

**DIOSDIDIT, BALDOMERO, FILOMENO, ELPIDIO, AIDA, ALL
SURNAMED CUENCA, PETITIONERS, VS. RESTITUTO CUENCA,
MELADORA CUENCA AND COURT OF APPEALS, RESPONDENTS.**

G.R. No. 72321. December 08, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari seeks the reversal of the resolutions of the then Intermediate Appellate Court, now Court of Appeals, denying the petitioners' motion for new trial on the ground of newly discovered evidence.

Private respondents Restituto Cuenca and Meladora Cuenca filed a complaint for recovery of real property and damages against the petitioners before the then Court of First Instance of Davao del Norte. The case was docketed as Civil Case No. 1240.

After trial, the lower court rendered a decision in favor of the petitioners. The lower court dismissed the complaint.

The private respondents appealed the decision to the then Intermediate Appellate Court.

On November 26, 1984, the appellate court reversed and set aside the decision of the lower court. It rendered a decision in favor of the private respondents the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby set aside and another one entered declaring plaintiff Restituto Cuenca the absolute and exclusive owner of that parcel of land known as Lot 3063 Pls-22 of the Cadastral Survey of the Municipality of Butuan, Province of Agusan located at Bo. Pinamangculan, containing an area of six (6) hectares, more or less, declared in the name of Restituto Cuenca; ordering the defendants to restore to said plaintiff Restituto Cuenca the possession of said parcel of land; declaring the parcel of land described as Lot 3060 Pls-22 of the Cadastral Survey of the Municipality of Butuan, Province of Agusan, located at Barrio Pinamangculan, Butuan, Agusan, containing an area of 17 hectares, 732 centares, more or less, declared in the name of Restituto Cuenca as conjugal partnership property of deceased spouses Agripino Cuenca and Maria Bangahon in effect declaring one half portion of said parcel of conjugal partnership property the share of the deceased Maria Bangahon to be divided exclusively share and share alike between the plaintiffs Restituto Cuenca and Meladora Cuenca as the heirs of Maria Bangahon; declaring the other half portion of said parcel as the share of the late Agripino Cuenca also with plaintiffs as the only surviving heirs of the said Agripino Cuenca entitled to divide exclusively between themselves share and share alike the said one half portion of Agripino Cuenca, and the other one half of the share of Agripino Cuenca to be divided among the plaintiffs Restituto Cuenca and Meladora Cuenca and defendant Engracia Basadre in equal shares under Article 892 of the New Civil Code. The other claim of the plaintiffs for damages and accounting of the value of the produce corresponding to their shares is not granted for lack of evidence. The counterclaim of defendants is likewise dismissed for lack of merit." (Rollo, pp. 37-38)

On December 3, 1984, the petitioners received a copy of the appellate court's decision.

On December 14, 1984, the petitioners filed a motion for reconsideration of the decision.

On February 22, 1985, the petitioners filed a Supplemental Motion for Reconsideration and/or Motion for New Trial on the ground of newly discovered evidence.

In a Resolution dated August 6, 1985, the appellate court denied the motion for reconsideration for lack of merit and the supplemental motion for reconsideration and/or new trial for having been filed out of time. The court ruled that under section 1, Rule 37 of the Revised Rules of Court, a motion for new trial on the ground of newly discovered evidence must be filed only within thirty (30) days after notice of the decision is received.

The petitioners filed a motion for reconsideration of the August 6, 1985 resolution insofar as the same held that the motion for new trial was filed out of time. The motion was denied for lack of merit and legal basis.

Hence, this petition.

In a resolution dated September 14, 1987, we gave due course to the petition.

The sole issue raised in the instant petition pertains to the period when a party may file a motion for new trial before the appellate court.

The Rules of Court under Rule 37 and Rule 53 provide two (2) instances when a party may file a motion for new trial on the ground of newly discovered evidence.

Rule 37, Section 1 states:

"SECTION 1. Grounds of and period for filing motion for new trial - Within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party."

x x x x x x x x

"b) Newly discovered evidence, which he could not, with reasonable diligence have discovered, and produced at the trial and which if presented would probably alter the result; (underlining supplied)"

x x x x x x x x

while section 1, Rule 53 states:

"SECTION 1. Petition - Before a final order or judgment rendered by the Court of Appeals becomes executory, a motion for new trial may be filed on the ground of newly discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence and a which is of such a character as would probably change the result. The motion shall be accompanied by affidavits showing the facts constituting the grounds therefor and the newly discovered evidence. (Underlining supplied)

The rules are clear and leave no room for interpretation. Rule 37 speaks of a trial court while Rule 53 speaks of the Court of Appeals. Undoubtedly, the appellate court erred in denying the petitioners' motion for new trial on the ground that it was filed out of time pursuant to Rule 37. The applicable law is Rule 53 and since the motion for new trial was filed before the appellate court's judgment could become final and executory, the motion was filed within the reglementary period.

With these findings, the usual procedure would be to remand the case to the appellate court. Nevertheless, since all the relevant facts needed to resolve the issue as to whether or not the petitioners' motion for new trial is meritorious are before us, we find no need to refer the case back to the appellate court. (See *Tejones v. Gironella, et al.*, G.R. No. L-35506 March 21, 1988; *Alger Electric, Inc. v. Court of Appeals* (135 SCRA 37 [1985]), and *Beautifont, Inc., et al. v. Court of Appeals, et al.* (G. R. No. 50141, January 29, 1988).

Civil Case No. 1240 had for its subject matter parcels of land which were claimed by two sets of families. Private respondents Restituto Cuenca and Meladora Cuenca claimed ownership over the subject parcels of land on the ground that they are the legitimate children of Agripino Cuenca and Maria Bangahon, both deceased, owners of the subject parcels of land. They alleged that some of the parcels are paraphernal property of Maria while all the others are conjugal properties of Maria and Agripino. They also alleged that Agripino Cuenca and Engracia Basadre were not legally married because at the time they lived together Agripino was married to a certain Jesusa Pagar. On the other hand, the petitioners (defendants below) Diosdedit, Baldomero, Filomeno Elpidio, Aida, Anita and Engracia Vda. de Cuenca denied the legitimacy of the marriage between Agripino Cuenca and Maria Bangahon as well as the legitimacy of the plaintiffs as children of the couple. They claimed that Agripino Cuenca and their mother Engracia Basadre were legally married and that they are the legitimate children of the couple. They contend that the subject parcels of lands are conjugal properties of Agripino and Engracia.

The appellate court stated its findings as follows:

"The records show that defendant Bartolome Sanchez upon manifestation of his counsel is no longer a necessary party as Engracia Basadre-Cuenca has repurchased that portion of the land in question sold to Bartolome Sanchez making plaintiffs' claim against defendant Bartolome Sanchez moot and academic.

Our review of the evidence shows that Agripino Cuenca in his lifetime expressed in the extrajudicial settlement of the estate of Maria Bangahon executed on June 13, 1950 before Notary Public Francisco Ro. Cupin (Exh. "C" that:

"Parcel of agricultural land situated in Pinamangculan, Butuan, Agusan, planted to coconut, under the present possession of the heirs of Maria Bangahon, bounded on the North, Lot No. 3062, Lucio Plaza, Lot No. 4319, A. Cuenca, portion of Lot No. 3063, in the possession of A. Cuenca, on the south Road, on the West by Lot No. 3057, S. Dumanon, 3058, B. Adormio, 3059, A. Cuenca and east portion of Lot No. 3063, containing an area of six (6) hectares, more or less (This is a portion of Lot No. 3063, Pls-22 of Cad. of the Municipality of Butuan), which parcel of land belongs exclusively to Maria Bangahon during her lifetime and which property is separate from the conjugal property of the marriage of said Maria Bangahon and Agripino Cuenca.

That parcel of land situated in Rendon, Butuan, Agusan, planted to rice with irrigation under the present possession of the heirs, bounded on the North by Mariano Agagdang, on the East by Clerencia Tagonsod, on the South by Suatan River and on the West by Mariano Agagdang, containing an area of 1.2500 hectares, more or less, under Tax Dec. 3055, assessed at P250.00 by the property records of Agusan.

That parcel of land situated in Rendon, Butuan, Agusan, planted to coconut, under the present possession of the heirs, bounded on the North by Maximo Bangahon, on the East, by Sergio Pagar, on the South, by Macaria Agagdang, on the West, by Folgencio Buyan, containing an area of 1.1722 hectares, more or less, assessed at P670.00 by Tax Dec. No. 4026 of Agusan."

belong to Maria Bangahon as her inheritance from her parents. This declaration against interest is further reiterated by Agripino Cuenca in that extrajudicial settlement and sale executed by him on October 19, 1950. These two documents, as rightly contended by the plaintiffs, are ample proofs that the properties in question described in par. 2 of the complaint, belong exclusively to Maria Bangahon as her paraphernal property, a fact declared by no less than the husband himself in a declaration against his interest. It was error for the trial court to unceremoniously brush aside the importance of the declaration of Agripino Cuenca in the extrajudicial settlement of the estate of Maria Bangahon. These public documents carry sufficient evidentiary weight to prove the origin of the properties in question and the nature of their ownership as properties brought into the marriage by Maria Bangahon to Agripino Cuenca as against the bare testimony of the defendants and their witnesses. More importantly, Juan Buyan and former Judge Francisco Ro. Cupin, parties who participated in the execution of the

two documents — the first as an instrumental witness to the documents and the other the intervening Notary Public — testified to the due execution of the said documents. These witnesses likewise proved the genuineness of Exhibits C and D.

The ownership of Maria Bangahon of the three parcels of land was testified to further by Adel Ras who declared un rebutted that Maria Bangahon was the daughter of Isidro Bangahon, the first cousin of his father; that the three parcels of land in question were inherited by Maria Bangahon from her parents; that Maria Bangahon later married Agripino Cuenca bringing into their marriage the properties which she inherited from her father, Isidro Bangahon. These pieces of evidence established the fact that the plaintiffs are the forced heirs of Maria Bangahon and Agripino Cuenca, who by law should succeed to the possession and ownership of the properties in question. On the other hand, defendants' evidence consist only of the oral testimonies of Marta Legaspi, Engracia Basadre-Cuenca, Baldomero Cuenca and Diosdidit Cuenca which proved nothing concrete as they merely are inferences and deductions conveniently tailored to support their claim that Agripino Cuenca married Engracia Basadre-Cuenca; that the properties in question were acquired during their marriage without, however, presenting any document to prop up their pretense; that they are the legitimate children of Agripino Cuenca and Engracia Basadre-Cuenca who succeeded to the properties in litigation. We find no evidentiary value in the extrajudicial settlement of the estate of Agripino Cuenca executed by the defendants Engracia Basadre-Cuenca and her children. It is self-serving and proves nothing.

In passing, We note that the defendants presented tax declaration (Exhibits 3-17-A), pieces of evidence which have been ruled in a long line of decisions by our Supreme Court to be not real evidence at all sufficient to prove ownership or possession.

After considering the evidence of both parties, in sum, We find convincing evidence to show that Agripino Cuenca and Maria Bangahon were legally married with Restituto Cuenca and Meladora Cuenca as their issues; that Maria Bangahon brought properties into her marriage; that the couple acquired properties during the marriage; that by virtue of the extrajudicial settlement executed by Agripino Cuenca and his children, Restituto is the absolute owner of the parcels of land described in paragraph 2(a) (b) and (c) of the complaint; that one half of the land described in par. 6 of the complaint belongs to Agripino Cuenca and the other half to Maria Bangahon the same having been acquired by Agripino Cuenca and Maria Bangahon during their marriage -- conjugal partnership property. Therefore, upon the dissolution of the conjugal relationship by the death of spouses Agripino Cuenca and Maria Bangahon, one half goes to Agripino Cuenca which portion after the death of Agripino Cuenca goes to his alleged third wife, Engracia Basadre-Cuenca together with the plaintiffs as forced heirs of Agripino Cuenca (Arts. 185 & 189, New Civil Code).

From the evidence of the plaintiffs, We find the present appeal impressed with merit." (Rollo, pp. 33-37)

In their motion for new trial the petitioners alleged:

"1. There are newly discovered evidence consisting of ancient, authentic records which establish beyond reasonable doubt, the status of defendants-appellees as legitimate children of the deceased Agripino Cuenca whose estate is the subject matter of this case.

2. There is documentary proof beyond doubt that Agripino Cuenca was never married to Jesusa Pagar.

3. The totality of defendants-appellees' evidence prove that Engracia A. Basadre was married legally to Agripino Cuenca in 1920 and that the defendant-appellees are legitimate children of Agripino Cuenca and legitimate half-brother/half sisters of plaintiffs-appellants who are entitled to equal shares of their father's estate.

4. There is sufficient documentary evidence to prove that the lands in question were conjugal properties of

Agripino Cuenca and Engracia A. Basadre acquired during their marriage." (Rollo, p. 60)

The petitioners wanted to prove that Engracia Basadre was legally married to their father Agripino Cuenca and that all the other petitioners were the legitimate children of the couple. In this connection, the petitioners attached to their motion an alleged newly discovered evidence consisting of a certified true copy of the Register of Birth of petitioner Diosdidit Cuenca, first child of Agripino Cuenca and petitioner Engracia Basadre issued by the National Archives or Bureau of Records Management which discloses that Diosdidit is a legitimate child of the couple and a notarized public document dated August 13, 1948 which discloses that Jesusa Pagar was married to Santiago Barkowel disproving the respondents' evidence that Jesusa Pagar was married to Agripino Cuenca.

The issue as to whether or not petitioner Engracia Basadre was legally married to Agripino Cuenca was settled by the appellate court in this wise:

"After considering the evidence of both parties, in sum, We find convincing evidence to show that Agripino Cuenca and Maria Bangahon were legally married with Restituto Cuenca and Meladora Cuenca as their issues; that Maria Bangahon brought properties into her marriage; that the couple acquired properties during the marriage; that by virtue of the extrajudicial settlement executed by Agripino Cuenca and his children, Restituto is the absolute owner of the parcels of land described in paragraph 2(a) (b) and (c) of the complaint; that one half of the land described in par. 6 of the complaint belongs to Agripino Cuenca and the other half to Maria Bangahon the same having been acquired by Agripino Cuenca and Maria Bangahon during their marriage - conjugal partnership property. Therefore, upon the dissolution of the conjugal relationship by the death of spouses Agripino Cuenca and Maria Bangahon, one half goes to Agripino Cuenca which portion after the death of Agripino Cuenca goes to his alleged third wife. Engracia Basadre-Cuenca together with the plaintiffs as forced heirs of Agripino Cuenca (Arts. 185 & 189, New Civil Code)." (Rollo, pp. 36-37) (Underlining supplied)

The dispositive portion of the decision states that petitioner Engracia Basadre was entitled to inherit from Agripino Cuenca together with the latter's legitimate children by Maria Bangahon, the private respondents herein in accordance with Article 892 of the New Civil Code.

Accordingly, the appellate court declared Engracia Basadre as surviving spouse. There was, therefore no need to prove the legality of the marriage between petitioners Engracia Basadre and Agripino Cuenca much less to prove the legitimacy of the other petitioners who are undoubtedly the children of Agripino and Engracia.

The petitioners also alleged the finding of newly discovered evidence to prove that the subject parcels of land were conjugal properties of Agripino Cuenca and petitioner Engracia Basadre. These consist of eight (8) sketch maps obtained on December 27, 1984 from the Regional Office of the Bureau of Lands in Cagayan de Oro City "after extensive research." The petitioners alleged that these parcels were surveyed for Agripino Cuenca and approved when Agripino Cuenca was already married to Engracia as indicated in the documents, hence, there is the presumption that these are conjugal properties and therefore petitioners have hereditary rights over these properties.

Article 160 of the New Civil Code provides that "All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife," In the cases of *Philippine National Bank v. Court of Appeals*, (153 SCRA 435 [August 31, 1987]); *Magallon v. Montejito* (146 SCRA 282 [December 16, 1986]) and *Maramba v. Lozano* (20 SCRA 474 [June 29, 1967]) this Court ruled that the presumption refers only to the property acquired during marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired.

In the case at bar, the documents sought to be presented as newly discovered evidence do not show that the claims

to the subject parcels consisting of homestead lands were perfected during the marriage of Agripino Cuenca and petitioner Engracia Basadre. The perfection of the homestead claims is considered the time of acquisition of the properties. (See *Magallon v. Montejo* supra) The fact that these parcels were surveyed for Agripino Cuenca and approved during the marriage of Agripino Cuenca and petitioner Engracia Basadre is not determinative of the issue as to whether or not the parcels were the conjugal properties of Agripino and Engracia. Moreover, the documents show that 5 of the 8 parcels covered by the documents are titled in the name of either respondent Meladora Cuenca or respondent Restituto Cuenca. The presumption cannot prevail "when the title is in the name of only one spouse and the rights of innocent third parties are involved. (*Philippine National Bank v. Court of Appeals*, supra citing *Nable Jose v. Nable Jose*, 41 Phil. 713) Under the circumstances of this case, the non-applicability of the presumption should also be upheld.

In the light of these findings a new trial would only be an unnecessary exercise and ineffective. The documents sought to be presented during a new trial would not in any way change the result. The motion for new trial was correctly denied although not for the reason given by the respondent court.

WHEREFORE, the instant petition is DISMISSED. The questioned resolutions of the appellate court are AFFIRMED.

For non-compliance with this Court's Resolution dated March 2, 1988, ordering him to show cause for his failure to file a memorandum within the period given to him, Atty. Cipriano C. Alvizo, Sr. is fined Five Hundred (P500.00) Pesos. If he fails to pay the fine within ten (10) days from notice of this decision, he shall be imprisoned for five (5) days.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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