

**MARIA B. CHING, PETITIONER, VS. JOSEPH C. GOYANKO, JR.,
EVELYN GOYANKO, JERRY GOYANKO, IMELDA GOYANKO, JULIUS
GOYANKO, MARY ELLEN GOYANKO AND JESS GOYANKO,
RESPONDENTS.**

G.R. NO. 165879. November 10, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On December 30, 1947, Joseph Goyanko (Goyanko) and Epifania dela Cruz (Epifania) were married.[1] Out of the union were born respondents Joseph, Jr., Evelyn, Jerry, Imelda, Julius, Mary Ellen and Jess, all surnamed Goyanko.

Respondents claim that in 1961, their parents acquired a 661 square meter property located at 29 F. Cabahug St., Cebu City but that as they (the parents) were Chinese citizens at the time, the property was registered in the name of their aunt, Sulpicia Ventura (Sulpicia).

On May 1, 1993, Sulpicia executed a deed of sale[2] over the property in favor of respondents' father Goyanko. In turn, Goyanko executed on October 12, 1993 a deed of sale[3] over the property in favor of his common-law-wife-herein petitioner Maria B. Ching. Transfer Certificate of Title (TCT) No. 138405 was thus issued in petitioner's name.

After Goyanko's death on March 11, 1996, respondents discovered that ownership of the property had already been transferred in the name of petitioner. Respondents thereupon had the purported signature of their father in the deed of sale verified by the Philippine National Police Crime Laboratory which found the same to be a forgery.[4]

Respondents thus filed with the Regional Trial Court of Cebu City a complaint for recovery of property and damages against petitioner, praying for the nullification of the deed of sale and of TCT No. 138405 and the issuance of a new one in favor of their father Goyanko.

In defense, petitioner claimed that she is the actual owner of the property as it was she who provided its purchase price. To disprove that Goyanko's signature in the questioned deed of sale is a forgery, she presented as witness the notary public who testified that Goyanko appeared and signed the document in his presence.

By Decision of October 16, 1998,[5] the trial court dismissed the complaint against petitioner, the pertinent portions of which decision read:

There is no valid and sufficient ground to declare the sale as null and void, fictitious and simulated. The signature on the questioned Deed of Sale is genuine. The testimony of Atty. Salvador Barrameda who declared in court that Joseph Goyanko, Sr. and Maria Ching together with their witnesses appeared before him for notarization of Deed of Sale in question is more reliable than the conflicting testimonies of the two document examiners. Defendant Maria Ching asserted that the Deed of Sale executed by Joseph Goyanko, Sr. in her

favor is valid and genuine. The signature of Joseph Goyanko, Sr. in the questioned Deed of Absolute Sale is genuine as it was duly executed and signed by Joseph Goyanko, Sr. himself.

The parcel of lands known as Lot No. 6 which is sought to be recovered in this case could never be considered as the conjugal property of the original Spouses Joseph C. Goyanko and Epifania dela Cruz or the exclusive capital property of the husband. The acquisition of the said property by defendant Maria Ching is well-elicited from the aforementioned testimonial and documentary evidence presented by the defendant. Although for a time being the property passed through Joseph Goyanko, Sr. as a buyer yet his ownership was only temporary and transitory for the reason that it was subsequently sold to herein defendant Maria Ching. Maria Ching claimed that it was even her money which was used by Joseph Goyanko, Sr. in the purchase of the land and so it was eventually sold to her. In her testimony, defendant Ching justified her financial capability to buy the land for herself. The transaction undertaken was from the original owner Sulpicia Ventura to Joseph Goyanko, Sr. and then from Joseph Goyanko, Sr. to herein defendant Maria Ching.

The land subject of the litigation is already registered in the name of defendant Maria Ching under TCT No. 138405. By virtue of the Deed of Sale executed in favor of Maria Ching, Transfer Certificate of Title No. 138405 was issued in her favor. In recognition of the proverbial virtuality of a Torrens title, it has been repeatedly held that, unless bad faith can be established on the part of the person appearing as owner on the certificate of title, there is no other owner than that in whose favor it has been issued. A Torrens title is not subject to collateral attack. It is a well-known doctrine that a Torrens title, as a rule, is irrevocable and indefeasible, and the duty of the court is to see to it that this title is maintained and respected unless challenged in a direct proceedings [sic].[6] (Citations omitted; underscoring supplied)

Before the Court of Appeals where respondents appealed, they argued that the trial court erred:

- . . . when it dismissed the complaint a quo . . . , in effect, sustaining the sale of the subject property between Joseph, Sr. and the defendant-appellee, despite the proliferation in the records and admissions by both parties that defendant-appellee was the "mistress" or "common-law wife" of Joseph, Sr..
- . . . when it dismissed the complaint a quo . . . , in effect, sustaining the sale of the subject property between Joseph, Sr. and the defendant-appellee, despite the fact that the marriage of Joseph, Sr. and Epifania was then still subsisting thereby rendering the subject property as conjugal property of Joseph, Sr. and Epifania.
- . . . in dismissing the complaint a quo . . . , in effect, sustaining the validity of the sale of the subject property between Joseph, Sr. and the defendant-appellee, despite the clear findings of forgery and the non-credible testimony of notary public.[7]

By Decision dated October 21, 2003,[8] the appellate court reversed that of the trial court and declared null and void the questioned deed of sale and TCT No. 138405. Held the appellate court:

. . . The subject property having been acquired during the existence of a valid marriage between Joseph Sr. and Epifania dela Cruz-Goyanko, is presumed to belong to the conjugal partnership. Moreover, while this presumption in favor of conjugality is rebuttable with clear and convincing proof to the contrary, we find no evidence on record to conclude otherwise. The record shows that while Joseph Sr. and his wife Epifania have been estranged for years and that he and defendant-appellant Maria Ching, have in fact been living together as common-law husband and wife, there has never been a judicial decree declaring the dissolution of his marriage to Epifania nor their conjugal partnership. It is therefore undeniable that the 661-square meter property located at No. 29 F. Cabahug Street, Cebu City belongs to the conjugal partnership.

Even if we were to assume that the subject property was not conjugal, still we cannot sustain the validity of the sale of the property by Joseph, Sr. to defendant-appellant Maria Ching, there being overwhelming evidence on records that they have been living together as common-law husband and wife. On this score, Art. 1352 of the Civil Code provides:

"Art. 1352. Contracts without cause, or with unlawful cause, produce no effect whatsoever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy."

We therefore find that the contract of sale in favor of the defendant-appellant Maria Ching was null and void for being contrary to morals and public policy. The purported sale, having been made by Joseph Sr. in favor of his concubine, undermines the stability of the family, a basic social institution which public policy vigilantly protects. Furthermore, the law emphatically prohibits spouses from selling property to each other, subject to certain exceptions. And this is so because transfers or conveyances between spouses, if allowed during the marriage would destroy the system of conjugal partnership, a basic policy in civil law. The prohibition was designed to prevent the exercise of undue influence by one spouse over the other and is likewise applicable even to common-law relationships otherwise, "the condition of those who incurred guilt would turn out to be better than those in legal union.[9] (Underscoring supplied)

Hence, the present petition, petitioners arguing that the appellate court gravely erred in:

I.

. . . APPLYING THE STATE POLICY ON PROHIBITION AGAINST CONVEYANCES AND TRANSFERS OF PROPERTIES BETWEEN LEGITIMATE AND COMMON LAW SPOUSES ON THE SUBJECT PROPERTY, THE SAME BEING FOUND BY THE COURT A QUO, AS THE EXCLUSIVE PROPERTY OF PETITIONER, AND THAT THE SAME WAS NEVER PART OF THE CONJUGAL PROPERTY OF THE MARRIAGE BETWEEN RESPONDENTS' MOTHER EPIFANIA GOYANKO AND PETITIONER'S COMMON LAW HUSBAND, JOSEPH GOYANKO, SR., NOR THE EXCLUSIVE OR CAPITAL PROPERTY OF THE LATTER AT ANYTIME BEFORE THE SAME WAS VALIDLY ACQUIRED BY PETITIONER.

II.

. . . NOT FINDING THAT A JURIDICAL RELATION OF TRUST AS PROVIDED FOR UNDER ARTICLES 1448 AND 1450 OF THE NEW CIVIL CODE CAN VALIDLY EXIST BETWEEN COMMON LAW SPOUSES.

III.

. . . NOT FINDING THAT A CONVEYANCE OVER A PROPERTY MADE BY A TRUSTEE, WHO BECAME AS SUCH IN CONTEMPLATION OF LAW, AND WHO HAPPENS TO BE A COMMON LAW HUSBAND OF THE BENEFICIARY, IS NOT A VIOLATION OF A STATE POLICY ON PROHIBITION AGAINST CONVEYANCES AND TRANSFERS OF PROPERTIES BETWEEN LEGITIMATE AND COMMON LAW SPOUSES.

IV.

. . . ALLOWING RESPONDENTS TO ABANDON THEIR ORIGINAL THEORY OF THEIR CASE DURING APPEAL.[10]

The pertinent provisions of the Civil Code which apply to the present case read:

ART. 1352. Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy.

ART. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

ARTICLE 1490. The husband and wife cannot sell property to each other, except:

- (1) When a separation of property was agreed upon in the marriage settlements; or
- (2) When there has been a judicial separation of property under Article 191. (Underscoring supplied)

The proscription against sale of property between spouses applies even to common law relationships. So this Court ruled in *Calimlim-Canullas v. Hon. Fortun, etc., et al.*:^[11]

Anent the second issue, we find that the contract of sale was null and void for being contrary to morals and public policy. The sale was made by a husband in favor of a concubine after he had abandoned his family and left the conjugal home where his wife and children lived and from whence they derived their support. The sale was subversive of the stability of the family, a basic social institution which public policy cherishes and protects.

Article 1409 of the Civil Code states inter alia that: contracts whose cause, object, or purposes is contrary to law, morals, good customs, public order, or public policy are void and inexistent from the very beginning.

Article 1352 also provides that: "Contracts without cause, or with unlawful cause, produce no effect whatsoever. The cause is unlawful if it is contrary to law, morals, good customs, public order, or public policy."

Additionally, the law emphatically prohibits the spouses from selling property to each other subject to certain exceptions. Similarly, donations between spouses during marriage are prohibited. And this is so because if transfers or conveyances between spouses were allowed during marriage, that would destroy the system of conjugal partnership, a basic policy in civil law. It was also designed to prevent the exercise of undue influence by one spouse over the other, as well as to protect the institution of marriage, which is the cornerstone of family law. The prohibitions apply to a couple living as husband and wife without benefit of marriage, otherwise, "the condition of those who incurred guilt would turn out to be better than those in legal union." Those provisions are dictated by public interest and their criterion must be imposed upon the will of the parties. . . .^[12] (Italics in the original; emphasis and underscoring supplied)

As the conveyance in question was made by Goyanko in favor of his common-law-wife-herein petitioner, it was null and void.

Petitioner's argument that a trust relationship was created between Goyanko as trustee and her as beneficiary as provided in Articles 1448 and 1450 of the Civil Code which read:

ARTICLE 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

ARTICLE 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of

law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

does not persuade.

For petitioner's testimony that it was she who provided the purchase price is uncorroborated. That she may have been considered the breadwinner of the family and that there was proof that she earned a living do not conclusively clinch her claim.

As to the change of theory by respondents from forgery of their father's signature in the deed of sale to sale contrary to public policy, it too does not persuade. Generally, a party in a litigation is not permitted to freely and substantially change the theory of his case so as not to put the other party to undue disadvantage by not accurately and timely apprising him of what he is up against,[13] and to ensure that the latter is given the opportunity during trial to refute all allegations against him by presenting evidence to the contrary. In the present case, petitioner cannot be said to have been put to undue disadvantage and to have been denied the chance to refute all the allegations against her. For the nullification of the sale is anchored on its illegality per se, it being violative of the above-cited Articles 1352, 1409 and 1490 of the Civil Code.

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED

Quisumbing, (Chairman), Carpio, and Velasco, Jr., JJ., concur.

Tinga, J., on leave.

[1] Records, p. 119.

[2] Id. at 122.

[3] Id. at 40.

[4] Id. at 42.

[5] Id. at 331-346.

[6] Id. at 345-346.

[7] CA rollo, p. 18.

[8] Penned by Justice Delilah Vidallon-Magtolis with the concurrence of Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, id. at 342-346.

[9] Id. at 345-346.

[10] Rollo, pp. 35-36.

[11] 214 Phil. 593 (1984).

[12] Id. at 598-599.

[13] Olympia Housing, Inc. v. Panasiatic Travel Corp., 443 Phil. 385, 399-400 (2003).

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