

## MELANIA A. ROXAS, PETITIONER, VS. THE HON. COURT OF APPEALS AND ANTONIO M. CAYETANO, RESPONDENTS.

*G.R. No. 92245. June 26, 1991*

Ponente: PARAS, J.

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### PARAS, J.:

The only issue before Us is whether or not a husband, as the administrator of the conjugal partnership, may legally enter into a contract of lease involving conjugal real property without the knowledge and consent of the wife.

According to the Decision\* rendered by the respondent Court of Appeals, the pertinent facts of the case as alleged in plaintiff-petitioner's complaint indicate:

"1. That plaintiff is of legal age, married but living separately from husband, one of the defendants herein and presently residing at No. 4 Ambrocia St., Quezon City; while defendant Antonio S. Roxas is likewise of legal age and living separately from his wife, plaintiff herein, with residence at No. 950 Quirino Highway, Novaliches, Quezon City where he may be served with summons; and defendant Antonio M. Cayetano is of legal age and residing at No. 28 Mariano Olondriz Street, BF Homes, Paranaque, Metro Manila where he may be served with summons;

"2. That only recently, plaintiff discovered that her estranged husband, defendant Antonio S. Roxas, had entered into a contract of lease with defendant Antonio M. Cayetano sometime on March 30, 1987 covering a portion of their conjugal lot situated at 854 Quirino Highway, Novaliches, Quezon City, described in T.C.T. No. 378197 (formerly T.C.T. No. 23881) of the Land Registry for Quezon City without her previous knowledge, much less her marital consent; xerox copy of which lease contract is hereto attached as Annex 'A', and made an integral part hereof.

"3. That on the same lot, plaintiff had planned to put up her flea market with at least twenty (20) stalls and mini-mart for grocery and dry goods items for which she had filed an application for the corresponding Mayor's Permit and Municipal License which had been approved since 1986, but when she attempted to renew it for 1986, the same was disapproved last month due to the complaint lodged by defendant Antonio M. Cayetano whose application for renewal of Mayor's Permit and License for the same business of putting up a flea market, had been allegedly earlier approved;

"4. That for the planning and initial construction of plaintiff's project to put up her own business of flea market and mini-mart grocery and wet and dry stores which she had intended to operate partly by herself and lease the rest of the twenty (20) stalls thereon, she had spent some P135,000.00 for the said construction, including materials and labor, where she had expected to earn as daily net income in the minimum amount of P500.00 daily;

"5. That due to the illegal lease contract entered into between the herein defendants and the resultant unlawful deprivation of plaintiff from operating her own legitimate business on the same lot of which she is a conjugal owner, plaintiff has been compelled to seek redress and ventilate her grievance to the court for which she has

to engage the services of counsel with whom she agreed to pay as and for attorney's fees the sum of P10,000.00; plus the amount equivalent to 20% of whatever damages may be awarded to her in addition to the sum of P500.00 per appearance in court.

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xxx xxx xxx

"Dated July 31, 1989 defendant Antonio M. Cayetano moved to dismiss the complaint on the sole ground that the complaint states no cause of action, to which an Opposition was filed by plaintiff (now petitioner herein), while defendant Antonio S. Roxas, estranged husband of plaintiff?petitioner, filed an answer.

"Confronted with the private respondent's Motion to Dismiss, on August 16, 1989, respondent Judge resolved said Motion by dismissing plaintiff-petitioner's complaint in its Order dated August 16, 1989, the dispositive portion of which reads, as follows:

'It is said that the test of sufficiency of the cause of action is whether admitting the facts alleged to be true, the court could render a valid judgment in accordance with the prayer in the complaint. After examining the material allegations in the complaint, the Court finds that the complaint failed to satisfy the test of sufficiency.

'WHEREFORE, the complaint is dismissed for failure to state a sufficient cause of action.

'IT IS SO ORDERED.' (p. 2 Order, dated August 16, 1989).

"Plaintiff-petitioner filed a Motion for Reconsideration, which was denied by respondent Judge in its Order dated September 29, 1989." (Decision of Court of Appeals, pp. 1-4; Rollo, Annex 'A', pp. 26-29)

Petitioner directly appealed the Decision of the lower court to the Supreme Court.

On November 27, 1989, the Second Division of this Court referred this case to the Court of Appeals for "proper determination and disposition."

Respondent Court of Appeals rendered judgment affirming in toto the Order of the trial court.

Hence, this petition.

Under the New Civil Code (NCC) "Art. 165. The husband is the administrator of the conjugal partnership," in view of the fact that the husband is principally responsible for the support of the wife and the rest of the family. If the conjugal partnership does not have enough assets, it is the husband's capital that is responsible for such support, not the paraphernal property. Responsibility should carry authority with it.

The husband is not an ordinary administrator, for while a mere administrator has no right to dispose of, sell, or otherwise alienate the property being administered, the husband can do so in certain cases allowed by law. He is not required by law to render an accounting. Acts done under administration do not need the prior consent of the wife.

However, administration does not include acts of ownership. For while the husband can administer the conjugal assets unhampered, he cannot alienate or encumber the conjugal realty. Thus, under Art. 166 of NCC, "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 rule prevents abuse on the part of the husband, and guarantees the rights of the wife, who is partly responsible for the acquisition of the property, particularly the real property. Contracts entered into by the husband in violation of this prohibition are voidable and subject to annulment at the instance of the aggrieved wife. (Art. 173 of the Civil

Code)

As stated in Black's Law Dictionary, the word "alienation" means "the transfer of the property and possession of lands, tenements, or other things from one person to another x x x. The act by which the title to real estate is voluntarily assigned by one person to another and accepted by the latter, in the form prescribed by law. Cf. In re Enhardt, U.S.D.C., 19F. 2d 406, 407 x x x x." While encumbrance "has been defined to be every right to, or interest in, the land which may subsist in third persons, to the diminution of the value of the land, but consistent with the passing of the fee by the conveyance; any (act) that impairs the use or transfer of property or real estate x x x." (42 C.J.S., p. 549).

The pivotal issue in this case is whether or not a lease is an encumbrance and/or alienation within the scope of Art. 166 of the New Civil Code.

Under Art. 1643 of the New Civil Code "In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid." Under the law, lease is a grant of use and possession: it is not only a grant of possession as opined by the Court of Appeals. The right to possess does not always include the right to use. For while the bailee in the contract of deposit holds the property in trust, he is not granted by law the right to make use of the property in deposit.

In the contract of lease, the lessor transfers his right of use in favor of the lessee. The lessor's right of use is impaired, therein. He may even be ejected by the lessee if the lessor uses the leased realty. Therefore, lease is a burden on the land, it is an encumbrance on the land. The opinion of the Court of Appeals that lease is not an encumbrance is not supported by law. The concept of encumbrance includes lease, thus "an encumbrance is sometimes construed broadly to include not only liens such as mortgages and taxes, but also attachment, LEASES, inchoate dower rights, water rights, easements, and other RESTRICTIONS on USE." (Capitalization is Ours) (533 Pacific Reporter [second series] 9, 12).

Moreover, lease is not only an encumbrance but also a "qualified alienation, with the lessee becoming, for all legal intents and purposes, and subject to its terms, the owner of the thing affected by the lease." (51 C.C.J.S., p. 522)

Thus, the joinder of the wife, although unnecessary for an oral lease of conjugal realty which does not exceed one year in duration, is required in a lease of conjugal realty for a period of more than one year, such a lease being considered a conveyance and encumbrance within the provisions of the Civil Code requiring the joinder of the wife in the instrument by which real property is conveyed or encumbered (See also 41 C.J.S., p. 1149). In case the wife's consent is not secured by the husband as required by law, the wife has the remedy of filing an action for the annulment of the contract. Art. 173 of the Civil Code states "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 x x x."

In the case at bar, the allegation in paragraph 2 of the complaint, indicates that petitioner's estranged husband, defendant Antonio S. Roxas had entered into a contract of lease with defendant Antonio M. Cayetano without her marital consent being secured as required by law under Art. 166 of the Civil Code. Petitioner, therefore, has a cause of action under Art. 173 to file a case for annulment of the contract of lease entered into without her consent. Petitioner has a cause of action not only against her husband but also against the lessee, Antonio M. Cayetano, who is a party to the contract of lease.

PREMISES CONSIDERED, the decision of the Court of Appeals is hereby SET ASIDE and this case is hereby

REMANDED to the Regional Trial Court for further proceedings.

**SO ORDERED.**

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

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\* Penned by Justice Jorge S. Imperial, and concurred in by Justices Reynato S. Puno and Artemon D. Luna

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