

BRIGIDO B. QUIAO, PETITIONER, VS. RITA C. QUIAO, KITCHIE C. QUIAO, LOTIS C. QUIAO, PETCHIE C. QUIAO, REPRESENTED BY THEIR MOTHER RITA QUIAO, RESPONDENTS.

G.R. No 176556. July 04, 2012

Ponente: REYES, J.

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REYES, J.:

The family is the basic and the most important institution of society. It is in the family where children are born and molded either to become useful citizens of the country or troublemakers in the community. Thus, we are saddened when parents have to separate and fight over properties, without regard to the message they send to their children. Notwithstanding this, we must not shirk from our obligation to rule on this case involving legal separation escalating to questions on dissolution and partition of properties.

The Case

This case comes before us via Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court. The petitioner seeks that we vacate and set aside the Order[2] dated January 8, 2007 of the Regional Trial Court (RTC), Branch 1, Butuan City. In lieu of the said order, we are asked to issue a Resolution defining the net profits subject of the forfeiture as a result of the decree of legal separation in accordance with the provision of Article 102(4) of the Family Code, or alternatively, in accordance with the provisions of Article 176 of the Civil Code.

Antecedent Facts

On October 26, 2000, herein respondent Rita C. Quiao (Rita) filed a complaint for legal separation against herein petitioner Brigido B. Quiao (Brigido).[3] Subsequently, the RTC rendered a Decision[4] dated October 10, 2005, the dispositive portion of which provides:

WHEREFORE, viewed from the foregoing considerations, judgment is hereby rendered declaring the legal separation of plaintiff Rita C. Quiao and defendant-respondent Brigido B. Quiao pursuant to Article 55.

As such, the herein parties shall be entitled to live separately from each other, but the marriage bond shall not be severed.

Except for Letecia C. Quiao who is of legal age, the three minor children, namely, Kitchie, Lotis and Petchie, all surnamed Quiao shall remain under the custody of the plaintiff who is the innocent spouse.

Further, except for the personal and real properties already foreclosed by the RCBC, all the remaining properties, namely:

- coffee mill in Balongagan, Las Nieves, Agusan del Norte;
- coffee mill in Durian, Las Nieves, Agusan del Norte;
- corn mill in Casiklan, Las Nieves, Agusan del Norte;

- coffee mill in Esperanza, Agusan del Sur;
- a parcel of land with an area of 1,200 square meters located in Tungao, Butuan City;
- a parcel of agricultural land with an area of 5 hectares located in Manila de Bugabos, Butuan City;
- a parcel of land with an area of 84 square meters located in Tungao, Butuan City;
- Bashier Bon Factory located in Tungao, Butuan City;

shall be divided equally between herein [respondents] and [petitioner] subject to the respective legitimes of the children and the payment of the unpaid conjugal liabilities of [P]45,740.00.

[Petitioner's] share, however, of the net profits earned by the conjugal partnership is forfeited in favor of the common children.

He is further ordered to reimburse [respondents] the sum of [P]19,000.00 as attorney's fees and litigation expenses of [P]5,000.00[.]

SO ORDERED.[5]

Neither party filed a motion for reconsideration and appeal within the period provided for under Section 17(a) and (b) of the Rule on Legal Separation.[6]

On December 12, 2005, the respondents filed a motion for execution[7] which the trial court granted in its Order dated December 16, 2005, the dispositive portion of which reads:

“Wherefore, finding the motion to be well taken, the same is hereby granted. Let a writ of execution be issued for the immediate enforcement of the Judgment.

SO ORDERED.”[8]

Subsequently, on February 10, 2006, the RTC issued a Writ of Execution[9] which reads as follows:

NOW THEREFORE, that of the goods and chattels of the [petitioner] BRIGIDO B. QUIAO you cause to be made the sums stated in the afore-quoted DECISION [sic], together with your lawful fees in the service of this Writ, all in the Philippine Currency.

But if sufficient personal property cannot be found whereof to satisfy this execution and your lawful fees, then we command you that of the lands and buildings of the said [petitioner], you make the said sums in the manner required by law. You are enjoined to strictly observed Section 9, Rule 39, Rule [sic] of the 1997 Rules of Civil Procedure.

You are hereby ordered to make a return of the said proceedings immediately after the judgment has been satisfied in part or in full in consonance with Section 14, Rule 39 of the 1997 Rules of Civil Procedure, as amended.[10]

On July 6, 2006, the writ was partially executed with the petitioner paying the respondents the amount of P46,870.00, representing the following payments:

- (a) P22,870.00 – as petitioner's share of the payment of the conjugal share;
- (b) P19,000.00 – as attorney's fees; and
- (c) P5,000.00 – as litigation expenses.[11]

On July 7, 2006, or after more than nine months from the promulgation of the Decision, the petitioner filed before

the RTC a Motion for Clarification,[12] asking the RTC to define the term “Net Profits Earned.”

To resolve the petitioner's Motion for Clarification, the RTC issued an Order[13] dated August 31, 2006, which held that the phrase “NET PROFIT EARNED” denotes “the remainder of the properties of the parties after deducting the separate properties of each [of the] spouse and the debts.”[14] The Order further held that after determining the remainder of the properties, it shall be forfeited in favor of the common children because the offending spouse does not have any right to any share of the net profits earned, pursuant to Articles 63, No. (2) and 43, No. (2) of the Family Code.[15] The dispositive portion of the Order states:

WHEREFORE, there is no blatant disparity when the sheriff intends to forfeit all the remaining properties after deducting the payments of the debts for only separate properties of the defendant-respondent shall be delivered to him which he has none.

The Sheriff is herein directed to proceed with the execution of the Decision.

IT IS SO ORDERED.[16]

Not satisfied with the trial court's Order, the petitioner filed a Motion for Reconsideration[17] on September 8, 2006. Consequently, the RTC issued another Order[18] dated November 8, 2006, holding that although the Decision dated October 10, 2005 has become final and executory, it may still consider the Motion for Clarification because the petitioner simply wanted to clarify the meaning of “net profit earned.”[19] Furthermore, the same Order held:

ALL TOLD, the Court Order dated August 31, 2006 is hereby ordered set aside. NET PROFIT EARNED, which is subject of forfeiture in favor of [the] parties' common children, is ordered to be computed in accordance [with] par. 4 of Article 102 of the Family Code.[20]

On November 21, 2006, the respondents filed a Motion for Reconsideration,[21] praying for the correction and reversal of the Order dated November 8, 2006. Thereafter, on January 8, 2007,[22] the trial court had changed its ruling again and granted the respondents' Motion for Reconsideration whereby the Order dated November 8, 2006 was set aside to reinstate the Order dated August 31, 2006.

Not satisfied with the trial court's Order, the petitioner filed on February 27, 2007 this instant Petition for Review under Rule 45 of the Rules of Court, raising the following:

Issues

I

IS THE DISSOLUTION AND THE CONSEQUENT LIQUIDATION OF THE COMMON PROPERTIES OF THE HUSBAND AND WIFE BY VIRTUE OF THE DECREE OF LEGAL SEPARATION GOVERNED BY ARTICLE 125 (SIC) OF THE FAMILY CODE?

II

WHAT IS THE MEANING OF THE NET PROFITS EARNED BY THE CONJUGAL PARTNERSHIP FOR PURPOSES OF EFFECTING THE FORFEITURE AUTHORIZED UNDER ARTICLE 63 OF THE FAMILY CODE?

III

WHAT LAW GOVERNS THE PROPERTY RELATIONS BETWEEN THE HUSBAND AND WIFE WHO GOT MARRIED IN 1977? CAN THE FAMILY CODE OF THE PHILIPPINES BE GIVEN RETROACTIVE EFFECT FOR PURPOSES OF DETERMINING THE NET PROFITS SUBJECT OF FORFEITURE AS A RESULT OF THE DECREE OF LEGAL SEPARATION WITHOUT IMPAIRING VESTED RIGHTS ALREADY ACQUIRED UNDER THE CIVIL CODE?

IV

WHAT PROPERTIES SHALL BE INCLUDED IN THE FORFEITURE OF THE SHARE OF THE GUILTY SPOUSE IN THE NET CONJUGAL PARTNERSHIP AS A RESULT OF THE ISSUANCE OF THE DECREE OF LEGAL SEPARATION?[23]

Our Ruling

While the petitioner has raised a number of issues on the applicability of certain laws, we are well-aware that the respondents have called our attention to the fact that the Decision dated October 10, 2005 has attained finality when the Motion for Clarification was filed.[24] Thus, we are constrained to resolve first the issue of the finality of the Decision dated October 10, 2005 and subsequently discuss the matters that we can clarify.

The Decision dated October 10, 2005 has become final and executory at the time the Motion for Clarification was filed on July 7, 2006.

Section 3, Rule 41 of the Rules of Court provides:

Section 3. Period of ordinary appeal. - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

In *Neypes v. Court of Appeals*,[25] we clarified that to standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, we held that “it would be practical to allow a fresh period of 15 days within which to file the notice of appeal in the RTC, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.”[26]

In *Neypes*, we explained that the “fresh period rule” shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the RTCs; Rule 42 on petitions for review from the RTCs to the Court of Appeals (CA); Rule 43 on appeals from quasi-judicial agencies to the CA and Rule 45 governing appeals by certiorari to the Supreme Court. We also said, “The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.”[27] In other words, a party litigant may file his notice of appeal within a fresh 15-day period from his receipt of the trial court's decision or final order denying his motion for new trial or motion for reconsideration. Failure to avail of the fresh 15-day period from the denial of the motion for reconsideration makes the decision or final order in question final and executory.

In the case at bar, the trial court rendered its Decision on October 10, 2005. The petitioner neither filed a motion for reconsideration nor a notice of appeal. On December 16, 2005, or after 67 days had lapsed, the trial court issued an order granting the respondent's motion for execution; and on February 10, 2006, or after 123 days had lapsed, the trial court issued a writ of execution. Finally, when the writ had already been partially executed, the petitioner, on July 7, 2006 or after 270 days had lapsed, filed his Motion for Clarification on the definition of the “net profits earned.” From the foregoing, the petitioner had clearly slept on his right to question the RTC's Decision dated October 10, 2005. For 270 days, the petitioner never raised a single issue until the decision had already been partially executed. Thus at the time the petitioner filed his motion for clarification, the trial court's decision has become final and executory. A judgment becomes final and executory when the reglementary period to appeal lapses and no appeal is perfected within such period. Consequently, no court, not even this Court, can arrogate unto itself appellate jurisdiction to review a case or modify a judgment that became final.[28]

The petitioner argues that the decision he is questioning is a void judgment. Being such, the petitioner's thesis is that it can still be disturbed even after 270 days had lapsed from the issuance of the decision to the filing of the motion for clarification. He said that "a void judgment is no judgment at all. It never attains finality and cannot be a source of any right nor any obligation." [29] But what precisely is a void judgment in our jurisdiction? When does a judgment becomes void?

"A judgment is null and void when the court which rendered it had no power to grant the relief or no jurisdiction over the subject matter or over the parties or both." [30] In other words, a court, which does not have the power to decide a case or that has no jurisdiction over the subject matter or the parties, will issue a void judgment or a coram non iudice. [31]

The questioned judgment does not fall within the purview of a void judgment. For sure, the trial court has jurisdiction over a case involving legal separation. Republic Act (R.A.) No. 8369 confers upon an RTC, designated as the Family Court of a city, the exclusive original jurisdiction to hear and decide, among others, complaints or petitions relating to marital status and property relations of the husband and wife or those living together. [32] The Rule on Legal Separation [33] provides that "the petition [for legal separation] shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner." [34] In the instant case, herein respondent Rita is found to reside in Tungao, Butuan City for more than six months prior to the date of filing of the petition; thus, the RTC, clearly has jurisdiction over the respondent's petition below. Furthermore, the RTC also acquired jurisdiction over the persons of both parties, considering that summons and a copy of the complaint with its annexes were served upon the herein petitioner on December 14, 2000 and that the herein petitioner filed his Answer to the Complaint on January 9, 2001. [35] Thus, without doubt, the RTC, which has rendered the questioned judgment, has jurisdiction over the complaint and the persons of the parties.

From the aforecited facts, the questioned October 10, 2005 judgment of the trial court is clearly not void ab initio, since it was rendered within the ambit of the court's jurisdiction. Being such, the same cannot anymore be disturbed, even if the modification is meant to correct what may be considered an erroneous conclusion of fact or law. [36] In fact, we have ruled that for "[as] long as the public respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected only by appeal." [37] Granting without admitting that the RTC's judgment dated October 10, 2005 was erroneous, the petitioner's remedy should be an appeal filed within the reglementary period. Unfortunately, the petitioner failed to do this. He has already lost the chance to question the trial court's decision, which has become immutable and unalterable. What we can only do is to clarify the very question raised below and nothing more.

For our convenience, the following matters cannot anymore be disturbed since the October 10, 2005 judgment has already become immutable and unalterable, to wit:

- (a) The finding that the petitioner is the offending spouse since he cohabited with a woman who is not his wife; [38]
- (b) The trial court's grant of the petition for legal separation of respondent Rita; [39]
- (c) The dissolution and liquidation of the conjugal partnership; [40]
- (d) The forfeiture of the petitioner's right to any share of the net profits earned by the conjugal partnership; [41]
- (e) The award to the innocent spouse of the minor children's custody; [42]

- (f) The disqualification of the offending spouse from inheriting from the innocent spouse by intestate succession;[43]
- (g) The revocation of provisions in favor of the offending spouse made in the will of the innocent spouse;[44]
- (h) The holding that the property relation of the parties is conjugal partnership of gains and pursuant to Article 116 of the Family Code, all properties acquired during the marriage, whether acquired by one or both spouses, is presumed to be conjugal unless the contrary is proved;[45]
- (i) The finding that the spouses acquired their real and personal properties while they were living together;[46]
- (j) The list of properties which Rizal Commercial Banking Corporation (RCBC) foreclosed;[47]
- (k) The list of the remaining properties of the couple which must be dissolved and liquidated and the fact that respondent Rita was the one who took charge of the administration of these properties;[48]
- (l) The holding that the conjugal partnership shall be liable to matters included under Article 121 of the Family Code and the conjugal liabilities totaling P503,862.10 shall be charged to the income generated by these properties;[49]
- (m) The fact that the trial court had no way of knowing whether the petitioner had separate properties which can satisfy his share for the support of the family;[50]
- (n) The holding that the applicable law in this case is Article 129(7);[51]
- (o) The ruling that the remaining properties not subject to any encumbrance shall therefore be divided equally between the petitioner and the respondent without prejudice to the children's legitime;[52]
- (p) The holding that the petitioner's share of the net profits earned by the conjugal partnership is forfeited in favor of the common children;[53] and
- (q) The order to the petitioner to reimburse the respondents the sum of P19,000.00 as attorney's fees and litigation expenses of P5,000.00.[54]

After discussing lengthily the immutability of the Decision dated October 10, 2005, we will discuss the following issues for the enlightenment of the parties and the public at large.

Article 129 of the Family Code applies to the present case since the parties' property relation is governed by the system of relative community or conjugal partnership of gains.

The petitioner claims that the court a quo is wrong when it applied Article 129 of the Family Code, instead of Article 102. He confusingly argues that Article 102 applies because there is no other provision under the Family Code which defines net profits earned subject of forfeiture as a result of legal separation.

Offhand, the trial court's Decision dated October 10, 2005 held that Article 129(7) of the Family Code applies in this case. We agree with the trial court's holding.

First, let us determine what governs the couple's property relation. From the record, we can deduce that the petitioner and the respondent tied the marital knot on January 6, 1977. Since at the time of the exchange of marital vows, the operative law was the Civil Code of the Philippines (R.A. No. 386) and since they did not agree on a marriage settlement, the property relations between the petitioner and the respondent is the system of relative community or conjugal partnership of gains.[55] Article 119 of the Civil Code provides:

Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

Thus, from the foregoing facts and law, it is clear that what governs the property relations of the petitioner and of the respondent is conjugal partnership of gains. And under this property relation, “the husband and the wife place in a common fund the fruits of their separate property and the income from their work or industry.”[56] The husband and wife also own in common all the property of the conjugal partnership of gains.[57]

Second, since at the time of the dissolution of the petitioner and the respondent's marriage the operative law is already the Family Code, the same applies in the instant case and the applicable law in so far as the liquidation of the conjugal partnership assets and liabilities is concerned is Article 129 of the Family Code in relation to Article 63(2) of the Family Code. The latter provision is applicable because according to Article 256 of the Family Code “[t]his Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other law.”[58]

Now, the petitioner asks: Was his vested right over half of the common properties of the conjugal partnership violated when the trial court forfeited them in favor of his children pursuant to Articles 63(2) and 129 of the Family Code?

We respond in the negative.

Indeed, the petitioner claims that his vested rights have been impaired, arguing: “As earlier adverted to, the petitioner acquired vested rights over half of the conjugal properties, the same being owned in common by the spouses. If the provisions of the Family Code are to be given retroactive application to the point of authorizing the forfeiture of the petitioner's share in the net remainder of the conjugal partnership properties, the same impairs his rights acquired prior to the effectivity of the Family Code.”[59] In other words, the petitioner is saying that since the property relations between the spouses is governed by the regime of Conjugal Partnership of Gains under the Civil Code, the petitioner acquired vested rights over half of the properties of the Conjugal Partnership of Gains, pursuant to Article 143 of the Civil Code, which provides: “All property of the conjugal partnership of gains is owned in common by the husband and wife.”[60] Thus, since he is one of the owners of the properties covered by the conjugal partnership of gains, he has a vested right over half of the said properties, even after the promulgation of the Family Code; and he insisted that no provision under the Family Code may deprive him of this vested right by virtue of Article 256 of the Family Code which prohibits retroactive application of the Family Code when it will prejudice a person's vested right.

However, the petitioner's claim of vested right is not one which is written on stone. In *Go, Jr. v. Court of Appeals*,[61] we define and explained “vested right” in the following manner:

A vested right is one whose existence, effectivity and extent do not depend upon events foreign to the will of the holder, or to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. The term “vested right” expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny.

To be vested, a right must have become a title—legal or equitable—to the present or future enjoyment of property.[62] (Citations omitted)

In our en banc Resolution dated October 18, 2005 for ABAKADA Guro Party List Officer Samson S. Alcantara,

et al. v. The Hon. Executive Secretary Eduardo R. Ermita,[63] we also explained:

The concept of “vested right” is a consequence of the constitutional guaranty of due process that expresses a present fixed interest which in right reason and natural justice is protected against arbitrary state action; it includes not only legal or equitable title to the enforcement of a demand but also exemptions from new obligations created after the right has become vested. Rights are considered vested when the right to enjoyment is a present interest, absolute, unconditional, and perfect or fixed and irrefutable.[64] (Emphasis and underscoring supplied)

From the foregoing, it is clear that while one may not be deprived of his “vested right,” he may lose the same if there is due process and such deprivation is founded in law and jurisprudence.

In the present case, the petitioner was accorded his right to due process. First, he was well-aware that the respondent prayed in her complaint that all of the conjugal properties be awarded to her.[65] In fact, in his Answer, the petitioner prayed that the trial court divide the community assets between the petitioner and the respondent as circumstances and evidence warrant after the accounting and inventory of all the community properties of the parties.[66] Second, when the Decision dated October 10, 2005 was promulgated, the petitioner never questioned the trial court's ruling forfeiting what the trial court termed as “net profits,” pursuant to Article 129(7) of the Family Code.[67] Thus, the petitioner cannot claim being deprived of his right to due process.

Furthermore, we take note that the alleged deprivation of the petitioner's “vested right” is one founded, not only in the provisions of the Family Code, but in Article 176 of the Civil Code. This provision is like Articles 63 and 129 of the Family Code on the forfeiture of the guilty spouse's share in the conjugal partnership profits. The said provision says:

Art. 176. In case of legal separation, the guilty spouse shall forfeit his or her share of the conjugal partnership profits, which shall be awarded to the children of both, and the children of the guilty spouse had by a prior marriage. However, if the conjugal partnership property came mostly or entirely from the work or industry, or from the wages and salaries, or from the fruits of the separate property of the guilty spouse, this forfeiture shall not apply.

In case there are no children, the innocent spouse shall be entitled to all the net profits.

From the foregoing, the petitioner's claim of a vested right has no basis considering that even under Article 176 of the Civil Code, his share of the conjugal partnership profits may be forfeited if he is the guilty party in a legal separation case. Thus, after trial and after the petitioner was given the chance to present his evidence, the petitioner's vested right claim may in fact be set aside under the Civil Code since the trial court found him the guilty party.

More, in *Abalos v. Dr. Macatangay, Jr.*,[68] we reiterated our long-standing ruling that:

[P]rior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of each spouse is limited to the net remainder or “remanente liquido” (haber ganancial) resulting from the liquidation of the affairs of the partnership after its dissolution. Thus, the right of the husband or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership, or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets left which can be divided between the spouses or their respective heirs.[69] (Citations omitted)

Finally, as earlier discussed, the trial court has already decided in its Decision dated October 10, 2005 that the

applicable law in this case is Article 129(7) of the Family Code.[70] The petitioner did not file a motion for reconsideration nor a notice of appeal. Thus, the petitioner is now precluded from questioning the trial court's decision since it has become final and executory. The doctrine of immutability and unalterability of a final judgment prevents us from disturbing the Decision dated October 10, 2005 because final and executory decisions can no longer be reviewed nor reversed by this Court.[71]

From the above discussions, Article 129 of the Family Code clearly applies to the present case since the parties' property relation is governed by the system of relative community or conjugal partnership of gains and since the trial court's Decision has attained finality and immutability.

The net profits of the conjugal partnership of gains are all the fruits of the separate properties of the spouses and the products of their labor and industry.

The petitioner inquires from us the meaning of "net profits" earned by the conjugal partnership for purposes of effecting the forfeiture authorized under Article 63 of the Family Code. He insists that since there is no other provision under the Family Code, which defines "net profits" earned subject of forfeiture as a result of legal separation, then Article 102 of the Family Code applies.

What does Article 102 of the Family Code say? Is the computation of "net profits" earned in the conjugal partnership of gains the same with the computation of "net profits" earned in the absolute community?

Now, we clarify.

First and foremost, we must distinguish between the applicable law as to the property relations between the parties and the applicable law as to the definition of "net profits." As earlier discussed, Article 129 of the Family Code applies as to the property relations of the parties. In other words, the computation and the succession of events will follow the provisions under Article 129 of the said Code. Moreover, as to the definition of "net profits," we cannot but refer to Article 102(4) of the Family Code, since it expressly provides that for purposes of computing the net profits subject to forfeiture under Article 43, No. (2) and Article 63, No. (2), Article 102(4) applies. In this provision, net profits "shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution." [72] Thus, without any iota of doubt, Article 102(4) applies to both the dissolution of the absolute community regime under Article 102 of the Family Code, and to the dissolution of the conjugal partnership regime under Article 129 of the Family Code. Where lies the difference? As earlier shown, the difference lies in the processes used under the dissolution of the absolute community regime under Article 102 of the Family Code, and in the processes used under the dissolution of the conjugal partnership regime under Article 129 of the Family Code.

Let us now discuss the difference in the processes between the absolute community regime and the conjugal partnership regime.

On Absolute Community Regime:

When a couple enters into a regime of absolute community, the husband and the wife becomes joint owners of all the properties of the marriage. Whatever property each spouse brings into the marriage, and those acquired during the marriage (except those excluded under Article 92 of the Family Code) form the common mass of the couple's properties. And when the couple's marriage or community is dissolved, that common mass is divided between the spouses, or their respective heirs, equally or in the proportion the parties have established, irrespective of the value each one may have originally owned.[73]

Under Article 102 of the Family Code, upon dissolution of marriage, an inventory is prepared, listing separately

all the properties of the absolute community and the exclusive properties of each; then the debts and obligations of the absolute community are paid out of the absolute community's assets and if the community's properties are insufficient, the separate properties of each of the couple will be solidarily liable for the unpaid balance. Whatever is left of the separate properties will be delivered to each of them. The net remainder of the absolute community is its net assets, which shall be divided between the husband and the wife; and for purposes of computing the net profits subject to forfeiture, said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.[74]

Applying Article 102 of the Family Code, the “net profits” requires that we first find the market value of the properties at the time of the community's dissolution. From the totality of the market value of all the properties, we subtract the debts and obligations of the absolute community and this result to the net assets or net remainder of the properties of the absolute community, from which we deduct the market value of the properties at the time of marriage, which then results to the net profits.[75]

Granting without admitting that Article 102 applies to the instant case, let us see what will happen if we apply Article 102:

(a) According to the trial court's finding of facts, both husband and wife have no separate properties, thus, the remaining properties in the list above are all part of the absolute community. And its market value at the time of the dissolution of the absolute community constitutes the “market value at dissolution.”

(b) Thus, when the petitioner and the respondent finally were legally separated, all the properties which remained will be liable for the debts and obligations of the community. Such debts and obligations will be subtracted from the “market value at dissolution.”

(c) What remains after the debts and obligations have been paid from the total assets of the absolute community constitutes the net remainder or net asset. And from such net asset/remainder of the petitioner and respondent's remaining properties, the market value at the time of marriage will be subtracted and the resulting totality constitutes the “net profits.”

(d) Since both husband and wife have no separate properties, and nothing would be returned to each of them, what will be divided equally between them is simply the “net profits.” However, in the Decision dated October 10, 2005, the trial court forfeited the half-share of the petitioner in favor of his children. Thus, if we use Article 102 in the instant case (which should not be the case), nothing is left to the petitioner since both parties entered into their marriage without bringing with them any property.

On Conjugal Partnership Regime:

Before we go into our disquisition on the Conjugal Partnership Regime, we make it clear that Article 102(4) of the Family Code applies in the instant case for purposes only of defining “net profit.” As earlier explained, the definition of “net profits” in Article 102(4) of the Family Code applies to both the absolute community regime and conjugal partnership regime as provided for under Article 63, No. (2) of the Family Code, relative to the provisions on Legal Separation.

Now, when a couple enters into a regime of conjugal partnership of gains under Article 142 of the Civil Code, “the husband and the wife place in common fund the fruits of their separate property and income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage.”[76] From the foregoing provision, each of the couple has his and her own property and debts. The law does not intend to effect a mixture or merger of those debts or properties between the spouses. Rather, it establishes a complete separation of capitals.[77]

Considering that the couple's marriage has been dissolved under the Family Code, Article 129 of the same Code applies in the liquidation of the couple's properties in the event that the conjugal partnership of gains is dissolved, to wit:

Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

- (1) An inventory shall be prepared, listing separately all the properties of the conjugal partnership and the exclusive properties of each spouse.
- (2) Amounts advanced by the conjugal partnership in payment of personal debts and obligations of either spouse shall be credited to the conjugal partnership as an asset thereof.
- (3) Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the conjugal partnership.
- (4) The debts and obligations of the conjugal partnership shall be paid out of the conjugal assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of paragraph (2) of Article 121.
- (5) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
- (6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family, belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the conjugal funds, if any.
- (7) The net remainder of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.
- (8) The presumptive legitimes of the common children shall be delivered upon the partition in accordance with Article 51.
- (9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.

In the normal course of events, the following are the steps in the liquidation of the properties of the spouses:

(a) An inventory of all the actual properties shall be made, separately listing the couple's conjugal properties and their separate properties.[78] In the instant case, the trial court found that the couple has no separate properties when they married.[79] Rather, the trial court identified the following conjugal properties, to wit:

1. coffee mill in Balongagan, Las Nieves, Agusan del Norte;
2. coffee mill in Durian, Las Nieves, Agusan del Norte;
3. corn mill in Casiklan, Las Nieves, Agusan del Norte;
4. coffee mill in Esperanza, Agusan del Sur;
5. a parcel of land with an area of 1,200 square meters located in Tungao, Butuan City;
6. a parcel of agricultural land with an area of 5 hectares located in Manila de Bugabos, Butuan City;

7. a parcel of land with an area of 84 square meters located in Tungao, Butuan City;

8. Bashier Bon Factory located in Tungao, Butuan City.[80]

(b) Ordinarily, the benefit received by a spouse from the conjugal partnership during the marriage is returned in equal amount to the assets of the conjugal partnership;[81] and if the community is enriched at the expense of the separate properties of either spouse, a restitution of the value of such properties to their respective owners shall be made.[82]

(c) Subsequently, the couple's conjugal partnership shall pay the debts of the conjugal partnership; while the debts and obligation of each of the spouses shall be paid from their respective separate properties. But if the conjugal partnership is not sufficient to pay all its debts and obligations, the spouses with their separate properties shall be solidarily liable.[83]

(d) Now, what remains of the separate or exclusive properties of the husband and of the wife shall be returned to each of them.[84] In the instant case, since it was already established by the trial court that the spouses have no separate properties,[85] there is nothing to return to any of them. The listed properties above are considered part of the conjugal partnership. Thus, ordinarily, what remains in the above-listed properties should be divided equally between the spouses and/or their respective heirs.[86] However, since the trial court found the petitioner the guilty party, his share from the net profits of the conjugal partnership is forfeited in favor of the common children, pursuant to Article 63(2) of the Family Code. Again, lest we be confused, like in the absolute community regime, nothing will be returned to the guilty party in the conjugal partnership regime, because there is no separate property which may be accounted for in the guilty party's favor.

In the discussions above, we have seen that in both instances, the petitioner is not entitled to any property at all. Thus, we cannot but uphold the Decision dated October 10, 2005 of the trial court. However, we must clarify, as we already did above, the Order dated January 8, 2007.

WHEREFORE, the Decision dated October 10, 2005 of the Regional Trial Court, Branch 1 of Butuan City is AFFIRMED. Acting on the Motion for Clarification dated July 7, 2006 in the Regional Trial Court, the Order dated January 8, 2007 of the Regional Trial Court is hereby CLARIFIED in accordance with the above discussions.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] Rollo, pp. 7-35.

[2] Penned by Judge Eduardo S. Casals; id. at 115-122.

[3] Id. at 36.

[4] Id. at 36-57.

[5] Id. at 56-57.

[6] A.M. No. 02-11-11-SC.

[7] Rollo, p. 185.

[8] Id. at 59.

- [9] Id. at 58-59.
- [10] Id. at 59.
- [11] Id. at 60.
- [12] Id. at 61-69.
- [13] Id. at 70-76.
- [14] Id. at 75.
- [15] Id. at 74-75.
- [16] Id. at 75-76.
- [17] Id. at 77-86.
- [18] Id. at 87-91.
- [19] Id. at 90.
- [20] Id. at 91.
- [21] Id. at 92-97.
- [22] Id. at 115-122.
- [23] Id. at 18.
- [24] Id. at 143-146.
- [25] 506 Phil. 613, 629 (2005).
- [26] Id. at 626.
- [27] Id. at 627.
- [28] PCI Leasing and Finance, Inc., v. Milan, G.R. No. 151215, April 5, 2010, 617 SCRA 258.
- [29] Rollo, p. 166.
- [30] See Moreno, Federico B., Philippine Law Dictionary, 3rd ed., 1988, p. 998.
- [31] People v. Judge Navarro, 159 Phil. 863, 874 (1975).
- [32] R.A. No. 8369, Section 5(d).
- [33] A.M. No. 02-11-11-SC.
- [34] Id. at Section 2(c).
- [35] Rollo, p. 38.
- [36] Sps. Edillo v. Sps. Dulpina, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 601-602.
- [37] Lim v. Judge Vianzon, 529 Phil. 472, 483-484 (2006); See also Herrera v. Barretto and Joaquin, 25 Phil. 245, 256 (1913), citing Miller v. Rowan, 251 Ill., 344.
- [38] Rollo, pp. 50-51.

[39] Id. at 51.

[40] Id.

[41] Id. at 51-52.

[42] Id. at 52 and 56.

[43] Id. at 52.

[44] Id.

[45] Id.

[46] Id.

[47] Id. at 52-53.

[48] Id. at 53.

[49] Id. at 53-54.

[50] Id. at 55.

[51] Id.

[52] Id. at 56.

[53] Id. at 57.

[54] Id.

[55] CIVIL CODE OF THE PHILIPPINES, Art. 119.

[56] Id. at Art. 142.

[57] Id. at Art. 143.

[58] FAMILY CODE OF THE PHILIPPINES, Art. 256.

[59] Rollo, p. 29.

[60] CIVIL CODE OF THE PHILIPPINES, Art. 143.

[61] G.R. No. 172027, July 29, 2010, 626 SCRA 180, 201.

[62] Id. at 199.

[63] The Court consolidated the following cases: ABAKADA Guro Party List Officer Samson S. Alcantara, et al. v. The Hon. Executive Secretary Eduardo R. Ermita, G.R. No. 168056; Aquilino Q. Pimentel, Jr., et al. v. Executive Secretary Eduardo R. Ermita, et al., G.R. No. 168207; Association of Pilipinas Shell Dealers, Inc., et al. v. Cesar V. Purisima, et al., G.R. No. 168461; Francis Joseph G. Escudero v. Cesar V. Purisima, et al, G.R. No. 168463; and Bataan Governor Enrique T. Garcia, Jr. v. Hon. Eduardo R. Ermita, et al., G.R. No. 168730.

[64] Id.

[65] Rollo, p. 37.

[66] Id. at 39.

[67] Id. at 55-57.

[68] 482 Phil. 877-894 (2004).

[69] Id. at 890-891.

[70] Rollo, p. 55.

[71] *Malayan Employees Association-FFW v. Malayan Insurance Co., Inc.*, G.R. No. 181357, February 2, 2010, 611 SCRA 392, 399; *Catmon Sales Int'l. Corp. v. Atty. Yngson, Jr.*, G.R. No. 179761, January 15, 2010, 610 SCRA 236, 245.

[72] FAMILY CODE OF THE PHILIPPINES, Art. 102(4).

[73] Id. at Art. 91; See also Tolentino, Arturo, M., *Commentaries and Jurisprudence on the CIVIL CODE OF THE PHILIPPINES: Volume One with the FAMILY CODE OF THE PHILIPPINES*, 379 (1990).

[74] FAMILY CODE OF THE PHILIPPINES, Art. 102.

[75] Tolentino, Arturo, M., *Commentaries and Jurisprudence on the Civil Code of the Philippines: Volume One with the Family Code of the Philippines*, 401-402 (1990).

[76] CIVIL CODE OF THE PHILIPPINES, Art. 142.

[77] Tolentino, Arturo, M., *Commentaries and Jurisprudence on the CIVIL CODE OF THE PHILIPPINES: Volume One*, 365 (1974).

[78] Tolentino, Arturo, M., *Commentaries and Jurisprudence on the CIVIL CODE OF THE PHILIPPINES: Volume One with the FAMILY CODE OF THE PHILIPPINES*, 472 (1990).

[79] Rollo, p. 55.

[80] Id. at 56-57.

[81] FAMILY CODE OF THE PHILIPPINES, Art. 129(2).

[82] Id. at Art. 129(3).

[83] Id. at Art. 129(4).

[84] Id. at Art. 129(5).

[85] Rollo, p. 55.

[86] Family Code of the Philippines, Art. 129(7).

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