

## SECOND DIVISION

[ G.R. No. 205487, November 12, 2014 ]

**ORION SAVINGS BANK, PETITIONER, VS. SHIGEKANE SUZUKI,  
RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

Before us is the Petition for Review on *Certiorari*<sup>[1]</sup> filed by petitioner Orion Savings Bank (*Orion*) under Rule 45 of the Rules of Court, assailing the decision<sup>[2]</sup> dated August 23, 2012 and the resolution<sup>[3]</sup> dated January 25, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 94104.

#### The Factual Antecedents

In the first week of August 2003, respondent Shigekane Suzuki (*Suzuki*), a Japanese national, met with Ms. Helen Soneja (*Soneja*) to inquire about a condominium unit and a parking slot at Cityland Pioneer, Mandaluyong City, allegedly owned by Yung Sam Kang (*Kang*), a Korean national and a Special Resident Retiree's Visa (*SRRV*) holder.

At the meeting, Soneja informed Suzuki that Unit No. 536 [covered by Condominium Certificate of Title (*CCT*) No. 18186]<sup>[4]</sup> and Parking Slot No. 42 [covered by *CCT* No. 9118]<sup>[5]</sup> were for sale for P3,000,000.00. Soneja likewise assured Suzuki that the titles to the unit and the parking slot were clean. After a brief negotiation, the parties agreed to reduce the price to P2,800,000.00.

On August 5, 2003, Suzuki issued Kang a Bank of the Philippine Island (*BPI*) Check No. 83349<sup>[6]</sup> for One Hundred Thousand Pesos (P100,000.00) as reservation fee.<sup>[7]</sup>

On August 21, 2003, Suzuki issued Kang another check, *BPI* Check No. 83350,<sup>[8]</sup> this time for P2,700,000.00 representing the remaining balance of the purchase price. Suzuki and Kang then executed a Deed of Absolute Sale dated August 26, 2003<sup>[9]</sup> covering Unit No. 536 and Parking Slot No. 42. Soon after, Suzuki took possession of the condominium unit and parking lot, and commenced the renovation of the interior of the condominium unit.

Kang thereafter made several representations with Suzuki to deliver the titles to the properties, which were then allegedly in possession of Alexander Perez (*Perez*, Orion's Loans Officer) for safekeeping. Despite several verbal demands, Kang failed to deliver the documents. Suzuki later on learned that Kang had left the country, prompting Suzuki to verify the status of the properties with the Mandaluyong City Registry of Deeds.

Before long, Suzuki learned that *CCT* No. 9118 representing the title to the Parking

Slot No. 42 contained no annotations although it remained under the name of Cityland Pioneer. This notwithstanding, Cityland Pioneer, through Assistant Vice President Rosario D. Perez, certified that Kang had fully paid the purchase price of Unit. No. 536<sup>[10]</sup> and Parking Slot No. 42.<sup>[11]</sup>

CCT No. 18186 representing the title to the condominium unit had no existing encumbrance, except for an annotation under Entry No. 73321/C-10186 which provided that any conveyance or encumbrance of CCT No. 18186 shall be subject to approval by the Philippine Retirement Authority (PRA). Although CCT No. 18186 contained Entry No. 66432/C-10186 dated February 2, 1999 representing a mortgage in favor of Orion for a P1,000,000.00 loan, that annotation was subsequently cancelled on June 16, 2000 by Entry No. 73232/T. No. 10186. Despite **the cancellation of the mortgage to Orion**, the titles to the properties remained in possession of Perez.

To protect his interests, Suzuki then executed an Affidavit of Adverse Claim<sup>[12]</sup> dated September 8, 2003, with the Registry of Deeds of Mandaluyong City, annotated as Entry No. 3292/C-No. 18186 in CCT No. 18186. Suzuki then demanded the delivery of the titles.<sup>[13]</sup> Orion, (through Perez), however, refused to surrender the titles, and cited the need to consult Orion's legal counsel as its reason.

On October 14, 2003, Suzuki received a letter from Orion's counsel dated October 9, 2003, stating that Kang obtained another loan in the amount of P1,800,000.00. When Kang failed to pay, he executed a *Dacion en Pago* dated February 2, 2003, in favor of Orion covering Unit No. 536. Orion, however, did not register the *Dacion en Pago*, until October 15, 2003.

On October 28, 2003, Suzuki executed an Affidavit of Adverse Claim over Parking Slot No. 42 (covered by CCT No. 9118) and this was annotated as Entry No. 4712/C-No. 9118 in the parking lot's title.

On January 27, 2004, Suzuki filed a complaint for specific performance and damages against Kang and Orion. At the pre-trial, the parties made the following admissions and stipulations:

1. That as of August 26, 2003, Kang was the registered owner of Unit No. 536 and Parking Slot No. 42;
2. That the mortgage in favor of Orion supposedly executed by Kang, with Entry No. 66432/C-10186 dated February 2, 1999, was subsequently cancelled by Entry No. 73232/T No. 10186 dated June 16, 2000;
3. That the alleged *Dacion en Pago* was never annotated in CCT Nos. 18186 and 9118;
4. That Orion only paid the appropriate capital gains tax and the documentary stamp tax for the alleged *Dacion en Pago* on October

15, 2003;

5. That Parking Slot No. 42, covered by CCT No. 9118, was never mortgaged to Orion; and
6. That when Suzuki bought the properties, he went to Orion to obtain possession of the titles.

### **The RTC Ruling**

In its decision<sup>[14]</sup> dated June 29, 2009, the Regional Trial Court (RTC), Branch 213, Mandaluyong City ruled in favor of Suzuki and ordered Orion to deliver the CCT Nos. 18186 and 9118 to Suzuki.

The court found that Suzuki was an innocent purchaser for value whose rights over the properties prevailed over Orion's. The RTC further noted that Suzuki exerted efforts to verify the status of the properties but he did not find any existing encumbrance in the titles. Although Orion claims to have purchased the property by way of a *Dacion en Pago*, Suzuki only learned about it two (2) months after he bought the properties because Orion never bothered to register or annotate the *Dacion en Pago* in CCT Nos. 18186 and 9116.

The RTC further ordered Orion and Kang to jointly and severally pay Suzuki moral damages, exemplary damages, attorney's fees, appearance fees, expenses for litigation and cost of suit. Orion timely appealed the RTC decision with the CA.

### **The CA Ruling**

On August 23, 2012, the CA partially granted Orion's appeal and sustained the RTC insofar as it upheld Suzuki's right over the properties. The CA further noted that Entry No. 73321/C-10186 pertaining to the withdrawal of investment of an SRRV only serves as a warning to an SRRV holder about the implications of a conveyance of a property investment. It deviated from the RTC ruling, however, by deleting the award for moral damages, exemplary damages, attorney's fees, expenses for litigation and cost of suit.

Orion sought a reconsideration of the CA decision but the CA denied the motion in its January 25, 2013 resolution. Orion then filed a petition for review on *certiorari* under Rule 45 with this Court.

### **The Petition and Comment**

Orion's petition is based on the following grounds/arguments:<sup>[15]</sup>

1. The Deed of Sale executed by Kang in favor of Suzuki is null and void. Under Korean law, any conveyance of a conjugal property should be made with the consent of both spouses;
2. Suzuki is not a buyer in good faith for he failed to check the owner's duplicate copies of the CCTs;

3. Knowledge of the PRA restriction under Entry No. 73321/C-10186, which prohibits any conveyance or encumbrance of the property investment, defeats the alleged claim of good faith by Suzuki; and
4. Orion should not be faulted for exercising due diligence.

In his Comment,<sup>[16]</sup> Suzuki asserts that the issue on spousal consent was belatedly raised on appeal. Moreover, proof of acquisition during the marital coverture is a condition *sine qua non* for the operation of the presumption of conjugal ownership.<sup>[17]</sup> Suzuki additionally maintains that he is a purchaser in good faith, and is thus entitled to the protection of the law.

### **The Court's Ruling**

**We deny the petition for lack of merit.**

***The Court may inquire into conclusions of fact when the inference made is manifestly mistaken***

In a Rule 45 petition, the latitude of judicial review generally excludes a factual and evidentiary re-evaluation, and the Court ordinarily abides by the uniform factual conclusions of the trial court and the appellate court.<sup>[18]</sup> In the present case, while the courts below both arrived at the same conclusion, there appears to be an incongruence in their factual findings and the legal principle they applied to the attendant factual circumstances. Thus, we are compelled to examine certain factual issues in the exercise of our sound discretion to correct any mistaken inference that may have been made.<sup>[19]</sup>

***Philippine Law governs the transfer of real property***

Orion believes that the CA erred in not ruling on the issue of spousal consent. We cannot uphold this position, however, because the issue of spousal consent was only raised on appeal to the CA. It is a well-settled principle that points of law, theories, issues, and arguments not brought to the attention of the trial court cannot be raised for the first time on appeal and considered by a reviewing court.<sup>[20]</sup> To consider these belated arguments would violate basic principles of fair play, justice, and due process.

Having said these, **we shall nonetheless** discuss the issues Orion belatedly raised, ***if only to put an end to lingering doubts on the correctness of the denial of the present petition.***

It is a universal principle that real or immovable property is exclusively subject to the laws of the country or state where it is located.<sup>[21]</sup> The reason is found in the very nature of immovable property — its immobility. Immovables are part of the country and so closely connected to it that all rights over them have their natural

center of gravity there.<sup>[22]</sup>

Thus, all matters concerning the title and disposition of real property are determined by what is known as the *lex loci rei sitae*, which can alone prescribe the mode by which a title can pass from one person to another, or by which an interest therein can be gained or lost.<sup>[23]</sup> This general principle includes all rules governing the descent, **alienation** and transfer of immovable property and the validity, effect and construction of wills and other conveyances.<sup>[24]</sup>

This principle even governs the capacity of the person making a deed relating to immovable property, no matter what its nature may be. Thus, an instrument will be ineffective to transfer title to land if the person making it is incapacitated by the *lex loci rei sitae*, even though under the law of his domicile and by the law of the place where the instrument is actually made, his capacity is undoubted.<sup>[25]</sup>

On the other hand, property relations between spouses are governed principally by the national law of the spouses.<sup>[26]</sup> However, the party invoking the application of a foreign law has the burden of proving the foreign law. The foreign law is a question of fact to be properly pleaded and proved as the judge cannot take judicial notice of a foreign law. <sup>[27]</sup> He is presumed to know only domestic or the law of the forum.  
<sup>[28]</sup>

To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court which reads:

SEC. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and **authenticated by the seal of his office.** (Emphasis supplied)

SEC. 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Accordingly, matters concerning the **title** and **disposition** of real property shall be governed by Philippine law while issues pertaining to the **conjugal nature** of the property shall be governed by South Korean law, provided it is proven as a fact.