

**FLORDELIZA CALPATURA FLORA, DOMINADOR CALPATURA AND
TOMAS CALPATURA, JR., HEIRS OF TOMAS CALPATURA, SR.,
PETITIONERS, VS. ROBERTO, ERLINDA, DANIEL, GLORIA, PATRICIO,
JR. AND EDN...**

G.R. No. 156879. January 20, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

The property under litigation is the northern half portion of a residential land consisting of 552.20 square meters, more or less, situated at 19th Avenue, Murphy, Quezon City and covered by Transfer Certificate of Title No. 71344 issued on August 15, 1963 by the Register of Deeds of Quezon City in the name of Narcisa Prado and her children by her first husband, Patricio Prado, Sr., namely, Roberto, Erlinda, Daniel, Gloria, Patricio, Jr. and Edna, respondents herein.

The pertinent facts are as follows:

On December 19, 1959, Patricio Prado, Sr. died. Narcisa subsequently married Bonifacio Calpatura. In order to support her minor children with her first husband, Narcisa and her brother-in-law, Tomas Calpatura, Sr., executed on April 26, 1968 an Agreement of Purchase and Sale whereby the former agreed to sell to the latter the northern half portion of the property for the sum of P10,500.00.[1] On July 28, 1973, Narcisa executed a Deed of Absolute Sale in favor of Tomas over the said property.[2]

In 1976, Tomas' daughter, Flordeliza Calpatura Flora, built a two-storey duplex with firewall[3] on the northern half portion of the property. Respondents, who occupied the southern half portion of the land, did not object to the construction. Flordeliza Flora and her husband Wilfredo declared the property for taxation purposes[4] and paid the corresponding taxes thereon.[5] Likewise, Maximo Calpatura, the son of Tomas' cousin, built a small house on the northern portion of the property.

On April 8, 1991, respondents filed a complaint for declaration of nullity of sale and delivery of possession of the northern half portion of the subject property against petitioners Flordeliza Calpatura Flora, Dominador Calpatura and Tomas Calpatura, Jr. before the Regional Trial Court of Quezon City, Branch 100, docketed as Civil Case No. Q-91-8404.[6] Respondents alleged that the transaction embodied in the Agreement to Purchase and Sale between Narcisa and Tomas was one of mortgage and not of sale; that Narcisa's children tried to redeem the mortgaged property but they learned that the blank document which their mother had signed was transformed into a Deed of Absolute Sale; that Narcisa could not have sold the northern half portion of the property considering that she was prohibited from selling the same within a period of 25 years from its acquisition, pursuant to the condition annotated at the back of the title;[7] that Narcisa, as natural guardian of her children, had no authority to sell the northern half portion of the property which she and her children co-owned; and that only P5,000.00 out of the consideration of P10,500.00 was paid by Tomas.

In their answer, petitioners countered that Narcisa owned 9/14 of the property, consisting of ½ as her share in the conjugal partnership with her first husband and 1/7 as her share in the estate of her deceased husband; that the consideration of the sale in the amount of P10,500.00 had been fully paid as of April 1, 1968; that Narcisa sold her conjugal share in order to support her minor children; that Narcisa's claim was barred by laches and prescription; and that the Philippine Homesite and Housing Corporation, not the respondents, was the real party in interest to question the sale within the prohibited period.

On April 2, 1997, the court a quo[8] dismissed the complaint. It found that the sale was valid; that the Agreement to Purchase and Sale and the Deed of Absolute Sale were duly executed; that the sum of P10,500.00 as selling price for the subject property was fully paid there being no demand for the payment of the remaining balance; that the introduction of improvements thereon by the petitioners was without objection from the respondents; and that Roberto and Erlinda failed to contest the transaction within four years after the discovery of the alleged fraud and reaching the majority age in violation of Article 1391 of the Civil Code.[9]

Petitioners appealed the decision to the Court of Appeals, where it was docketed as CA-G.R. CV No. 56843. On October 3, 2002, a decision[10] was rendered by the Court of Appeals declaring that respondents were co-owners of the subject property, thus the sale was valid only insofar as Narcisa's 1/7 undivided share thereon was concerned. The dispositive portion of the said decision reads:

WHEREFORE, the appealed Decision is AFFIRMED, with the MODIFICATION that the sale in dispute is declared valid only with respect to the one-seventh (1/7) share of plaintiff-appellant NARCISA H. PRADO in the subject property, which is equivalent to 78.8857 square meters. In all other respects, the same decision stands. No pronouncement as to costs.

SO ORDERED.[11]

Petitioner filed a motion for reconsideration which was denied in a Resolution dated January 14, 2003.[12] Hence this petition for review on the following assigned errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN MODIFYING THE DECISION RENDERED BY THE REGIONAL TRIAL COURT WITHOUT TAKING INTO CONSIDERATION THAT, ASIDE FROM THE DECLARATION OF THE VALIDITY OF THE SALE, THE PETITIONERS HEREIN HAVE TAKEN ACTUAL POSSESSION OF THE SAID ONE-HALF (1/2) TO THE EXCLUSION OF THE RESPONDENTS AND INTRODUCED IMPROVEMENTS THEREON.

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN MODIFYING THE DECISION RENDERED BY THE REGIONAL TRIAL COURT WITHOUT TAKING INTO CONSIDERATION THE CLEAR AND UNEQUIVOCAL STATEMENT IN THE SALE THAT THE SAME PERTAINS TO THE CONJUGAL SHARE OF RESPONDENT NARCISA PRADO AND THE OTHER RESPONDENTS HAD NO FINANCIAL CAPACITY TO ACQUIRE THE SAID PROPERTY SINCE THEY WERE MINORS THEN AT THE ISSUANCE OF THE SAID TCT NO. 71344 ON AUGUST 15, 1963.

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN NOT DECLARING THE HEREIN RESPONDENTS GUILTY OF LACHES IN FILING THE INSTANT CASE ONLY ON APRIL 8, 1991, THAT IS 18 YEARS AFTER THE SAID SALE WITH THE PETITIONERS

TAKING ACTUAL POSSESSION OF SAID PORTION OF THE PROPERTY.

IV

THAT THE DECISION OF THE HON. COURT OF APPEALS WILL UNDULY ENRICH THE RESPONDENTS AT THE EXPENSE OF THE HEREIN PETITIONERS.[13]

At the outset, it must be stressed that only questions of law may be raised in petitions for review before this Court under Rule 45 of the Rules of Court.[14] It was thus error for petitioners to ascribe to the Court of Appeals grave abuse of discretion. This procedural lapse notwithstanding, in the interest of justice, this Court shall treat the issues as cases of reversible error.[15]

The issues for resolution are: (1) Is the subject property conjugal or paraphernal? (2) Is the transaction a sale or a mortgage? (3) Assuming that the transaction is a sale, what was the area of the land subject of the sale?

Article 160 of the Civil Code, which was in effect at the time the sale was entered into, provides that all property of the marriage is presumed to belong to the conjugal partnership unless it is proved that it pertains exclusively to the husband or to the wife. Proof of acquisition during the marriage is a condition sine qua non in order for the presumption in favor of conjugal ownership to operate.[16]

In the instant case, while Narcisa testified during cross-examination that she bought the subject property from People's Homesite Housing Corporation with her own funds,[17] she, however admitted in the Agreement of Purchase and Sale and the Deed of Absolute Sale that the property was her conjugal share with her first husband, Patricio, Sr.[18] A verbal assertion that she bought the land with her own funds is inadmissible to qualify the terms of a written agreement under the parole evidence rule.[19] The so-called parole evidence rule forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. Whatever is not found in the writing is understood to have been waived and abandoned.[20]

Anent the second issue, the Deed of Absolute Sale executed by Narcisa in favor of Tomas is contained in a notarized[21] document. In *Spouses Alfarero, et al. v. Spouses Sevilla, et al.*,[22] it was held that a public document executed and attested through the intervention of a notary public is evidence of the facts in a clear, unequivocal manner therein expressed. Otherwise stated, public or notarial documents, or those instruments duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved. In order to contradict the presumption of regularity of a public document, evidence must be clear, convincing, and more than merely preponderant.

It is well-settled that in civil cases, the party that alleges a fact has the burden of proving it.[23] Except for the bare allegation that the transaction was one of mortgage and not of sale, respondents failed to adduce evidence in support thereof. Respondents also failed to controvert the presumption that private transactions have been fair and regular.[24]

Furthermore, Narcisa, in fact did not deny that she executed an Affidavit allowing spouses Wilfredo and Flordeliza Flora to construct a firewall between the two-storey duplex and her house sometime in 1976. The duplex was made of strong materials, the roofing being galvanized sheets. While the deed of sale between Tomas and Narcisa was never registered nor annotated on the title, respondents had knowledge of the possession of petitioners of the northern half portion of the property. Obviously, respondents recognized the ownership of Tomas, petitioners' predecessor-in-interest.

Respondents belatedly claimed that only P5,000.00 out of the P10,500.00 consideration was paid. Both the Agreement of Purchase and Sale and the Deed of Absolute Sale state that said consideration was paid in full. Moreover, the presumption is that there was sufficient consideration for a written contract.[25]

The property being conjugal, upon the death of Patricio Prado, Sr., one-half of the subject property was automatically reserved to the surviving spouse, Narcisa, as her share in the conjugal partnership. Patricio's rights to the other half, in turn, were transmitted upon his death to his heirs, which includes his widow Narcisa, who is entitled to the same share as that of each of the legitimate children. Thus, as a result of the death of Patricio, a regime of co-ownership arose between Narcisa and the other heirs in relation to the property. The remaining one-half was transmitted to his heirs by intestate succession. By the law on intestate succession, his six children and Narcisa Prado inherited the same at one-seventh (1/7) each pro indiviso.[26] Inasmuch as Narcisa inherited one-seventh (1/7) of her husband's conjugal share in the said property and is the owner of one-half (1/2) thereof as her conjugal share, she owns a total of 9/14 of the subject property. Hence, Narcisa could validly convey her total undivided share in the entire property to Tomas. Narcisa and her children are deemed co-owners of the subject property.

Neither can the respondents invoke the proscription of encumbering the property within 25 years from acquisition. In *Sarmiento, et al. v. Salud, et al.*,[27] it was held that:

xxx The condition that the appellees Sarmiento spouses could not resell the property except to the People's Homesite and Housing Corporation (PHHC for short) within the next 25 years after appellees' purchasing the lot is manifestly a condition in favor of the PHHC, and not one in favor of the Sarmiento spouses. The condition conferred no actionable right on appellees herein, since it operated as a restriction upon their *jus disponendi* of the property they bought, and thus limited their right of ownership. It follows that on the assumption that the mortgage to appellee Salud and the foreclosure sale violated the condition in the Sarmiento contract, only the PHHC was entitled to invoke the condition aforementioned, and not the Sarmientos. The validity or invalidity of the sheriff's foreclosure sale to appellant Salud thus depended exclusively on the PHHC; the latter could attack the sale as violative of its right of exclusive reacquisition; but it (PHHC) also could waive the condition and treat the sale as good, in which event, the sale can not be assailed for breach of the condition aforesaid.

Finally, no particular portion of the property could be identified as yet and delineated as the object of the sale considering that the property had not yet been partitioned in accordance with the Rules of Court.[28] While Narcisa could validly sell one half of the subject property, her share being 9/14 of the same, she could not have particularly conveyed the northern portion thereof before the partition, the terms of which was still to be determined by the parties before the trial court.

WHEREFORE, the Decision of the Court of Appeals on October 3, 2002, as well as the Resolution dated January 14, 2003 is PARTLY AFFIRMED subject to the following MODIFICATIONS:

1)

Narcisa Prado is entitled to 9/14 of the residential land consisting of 552.20 square meters, more or less, situated at 19th Avenue, Murphy, Quezon City and covered by Transfer Certificate of Title No. 71344;

2)

the sale of the undivided one half portion thereof by Narcisa Prado in favor of Tomas Calpatura, Sr. is valid.

Furthermore, the case is REMANDED to the court of origin, only for the purpose of determining the specific

portion being conveyed in favor of Tomas Calpatura, Sr. pursuant to the partition that will be agreed upon by the respondents.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Records, p. 36.

[2] Records, p. 202.

[3] Affidavit executed by Narcisa Prado authorizing spouses Wilfredo and Flordeliza Flora to construct a firewall.

[4] Tax Declaration No. B-102-00-537 issued by City Assessor of Quezon City.

[5] Receipts secured by Flordeliza Calpatura Flora but issued in the name of Narcisa Prado-

Receipt Nos. 598798-1991; 966399-1992; 073714-1993; 309113-1993; 690423-1994; 1015627-1995; 223105-1996

Receipts in the name of Flordeliza Flora - 583531-1976; 583530-1977; 982901-1978; 982902-1979; 982903-1980

[6] Records, pp. 16-21.

[7] (2) This lot is being sold subject to the condition that it cannot be resold within a period of twenty five (25) years from the date of this contract, and that if by circumstances, the purchaser is constrained to resell, within this period, he may sell it only to the People's Homesite and Housing Corporation at the original purchase price plus 5% interest per annum and the appraised cost of the improvements thereon.

[8] Through Judge Mariano C. Del Castillo.

[9] The action for annulment shall be brought within four years. This period shall begin:

x x x x x x x x

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

[10] Penned by Justice Salvador J. Valdez, Jr. with Justices Mercedes Gozo-Dadole and Sergio L. Pestaño, concurring.

[11] CA-G.R. CV No. 56843, pp. 9-10, Rollo, pp. 95-96.

[12] CA Rollo, pp. 97-99.

[13] Rollo, p. 8.

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

[15] Ramirez, et al. v. Court of Appeals, et al., G.R. No. 138441, 15 August 2003, citing AB Leasing and Finance Corporation v. Commissioner of Internal Revenue, G.R. No. 138342, 8 July 2003; Panado v. Court of Appeals, 298 SCRA 110, 116 (1998); People's Aircargo and Warehousing Co., Inc. v. Court of Appeals, 297 SCRA 170, 181 (1998).

[16] Ruiz v. Court of Appeals, et al., G.R. No. 146942, 22 April 2003.

[17] TSN, 25 April 1994, p. 21.

[18] Deed of Absolute Sale, p. 1, Rollo, p. 202.

[19] Rule 130, Section 7, 1964 Rules of Court.

Evidence of written agreements.- When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing xxx.

[20] Manufacturers Building, Inc. v. Court of Appeals, et al., G.R. No. 116847, 16 March 2001, citing CKH Industrial and Development Corporation v. Court of Appeals, 338 Phil. 837, 851 (1997).

[21] Notary Public Ex Officio Manuel P. Pastor.

[22] G.R. No. 142974, 22 September 2003.

[23] Citibank, NA Mastercard v. Teodoro, G.R. No. 150905, 23 September 2003.

[24] Rule 131, Section 5 (p), 1964 Rules of Court.

[25] Rule 131, Section 5 (r) of the 1964 Rules of Court.

[26] Article 996 of the Civil Code.

If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children.

[27] 45 SCRA 213, 215-216 (1972).

[28] Alejandrino v. Court of Appeals, G.R. No. 114151, 17 September 1998.

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