

ELNA MERCADO-FEHR, PETITIONER, VS. BRUNO FEHR, RESPONDENT.

G.R. No. 152716. October 23, 2003

Ponente: PUNO, J.

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PUNO, J.:

This case arose from a petition for declaration of nullity of marriage on the ground of psychological incapacity to comply with the essential marital obligations under Article 36 of the Family Code filed by petitioner Elna Mercado-Fehr against respondent Bruno Fehr before the Regional Trial Court of Makati in March 1997.[1]

After due proceedings, the trial court declared the marriage between petitioner and respondent void ab initio under Article 36 of the Family Code and ordered the dissolution of their conjugal partnership of property.[2] The dispositive portion of the Decision dated January 30, 1998 states:

WHEREFORE, in the light of the foregoing, the marriage between Elna D. Mercado and Bruno F. Fehr on March 14, 1985 is hereby declared null and void on the ground of psychological incapacity on the part of respondent to perform the essential obligations of marriage under Article 36 of the Family Code.

Accordingly, the conjugal partnership of property existing between the parties is dissolved and in lieu thereof, a regime of complete separation of property between the said spouses is established in accordance with the pertinent provisions of the Family Code, without prejudice to the rights previously acquired by creditors.

Custody over the two minor children, MICHAEL BRUNO MERCADO FEHR and PATRICK FRANZ FEHR, is hereby awarded to petitioner, she being the innocent spouse.

Let a copy of this Decision be duly recorded in the proper civil and property registries in accordance with Article 52 of the Family Code.

SO ORDERED.[3]

On August 24, 1999, the trial court issued an Order resolving the various motions[4] filed by respondent after the case had been decided. The Order pertained to the properties held by the parties, thus:

x x x x x x x x

After a careful scrutiny of the inventory of properties submitted by both parties, the Court finds the following properties to be excluded from the conjugal properties, namely:

- a) the Bacolod property covered by Transfer Certificate of Title No. T-137232, considering that the same is owned by petitioner's parents, Herminio Mercado and Catalina D. Mercado xxx and
- b) Suite 204 of the LCG Condominium covered by Condominium Certificate of Title No. 14735, considering that the same was purchased on installment basis by respondent with his exclusive funds prior to his marriage, as evidenced by a Contract to Sell dated July 26, 1983. xxx

Accordingly, the conjugal properties of the petitioner and respondent shall be distributed in the following

manner:

TO PETITIONER ELNA MERCADO:

- Ground Floor, LCG Condominium, with an area of 671.84 sq. m., covered by Condominium Certificate of Title No. 14734; and
- Tamaraw FX (1995 model)

TO RESPONDENT BRUNO FRANZ FEHR:

- Upper Basement, LCG Condominium, with an area of 180.81 sq. m. and covered by Condominium Certificate of Title No. 14733; and
- Nissan Sentra with Plate No. FDJ-533 (1994 model)

Furthermore, Suite 204, LCG Condominium with an area of 113.54 sq. m. and covered by Condominium Certificate of Title NO. 14735 is hereby declared the EXCLUSIVE PROPERTY of respondent, BRUNO FRANZ FEHR. Accordingly, petitioner is hereby directed to transfer ownership of Suite 204 in the name of respondent, covered by Condominium Certificate of Title No. 14735, being respondent's exclusive property, acquired prior to his marriage.

Anent the monthly rentals prior to the issuance of this Order of the subject properties, namely the Ground Floor Front (Friday's Club), Ground Floor Rear Apartment and Upper Basement at LGC Condominium, all leased by Bar 4 Corporation, the same shall be shared by the parties in common, in proportion to one-half each or share and share alike, after deducting all expenses for Income Taxes, Business Permits, Realty Taxes, Municipal License fees, clearances, etc. Accordingly, petitioner is hereby directed to deliver to respondent the following: a) the balance of his share of the monthly rentals from February 1998 to May 1998; and b) his one-half share (1/2) of the monthly rentals of the aforesaid properties from June 1998 up to this date. Thereafter, the parties shall own and enjoy their respective share of the monthly rentals derived from the properties adjudicated to them as stated above.

The Petitioner and Respondent are further enjoined to jointly support their minor children, Michael and Patrick Fehr, for their education, uniforms, food and medical expenses.[5]

Petitioner filed a motion for reconsideration of said Order with respect to the adjudication of Suite 204, LCG Condominium and the support of the children. Petitioner alleged that Suite 204 was purchased on installment basis at the time when petitioner and respondent were living exclusively with each other as husband and wife without the benefit of marriage, hence the rules on co-ownership should apply in accordance with Article 147 of the Family Code. Petitioner further claimed that it would not be in the best interests of the children if she would be made to demand periodically from respondent his share in the support of the children. She instead proposed that the Upper Basement and the Lower Ground Floor of the LCG Condominium be adjudicated to her so that she could use the income from the lease of said premises for the support of the children.[6]

Resolving said motion, the trial court held in an Order dated October 5, 2000 that since the marriage between petitioner and respondent was declared void ab initio, the rules on co-ownership should apply in the liquidation and partition of the properties they own in common pursuant to Article 147 of the Family Code. The court, however, noted that the parties have already agreed in principle to divide the properties and/or proceeds from the sale thereof proportionately among them and their children as follows: 1/3 for petitioner, 1/3 for respondent and 1/3 for the children. It also affirmed its previous ruling that Suite 204 of LCG Condominium was acquired prior to the couple's cohabitation and therefore pertained solely to respondent.[7]

On November 28, 2000, petitioner filed a notice of appeal questioning the October 5, 2000 Order of the trial

court.[8] Respondent filed an Opposition to the Notice of Appeal.[9] On January 12, 2001, petitioner withdrew the notice of appeal[10] and instead filed on the following day a special civil action for certiorari and prohibition with the Court of Appeals, questioning the findings of the trial court in its Order dated October 5, 2000.[11]

The Court of Appeals, in its Decision dated October 26, 2001, dismissed the petition for certiorari for lack of merit. The appellate court stated that petitioner has not shown any reason to warrant the issuance of a writ of certiorari as the errors she raised were mere errors of judgment which were the proper subject of an ordinary appeal, not a petition for certiorari.[12]

Petitioner filed a motion for reconsideration of said Decision, which was also denied by the appellate court.[13]

Hence this petition. Petitioner raises the following arguments:

1)

Petitioner correctly filed a petition for certiorari and prohibition against the Regional Trial Court of Makati, Branch 149 in the Court of Appeals in view of the fact that the questioned orders were issued with grave abuse of discretion amounting to excess of or lack of jurisdiction.

2)

The Court of Appeals erred in ruling that the questioned orders were errors of judgment and not of jurisdiction.[14]

We shall first address the procedural issue, whether the Court of Appeals erred in dismissing the special civil action for certiorari filed by petitioner.

Petitioner argues that the filing of a petition for certiorari with the Court of Appeals was proper because the trial court committed grave abuse of discretion in the issuance of its Order dated October 5, 2000, and there were no other speedy and adequate remedies available. She asserts that the trial court committed grave abuse of discretion when it held that Suite 204 of the LCG Condominium was the exclusive property of respondent, although it was established that they lived together as husband and wife beginning March 1983, before the execution of the Contract to Sell on July 26, 1983. Furthermore, the trial court's ruling dividing their properties into three, instead of two as provided under Article 147 of the Family Code, or four, as allegedly agreed by the parties during a conference with the trial court judge on May 3, 2000, also constituted grave abuse of discretion.[15]

Respondent, on the other hand, contends that petitioner may no longer avail of any remedy, whether an appeal or a petition for certiorari, as she had lost all the right to appeal from the time the Decision of January 30, 1998 became final and executory. He argues that the Order of the trial court dated October 5, 2000 is no longer assailable because it was merely issued to execute the final and executory Decision of January 30, 1998. He also submits that the division of the properties into three and the distribution of 1/3 share each to the petitioner, the respondent, and their children was proper, in accordance with Articles 50, 51, 147 and 148 of the Family Code mandating the delivery of the presumptive legitime of the common children upon dissolution of the property regime. Respondent further claims Suite 204 of LCG Condominium to be his exclusive property as it was acquired on July 26, 1983, prior to their marriage on March 14, 1985.[16]

A petition for certiorari is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. Grave abuse of discretion is defined as the capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. As a general rule, a petition for certiorari will not lie if an appeal is the proper remedy such as

when an error of judgment or procedure is involved. As long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil action of certiorari. However, in certain exceptional cases, where the rigid application of such rule will result in a manifest failure or miscarriage of justice, the provisions of the Rules of Court which are technical rules may be relaxed. Certiorari has been deemed to be justified, for instance, in order to prevent irreparable damage and injury to a party where the trial judge has capriciously and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a party from the injurious effects of the judgment complained of.[17]

The exception applies to the case at bar. We reject respondent's submission that all the appellate remedies of petitioner have been foreclosed when the Decision dated January 30, 1998 became final and executory. What is being questioned in this petition is not the January 30, 1998 Decision of the trial court declaring the marriage between petitioner and respondent void ab initio on the ground of psychological incapacity, but the Order of the trial court dated October 5, 2000 dividing the common properties of petitioner and respondent into three--1/3 to petitioner, 1/3 to respondent and 1/3 to their children, and affirming its previous ruling that Suite 204 of LCG Condominium is the exclusive property of respondent. The issue on the validity of the marriage of petitioner and respondent has long been settled in the main Decision and may no longer be the subject of review. There were, however, incidental matters that had to be addressed regarding the dissolution of the property relations of the parties as a result of the declaration of nullity of their marriage. The questioned Order pertained to the division and distribution of the common properties of petitioner and respondent, pursuant to the court's directive in its main decision to dissolve the conjugal partnership. Said Order is a final Order as it finally disposes of the issues concerning the partition of the common properties of petitioner and respondent, and as such it may be appealed by the aggrieved party to the Court of Appeals via ordinary appeal. However, considering the merits of the case, the Court believes that a blind adherence to the general rule will result in miscarriage of justice as it will divest the petitioner of her just share in their common property, and thus, deprive her of a significant source of income to support their children whom the court had entrusted to her care. We have held that where a rigid application of the rule that certiorari cannot be a substitute for appeal will result in a manifest failure or miscarriage of justice, the provisions of the Rules of Court which are technical rules may be relaxed.[18]

We now go to the substantive issues. The crux of the petition is the ownership of Suite 204 of LCG Condominium and how the properties acquired by petitioner and respondent should be partitioned.

It appears from the facts, as found by the trial court, that in March 1983, after two years of long-distance courtship, petitioner left Cebu City and moved in with respondent in the latter's residence in Metro Manila. Their relations bore fruit and their first child, Michael Bruno Fehr, was born on December 3, 1983. The couple got married on March 14, 1985. In the meantime, they purchased on installment a condominium unit, Suite 204, at LCG Condominium, as evidenced by a Contract to Sell dated July 26, 1983 executed by respondent as the buyer and J.V. Santos Commercial Corporation as the seller. Petitioner also signed the contract as witness, using the name "Elna Mercado Fehr". Upon completion of payment, the title to the condominium unit was issued in the name of petitioner.[19]

In light of these facts, we give more credence to petitioner's submission that Suite 204 was acquired during the parties' cohabitation. Accordingly, under Article 147 of the Family Code, said property should be governed by the rules on co-ownership. The Family Code provides:

Article 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of 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 to the acquisition thereof if the former's efforts consisted in the care and maintenance of their family and of the household.

Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. (emphasis supplied)

Article 147 applies to unions of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void,[20] as in the case at bar. This provision creates a co-ownership with respect to the properties they acquire during their cohabitation.

We held in *Valdes vs. Regional Trial Court, Br. 102, Quezon City*:^[21]

This peculiar kind of co-ownership applies when a man and a woman, suffering no legal impediment to marry each other, so exclusively live together as husband and wife under a void marriage or without the benefit of marriage. The term "capacitated" in the provision (in the first paragraph of the law) refers to the legal capacity of a party to contract marriage, i.e., any "male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Article 37 and 38" of the Code.

Under this property regime, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership. Any property acquired during the union is prima facie presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party's "efforts consisted in the care and maintenance of the family household."

Thus, for Article 147 to operate, the man and the woman: (1) must be capacitated to marry each other; (2) live exclusively with each other as husband and wife; and (3) their union is without the benefit of marriage or their marriage is void. All these elements are present in the case at bar. It has not been shown that petitioner and respondent suffered any impediment to marry each other. They lived exclusively with each other as husband and wife when petitioner moved in with respondent in his residence and were later united in marriage. Their marriage, however, was found to be void under Article 36 of the Family Code because of respondent's psychological incapacity to comply with essential marital obligations.

The disputed property, Suite 204 of LCG Condominium, was purchased on installment basis on July 26, 1983, at the time when petitioner and respondent were already living together. Hence, it should be considered as common property of petitioner and respondent.

As regards the settlement of the common properties of petitioner and respondent, we hold that the Civil Code provisions on co-ownership should apply. There is nothing in the records that support the pronouncement of the trial court that the parties have agreed to divide the properties into three--1/3 share each to the petitioner, the respondent and their children. Petitioner, in fact, alleges in her petition before this Court that the parties have

agreed on a four-way division of the properties--1/4 share each to the petitioner and the respondent, and 1/4 share each to their two children. Moreover, respondent's argument that the three-way partition is in accordance with Articles 50 and 51 of the Family Code does not hold water as said provisions relate only to voidable marriages and exceptionally to void marriages under Article 40 of the Family Code, i.e., the declaration of nullity of a subsequent marriage contracted by a spouse of a prior void marriage before the latter is judicially declared void.[22]

In sum, we rule in favor of the petitioner. We hold that Suite 204 of LCG Condominium is a common property of petitioner and respondent and the property regime of the parties should be divided in accordance with the law on co-ownership.

IN VIEW WHEREOF, the petition is GRANTED. The case is hereby REMANDED to the Regional Trial Court of Makati, Branch 149 for liquidation of the properties of petitioner and respondent in accordance with this Court's ruling.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.
Carpio-Morales, J., no part.

[1] Docketed as Civil Case No. 97-573, Original Records, pp. 1-10.

[2] Decision dated January 30, 1998 penned by Judge Josefina Guevara Salonga, Original Records, pp. 138-144.

[3] Id. at 143-144.

[4] Respondent filed the following motions: (1) Motion for Approval of Inventory of Property of the Petitioner and Respondent; (2) Motion for Distribution of Rental Income; and (3) Motion to Deposit Rentals in Court, which were all opposed by petitioner.

[5] Original Records, pp. 325-326.

[6] Id. at 381-387.

[7] Id. at 576-577.

[8] Id. at 578.

[9] Id. at 581-584.

[10] Id. at 608.

[11] CA Rollo, pp. 2-14.

[12] Id. at 124-129.

[13] Id. at 153.

[14] Petition, Rollo, pp. 19-20.

[15] Id. at 14-27.

[16] Comment, Rollo, pp. 147-158.

[17] Estate of Salud Jimenez vs. Philippine Export Processing Zone, 349 SCRA 240 (2001).

[18] BF Corporation vs. Court of Appeals, 288 SCRA 267 (1998); See also Caraan vs. Court of Appeals, 289 SCRA 579 (1998).

[19] See Decision, Civil Case No. 97-573, pp. 1-4.

[20] Cariño vs. Cariño, 351 SCRA 127 (2001).

[21] 260 SCRA 221 (1996).

[22] Valdes vs. Regional Trial Court, Br. 102, Quezon City, *supra*.

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