

**EDUARDO FELIPE, HERMOGENA V. FELIPE AND VICENTE V. FELIPE,
PETITIONERS, VS. HEIRS OF MAXIMO ALDON, NAMELY: GIMENA
ALMOSARA, SOFIA ALDON, SALVADOR ALDON, AND THE
HONORABLE COURT ...**

G.R. No. 60174. February 16, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Maximo Aldon married Gimena Almosara in 1936. The spouses bought several pieces of land sometime between 1948 and 1950. In 1960-62, the lands were divided into three lots, 1370, 1371 and 1415 of the San Jacinto Public Land Subdivision, San Jacinto, Masbate.

In 1951, Gimena Almosara sold the lots to the spouses Eduardo Felipe and Hermogena V. Felipe. The sale was made without the consent of her husband, Maximo.

On April 26, 1976, the heirs of Maximo Aldon, namely his widow Gimena and their children Sofia and Salvador Aldon, filed a complaint in the Court of First Instance of Masbate against the Felipes. The complaint which was docketed as Civil Case No. 2372 alleged that the plaintiffs were the owners of Lots 1370, 1371 and 1415; that they had orally mortgaged the same to the defendants; and an offer to redeem the mortgage had been refused so they filed the complaint in order to recover the three parcels of land.

The defendants asserted that they had acquired the lots from the plaintiffs by purchase and subsequent delivery to them. The trial court sustained the claim of the defendants and rendered the following judgment:

- "a. declaring the defendants to be the lawful owners of the property subject of the present litigation;
- b. declaring the complaint in the preset action to be without merit and is therefore hereby ordered dismissed;
- c. ordering the plaintiffs to pay to the defendants the amount of P2,000.00 as reasonable attorney's fees and to pay the costs of the suit."

The plaintiffs appealed the decision to the Court of Appeals which rendered the following judgment:

"PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and SET ASIDE, and a new one is hereby RENDERED, ordering the defendants-appellees to surrender the lots in question as well as the plaintiffs'-appellants' muniments of title thereof to said plaintiffs-appellants, to make an accounting of the produce derived from the lands including expenses incurred since 1951, and to solidarily turn over to the plaintiffs-appellants the NET monetary value of the profits, after deducting the sum of P1,800.00. No attorney's fees nor moral damage are awarded for lack of any legal justification therefor. No costs."

The ratio of the judgment is stated in the following paragraphs of the decision penned by Justice Edgardo L. Paras with the concurrence of Justices Venicio Escolin and Mariano A. Zosa:

"One of the principal issues in the case involves the nature of the aforementioned conveyance or transaction,

with appellants claiming the same to be an oral contract of mortgage or antichresis, the redemption of which could be done anytime upon repayment of the P1,800.00 involved (incidentally the only thing written about the transaction is the aforementioned receipt re the P1,800.00). Upon the other hand, appellees claim that the transaction was one of sale, accordingly, redemption was improper. The appellees claim that plaintiffs never conveyed the property because of a loan or mortgage or antichresis and that what really transpired was the execution of a contract of sale thru a private document designated as a 'Deed of Purchase and Sale' (Exhibit 1), the execution having been made by Gimena Almosara in favor of appellee Hermogena V. Felipe.

"After a study of this case, we have come to the conclusion that the appellants are entitled to recover the ownership of the lots in question. We so hold because although Exh. 1 concerning the sale made in 1951 of the disputed lots is, in Our opinion, not a forgery the fact is that the sale made by Gimena Almosara is invalid, having been executed, without the needed consent of her husband, the lots being conjugal. Appellees' argument that this was an issue not raised in the pleadings is baseless, considering the fact that the complaint alleges that the parcels 'were purchased by plaintiff Gimena Almosara and her late husband Maximo Aldon' (the lots having been purchased during the existence of the marriage, the same are presumed conjugal) and inferentially, by force of law, could not, be disposed of by a wife without her husband's consent."

The defendants are now the appellants in this petition for review. They invoke several grounds in seeking the reversal of the decision of the Court of Appeals. One of the grounds is factual in nature; petitioners claim that "respondent Court of Appeals has found as a fact that the 'Deed of Purchase and Sale' executed by respondent Gimena Almosara is not a forgery and therefore its authenticity and due execution is already beyond question." We cannot consider this ground because as a rule only questions of law are reviewed in proceedings under Rule 45 of the Rules of Court subject to well-defined exceptions not present in the instant case.

The legal ground which deserves attention is the legal effect of a sale of lands belonging to the conjugal partnership made by the wife without the consent of the husband.

It is useful at this point to re-state some elementary rules: The husband is the administrator of the conjugal partnership. (Art. 165, Civil Code.) Subject to certain exceptions, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. (Art. 166, Idem.) And the wife cannot bind the conjugal partnership without the husband's consent, except in cases provided by law. (Art. 172, Idem.)

In the instant case, Gimena, the wife, sold lands belonging to the conjugal partnership without the consent of the husband and the sale is not covered by the phrase "except in cases provided by law." The Court of Appeals described the sale as "invalid"—a term which is imprecise when used in relation to contracts because the Civil Code uses specific names in designating defective contracts, namely: rescissible (Arts. 1380 et seq.), voidable (Arts. 1390 et seq.), unenforceable (Arts. 1403, et seq.), and void or inexistent (Arts. 1409 et seq.)

The sale made by Gimena is certainly a defective contract but of what category? The answer: it is a voidable contract.

According to Art. 1390 of the Civil Code, among the voidable contracts are "[T]hose where one of the parties is incapable of giving consent to the contract." (Par. 1.) In the instant case Gimena had no capacity to give consent to the contract of sale. The capacity to give consent belonged not even to the husband alone but to both spouses.

The view that the contract made by Gimena is a voidable contract is supported by the legal provision that contracts entered by the husband without the consent of the wife when such consent is required, are annulable at her instance during the marriage and within ten years from the transaction questioned. (Art. 173, Civil Code)

Gimena's contract is not rescissible for in such a contract all the essential elements are untainted but Gimena's consent was tainted. Neither can the contract be classified as unenforceable because it does not fit any of those

described in Art. 1403 of the Civil Code. And finally, the contract cannot be void or inexistent because it is not one of those mentioned in Art. 1409 of the Civil Code. By process of elimination, it must perforce be a voidable contract.

The voidable contract of Gimena was subject to annulment by her husband only during the marriage because he was the victim who had an interest in the contract. Gimena, who was the party responsible for the defect, could not ask for its annulment. Their children could not likewise seek the annulment of the contract while the marriage subsisted because they merely had an inchoate right to the lands sold.

The termination of the marriage and the dissolution of the conjugal partnership by the death of Maximo Aldon did not improve the situation of Gimena. What she could not do during the marriage, she could not do thereafter.

The case of Sofia and Salvador Aldon is different. After the death of Maximo they acquired the right to question the defective contract insofar as it deprived them of their hereditary rights in their father's share in the lands. The father's share is one-half (1/2) of the lands and their share is two-thirds (2/3) thereof, one-third (1/3) pertaining to the widow.

The petitioners have been in possession of the lands since 1951. It was only in 1976 when the respondents filed action to recover the lands. In the meantime, Maximo Aldon died.

Two questions come to mind, namely: (1) Have the petitioners acquired the lands by acquisitive prescription? (2) Is the right of action of Sofia and Salvador Aldon barred by the statute of limitations?

Anent the first question, We quote with approval the following statement of the Court of Appeals:

"We would like to state further that appellees [petitioners herein] could not have acquired ownership of the lots by prescription in view of what we regard as their bad faith. This bad faith is revealed by testimony to the effect that defendant-appellee Vicente V. Felipe (son of appellees Eduardo Felipe and Hermogena V. Felipe) attempted in December 1970 to have Gimena Almosara sign a ready-made document purporting to sell the disputed lots to the appellees. This actuation clearly indicated that the appellees knew the lots did not still belong to them, otherwise, why were they interested in a document of sale in their favor? Again why did Vicente V. Felipe tell Gimena that the purpose of the document was to obtain Gimena's consent to the construction of an irrigation pump on the lots in question? The only possible reason for purporting to obtain such consent is that the appellees knew the lots were not theirs. Why was there an attempted improvement (the irrigation tank) only in 1970? Why was the declaration of property made only in 1974? Why were no attempts made to obtain the husband's signature, despite the fact that Gimena and Hermogena were close relatives? All these indicate the bad faith of the appellees. Now then, even if we were to consider appellees' possession in bad faith as a possession in the concept of owners, this possession at the earliest started in 1951, hence the period for extraordinary prescription (30 years) had not yet lapsed when the present action was instituted on April 26, 1976."

As to the second question, the children's cause of action accrued from the death of their father in 1959 and they had thirty (30) years to institute it (Art. 1141, Civil Code.) They filed action in 1976 which is well within the period.

WHEREFORE, the decision of the Court of Appeals is hereby modified. Judgment is entered awarding to Sofia and Salvador Aldon their shares of the lands as stated in the body of this decision; and the petitioners as possessors in bad faith shall make an accounting of the fruits corresponding to the shares aforementioned from 1959 and solidarily pay their value to Sofia and Salvador Aldon; costs against the petitioners.

SO ORDERED.

Concepcion Jr., Guerrero and De Castro, JJ., concur.

Makasiar (Chairman), J., in the result.

Aquino, J., concurs.

Escolin, J., no part.

CONCURRING OPINION**AQUINO, J.:**

I concur in the result. The issue is whether the wife's sale in 1951 of an unregistered sixteen-hectare conjugal land, without the consent of her husband (he died in 1959), can be annulled in 1976 by the wife and her two children.

As a rule, the husband cannot dispose of the conjugal realty without the wife's consent (Art. 166, Civil Code). Thus, a sale by the husband of the conjugal realty without the wife's consent was declared void (Tolentino vs. Cardenas, 123 Phil. 517; Villocino vs. Doyon, L-19797, December 17, 1966, 18 SCRA 1094 and L-28871, April 25, 1975, 63 SCRA 460; Reyes vs. De Leon, L-22331, June 6, 1967, 20 SCRA 369; Bucoy vs. Paulino, L-25775, April 26, 1968, 23 SCRA 248; Tinitigan vs. Tinitigan, L-45418, October 30, 1980, 100 SCRA 619).

With more reason, the wife cannot make such a disposition without the husband's consent since the husband is the administrator of the conjugal assets.

In the instant case, the Court of Appeals did not err in voiding the wife's sale of the conjugal land without the husband's consent. As that sale is contrary to law, the action to have it declared void or inexistent does not prescribe.

Moreover, there are indications that the contract between the parties was an antichresis, a transaction which is very common in rural areas.

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