

BENJAMIN A. KO, EDUARDO A. KO, ALEXANDER A. KO, MA. CYNTHIA K. AZADA-CHUA, GARY A. KO, ANTHONY A. KO, FELIX A. KO, AND DANTON C. KO, PETITIONERS, V. VIRGINIA DY ARAMBURO, VICKY ...

G.R. No. 190995. August 09, 2017

Ponente: TIJAM, J.

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TIJAM, J.:

This is a Petition for Review on Certiorari[1] under Rule 45, assailing the Decision[2] dated September 22, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 89611, affirming the Decision dated February 16, 2006 of the Regional Trial Court (RTC) of Tabaco City, Branch 15, in Civil Case No. T-1693.

Factual and Procedural Antecedents

Respondent Virginia Dy Aramburo (Virginia) is Corazon Aramburo Ko's (Corazon) sister-in-law, the former being the wife of the latter's brother, Simeon Aramburo (Simeon). Corazon and Simeon have another sibling, Augusto Aramburo (Augusto), who predeceased them. Virginia's co-respondents herein are the heirs of Augusto, while the petitioners in the instant case are the heirs of Corazon who substituted the latter after she died while the case was pending before the CA.[3]

On November 26, 1993, Virginia, together with her co-respondents herein, filed a Complaint for Recovery of Ownership with Declaration of Nullity and/or Alternatively Reconveyance and Damages with Preliminary Injunction against Corazon, docketed as Civil Case No. T-1693.[4]

Subject of this case are seven parcels of land located in Tabaco City, Albay, to wit: (1) Transfer Certificate of Title (TCT) No. T-41187 with an area of 176,549 square meters, more or less; (2) TCT No. T-41183 with an area of 217,732 sq m, more or less; (3) TCT No. T-41184 with an area of 39,674 sq m, more or less; (4) TCT No. T-28161 with an area of 86,585 sq m, more or less; (5) TCT No. T-41186 with an area of 4,325 sq m, more or less; (6) TCT No. 49818 with an area of 27,281 sq m, more or less; and (7) TCT No. 49819 with an area of 35,760 sq m, more or less (subject properties), now all under the name of Corazon.[5]

The complaint alleged that Virginia and her husband Simeon (Spouses Simeon and Virginia), together with Corazon and her husband Felix (Spouses Felix and Corazon), acquired the subject properties from Spouses Eusebio and Epifania Casaul (Spouses Eusebio and Epifania) through a Deed of Cession dated April 10, 1970.[6]

On April 13, 1970, Spouses Simeon and Virginia and Spouses Felix and Corazon executed a Deed of Cession in favor of Augusto's heirs, subject of which is the one-third pro-indiviso portion of the subject properties.[7]

However, allegedly with the use of falsified documents, Corazon was able to have the entire subject properties transferred exclusively to her name, depriving her co-owners Virginia and Augusto's heirs of their pro-indiviso share, as well as in the produce of the same.[8]

For her part, Corazon admitted having acquired the subject properties through cession from their uncle and auntie,

Spouses Eusebio and Epifania. She, however, intimated that although the said properties were previously registered under Spouses Eusebio and Epifania's name, the same were, in truth, owned by their parents, Spouses Juan and Juliana Aramburo (Spouses Juan and Juliana). Hence, when her parents died, Spouses Eusebio and Epifania allegedly merely returned the said properties to Spouses Juan and Juliana by ceding the same to their children, Corazon and Simeon. She further averred that the said properties were ceded only to her and Simeon, in that, her husband Felix's name and Virginia's name appearing in the Deed were merely descriptive of her and Simeon's civil status, being married to Felix and Virginia, respectively.[9]

Corazon alleged that she and Simeon thought of sharing a third of the subject properties with the heirs of their brother Augusto who predeceased them, hence they executed a Deed of Cession on April 13, 1970 but later on decided to recall and not implement the same. In fine, thus, Corazon insisted that only she and Simeon share one-half portion each of the subject properties. [10]

Corazon further alleged that on December 14, 1974, Simeon sold and conveyed his entire one-half share in the co-owned properties in her favor. Hence, Corazon became the sole owner thereof and consequently, was able to transfer the titles of the same to her name. Corazon argued that the subject properties belong to Simeon's exclusive property, hence, Virginia's conformity to such sale was not necessary.[11]

Corazon also raised in her Answer to the complaint, that respondents' action was barred by prescription.[12]

Ruling of the RTC

During trial, it was established that Simeon and Virginia's marriage had been on bad terms. In fact, since February 4, 1973 Simeon and Virginia had lived separately. Simeon lived with his sister Corazon in Tabaco City, Albay, while Virginia and their children lived in Paco, Manila. From these circumstances, the trial court deduced that it is highly suspicious that thereafter, Virginia would sign a deed of sale, consenting to her husband's decision to sell their conjugal assets to Corazon. Virginia vehemently disowned the signature appearing in the December 14, 1974 Deed of Absolute Sale. Verily, the National Bureau of Investigation (NBI) examination report concluded that the questioned signature and the specimen signatures of Virginia were not written by one and the same person and thus, the former is a forgery. [13]

Without the conformity of Virginia, according to the trial court, Simeon cannot alienate or encumber any real property of the conjugal partnership.[14]

The trial court concluded, thus, that the December 14, 1974 Deed of Absolute Sale, being falsified, is not a valid instrument to transfer the one- third share of the subject properties.[15]

The trial court also did not accept Corazon's allegation that the April 13, 1970 Deed of Cession in favor of Augusto's heirs as to the other one- third portion of the subject properties, was cancelled and not implemented. The trial court noted Corazon's testimony during trial that she was merely administering the said portion for Augusto's heirs, her nephews and nieces, who were still minors at that time.[16]

On February 16, 2006, the trial court rendered a Decision in favor of herein respondents, thus:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiffs:

(1)

Declaring the plaintiffs Virginia Dy-Arambulo and Vicky Aramburo-Lee together with the interested parties the owner of ONE-THIRD (1/3) portion of the property subject matter of this case;

(2)

Declaring the co-plaintiffs (heirs of Augusto Aramburo) likewise the owners of One-third (1/3) portion of the property subject matter of this case;

(3)

Ordering the Cancellation of [TCT] Nos. T-41187,T-41183, T-41184, T-41185, T-41186, T-48918[4] [sic] and T-49819 and another ones issued upon proper steps taken in the names of the plaintiffs and interested parties; and the other plaintiffs, Heirs of Augusto Aramburo, conferring ownership over TWO-THIRDS (2/3) PORTION of the properties subject matter of this case;

(4)

Ordering the defendant to reimburse the plaintiffs TWO-THIRDS (2/3) of the produce of the properties, subject matter of this case from the time she appropriated it to herself in 1974 until such time as the 2/3 share are duly delivered to them; and

(5)

Ordering the defendant to pay plaintiffs by way of damages the amount of Fifty Thousand (P50,000.00) as attorney's fees; and

(6)

To pay the cost of suit.

SO ORDERED.[17]

Ruling of the CA

On appeal, Corazon maintained that the subject properties are not part of Spouses Simeon and Virginia's conjugal properties. This, according to her, is bolstered by the fact that the subject properties are not included in the case for dissolution of conjugal partnership docketed as Special Proceeding No. 67, and in the separation of properties case docketed as Civil Case No. T-1032 between Simeon and Virginia.[18]

Respondents argued otherwise. Particularly, Virginia insisted that only a third portion of the subject properties is owned by Simeon and that the same is conjugally-owned by her and Simeon since it was acquired during their marriage. As such, the disposition by Simeon of the one-half portion of the subject properties in favor of Corazon is not only void but also fictitious not only because Simeon does not own the said one-half portion, but also because Virginia's purported signature in the December 14, 1974 Deed of Absolute Sale as the vendor's wife was a forgery as found by the NBI, which was upheld by the trial court.[19]

In its September 22, 2009 assailed Decision,[20] the CA affirmed the trial court's findings and conclusion in its entirety, thus:

WHEREFORE, the present appeal is DISMISSED. Consequently, the Decision of the [RTC], Branch 15, Tabaco City, in Civil Case No. T-1693 is hereby AFFIRMED in toto.

SO ORDERED.[21]

Petitioners then, substituting deceased Corazon, filed a Motion for Reconsideration,[22] which was likewise denied by the CA in its Resolution[23] dated January 13, 2010:

WHEREFORE, there being no cogent reason for US to depart from Our assailed Decision, WE hereby DENY the Motion for Partial Reconsideration.

SO ORDERED.[24]

Hence, this petition.

Issue

Did the CA correctly sustain the RTC decision, declaring the parties as co-owners of the subject properties? In the affirmative, may the subject titles be nullified and transferred to the parties as to their respective portions?

This Court's Ruling

The petition is partly meritorious.

At the outset, let it be stated that the law which governs the instant case is the Old Civil Code, not the Family Code, as the circumstances of this case all occurred before the effectivity of the Family Code on August 3, 1988.

Proceeding, thus, to the issue of ownership, We find no reason to depart from the RTC's ruling as affirmed by the CA.

Augusto's heirs own one-third pro-indiviso share in the subject properties

Respondents' (Augusto's heirs) claim concerning one-third of the subject properties, is anchored upon the April 13, 1970 Deed of Cession executed by Spouses Felix and Corazon and Spouses Simeon and Virginia in favor of Augusto's children. Petitioners, however, maintain that the said deed was never given effect as it was recalled by the said spouses.

The courts a quo found that the said deed, ceding a third of the subject properties to Augusto's heirs, was in fact implemented as evidenced by Corazon's testimony that she was merely administering the said properties for Augusto's heirs as her nephews and nieces were still minors at that time.

We find no cogent reason to depart from the the courts a quo's findings as to the existence and effectivity of the April 13, 1970 Deed of Cession giving rights to Augusto's children over the one-third portion of the subject property. For one, basic is the rule that factual findings of the trial court, especially if affirmed by the appellate court, are binding and conclusive upon this Court absent any clear showing of abuse, arbitrariness, or capriciousness committed by the trial court.[25] In addition, We are not convinced of Corazon's bare assertion that the said document was cancelled merely because she and her brother . Simeon decided not to implement it anymore. Moreover, as can be gleaned from the testimony of respondent July Aramburo, one of Augusto's heirs, which was notably quoted by the petitioners in this petition, it is clear that he, together with his co-heirs, are co-owners of the subject properties along with Spouses Simeon and Virginia and Spouses Felix and Corazon, by virtue of the Deed of Cession executed in their favor. The said testimony clearly stated that Simeon was also merely administering the subject properties.[26]

Simeon's heirs, which include Virginia, also own one-third pro-indiviso share in the subject properties

Respondent Virginia's claim as to the other one-third portion of the subject properties is ultimately anchored upon the April 10, 1970 Deed of Cession. Corazon, however, countered that inasmuch as her husband Felix's name in

the said Deed of Cession was merely descriptive of her status as being married to the latter, Virginia's name likewise appeared in the said Deed of Cession merely to describe Simeon's status as being married to Virginia. In fine, Corazon argued that the properties subject of the said Deed were given exclusively to her and Simeon. Consequently, the one-half portion thereof pertains to Simeon's exclusive property and does not belong to Simeon and Virginia's conjugal property. This, according to Corazon, was bolstered by the fact that Simeon's share in the subject properties was not included in the petition for separation of properties between Virginia and Simeon. Petitioners maintain this argument.

We uphold the courts a quo's conclusion that one-third portion of the subject properties is indeed part of Simeon and Virginia's conjugal properties.

It is undisputed that the subject properties were originally registered in the name of Spouses Eusebio and Epifania. It is also undisputed that in a Deed of Cession dated April 10, 1970, these parcels of land were ceded to Spouses Felix and Corazon, and Spouses Simeon and Virginia. There is likewise no question that the subject properties were ceded to the said spouses during Spouses Simeon and Virginia's marriage.

Article 160 of the Old Civil Code, which is the applicable provision since the property was acquired prior to the enactment of the Family Code as stated above, provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." [27] This presumption in favor of conjugality is rebuttable, but only with a strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses, [28] and the burden of proof rests upon the party asserting it. [29]

Thus, in this case, the subject properties, having been acquired during the marriage, are still presumed to belong to Simeon and Virginia's conjugal properties.

Unfortunately, Corazon, or the petitioners for that matter, failed to adduce ample evidence that would convince this Court of the exclusive character of the properties.

Petitioners' argument that Virginia's name was merely descriptive of Simeon's civil status is untenable. It bears stressing that if proof obtains on the acquisition of the property during the existence of the marriage, as in this case, then the presumption of conjugal ownership remains unless a strong, clear and convincing proof was presented to prove otherwise. In fact, even the registration of a property in the name of one spouse does not destroy its conjugal nature. What is material is the time when the property was acquired. [30]

We also give scant consideration on petitioners' bare allegation that the subject properties were actually from the estate of Simeon and Corazon's parents, intimating that the same were inherited by Simeon and Corazon, hence, considered their exclusive properties. The records are bereft of any proof that will show that the subject properties indeed belonged to Simeon and Corazon's parents. Again, what is established is that the subject properties were originally registered under Spouses Eusebio and Epifania's name and thus, ceded by the latter. Petitioners' bare allegation on the matter is so inadequate for the Court to reach a conclusion that the acquisition of the subject properties was in a nature of inheritance than a cession.

Likewise, the fact that the subject properties were not included in the cases for separation of properties between Simeon and Virginia does not, in any way, prove that the same are not part of Simeon and Virginia's conjugal properties. Such fact cannot be considered as a strong, clear and convincing proof that the said properties exclusively belong to Simeon. Besides, We note respondents' allegation in their Comment to this petition that the case for separation of properties between Simeon and Virginia was not resolved by the trial court on the merits as Simeon died during the pendency thereof, and also because there was actually a disagreement as to the inventory

the properties included therein. This could mean that precisely, other properties may be part of the said spouses' conjugal properties and were not included in the said case. Notably, such allegation was not denied by the petitioners.

At any rate, the question of whether petitioners were able to adduce proof to overthrow the presumption of conjugality is a factual issue best addressed by the trial court. It cannot be over-emphasized that factual determinations of the trial courts, especially when confirmed by the appellate court, are accorded great weight by the Court and, as a rule, will not be disturbed on appeal, except for the most compelling reasons, which We do not find in the case at bar.[31]

Simeon could not have validly sold the one-third share of Augusto's heirs, as well as the one-third portion of his and Virginia's conjugal share without the latter's consent, to Corazon

We now proceed to determine the validity of the December 14, 1974 Deed of Absolute Sale executed by Simeon in favor of Corazon, covering one-half of the subject properties which was his purported share.

As for the one-third portion of the subject properties pertaining to Augusto's heirs, We are one with the CA in ruling that the Deed of Absolute Sale is void as the said portion is owned by Augusto's heirs as above-discussed and thus, Simeon had no right to sell the same. It is basic that the object of a valid sales contract must be owned by the seller.[32] *Nemo dat quod non habet*, as an ancient Latin maxim says. One cannot give what one does not have.[33]

However, as to the one-third portion commonly-owned by Spouses Simeon and Virginia, Simeon's alienation of the same through sale without Virginia's conformity is merely voidable.

Article 166[34] of the Old Civil Code explicitly requires the consent of the wife before the husband may alienate or encumber any real property of the conjugal partnership except when there is a showing that the wife is incapacitated, under civil interdiction, or in like situations.

In this case, Virginia vehemently denies having conformed to the December 14, 1974 sale in favor of Corazon. In fact, during trial, it has already been satisfactorily proven, through the NBI's findings as upheld by the trial court, that Virginia's signature appearing on the said Deed of Absolute Sale is a forgery. Concedingly, a finding of forgery does not depend entirely on the testimonies of handwriting experts as even this Court may conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. We, however, do not have any means to evaluate the questioned signature in this case as even the questioned Deed of Absolute Sale is not available in the records before Us. Hence, We are constrained to the general rule that the factual findings of the RTC as affirmed by the CA should not be disturbed by this Court unless there is a compelling reason to deviate therefrom.

In addition, as correctly observed by the courts a quo, We cannot turn a blind eye on the circumstances surrounding the execution of the said Deed of Absolute Sale. The CA, quoting the RTC, held thus:

[T]he dubiety of its execution at a time that [Virginia] and her husband's marital relationship was already stale is not to be taken for granted. It is a fact that [Virginia] had lived separately from bed and board with her husband [Simeon] as of February 4, 1973. It is, therefore, highly suspicious that [later on], x x x she would consent to her husband's decision selling their conjugal assets to [Corazon]. Precisely, her signature appearing in said Deed of Absolute Sale dated December 14, 1974 x x x is being disowned by her as being a forgery. Undoubtedly, the NBI Examination report anent this x x x conducted by Sr. Document Examiner Rhoda B. Flores gave the conclusion that the questioned and the standard/sample signatures of "[Virginia]" was not written by one and the same person. x x x.[35]

The CA also correctly observed that the forgery, as found by the RTC, is evident from the admitted fact of strained marital relationship between Simeon and Virginia and the fact that at the time the question Deed of Absolute Sale was executed, Simeon had been living with Corazon in Tabaco City, Albay, while Virginia and her children were living in Paco, Manila.[36]

Accordingly, without Virginia's conformity, the Deed of Absolute Sale executed on December 14, 1974 between Simeon and Corazon purportedly covering one-half of the subject properties is voidable.

As for Augusto's heirs, the action to nullify the sale of their share, being void is imprescriptible; as for Virginia, the action to nullify the sale of her share, being merely voidable, is susceptible to prescription

At this juncture, We differ from the CA's pronouncement that since the deed of sale involved is a void contract, the action to nullify the same is imprescriptible.

We qualify.

For the share of Augusto's heirs sold by Simeon in the December 14, 1974 Deed of Absolute Sale, the sale of the same is void as the object of such sale, not being owned by the seller, did not exist at the time of the transaction.[37] Being a void contract, thus, the CA correctly ruled that the action to impugn the sale of the same is imprescriptible pursuant to Article 1410[38] of the New Civil Code (NCC).

As for the share pertaining to Simeon and Virginia, We must emphasize that the governing law in this case is the Old Civil Code. Under the said law, while the husband is prohibited from selling the commonly-owned real property without his wife's consent, still, such sale is not void but merely voidable.[39] Article 173 thereof gave Virginia the right to have the sale annulled during the marriage within ten years from the date of the sale. Failing in that, she or her heirs may demand, after dissolution of the marriage, only the value of the property that Simeon erroneously sold.[40] Thus:

Art. 173. The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

In contrast, the Family Code does not provide a period within which the wife who gave no consent may assail her husband's sale of real property. It simply provides that without the other spouse's written consent or a court order allowing the sale, the same would be void.[41] Thus, the provisions of the NCC governing contracts is applied as regards the issue on prescription. Under the NCC, a void or inexistent contract has no force and effect from the very beginning, and this rule applies to contracts that are declared void by positive provision of law as in the case of a sale of conjugal property without the other spouse's written consent.[42] Under Article 1410 of the NCC, the action or defense for the declaration of the inexistence of a contract does not prescribe.

As this case, as far as Virginia is concerned, falls under the provisions of the Old Civil Code, the CA erred in ruling that the subject Deed of Absolute Sale is void for the lack of the wife's conformity thereto and thus, applying Article 1410 of the NCC stating that the action to question a void contract is imprescriptible. Again, Simeon's sale of their conjugal property without his wife's conformity under the Old Civil Code is merely voidable not void. The imprescriptibility of an action assailing a void contract under Article 1410 of the NCC, thus, does not apply in such case. The 10-year prescriptive period under Article 173 of the Old Civil Code, therefore, should be applied in this case.

Here, the invalid sale was executed on December 14, 1974 while the action questioning the same was filed in

1993, which is clearly way beyond the 10-year period prescribed under Article 173 of the Old Civil Code. Virginia's recourse is, therefore, to demand only the value of the property, i.e., the one-third portion of the subject properties invalidly sold by Simeon without Virginia's conformity pursuant to the same provision.

In fine, while We uphold the courts a quo's findings that the parties herein are co-owners of the subject properties, We reverse and set aside the said courts' ruling, ordering the cancellation of titles of the entire subject properties and the transfer of the two-thirds portion of the same to the respondents. While Augusto's heirs are entitled to the recovery of their share in the subject properties, Virginia is only entitled to demand the value of her share therefrom pursuant to Article 173 of the Old Civil Code above-cited.

WHEREFORE, premises considered, the petition is PARTLY GRANTED. The Decision dated September 22, 2009 of the Court of Appeals in CA-G.R. CV No. 89611, affirming the Decision dated February 16, 2006 of the Regional Trial Court of Tabaco City, Branch 15, in Civil Case No. T-1693 is hereby AFFIRMED in all aspects EXCEPT insofar as it ordered the cancellation of the titles of the entire subject properties.

Accordingly, petitioners Heirs of Corazon Aramburo Ko, respondents Virginia Dy Aramburo and all persons claiming under her, as Heirs of Simeon Aramburo, and respondents Heirs of Augusto Aramburo are deemed co-owners pro-indiviso of the subject properties in equal one-third (1/3) share. As such, the titles over the subject properties are ORDERED cancelled insofar as the heirs of Augusto Aramburo's share is concerned. Virginia Dy Aramburo and all persons claiming under her have the right to demand for the value of their one-third (1/3) share in a proper case.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta,[*] Bersamin, and Jardeleza, JJ., concur.

October 19, 2017

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on August 9, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 19, 2017 at 10:05 a.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

[*] Designated additional Member per Raffle dated August 7, 2017 vice Associate Justice Andres B. Reyes, Jr.

[1] Rollo, pp. 11-40.

[2] Penned by Associate Justice Marlene B. Gonzales-Sison, concurred in by Presiding Justice Andres B. Reyes,

Jr. (now a Member of the Court) and Associate Justice Vicente S.E. Veloso; id. at 42-58.

[3] Id. at 49-50.

[4] Id. at 44.

[5] Id. at 44-46.

[6] Id. at 44.

[7] Id. at 45.

[8] Id. at 46.

[9] Id. at 47-48.

[10] Id.

[11] Id. at 47 and 54.

[12] Id. at 48.

[13] Id. at 53-55.

[14] Id. at 55-56.

[15] Id. at 56.

[16] Id. at 53.

[17] Id. at 43-44.

[18] Id. at 49-50.

[19] Id. at 51.

[20] Id. at 42-58.

[21] Id. at 57.

[22] Id. at 59-70.

[23] Id. at 73-74.

[24] Id. at 73.

[25] Uybuco v. People of the Philippines, 749 Phil. 987, 992 (2014).

[26] Rollo, pp. 30-31.

[27] Francisco v. CA, 359 Phil. 519, 526 (1998).

[28] Id.

[29] Spouses Tarrosa v. De Leon, et al., 611 Phil. 384, 395 (2009).

[30] Id. at 395.

[31] Id..

[32] Cabrera v. Ysaac, 747 Phil. 187, 206 (2014).

[33] Cavite Development Bank v. Spouses Lim, 381 Phil. 355, 365 (2000).

[34] Art. 166. Unless the wife has been declared a non compos mentis or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same.

x x x x

[35] Id. at 55.

[36] Id. at 56.

[37] Art. 1409. The following contracts are inexistent and void from the beginning:

x x x x

(3) Those whose cause or object did not exist at the time of the transaction;

x x x x

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

[38] Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

[39] Fuentes, et al. v. Roca, et al., 633 Phil. 9, 18 (2010).

[40] Id.

[41] Art. 124. x x x In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. x x x

[42] Fuentes, et al. v. Roca, et al., supra note 40, at 20.

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