean that petitioners' counsel chose to waive, or did not consider important, the defense of prescription and laches. Petitioners are bound by their counsel's choice. Other than arguing that it is allowable to raise the issue for the first time on appeal, we have no explanation from petitioners why they suddenly decided to change their mind. Parties are not allowed to flip-flop. Courts have neither the time nor the resources to accommodate parties who choose to go to trial haphazardly. Moreover, it would be grossly unfair to allow petitioners the luxury of changing their mind to the detriment of private respondents at this late stage. To put it simply, since petitioners did not raise the defense of prescription and laches during the trial, they cannot now raise this defense for the first time on appeal.[13]

Third Issue: Whether the Subject Properties Are Conjugal

We proceed to the crux of this petition.

We reiterate the basic rule that a petition for review should only cover questions of law.[14] Questions of fact are not reviewable. The exceptions apply only in the presence of extremely meritorious circumstances.[15] None exists in this case. We note with disfavor that most of the issues raised in this petition are factual. We caution the petitioners that this practice of deluging the Court with factual issues in defiance of well-settled rule, in the hope of having them reviewed, is unacceptable.

The only issue proper for resolution is the question of whether the subject properties are conjugal. Petitioners claim that the subject properties[16] are exclusive properties of Nicolas except for Lot No. 152, which they claim is Pacita's exclusive property. This issue is easily resolved. The Family Code provisions on conjugal partnerships govern the property relations between Nicolas and Eusebia even if they were married before the effectivity of Family Code.[17] Article 105[18] of the Family Code explicitly mandates that the Family Code shall apply to conjugal partnerships established before the Family Code without prejudice to vested rights already acquired under the Civil Code or other laws. Thus, under the Family Code, if the properties are acquired during the marriage, the presumption is that they are conjugal.[19] The burden of proof is on the party claiming that they are not conjugal.[20] This is counter-balanced by the requirement that the properties must first be proven to have been acquired during the marriage before they are presumed conjugal.[21] Petitioners argue that Eusebia failed to prove this pre-requisite. We disagree.

The question of whether the subject properties were acquired during the marriage of Nicolas and Eusebia is a factual issue. Both the trial and appellate courts agreed that the subject properties were in fact acquired during the marriage of Nicolas and Eusebia.[22] The tax declarations[23] covering the subject properties, along with the un rebutted testimony of Eusebia's witnesses, establish this fact. We give due deference to factual findings of trial courts,[24] especially when affirmed by the appellate court. A reversal of this finding can only occur if petitioners

show sufficient reason for us to doubt its correctness. Petitioners in the present case have not.

Moreover, on whether Lot No. 152 is conjugal or not, the answer came from petitioners themselves. Nicolas and Eusebia were married on 7 October 1926. Nicolas and Pacita started cohabiting in 1936. Eusebia died on 23 November 1996. Pacita and Nicolas were married on 16 December 1996. Petitioners themselves admit that Lot No. 152 was purchased on 4 October 1957.[25] The date of acquisition of Lot No. 152 is clearly during the marriage of Nicolas and Eusebia.

Since the subject properties, including Lot No. 152, were acquired during the marriage of Nicolas and Eusebia, the presumption under Article 116 of the Family Code is that all these are conjugal properties of Nicolas and Eusebia. The burden is on petitioners to prove that the subject properties are not conjugal. The presumption in Article 116, which subsists “unless the contrary is proved,” stands as an obstacle to any claim the petitioners may have. The burden of proving that a property is exclusive property of a spouse rests on the party asserting it and the evidence required must be clear and convincing.[26] Petitioners failed to meet this standard.

Petitioners point out that the deed of sale, the transfer certificate of title and the tax declaration of Lot No. 152 are all in the name of Pacita. Petitioners maintain that this can only mean that Pacita is the real owner of Lot No. 152. We disagree. The totality of the evidence reveals that this was merely just one of the several schemes Nicolas employed to deprive Eusebia of their conjugal property. Ironically, petitioners themselves submitted in evidence a decision rendered by the Regional Trial Court of Cebu, Branch IV, in Civil Case No. R-9602[27] involving the acquisition of Lot No. 152.

The decision in Civil Case No. R-9602 stated that Tranquiliana Marababol Remulta testified that the one who offered to buy the lot from her was none other than Nicolas Retuya.[28] Tranquiliana narrated that at first she refused to sign the deed of sale because the buyer placed in the deed was Pacita and not Nicolas, her understanding being that the buyer was Nicolas. We find that the trial court in the present case correctly took into consideration the decision in Civil Case No. R-9602.[29] Considering that the decision in Civil Case No. R-9602 has become final and executory, its findings of fact involving the sale of Lot No. 152 to Nicolas and Pacita are conclusive and binding on petitioners who introduced in evidence the decision.

Petitioners also point out that all the other tax declarations presented before the trial court are in the name of Nicolas alone. Petitioners argue that this serves as proof of Nicolas’ exclusive ownership of these properties. Petitioners are mistaken. The tax declarations are not sufficient proof to overcome the presumption under Article 116 of the Family Code. All property acquired by the spouses during the marriage, regardless in whose name the property is registered, is presumed conjugal unless proved otherwise.[30] The presumption is not rebutted by the mere fact that the certificate of title of the property or the tax declaration is in the name of one of the spouses only.[31] Article 116 of the Family Code expressly provides that the presumption remains even if the property is “registered in the name of one or both of the spouses.”

In some of the documents that petitioners presented, Nicolas misrepresented his civil status by claiming that he was single. Petitioners point to this as proof of Nicolas’ desire to exclude Eusebia from the properties covered by the documents.[32] Petitioners further claim that this supports their stand that the subject properties are not conjugal. This argument is baseless. Whether a property is conjugal or not is determined by law and not by the will of one of the spouses. No unilateral declaration by one spouse can change the character of conjugal property. The clear intent of Nicolas in placing his status as single is to exclude Eusebia from her lawful share in the conjugal property. The law does not allow this.

Petitioners point out that Pacita had the means to buy Lot No. 152. Even if Pacita had the financial capacity, this does not prove that Pacita bought Lot No. 152 with her own money. To rebut the presumption that Lot No. 152 is

conjugal, petitioners must prove that Pacita used her own money to pay for Lot No. 152. Petitioners failed to prove this.

Petitioners further argue that since Nicolas and Pacita were already cohabiting when Lot No. 152 was acquired, the lot cannot be deemed conjugal property of Nicolas and Eusebia. Petitioners keep belaboring this point in their petition and memorandum.

Petitioners' argument is flawed.

The cohabitation of a spouse with another person, even for a long period, does not sever the tie of a subsisting previous marriage.[33] Otherwise, the law would be giving a stamp of approval to an act that is both illegal and immoral. What petitioners fail to grasp is that Nicolas and Pacita's cohabitation cannot work to the detriment of Eusebia, the legal spouse. The marriage of Nicolas and Eusebia continued to exist regardless of the fact that Nicolas was already living with Pacita. Hence, all property acquired from 7 October 1926, the date of Nicolas and Eusebia's marriage, until 23 November 1996, the date of Eusebia's death, are still presumed conjugal. Petitioners have neither claimed nor proved that any of the subject properties was acquired outside or beyond this period.

Finally, petitioners' reliance on Article 148 of the Family Code[34] is misplaced. A reading of Article 148 readily shows that there must be proof of "actual joint contribution" by both the live-in partners before the property becomes co-owned by them in proportion to their contribution. The presumption of equality of contribution arises only in the absence of proof of their proportionate contributions, subject to the condition that actual joint contribution is proven first. Simply put, proof of actual contribution by both parties is required, otherwise there is no co-ownership and no presumption of equal sharing. Petitioners failed to show proof of actual contribution by Pacita in the acquisition of Lot No. 152. In short, petitioners failed to prove that Pacita bought Lot No. 152 with her own money, or that she actually contributed her own money to acquire it.

WHEREFORE, we DENY the petition. The Decision of the Court of Appeals dated 31 January 2000 in CA-G.R. CV No. 46716 is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] This is the parcel of land situated at Tipolo, Mandaue City in the name of Pacita Villanueva under Tax Declaration No. 01450.

[3] Rollo, p. 120.

[4] RTC Records, p. 1.

[5] Ibid., p. 19.

[6] *Macaraeg v. Court of Appeals*, G.R. No. 48008, 20 January 1989, 169 SCRA 259.

[7] *Permanent Concrete Products, Inc. v. Teodoro*, 135 Phil. 364 (1968).

[8] *Caltex, Inc. v. Court of Appeals*, G.R. No. 97753, 10 August 1992, 212 SCRA 448.

[9] *Velasco v. Apostol*, G.R. No. 44588, 9 May 1989, 173 SCRA 228.

[10] *Munasque v. Court of Appeals*, G.R. No. L-39780, 11 November 1985, 139 SCRA 533.

[11] Some instances where we reviewed matters raised for the first time on appeal involved the presence of at least one of the following circumstances:

- that the issues are closely related to one properly assigned (PCIB v. CA et al., L-34931, 18 March 1988, 159 SCRA 24);
- that the determination of an issue properly assigned is dependent upon the one being raised for the first time (Ortigas, Jr. v. Lufthansa German Airlines, L-28773, 30 June 1975, 64 SCRA 610);
- if in avoiding the issue, the Court would be sacrificing substance for technicality (Dilag v. Heirs of Resurreccion, 76 Phil. 649 [1946]).

[12] Supra note 6.

[13] Sanchez v. Court of Appeals, 345 Phil. 155 (1997).

[14] Section 1, Rule 45, Rules of Court.

[15] As laid out in Ramos, et al. v. Pepsi-Cola Bottling Co, 125 Phil. 701 (1967):

(a)

when the conclusion is a finding grounded entirely on speculations, surmises and conjectures;

(b)

when the inference made is manifestly mistaken, absurd or impossible;

(c)

where there is grave abuse of discretion;

(d)

when the judgment is based on a misapprehension of facts;

(e)

when the findings of fact of the trial court and the appellate court are conflicting;

(f)

where the appellate court manifestly overlooked relevant facts which would have justified a different conclusion;

(g)

where the findings of fact are contradicted by the evidence of record.

[16] Which consist of the following:

- A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24951;
- A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24952;
- A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24953;
- A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24954;
- A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24956;

- A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24957;
- A parcel of land located at Pulpugan, Consolacion, Cebu under tax dec. No. 24958;
- A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01042;
- A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01043;
- A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01046;
- A parcel of land located at Tipolo, Mandaue City, covered by tax dec. No. 01041;
- A parcel of land located at Nawanao-Subangdaku, Mandaue City covered by tax dec. No. 01488;
- A parcel of land located at Baklid, Mandaue City, covered by tax dec. No. 00492;
- A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01044;
- A residential house located at Tipolo, Mandaue City covered by tax dec. No. 01050;
- A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01048;
- A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01051;
- A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01047;
- A parcel of land located at Banilad, Mandaue City covered by tax dec. No. 02381;
- A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01049;
- A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01045;
- A parcel of land located at Tipolo, Mandaue City covered by tax dec. No. 01450 (in the name of Pacita Villanueva).

[17] The Family Code took effect on 3 August 1988.

[18] The second paragraph of which reads:

The provisions of this Chapter shall also apply to conjugal partnerships already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 255.

[19] Article 116, E.O. 209, The Family Code of the Philippines.

[20] *Lim v. Garcia*, 7 Phil. 320 (1907).

[21] *Perez v. Lantin*, 132 Phil. 219 (1968).

[22] *Rollo*, p. 60.

[23] *RTC Records*, pp. 52 to 75.

[24] *People v. Cordero*, G.R. No. 136894-96, 7 February 2001, 351 SCRA 383.

[25] *Rollo*, p. 135.

[26] *Ahern v. Julian*, 39 Phil. 607 (1919).

[27] Exhibit 6-A, Civil Case No. R- 9602 of Branch IV, Regional Trial Court of Cebu.

[28] “Third-party defendant Tranquiliana declared: (sic) that when Nicolas Retuya offered to buy the lot, she told him that she already owned a portion thereof and that even after the deed of sale was prepared, she refused to sign it at the very beginning because the sale was in favor of Pacita Villanueva and not in Nicolas as she was made to believe. When she signed the deed of sale because of the insistence of her uncle Nicolas Retuya, she reminded him that she was selling her share, but Nicolas Retuya told her that he will take care of his brothers and sisters.” (Emphasis added)

[29] RTC Decision, p. 6.

[30] Diancin v. Court of Appeals, G.R. No. 119991, 20 November 2000, 345 SCRA 117.

[31] Mendoza v. Reyes, 209 Phil. 120 (1983).

[32] Rollo, p. 129.

[33] Borja-Manzano v. Sanchez, A.M. No. MTJ-00-1329, 8 March 2001, 354 SCRA 1.

[34] The pertinent portion of which provides:

“Art. 148. In cases of cohabitation not falling under the preceding Article, 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. xxx” (Emphasis supplied)

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