

RAMON C. ONG, PETITIONER, VS. COURT OF APPEALS, FRANCISCO BOIX AND ARSENIO CAMINO AS DEPUTY SHERIFF OF CAMARINES NORTE, RESPONDENTS.

G.R. No. 63025. November 29, 1991

Ponente: PARAS, J.

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PARAS, J.:

The instant petition for certiorari seeks a reversal of the decision* of herein public respondent Court of Appeals dated October 24, 1977 in CA-G.R. No. 47063-R and its resolution dated January 14, 1983 denying herein petitioner's Motion for Reconsideration.

The Court of Appeals narrates the facts thus:

The record shows that on November 16, 1961, Ramon C. Ong filed a complaint against defendants Arsenio Camino as Deputy Sheriff of Camarines Norte and Francisco Boix, to annul the auction sale of a parcel of land, allegedly owned conjugally by plaintiff and his former wife Teodora B. Ong, awarded in favor of Boix, as highest bidder, in an auction sale conducted on October 10, 1958 by the Deputy Sheriff of Camarines Norte, herein defendant Camino, pursuant to a writ of execution dated August 8, 1958 (Exhibits "C", "2-A") issued by the Court of First Instance of Manila, Branch IV, to enforce its decision in Civil Case No. 33396, entitled, "Francisco Boix, Plaintiff vs. Teodora B. Ong and Ramon C. Ong, Defendants" wherein judgment was rendered to wit:

WHEREFORE, judgment is hereby rendered in favor of plaintiff, ordering the defendant Teodora B. Ong to pay to the plaintiff the sum of P2,827.83, with interest of 8% per annum on the sum of P1,000.00 from September 5, 1955, on the sum of P1,000.00 from October 30, 1955; and on the sum of P827.83 from December 30, 1955 plus 15% on the total amount of P2,827.83 as attorney's fees; and the further amount of P2,503 with interest at 6% per annum from date of the filing of the complaint, and the costs of the suit." (Exhibit "1")

The title to the property, in favor of the execution-creditor Boix was duly registered in the Office of the Register of Deeds of Camarines Norte (Exhibit "4").

It is not disputed that plaintiff's wife, Teodora B. Ong conducted her own logging business in Camarines Sur. In furtherance of her business operation, on August 18, 1955, she secured from Francisco Boix a loan in the amount of P2,827.83. Unfortunately, because of mismanagement, Teodora defaulted in her obligation. This prompted Boix to file a complaint, based on the promissory notes executed by Teodora, to collect the sum legally due plus interest against Teodora and Ramon Ong, the latter being joined as husband of the former. Defendant-spouses were declared in default and judgment was rendered, as aforesaid, in favor of Boix.

After the aforementioned decision became final and executory, Boix moved to execute the judgment. The motion was granted and a corresponding writ of execution, dated August 8, 1958 (Exhibits "C", "2-A"), was issued. Accordingly, the Sheriff of Camarines Norte levied and attached a parcel of land situated at Diego Linan St., Daet, Camarines Norte, declared under Tax No. 05378 in the sole name of Teodora B. Ong, subject-parcel of herein suit. In a notice of levy on Execution dated August 22, 1958 (Exhibit "2-B") and notice

of Public Auction sale dated September 10, 1958 (Exhibit "2-C"), auction sales was held on October 10, 1958 and as already mentioned, defendant Boix was adjudged highest bidder. A writ of possession was issued to place the execution-creditor in possession of the property levied upon and sold on execution. A corresponding Certificate of Sale (Exhibit "H") was also issued in favor of Boix.

Subsequently, thereafter, Ramon C. Ong filed an Omnibus motion dated October 2, 1961 (Exhibit "D") with the same Court of First Instance of Manila asking to quash the writ of possession, which was denied in an order dated December 6, 1961. A motion for reconsideration dated December 29, 1961 (Exhibit "F") was likewise denied in an order dated February 10, 1962 (Exhibit "G"). (PP. 1-4, Decision; pp. 11-14, Rollo)

Consequently, petitioner brought the case to the Court of Appeals to annul the auction sale allegedly irregularly executed on the following grounds, namely, that the property was conjugal and thus could not be held liable for personal debts contracted by the wife, and that there was no valid publication thus making the auction sale void.

The Court of Appeals affirmed the decision of the trial court, prompting petitioner to file a motion for reconsideration thereof. Said motion was denied on January 15, 1983; hence, the present petition.

Petitioner contends that the auction sale of the property in dispute is null and void, having been made on a date different from that reflected in the advertisement thereof, aside from having been published in a newspaper which is not of general circulation in the province where the property is situated. According to the petitioner, respondent court's failure to touch on such a jurisdictional issue constitutes grave abuse of discretion which justifies a reversal of its decision affirming the finding of the trial court which in itself constitutes a misappreciation of facts.

The other argument advanced by the petitioner is that the subject property is really conjugal which the wife in the case at bar could not legally bind, and considering that the indebtedness was contracted by the wife only, the levy of the subject property not owned exclusively by the wife but owned jointly with the husband is improper.

Against petitioner's argument that the auction sale is null and void is the trial court's assessment of the validity thereof, that is, that the notice of public auction sale was published in accordance with law. Such a factual finding of the trial court is entitled to great weight and should not be disturbed on appeal. "Factual questions should be resolved by the lower courts and the Supreme Court has no jurisdiction as a rule to reverse the findings of the lower courts except in a clear showing of a grave abuse of discretion" (*Korean Air Lines vs. CA*, 154 SCRA 211). In the instant case, petitioner failed to show any grave abuse of discretion committed by the lower court in appreciating private respondent's allegation that petitioner was previously notified of the supposed transfer of the date of public auction from September 25, 1958 to October 10, 1958.

Petitioner's other argument is also based on factual considerations. Against the Court of Appeals' finding that the subject property is paraphernal property, in view of the fact that it was "declared, under Tax No. 05378, in the name of Teodora B. Ong while the house erected thereon was declared under Tax No. 06022 in the name of Ramon C. Ong and Teodora B. Ong (Exhibits "B", "H", "2-B", "2-C", "4") (Decision, p. 4) is petitioner's claim that the subject property is conjugal. Petitioner stresses heavily on the fact that since the surname "Ong" (which is the surname of the husband Ramon C. Ong) was carried by Teodora in the aforesaid tax declaration, that indicates that the subject property was acquired during the marriage. By reason thereof, the property in dispute is presumed to be owned jointly by both spouses.

We disagree. The mere use of the surname of the husband in the tax declaration of the subject property is not sufficient proof that said property was acquired during the marriage and is therefore conjugal. It is undisputed that the subject parcel was declared solely in the wife's name, but the house built thereon was declared in the name of the spouses. Under such circumstances, coupled with a careful scrutiny of the records of the present case, We hold that the lot in question is paraphernal, and is therefore, liable for the personal debts of the wife.

Thus, it was held in the case of *Maramba vs. Lozano*, 20 SCRA 474, that

"The presumption that property is conjugal (Art. 160, New Civil Code) refers to property acquired during the marriage. When there is no showing as to when the property was acquired by a spouse, the fact that the title is in the spouse's name is an indication that the property belongs exclusively to said spouse."

As correctly pointed out by the respondent Court, the party who invokes the presumption that all property of the marriage belongs to the conjugal partnership (Art. 160, New Civil Code) must first prove that the property was acquired during the marriage. Proof of acquisition during the marriage is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership. (*Cobb-Perez, et al. vs. Lantin, et al.*, 23 SCRA 637; *Jose Ponce de Leon vs. Rehabilitation Finance Corp.*, 36 SCRA 289). In the same manner, the recent case of *PNB vs. Court of Appeals*, 153 SCRA 435 affirms that:

"When the property is registered in the name of a spouse only and there is no showing as to when the property was acquired by said spouse, this is an indication that the property belongs exclusively to said spouse. And this presumption under Art. 160 of the Civil Code cannot prevail when the title is in the name of only one spouse and the rights of innocent third parties are involved."

Furthermore, even assuming for the sake of argument that the property in dispute is conjugal, the same may still be held liable for the debts of the wife in this case. Under Art. 117 of the Civil Code, the wife may engage in business although the husband may object (but subject to certain conditions). It is clear from the records that the wife was engaged in the logging business with the husband's knowledge and apparently without any objection on his part. The acts of the husband show that he gave his implied consent to the wife's engagement in business. According to Justice Ameurfina-Herrera (then Associate Justice of the Court of Appeals) in her concurring opinion, the rule that should govern in that case is that the wife's paraphernal properties, as well as those of their conjugal partnership, shall be liable for the obligations incurred by the wife in the course of her business (Arts. 117, 140, 172, 203, and 236, Civil Code; Art. 10, Code of Commerce, cited in *Commentaries on Phil. Commercial Laws*, Martin, T.C. Vol. 1, 1970 Revised Edition, pp. 14-15). After all, whatever profits are earned by the wife from her business go to the conjugal partnership. It would only be just and equitable that the obligations contracted by the wife in connection with her business may also be chargeable not only against her paraphernal property but also against the conjugal property of the spouses.

Let it be noted that due to the length of time that this case has remained pending, private respondents Francisco Boix and Arsenio Camino have allegedly already died in the process. No proper substitution of parties have apparently been made. Nevertheless, despite such supervening events, for failure on the part of petitioner to show any grave abuse of discretion or reversible error committed by respondent appellate court, We deem it wise to affirm the said court's decision. Besides, the decision of the trial court is in accordance with law and the evidence presented.

WHEREFORE, the petition is hereby DISMISSED for lack of merit without pronouncement as to costs.

SO ORDERED.

Padilla and Regalado, JJ., concur.

Melencio-Herrera, (Chairman), J., no part, concurred in the Court of Appeals Decision under review.

* Penned by the then Associate Justice (now deceased) Simeon M. Gopengco and concurred in by Associate Justices Ameurfina A. Melencio-Herrera and Vicente G. Ericta.

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