

THE PHILIPPINE NATIONAL BANK, PETITIONER, VS. ELPIDIA DEVARAS, REPRESENTED BY HER ATTORNEY-IN-FACT, ATTY. LEON T. TUMANDAO, RESPONDENT.

G.R. NO. 69269. March 14, 1990

Ponente: PARAS, J.

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PARAS, J.:

Elpidia Devaras and Pio Dumaguit were wife and husband respectively. They separated - in - fact after Liberation and Devaras married an American soldier by the name of Robert James Perkins, Jr. on October 6, 1945. They went to live together in America.

Devaras and Dumaguit, during their marriage, acquired a parcel of land situated at Barrio Luneta, La Paz, Leyte, having an area of 160,652 square meters, designated as Lot No. 1233 of the Cadastral Survey, covered by O.C.T. No. N-68. As administrator of the above-described property, Dumaguit sold one-half (1/2) of the said property on May 4, 1958 to Eulagia Aras, who mortgaged the same to PNB, Tacloban City Branch, to secure a loan in the amount of P10,000. On December 8, 1970, the other half of the property was sold to Melinao Peregrino.

In 1971, Devaras came back to Leyte and when in her hometown, Dulag, Leyte, she claimed her share, rights and interests in their conjugal partnership property from Dumaguit. Having discovered the two sales made by her former husband, she requested for an amicable settlement with Dumaguit, but to no avail.

As her visa was already expiring, she requested her lawyer, Atty. Leon T. Tumandao, to take legal steps to recover her share, rights and interests in that conjugal property and to represent her in all stages of the proceedings, executing in favor of her attorney-in-fact a Special Power of Attorney for that matter.

On December 4, 1973, Devaras, represented by her Attorney--in-Fact, Atty. Tumandao, filed a complaint for Recovery of Real Property, originally against defendants Dumaguit and Peregrino which was later on amended to include Aras and the Philippine National Bank as party defendants. Devaras prayed inter alia that judgment be rendered declaring the Deeds of Absolute Sale as null and void.

On February 25, 1975, the trial court issued an Order dismissing the complaint. The Order read in part as follows:

"Now then, the Court is of the view that there should be no question that no prior consent from plaintiff as the wife was necessary for the validity of the sales of the land in question by defendant-husband Pio Dumaguit in favor of herein defendants-vendees because said property was acquired by the spouses before the effectivity of the New Civil Code."^[1]

On appeal to the Court of Appeals,^[2] the appellate court, on July 23, 1984, promulgated its Decision setting aside the dismissal order and remanding the case to the court of origin for further proceedings ruling in part:

"However, even [if] the consent of the wife is not needed by her husband in alienating and encumbering any real property of the conjugal partnership if acquired before 1950, the wife is not barred from asserting and protecting

her rights over her share in the conjugal partnership property under Article 173 of the New Civil Code against her husband's act or contract which tends to defraud her or impair her interest in the conjugal partnership during her marriage and within ten years from the transaction questioned." [3]

Hence, this petition by the Philippine National Bank.

It is petitioner PNB's contention that since the contract of sale between Dumaguít and Aras was perfected and executed on May 4, 1958, the action filed by respondent Devaras in the trial court on December 4, 1973 to annul the same, has clearly prescribed under Article 173 of the Civil Code, insofar as such action refers or relates to Dumaguít and Aras (regarding the sale transaction between them) and to Aras and the petitioner PNB (regarding the mortgage contract between them).

The only issue involved in the case at bar is whether or not Devaras' causes of action against Pio Dumaguít, Eulogia Aras, and the petitioner, insofar as such causes of action refer or relate to the transactions executed between Dumaguít and Aras on the one hand and the mortgage contract between Aras and the petitioner on the other, have been barred by the statute of limitations.

The answer is in the affirmative.

Article 173 of the new Civil Code states in part that "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 husband which tends to defraud her or impair her interest in the conjugal partnership property." Be it noted that Article 173 is an article under the new Civil Code and not an article under the Civil Code of Spain. Nonetheless, We can apply Article 173 because it also speaks of a transaction by the husband without the consent of the wife, even though the contract does not need her consent, as long as she might be prejudiced thereby. (emphasis supplied)

At the outset, two important matters must be stressed: (1) the marriage between Dumaguít and Devaras still subsisted at the time the complaint for Recovery of Real Property was brought in 1973; and (2) that while Article 1661 excludes properties acquired before the effectivity of the New Civil Code from the wife's consent before the alienation, the wife under Article 173 of the same code can ask the court for the annulment of any act or contract of the husband which tends to defraud or impair her interest in the conjugal partnership.

Clearly therefore, Devaras has no cause of action against Aras and PNB when she filed the action for Recovery of Real Property which was actually an Annulment of the Sale transactions, since the action had already prescribed. Respondent Devaras should have filed her annulment suit before the 10-year period, under Article 173, expired in 1968. The present complaint was, therefore, filed approximately five (5) years and seven (7) months too late.

With regard however, to the sale transaction between Dumaguít and Peregrino executed on December 8, 1970, there is no question that Devaras has a cause of action. The action for annulment of said transaction having been filed on December 4, 1973, or within the ten-year prescriptive period.

The issue or defense of prescription under the circumstances of the case, particularly with reference to Article 173 of the Civil Code, may still be invoked and considered, despite its not having been expressly pleaded in petitioner's answer to the complaint, because the factual basis of prescription can be ascertained nevertheless from the pleadings or the evidence on record themselves.

PREMISES CONSIDERED, the petition is hereby **GRANTED**. The decision of the appellate court dated July 23, 1984 is hereby **SET ASIDE** or **REVERSED** insofar as the sale between Dumaguít and Aras is concerned.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, p. 16

[2] Penned by Justice Mariano A. Zosa and concurred in by Justices Jorge R. Coquia and Floreliana Castro-Bartolome

[3] Rollo, p. 79

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

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