

**MARCIANA VILLOCINO AND PROTASIO RODRIGUEZ,
PLAINTIFFS-APPELLEES, VS. PEDRO DOYON,
DEFENDANT-APPELLANT. CLETO P. EVANGELISTA,
INTERVENOR-APPELLANT. D E C I S I O N**

G.R. No. 19797. December 17, 1966

Ponente: REGALA, J.

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REGALA, J.:

This case was filed by the appellees to recover from the appellants the possession and ownership of two parcels of land, one situated in Kananga, Leyte, and another one in Ormoc City. After hearing, the Court of First Instance of Leyte rendered judgment declaring appellees the owners of the land. From that judgment appellants appealed to the Court of Appeals but the latter Court certified the case to us as the facts are not in dispute and the issues raised are question of law.

The two lots in question, Lot No. 10375 and Lot No. 7924 of the Ormoc Cadastre, were conjugal properties of appellee Marciana Villocino and Bartolome Rodriguez, now deceased. Without the knowledge of his wife, Rodriguez sold on August 7, 1951 one half of Lot No. 10375 and on December 20, 1951 the whole of Lot No. 7924 to the appellant Pedro Doyon. He sold two other lots to Emilia Conui Vda. de Aviles, also without the knowledge of his wife. Rodriguez made the sales even as his wife and son, the other appellee herein, Protasio Rodriguez, were seeking in Civil Case No. 549 of the Leyte Court of First Instance a change of administration of the conjugal partnership.

In its decision in Civil Case No. 549, the court found that the husband, who was living with a concubine, had sold four parcels of land without the knowledge and consent of his wife and, for this reason, placed all properties of the conjugal partnership under the latter's administration. Later, these lots were to be included in the order of execution but, on motion of appellant Doyon and Emilia Conui Vda. de Aviles, the other vendee, the court excluded the lots from execution. On September 6, 1957, appellant Doyon sold Lot No. 7924 to the other appellant, Atty. Cleto P. Evangelista, who represented him in Civil Case No. 549.

On June 30, 1959, appellees filed this case against appellant Doyon to recover the possession and ownership of the lots in question. Appellant Evangelista intervened, claiming ownership of Lot No. 7924. In declaring appellees owners of the land, the court said:

"It is to be noted that when the late Bartolome Rodriguez sold the two parcels of land, the consent of the wife, Marciana Villocino, had not been secured so that pursuant to Article 166 of the new Civil Code, the sale of the defendant (Doyon) is null and void[*]; consequently the sale by the defendant to the intervenor ^Evangelista^ has no force and effect."

Appellants contend that since the lots in this case were acquired by appellee Villocino and her late husband before the effectivity of the new Civil Code, the sales in this case should be governed by the provisions of the Spanish Civil Code. It is then urged that, under article 1413 of the latter Code, the husband has the power to alienate

property of the conjugal partnership even without the consent of his wife.

Indeed, article 166 of the new Civil Code provides that—

"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.

"This article shall not apply to property acquired by the conjugal partnership before the effective date of this Code."

while the Spanish Civil Code provides:

"ART. 1413. In addition to his powers as manager the husband may for valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife.

"Nevertheless, no alienation or agreement which the husband may make with respect to such property in contravention of this code or in fraud of the wife shall prejudice her or her heirs."

But while we agree with appellants that the consent of the wife (appellee Villocino) was not necessary for the validity of her husband's sale because the lots sold had been acquired by the couple before August 30, 1950 when the new Code took effect (*Tabunan v. Marigmen*, 101 Phil. 288 [1957]), it is nevertheless true that even under the former law the husband's power to alienate properties of the conjugal partnership is not without limitation. (*Simbre v. Agustin*, 55 O.G. 5016 [1958]; *Liguez v. Court of Appeals*, 54 O.G. 4261 [1957]. See also *Harden v. Peña*, 87 Phil. 609 [1950]) For one thing, such power, as we have seen, cannot be exercised to the prejudice of the wife or her heirs. What is more, alienations made without the knowledge of the wife are presumed to be in fraud of her. (*Simbre v. Agustin*, *supra*; *Tabunan v. Marigmen*, *supra*) For, as conjugal properties belong equally to husband and wife, any alienation made by the husband without the consent of his wife prejudices her in so far as it includes a part or the whole of the wife's half and is, to that extent, invalid. (*Baello v. Villanueva*, 54 Phil. 213 [1930])

Indeed, in Civil Case No. 549 of the Court of First Instance of Leyte, the administration of the conjugal partnership was transferred to appellee Villocino precisely because the court found that the late Bartolome Rodriguez had fraudulently disposed of conjugal properties (among which were the lots in question) without the knowledge and consent of his wife. Thus, in the decision in that case, the court said:

"Es evidente que el marido Bartolome Rodriguez ha abusado de los poderes que tenia como administrador de los bienes de la sociedad de gananciales al disponer de cuatro parcelas gananciales sin conocimiento ni consentimiento de mujer y gastar para su propio beneficio exclusivamente de las cantidades recibidas como precio de venta. De permitir que Bartolome Rodriguez continua siendo administrador, podria continuar disponiendo de todas las propiedades de la sociedad conyugal en perjuicio de su esposa."

This excerpt from the decision in Civil Case No. 549 should likewise answer appellants' contention that the present case was filed as an action for recovery of possession and ownership, not for the annulment of sale, and that the issue of fraud was never put in issue by the pleadings. The parties to this case entered into a stipulation of facts in which they asked the trial court to consider among other things, the decision in Civil Case No. 549. The above quotation from the decision in that case clearly shows that fraud against the wife was in issue. Moreover, as this Court once said, "It may be that the recovery of title and possession of the lot was the ultimate objective of plaintiffs, but to attain that goal, they must need first travel over the road of relief on the ground of fraud." (*Rone v. Claro*, 91 Phil. 250, 253 [1952]) We therefore hold that the sale of Lots No. 10375 (1/2) and 7924 to appellant

Doyon and the subsequent transfer of Lot No. 7924 by appellant Doyon to appellant Evangelista are invalid to the extent that the rights of appellee Villocino to one half are affected. Since any prejudice to the wife can be determined only after the liquidation of the conjugal partnership, the sales in question should be deemed subject to such contingency which should be noted in the corresponding certificate of title, (Baello v. Villanueva, supra; Tabunan v. Marigmen, supra) The Court is aware that only one half of Lot No. 10375 had been sold and that in all probability the wife's share has not been affected but considering that the other lot (Lot No. 7924) is unregistered, it is believed that the annotation of the condition on the certificate of title covering Lot No. 10375 is necessary to compensate for the lack of registration of the other lot.

WHEREFORE, with the modification that the invalidity of the sales to appellants shall be deemed subject to the outcome of the liquidation of the conjugal partnership and that, in the meantime, this condition should be noted in the certificate of title covering Lot No. 10375, the decision appealed from is affirmed, with costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[*] The sale is not void but only voidable at the instance of the wife. Civil Code art. 173.

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