

BENIGNO TODA, JR., PETITIONER, VS. COURT OF APPEALS AND ROSE MARIE TUASON-TODA, RESPONDENTS.

G.R. NOs. 78583-84. March 26, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

These consolidated cases seek a review of the decision of the Court of Appeals promulgated on January 29, 1987[1] in CA-G.R. CV Nos. 06675 and 07936, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

1. Ordering the payment of the cash dividends declared on July 1, 1981 amounting to P2,191.62 and those declared on July 25, 1981 amounting to P40,196.12 to Rose Marie Toda as her separate property. The cash dividends declared on April 25, 1981 amounting to P37,196.30 (sic) are hereby adjudicated to Benigno Toda, Jr. as his share in the conjugal partnership assets; the portion of the order dated November 2, 1981 with respect to the payment of the amount of P360,095.12 to Rose Marie T. Toda is set aside;
2. Ordering the payment of the amount of P4,623,982.24 to Rose Marie Toda representing the balance of P15,749,135.32 obligated to be paid as estate taxes by Benigno Toda, Jr.;
3. Setting aside the order of the lower court dated June 2, 1982 directing Benigno Toda, Jr. to pay interest and non-payment penalty of 18% and 5%, respectively; and
4. Setting aside the order of the lower court directing the annotation of lien on the property of Benigno Toda, Jr.

SO ORDERED."

Benigno Toda, Jr. (Benigno for brevity) and Rose Marie Tuason-Toda (Rose Marie for brevity) were married on June 9, 1951 and were blessed with two children. Individual differences and the alleged infidelity of Benigno, however, marred the conjugal union thereby prompting Rose Marie to file on December 18, 1979 in the former Court of First Instance of Rizal,[2] as Civil Case No. 35566, a petition for termination of conjugal partnership for alleged mismanagement and dissipation of conjugal funds against Benigno.

After hearings were held, the parties in order to avoid further "disagreeable proceedings," filed on April 1, 1981 a joint petition for judicial approval of dissolution of conjugal partnership under Article 191 of the Civil Code, docketed as Special Proceeding No. 9478,[3] which was consolidated with the aforesaid civil case. This petition which was signed by the parties on March 30, 1981, embodied a compromise agreement allocating to the spouses their respective shares in the conjugal partnership assets and dismissing with prejudice the said Civil Case No. 35566, CA-G.R. No. 11123-SP of the Court of Appeals and G.R. No. 56121 of this Court. The said petition and the compromise agreement therein were approved by the trial court in its order of June 9, 1981.[4]

Thereafter, several orders were issued by the lower court pertaining to the interpretation and implementation of the compromise agreement, as follows:

1. Order, dated November 20, 1981, ordering Benigno, inter alia, to pay Rose Marie the cash dividends on the shares declared on April 25, 1981 amounting to P37,126.30; that declared on July 25, 1981 amounting to P40,196.12; that declared on July 1, 1981, given on September 25, 1981 amounting to P2,191.62; and the payment of P360,095.12 to Rose Marie which is the balance of P2 million paid on April 4, 1981;[5]
2. Order, dated June 2, 1982, ordering Benigno to pay Rose Marie interest at 18% per annum on the amounts required to be paid in the order of November 20, 1981, as well as 5% non-payment penalty should the said order of November 20, 1981 be sustained on appeal;[6]
3. Order, dated December 9, 1982, denying Benigno's motion to inhibit Judge Rizalina Bonifacio Vera from hearing the case;[7]
4. Order, dated March 1, 1983, ordering the annotation of a lien on certain properties of Benigno as security for any and all amounts that he may finally be ordered to pay to Rose Marie under the compromise agreement;[8] and
5. Order, dated March 14, 1983, ordering Benigno to pay Rose Marie the amount of P4,623,929.24, with interest and penalties thereon at the rates stipulated in the compromise agreement from date of demand by Rose Marie.[9]

The compromise agreement which, as earlier stated, was incorporated in the petition for dissolution of the conjugal partnership and was approved by the court below, contains the following stipulations:

xxx xxx xxx

"4. For the best interest of each of them, petitioners have agreed to dissolve their conjugal partnership and to partition the assets thereof, under the following terms and conditions - this document, a pleading, being intended by them to embody and evidence their agreement:

"(a) Petitioners as the parties hereto agree upon the dissolution of their conjugal partnership during the marriage and further agree to obtain judicial approval of their said agreement as provided by Article 191 of the Civil Code.

"(b) The following shall be adjudicated to petitioner Rose Marie Tuason-Toda:

(1)

Forty Million Pesos (P40,000,000.00) to be paid as follows:

(a)

Petitioner Benigno Toda, Jr. shall assume the payment of the estate taxes, interest and penalties thereon, pertaining to the estate of petitioner Rose Marie Tuason-Toda's late brother Manuel Tuason, Jr. in the sum of P15,749,135.32 as of March 31, 1981 - all interest and penalty charges after March 31, 1981 to be the responsibility of petitioner Benigno Toda, Jr.

(b)

P2,000,000.00 to be paid within 30 days after signing of this agreement.

(c)

The balance shall be paid within six (6) months after date of signing of this agreement. If not paid when due, the balance shall bear interest at 18% per annum until paid and there shall be a 5% non-payment penalty. The proceeds from any sale of or loss with respect to, Rubicon's shares in Philippine Air Lines, Inc., shares of Cibeles Insurance Corporation or Hermana Mayor shall be applied when received against the aforesaid balance, except to the extent such proceeds are used to satisfy any other obligation under this agreement.

(2)

All shares of stock in San Miguel Corporation registered solely in the name of petitioner Rose Marie Tuason-Toda whether stock dividends or stocks acquired on pre-emptive rights including those acquired in the names of both petitioners Benigno Toda, Jr. and Rose Marie Tuason-Toda (whether jointly or alternately 'and/or'), free from all liens and encumbrances.

(3)

All shares of stock in San Miguel Corporation acquired whether as stock dividends of or on pre-emptive rights pertaining to the shares of stock in said corporation of petitioner Rose Marie Tuason-Toda's brother the late Manuel Tuason, Jr. (of course, the original shares of the latter pertain to petitioner Rose Marie Tuason-Toda also), free from all liens and encumbrances except for the estate tax lien. Petitioner Rose Marie Tuason-Toda hereby grants petitioner Benigno Toda, Jr. an irrevocable proxy, for three years through the 1983 stockholders' meeting whether annual or special to elect directors for all shares of stock she owns directly or indirectly including those from the late Manuel Tuason, Jr. in San Miguel Corporation.

(4)

The Banaba Forbes Park conjugal dwelling and its contents free from all liens and encumbrances except that petitioner Benigno Toda, Jr. shall remove therefrom his personal effects including furniture and appliances in his study room and T.V. room and, from the family room, all antiques, rugs, paintings of Old Fort Manila, books and mementos.

Petitioner Benigno Toda, Jr. commits that no servant now living in the Tolentino street apartments shall be evicted.

(5)

The San Francisco apartment at Apartment 905, No. 1750 Taylor Street, San Francisco, California, U.S.A., and its contents, free from all liens and encumbrances, except that petitioner Benigno Toda, Jr. shall remove therefrom his personal effects.

(6)

The artifacts already removed by petitioner Rose Marie Tuason-Toda from the Madrid Apartment at No. 4 San Pedro de Valdivia. She shall return to it its silver ware, china ware, paintings and etchings. She may retain the three fans encased in glass and may remove her clothes, perfumes and toiletries, the Sansa painting of a shell dedicated to her, the painting of the Madonna and tapestry hanging in her bedroom, 5 Persian rugs, 1 writing desk and chair and the 2 lamps thereon and 1 lamp on the night table, and the statuette given her by Hagedorn.

(7)

Jewelry.

(8)

Motor vehicles registered in her name.

(9)

Within forty-five (45) days from signing of this agreement, One Million Pesos (P1,000,000.00) as attorneys' fees - petitioner Rose Marie Tuason-Toda agreeing to hold petitioner Benigno Toda, Jr. harmless from any claim for attorneys' fees and expenses that may be filed against the conjugal partnership or herself for services rendered to

her in the prosecution of her claims against said conjugal partnership or against petitioner Benigno Toda, Jr. or to secure her paraphernal estate.

(10)

Two shares with two lots in Valley Golf & Country Club.

(11)

One share in Club Puerta de Hierro in Madrid, Spain if there is one registered in petitioner Rose Marie Tuason-Toda's name.

(12)

Share in Montemar Beach Club in Bagac, Bataan – petitioner Rose Marie Tuason-Toda agreeing to assume the balance of the acquisition cost thereof.

"(c) All other properties of the conjugal partnership of whatever kind wherever located shall be adjudicated to petitioner Benigno Toda, Jr. even though acquired in the name of petitioner Rose Marie Tuason-Toda or both of them - she undertaking to execute the corresponding deeds of conveyances.

"(d) Petitioner Benigno Toda, Jr. shall assume the payment of all conjugal obligations, petitioner Rose Marie Tuason-Toda representing and warranting that she has no pending obligation or incurred no obligation chargeable to the conjugal partnership except those listed in Annex 'A' hereof.

"If the Rosaria Apartment is subject to a mortgage loan and such loan is a conjugal debt, petitioner Benigno Toda, Jr. shall assume such loan and shall obtain the discharge of the mortgage.

"(e) After the signing of this document:

(1) Each of them shall own, dispose of, possess, administer and enjoy his or her separate estate, present and future, without the consent of the other;

(2) All earnings from any profession, business or industry shall likewise belong to each of them respectively;

(3) All expenses and obligations incurred by each of them shall be their respective and separate responsibilities.

"(f) With the signing of this document, Civil Case No. 35566 of this same Court, CA-G.R. No. 11123-SP and SC-G.R. No. L-56121 shall be deemed dismissed with prejudice as between the parties hereto."[10]

The parties then prayed that judgment be rendered:

"(a) Approving the agreement for voluntary dissolution and partition of the conjugal partnership;

(b) declaring the conjugal partnership of petitioners dissolved and adjudicating to each of them his or her share in the properties and assets of said conjugal partnership in accordance with the agreement embodied in paragraph 4 hereof; and

(c) enjoining the parties to comply with the terms and conditions of the aforesaid agreement."[11]

Ironically, the said agreement failed to fully subserve the intended amicable settlement of all the disputes of the spouses. Instead, as lamented by the counsel of one of them, the compromise agreement which was designed to terminate a litigation spawned two new petitions with each party initiating one against the other. Thus, illustrative of the saying that a solution which creates another problem is no solution, the contradictory interpretations placed by the parties on some provisions of the agreement resulted in appeals to respondent court and, eventually, the present recourse to us.

Benigno appealed from the aforesaid orders of the trial court of November 20, 1981, June 2, 1982, December 9, 1982, March 1, 1983 and March 14, 1983 containing the directives hereinbefore respectively set out. The same were disposed of by the Court of Appeals as explained at the start of this decision.

Rose Marie now submits that the Court of Appeals erred:

1. In holding that the compromise agreement of the parties herein became effective only after its judicial approval on June 9, 1981 and not upon its execution on March 30, 1981;
2. In setting aside the order of the lower court dated June 2, 1981 directing Benigno to pay interest of eighteen percent and non-payment penalty of five percent; and
3. In setting aside the order of the lower court directing the annotation of Rose Marie's lien on Benigno's property.[12]

On the other hand, Benigno contends in his present petition before us that:

1. The Court of Appeals erred on a question of law when it affirmed the lower court's award of P4,623,929.24 without trial and evidence-taking and overruled petitioner's claim of violation of his due process right;
2. The Court of Appeals erred on a question of law and due process when it upheld the lower court's denial of petitioner's motion for her inhibition/disqualification;
3. Since the document (the parties' compromise agreement) explicitly provided for assumption of liability rather than agency to pay and since there was no evidence-taking, the Court of Appeals' finding of an agency to pay is reviewable as a question of law; and
4. The Court of Appeals erred on a question of law involving the parol evidence rule.[13]

The award of cash dividends basically depends on the date of effectivity of the compromise agreement as this will determine whether the same is conjugal property or separate property of the spouses.

We are in agreement with the holding of the Court of Appeals that the compromise agreement became effective only on June 9, 1981, the date when it was approved by the trial court, and not on March 30, 1981 when it was signed by the parties. Under Article 190 of the Civil Code,[14] "(i)n the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place save in virtue of a judicial order." Hence, the separation of property is not effected by the mere execution of the contract or agreement of the parties, but by the decree of the court approving the same. It, therefore, becomes effective only upon judicial approval, without which it is void.[15] Furthermore, Article 192 of said Code explicitly provides that the conjugal partnership is dissolved only upon the issuance of a decree of separation of property.

Consequently, the conjugal partnership of Benigno and Rose Marie should be considered dissolved only on June 9, 1981 when the trial court approved their joint petition for voluntary dissolution of their conjugal partnership. Conformably thereto, the cash dividends declared on July 1, 1981 and July 25, 1981 in the amount of P2,191.62 and P40,196.12, respectively, should pertain to Rose Marie; and that declared on April 25, 1981 in the amount of P37,126.30 ought to be paid to Benigno, pursuant to Paragraph 4(c) of the compromise agreement which awards to Benigno the conjugal assets not otherwise specifically assigned to Rose Marie.

With respect to the amount of P360,095.12 which Benigno deducted from the P2 million supposed to be paid to Rose Marie, it is not clear from the records where said amount came from. The Court of Appeals, in holding, that it is conjugal and therefore belongs to Benigno, presumed it to be in the nature of cash dividends declared prior to the approval of the compromise agreement by reason of the fact that the amount was deducted by Benigno from

the P2 million which he paid on April 14, 1981. While no sufficient proof was adduced to conclusively explain such deduction, there exists the legal presumption that all property of the marriage belongs to the conjugal partnership absent any proof that it is the exclusive property of either spouse.[16] Since Rose Marie failed to prove that the amount forms part of her paraphernal property, it is presumed to be conjugal property. Consequently, Benigno is entitled to the said amount of P360,095.12, hence he rightfully deducted the same from the amount due to Rose Marie.

The issue regarding the annotation of the lien on Benigno's properties has been mooted by our resolution dated April 3, 1989 wherein, at his instance, we ordered the cancellation thereof upon his posting of the corresponding bond. In our resolution of February 26, 1990, we noted Benigno's compliance, approved the bond he filed, and ordered the cancellation of the liens annotated on the certificates of title of the properties involved.

Likewise, the order denying the motion to inhibit Judge Rizalina Bonifacio Vera has become academic considering that she no longer presides over the court where the case was filed. Besides, as correctly explained by respondent court, the ground for inhibition raised by Benigno is not valid it being merely on the basis of the judge having acquired knowledge of the facts surrounding the agreement of the parties, hence she would be a material witness to the issue of the true agreement which is contested by the parties. However, those facts came to the knowledge of the judge in the course of her efforts to effect a compromise between the parties and are also known to the parties. This is not a ground for disqualification; on the contrary, said acts of the judge were in accord with the rule encouraging compromises in litigations, especially between members of the same family.

Anent the tax savings of P4,623,982.24 obtained by Benigno, we hold that this forms part of the P40 million allocated to Rose Marie under paragraph 4(b)(1) of the compromise agreement. We give credit to the ratiocination thereon of the trial court as quoted with approval by respondent court:

"The records show that petitioner Benigno Toda, Jr. paid only P1,125,152.48 in estate taxes, although the amount stated in the Compromise Agreement was P15,749,135.32. The balance of P4,623,929.24 is now being claimed by both parties as aforesated. In the opinion of this court, the pertinent terms of the Agreement as quoted, are clear and do not require any interpretation. In brief, under the Agreement, petitioner Rose Marie T. Toda is adjudicated the fixed sum of P40 million, to be paid as follows: (a) Payment by petitioner Benigno Toda, Jr. of the estate taxes, interests and penalties thereon, pertaining to the estate of the late Manuel Tuason, Jr. in the amount of P15,749,135.32 as of March 31, 1982; (b) P2 million within 30 days after signing of the Agreement; (c) the balance within six months after date of signing of the Agreement. This Court notes that the amount of taxes, interests and penalties is fixed at P15,749,135.32 and this figure was provided by Benigno Toda, Jr. There is no provision as contended by petitioner Benigno Toda, Jr. that the amount was only an assumed liability and that he could attempt to reduce it by suit or compromise. It is clear that if the amount of P4,623,929.24 is to be credited to Benigno Toda, Jr. then the P40 million which petitioner Rose Marie T. Toda is to receive would be short by that amount. This Court is also of the opinion that under the Agreement, petitioner Benigno Toda, Jr. was constituted as agent to pay to the government the liability of the estate of the late Manuel Tuason, Jr. in the fixed amount of P15,749,135.32 and if he was able to secure a reduction thereof, then he should deliver to his principal such reduction... x x x"[17]

We do not believe that Benigno was denied due process when the trial court resolved the motion of Rose Marie for the payment of P4,623,982.24 without the benefit of a hearing. The records disclose that the hearing thereon was postponed twice at the instance of Benigno, which prompted the court to thereafter consider the motion submitted for resolution on the basis of the allegations therein and the answer filed by counsel for both parties. Benigno cannot now be heard to claim that he was deprived of his day in court. Furthermore, respondent court correctly held that the issue involved was more of a question of interpretation of a contract rather than a determination of facts. Benigno failed to make a plausible showing that the supposed evidence he had intended to

present, if any, would not be merely collateral matters.

Considering that the amount of P4,623,982.24 actually forms an integral part of the P40 million (minus the lawful and authorized deductions that may be made therefrom) which Benigno categorically undertook to pay to Rose Marie, the same must earn interest at the rate of 18% per annum and 5% non-payment penalty, the same being included in and within the contemplation of Paragraph 4(b)(1)(c) of the compromise agreement. Said provision of the agreement provides for the payment of the interest and penalty upon non-payment of the balance of the P40 million after the specific authorized deductions therefrom. Since the amount of P4,623,982.24 was not to be lawfully deducted by Benigno, as hereinbefore explained, it constitutes part of the contemplated contingent balance which might turn out to be due to Rose Marie and, therefore, subject to the imposition of said increments on Benigno's liability.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**, with the modification that Benigno Toda, Jr. is hereby ordered to pay Rose Marie Tuason-Toda interest at the rate of 18% per annum and 5% non-payment penalty on the tax savings of P4,623,982.24 from date of formal demand until the same is fully paid.

SO ORDERED.

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

[1] Justice Jose A. R. Melo, ponente, with Justices Ricardo P. Tensuan and Jaime M. Lantin, concurring; Rollo, G.R. Nos. 78583-84, 29-45.

[2] Presided over by then Judge Rizalina Bonifacio Vera.

[3] Rollo, G.R. Nos. 78696-97, 69-74.

[4] Ibid., 75-84.

[5] Ibid., 85-98.

[6] Ibid., 102-105.

[7] Ibid., 62.

[8] Ibid., 122-125.

[9] Ibid., 110-115.

[10] Ibid., 69-73.

[11] Ibid., 73.

[12] Ibid., 22.

[13] Ibid., G.R. Nos. 78583-84, 13-26.

[14] Now Art. 134 of the Family Code.

[15] Lacson vs. Lacson, et al., 24 SCRA 837 (1968); see also Tolentino, Civil Code, Vol. I, 1987 Ed., 487.

[16] Article 160, Civil Code.

[17] Rollo, G.R. Nos. 78696-97, 61-62.

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