

JOSEPHINE B. BELCODERO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, ET AL., RESPONDENTS.*G.R. No. 89667. October 20, 1993*

Ponente: VITUG, J.

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This case involves the question of ownership over a piece of land acquired by a husband while living with a paramour and after having deserted his lawful wife and children. The property had been bought by the husband on installment basis prior to the effectivity of the Civil Code of 1950 but the final deed, as well as the questioned conveyance by him to his common law spouse, has ensued during the latter Code's regime. Now, of course, we have to likewise take note of the new Family Code which took effect on 03 August 1988.

Let us begin by paraphrasing the factual findings of the appellate court below.

The husband, Alayo D. Bosing, married Juliana Oday on 27 July 1927, with whom he had three children, namely, Flora, Teresita, and Gaido. In 1946, he left the conjugal home, and he forthwith started to live instead with Josefa Rivera with whom he later begot one child, named Josephine Bosing, now Josephine Balcobero.

On 23 August 1949, Alayo purchased a parcel of land on installment basis from the Magdalena Estate, Inc. In the deed, he indicated his civil status as, "married to Josefa R. Bosing," the common-law wife. In a letter, dated 06 October 1959, which he addressed to Magdalena Estate, Inc., he authorized the latter to transfer the lot in the name of his "wife Josefa R. Bosing." The final deed of sale was executed by Magdalena Estate, Inc., on 24 October 1959. A few days later, or on 09 November 1959, Transfer Certificate of Title No. 48790 was issued in the name of "Josefa R. Bosing, x x x married to Alayo Bosing, x x x."

On 06 June 1958, Alayo married Josefa even while his prior marriage with Juliana was still subsisting. Alayo died on 11 March 1967. About three years later, or on 17 September 1970, Josefa and Josephine executed a document of extrajudicial partition and sale of the lot in question, which was there described as "conjugal property" of Josefa and deceased Alayo. In this deed, Josefa's supposed one-half (1/2) interest as surviving spouse of Alayo, as well as her one-fourth (1/4) interest as heir, was conveyed to Josephine for a P10,000.00 consideration, thereby completing for herself, along with her own one-fourth (1/4) interest as the surviving child of Alayo, a full "ownership" of the property. The notice of extrajudicial partition was published on 04, 05 and 06 November 1970 in the Evening Post; the inheritance and estate taxes were paid; and a new Transfer Certificate of Title No. 198840 was issued on 06 June 1974 in the name of Josephine.

On 30 October 1980, Juliana (deceased Alayo's real widow) and her three legitimate children filed with the court a quo an action for reconveyance of the property. On the basis of the above facts, the trial court ruled in favor of the plaintiffs, and it ordered that -

"x x x Josephine Bosing execute a deed of reconveyance of the property in question to the legal heirs of the deceased Alayo D. Bosing, and that both defendants pay, jointly and severally, actual damages by way of attorney's fees and expenses in litigation, TEN THOUSAND (P10,000.00) PESOS, and the sum of TEN

THOUSAND (P10,000.00) PESOS as moral damages, plus TEN THOUSAND (P10,000.00) PESOS exemplary damages to prevent future frauds."

The defendants went to the Court of Appeals which affirmed the trial court's order for reconveyance but reversed the decision on the award for damages, thus -

WHEREFORE, the judgment appealed from is hereby AFFIRMED insofar as defendant Josephine Bosing is ordered to execute a deed of reconveyance of the property granting the same to the legal heirs of the deceased Alayo D. Bosing, and REVERSED insofar as it awards actual, moral and exemplary damages.[1]

Hence, the instant petition for review[2] submitting that -

1. THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE ACTION FOR RECONVEYANCE HAD LONG PRESCRIBED.
2. THE RESPONDENT COURT ERRED IN FINDING THAT, THE ACTION FOR RECONVEYANCE IS BASED UPON AN IMPLIED OR CONSTRUCTIVE TRUST.
3. THE RESPONDENT COURT ERRED IN NOT HOLDING THAT, THE PROPERTY IN QUESTION BELONGS EXCLUSIVELY TO THE PETITIONERS.
4. THE RESPONDENT COURT ERRED IN NOT GRANTING PETITIONERS' MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, AND LIKEWISE ERRED IN HOLDING THAT EVEN IF A NEW TRIAL IS GRANTED THE SAME WOULD NOT SERVE A USEFUL PURPOSE.

We rule for affirmance.

The first three issues are interrelated, and the same will thus be jointly discussed.

Whether the property in question was acquired by Alayo in 1949 when an agreement for its purchase on installment basis was entered into between him and Magdalena Estate, Inc., or in 1959 when a deed of sale was finally executed by Magdalena Estate, Inc., the legal results would be the same. The property remained as belonging to the conjugal partnership of Alayo and his legitimate wife Juliana. Under both the new Civil Code (Article 160) and the old Civil Code (Article 1407); "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." This presumption has not been convincingly rebutted.

It cannot be seriously contended that, simply because the property was titled in the name of Josefa at Alayo's request, she should thereby be deemed to be its owner. The property unquestionably was acquired by Alayo. Alayo's letter, dated 06 October 1959, to Magdalena Estate, Inc., merely authorized the latter to have the title to the property transferred to her name. More importantly, she implicitly recognized Alayo's ownership when, three years after the death of Alayo, she and Josephine executed the deed of extrajudicial partition and sale in which she asserted a one-half (1/2) interest in the property in what may be described as her share in the "conjugal partnership" with Alayo, plus another one-fourth (1/4) interest as the "surviving widow," the last one-fourth (1/4) going to Josephine as the issue of the deceased. Observe that the above adjudication would have exactly conformed with a partition in intestacy had they been the sole and legitimate heirs of the decedent.

The appellate court below, given the above circumstances, certainly cannot be said to have been without valid basis in concluding that the property really belonged to the lawful conjugal partnership between Alayo and his true spouse Juliana.

As regards the property relations between common-law spouses, Article 144 of the Civil Code merely codified the

law established through judicial precedents under the old code (Margaret Maxey vs. Court of Appeals, G.R. No. L-45870, 11 May 1984). In both regimes, the co-ownership rule had more than once been repudiated when either or both spouses suffered from an impediment to marry (Jeroniza vs. Jose, 89 SCRA 306). The present provisions under Article 147 and Article 148 of the Family Code did not much deviate from the old rules; in any case, its provisions cannot apply to this case without interdicting prior vested rights (Article 256, Family Code).

It was at the time that the adjudication of ownership was made following Alayo's demise (not when Alayo merely allowed the property to be titled in Josefa's name which clearly was not intended to be adversarial to Alayo's interest), that a constructive trust was deemed to have been created by operation of law under the provisions of Article 1456 of the Civil Code.

"Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

The applicable prescriptive period for an action seeking a reconveyance of the property by the beneficiaries thereof is ten (10) years (Article 1144, Civil Code). Ordinarily, that period starts from the establishment of the implied trust being the day when the cause of action would be considered to have accrued (Article 1150, Civil Code). Unfortunately for Josefa and Josephine, however, the property involved in this case is a realty titled under the Torrens System. The prescriptive period is thus to be counted from the time the transaction affecting the property is registered with the corresponding issuance of a new certificate of title.[3] Between the time Transfer Certificate of Title No. 198840 was issued on 06 June 1974, and the filing of the action for the reconveyance of the property with the court a quo on 30 October 1980, barely a period of six (6) years and four (4) months had elapsed. The case has accordingly been initiated seasonably.

The four-year prescriptive period, mentioned in passing by the petitioners, would have had some value and relevance had the private respondents or their predecessor in interest been parties to the extrajudicial partition and sale. In that event, the latter's action could only then be predicated on a vitiation of consent[4] where the applicable statutory limitation would be four years.[5]

The last issue raises the supposed error in the rejection of a new trial on the basis of newly discovered evidence. We concur with the resolution of the appellate court below (on appellants' [petitioners herein] motion for reconsideration thereat), thus -

Appellants' prayer for a new trial based upon what they claim is newly discovered evidence deserves scant consideration.

Appellant proposes to prove (1) that Josefa Bosing sold certain property for P8,000.00 in 1948 and was therefore in a financial position to make the payments to Magdalena Estate Inc. and (2) that appellee Juliana Bosing got married in 1961 to one Burayos Ballit, and thus, "forfeited" her right to the conjugal partnership.

The first ground is not meritorious. It is not newly discovered evidence. As described in appellants' Motion the documents were "not discovered or considered as necessary evidence during the trial of the case below" by the former counsel; it is therefore more properly considered as forgotten evidence, which the appellant knew or should have known during the trial (Tesoro vs. Court of Appeals, 54 SCRA 296; Republic vs. Vda. de Castelv, 58 SCRA 336). Moreover, assuming the sale is proven, it does not follow that the proceeds were used to pay the lot in question; the payments were made in installments, not in one lump sum.

Neither is the second ground deserving of merit. Assuming that the marriage to Ballit in 1961 is duly proven, and that this provided a cause for legal separation and consequent disqualification of the guilty spouse to succeed to the husband's intestate estate under Article 1002 of the Civil Code, the fact remains that no action for legal separation was brought by the husband during his lifetime and within the period provided by law. It is

too late to raise the issue at this time.

Accordingly, assuming that the Motion for New Trial complies with the formal requisites for such a motion (See *Minister of Natural Resources vs. Heirs of Orval Hughes, et. al.*, GR No. 62662, prom. November 12, 1987), a question We don't find necessary to decide, a new trial would not serve a useful purpose in altering the result of the questioned decision.

WHEREFORE, the decision appealed from in the instant petition for review on certiorari is AFFIRMED.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Penned by Justice Minerva Gonzaga-Reyes, concurred in by Justices Santiago Kapunan and Ricardo Francisco.

[2] Ably presented by Atty. Jaime Infante.

[3] See Articles 708-709, 711, Civil Code; *Amerol vs. Bagumbaran*, 154 SCRA 396.

[4] Article 1390, Civil Code.

[5] Article 1391, *Ibid.*

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