

MERCEDES CALIMLIM-CANULLAS, PETITIONER, VS. HON. WILLELMO FORTUN, JUDGE, COURT OF FIRST INSTANCE OF PANGASINAN, BRANCH I, AND CORAZON DAGUINES, RESPONDENTS.

G.R. No. 57499, June 22, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Review on Certiorari assailing the Decision, dated October 6, 1980, and the Resolution on the Motion for Reconsideration, dated November 27, 1980, of the then Court of First Instance of Pangasinan, Branch I, in Civil Case No. 15620 entitled "Corazon DAGUINES vs. MERCEDES Calimlim-Canullas", upholding the sale of a parcel of land in favor of DAGUINES but not of the conjugal house thereon.

The background facts may be summarized as follows: Petitioner MERCEDES Calimlim-Canullas and FERNANDO Canullas were married on December 19, 1962. They begot five children. They lived in a small house on the residential land in question with an area of approximately 891 square meters, located at Bacabac, Bugallon, Pangasinan. After FERNANDO's father died in 1965, FERNANDO inherited the land.

In 1978, FERNANDO abandoned his family and was living with private respondent Corazon DAGUINES. During the pendency of this appeal, they were convicted of concubinage in a judgment rendered on October 27, 1981 by the then Court of First Instance of Pangasinan, Branch II, which judgment has become final.

On April 15, 1980, FERNANDO sold the subject property with the house thereon to DAGUINES for the sum of P2,000.00. In the document of sale, FERNANDO described the house as "also inherited by me from my deceased parents".

Unable to take possession of the lot and house, DAGUINES initiated a complaint on June 19, 1980 for quieting of title and damages against MERCEDES. The latter resisted and claimed that the house in dispute where she and her children were residing, including the coconut trees on the land, were built and planted with conjugal funds and through her industry; that the sale of the land together with the house and improvements to DAGUINES was null and void because they are conjugal properties, and she had not given her consent to the sale.

In its original judgment, respondent Court principally declared DAGUINES "as the lawful owner of the land in question as well as the one-half (½) of the house erected on said land." Upon reconsideration prayed for by MERCEDES, however, respondent Court resolved:

"WHEREFORE, the dispositive portion of the Decision of this Court, promulgated on October 6, 1980, is hereby amended to read as follows:

"(1) Declaring plaintiff as the true and lawful owner of the land in question and the 10 coconut trees;

"(2) Declaring as null and void the sale of the conjugal house to plaintiff on April 15, 1980 (Exhibit A) including the 3 coconut trees and other crops planted during the conjugal relation between Fernando Canullas

(vendor) and his legiti-mate wife, herein defendant Mercedes Calimlim--Canullas;

x x x "

The issues posed for resolution are (1) whether or not the construction of a conjugal house on the exclusive property of the husband ipso facto gave the land the cha-racter of conjugal property; and (2) whether or not the sale of the lot together with the house and improvements thereon was valid under the circumstances surrounding the transaction.

The determination of the first issue revolves around the interpretation to be given to the second paragraph of Article 158 of the Civil Code, which reads:

"x x x

"Buildings constructed at the expense of the part-nership during the marriage on land belonging to one of the spouses also pertain to the partnership, but the value of the land shall be reimbursed to the spouse who owns the same."

We hold that pursuant to the foregoing provision both the land and the building belong to the conjugal partnership but the conjugal partnership is indebted to the husband for the value of the land. The spouse owning the lot becomes a creditor of the conjugal partnership for the value of the lot[1] , which value would be reimbursed at the liquid-ation of the conjugal partnership.[2]

In his commentary on the corresponding provision in the Spanish Civil Code (Art. 1404), Manresa stated:

"El articulo cambia la doctrina; los edificios construidos durante el matrimonio en suelo propio de uno de los conyuges son gananciales, abonandose el valor del suelo al conyuge a quien pertenezca."

It is true that in the case of *Maramba vs. Lozano*,[3] relied upon by respondent Judge, it was held that land be-longing to one of the spouses, upon which the spouses have built a house, becomes conjugal property only when the conjugal partnership is liquidated and indemnity paid to the owner of the land. We believe that the better rule is that enunciated by Mr. Justice JBL Reyes in *Padilla vs. Paterno*, 3 SCRA 678, 691 (1961), where the following was explained:

"As to the above properties, their conversion from paraphernal to conjugal assets should be deemed to retroact to the time the conjugal buildings were first constructed thereon or at the very latest, to the time immediately before the death of Narciso A. Padilla that ended the conjugal partnership. They can not be considered to have become conjugal property only as of the time their values were paid to the estate of the widow Concepcion Paterno because by that time the conjugal partnership no longer existed and it could not acquire the ownership of said properties. The acquisition by the partnership of these properties was, under the 1943 decision, subject to the suspensive condition that their values would be reimbursed to the widow at the liquidation of the conjugal partnership; once paid, the effects of the fulfillment of the condition should be deemed to retroact to the date the obligation was constituted (Art. 1187, New Civil Code). x x x "

The foregoing premises considered, it follows that FERNANDO could not have alienated the house and lot to DAGUINES since MERCEDES had not given her consent to said sale.[4]

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. That sale was subversive of the stability of the family, a basic social institution which public policy cherishes and protects.[5]

Article 1409 of the Civil Code states inter alia that: contracts whose cause, object, or purpose 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.[6] Similarly, donations between spouses during marriage are prohibited.[7] 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 de-signed to prevent the exercise of undue influence by one spouse over the other[8] , 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. That was the ruling in *Buenaventura vs. Bautista*, also penned by Justice JBL Reyes (CA) 50 O.G. 3679, and cited in *Matabuena vs. Cervantes*. [9] We quote hereunder the pertinent dissertation on this point:

"We reach a different conclusion. While Art. 133 of the Civil Code considers as void a donation between the spouses during the marriage, policy considerations of the most exigent character as well as the dictates of morality require that the same prohibition should apply to a common-law relationship.

"As announced in the outset of this opinion, a 1954 Court of Appeals decision, *Buenaventura vs. Bautista*, 50 OG 3679, interpreting a similar provision of the old Civil Code speaks unequivocally. If the policy of the law is, in the language of the opinion of the then Justice J.B.L. Reyes of that Court, 'to prohibit donations in favor of the other consort and his descendants because of fear of undue influence and improper pressure upon the donor, a prejudice deeply rooted in our ancient law, x x x, then there is every reason to apply the same prohibitive policy to persons living together as husband and wife without benefit of nuptials. For it is not to be doubted that assent to such irregular connection for thirty years be-speaks greater influence of one party over the other, so that the danger that the law seeks to avoid is correspondingly increased'. Moreover, as pointed out by Ulpian (in his lib 32 ad Sabinum, fr.1), 'It would not be just that such donations should subsist, lest the conditions of those who incurred guilt should turn out to be better.' So long as marriage remains the cornerstone of our family law, reason and morality alike demand that the disabilities attached to marriage should likewise attach to concubinage" (Italics supplied).

WHEREFORE, the Decision of respondent Judge, dated October 6, 1980, and his Resolution of November 27, 1980 on petitioner's Motion for Reconsideration, are hereby set aside and the sale of the lot, house and improvements in question, is hereby declared null and void. No costs. SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

[1] *Tabotabo vs. Molero*, 22 Phil. 418 (1912).

[2] *Vda. de Padilla vs. Paterno*, 3 SCRA 678, 691 (1961).

[3] 20 SCRA 474 (1967).

[4] Article 166, Civil Code.

[5] Article 216, Civil Code.

[6] Article 1490, *ibid*.

[7] Article 133, *ibid*.

[8] Article 1337, *ibid*.

[9] 38 SCRA 284 (1971).

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