

## SECOND DIVISION

[ G.R. No. 179010, April 11, 2011 ]

**ELENITA M. DEWARA, REPRESENTED BY HER ATTORNEY-IN-FACT, FERDINAND MAGALLANES, PETITIONER, VS. SPOUSES RONNIE AND GINA LAMELA AND STENILE ALVERO, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision<sup>[1]</sup> dated November 6, 2006 and the Resolution<sup>[2]</sup> dated July 10, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 64936, which reversed and set aside the Decision<sup>[3]</sup> dated September 2, 1999 of the Regional Trial Court (RTC), Branch 54, Bacolod City, in Civil Case No. 93-7942.

#### *The Facts*

Eduardo Dewara (Eduardo) and petitioner Elenita Magallanes Dewara (Elenita) were married before the enactment of the Family Code. Thus, the Civil Code governed their marital relations. Husband and wife were separated-in-fact because Elenita went to work in California, United States of America, while Eduardo stayed in Bacolod City.

On January 20, 1985, Eduardo, while driving a private jeep registered in the name of Elenita,<sup>[4]</sup> hit respondent Ronnie Lamela (Ronnie). Ronnie filed a criminal case for serious physical injuries through reckless imprudence<sup>[5]</sup> against Eduardo before the Municipal Trial Court in Cities (MTCC), Branch IV, Bacolod City. The MTCC found Eduardo guilty of the charge and sentenced him to suffer the penalty of imprisonment of two (2) months and one (1) day to (3) months, and to pay civil indemnity of Sixty-Two Thousand Five Hundred Ninety-Eight Pesos and Seventy Centavos (P62,598.70) as actual damages and Ten Thousand Pesos (P10,000.00) as moral damages. On appeal, the RTC<sup>[6]</sup> affirmed the decision of the MTCC<sup>[7]</sup> and it became final and executory.<sup>[8]</sup>

The writ of execution on the civil liability was served on Eduardo, but it was returned unsatisfied because he had no property in his name. Ronnie requested the City Sheriff, respondent Stenile Alvero, to levy on Lot No. 234-C, Psd. 26667 of the Bacolod Cadastre, with an area of One Thousand Four Hundred Forty (1,440) square meters (sq m), under Transfer Certificate of Title (TCT) No. T-80054, in the name of "ELENITA M. DEWARA, of legal age, Filipino, married to Eduardo Dewara, and resident of Bacolod City," to satisfy the judgment on the civil liability of Eduardo. The City Sheriff served a notice of embargo on the title of the lot and subsequently sold the lot in a public auction. In the execution sale, there were no interested buyers other than Ronnie. The City Sheriff issued a certificate of sale to spouses Ronnie and

Gina Lamela to satisfy the civil liability in the decision against Eduardo.<sup>[9]</sup> Ronnie then caused the consolidation of title in a Cadastral Proceeding before the RTC, which ordered the cancellation of TCT No. T-80054 in the name of Elenita and the issuance of a new certificate of title in the name of respondent spouses.<sup>[10]</sup>

The levy on execution, public auction, issuance of certificate of sale, and cancellation of title of the lot in the name of Elenita were done while Elenita was working in California.<sup>[11]</sup> Thus, Elenita, represented by her attorney-in-fact, Ferdinand Magallanes, filed a case for annulment of sale and for damages against respondent spouses and ex-officio sheriff Stenile Alvero before the RTC of Bacolod City. Petitioner claimed that the levy on execution of Lot No. 234-C was illegal because the said property was her paraphernal or exclusive property and could not be made to answer for the personal liability of her husband. Furthermore, as the registered owner of the property, she received no notice of the execution sale. She sought the annulment of the sale and the annulment of the issuance of the new TCT in the name of respondent spouses.<sup>[12]</sup>

On the other hand, respondent spouses averred that the subject lot was the conjugal property of petitioner Elenita and Eduardo. They asserted that the property was acquired by Elenita during her marriage to Eduardo; that the property was acquired with the money of Eduardo because, at the time of the acquisition of the property, Elenita was a plain housewife; that the jeep involved in the accident was registered in the name of petitioner; and that Elenita did not interpose any objection pending the levy on execution of the property.<sup>[13]</sup> On September 2, 1999, the RTC rendered a decision in favor of petitioner, the *fallo* of which reads:

WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against the [respondents]:

1. The levy on execution on Lot No. 234-C of the Bacolod Cadastre covered by TCT No. 80054 in the name of [petitioner] Elenita M. Dewara, the public auction of the property, and the consolidation of the title and issuance of new TCT No. 167403 in the name of [respondent] Ronnie Lamela, are hereby declared null and void;
2. The Register of Deeds of Bacolod City is ordered to cancel TCT No. 167403 in the name of [respondent] Ronnie Lamela and TCT No. 80054 be reinstated or a new one issued in the name of [petitioner] Elenita M. Dewara;
3. There is no pronouncement on damages with cost de officio.

SO ORDERED.<sup>[14]</sup>

The RTC declared that said property was paraphernal in nature. It arrived at this conclusion by tracing how Elenita acquired the subject property. Based on the documentary evidence submitted, Elenita's grandfather, Exequiel Magallanes, originally owned Lot No. 234-C. Upon his demise, his children, Jesus (Elenita's father), Salud, and Concepcion, inherited the property, each entitled to a share equal to one-third (1/3) of the total area of the land. They were issued a new title (TCT No. T-17541) for the property. On July 6, 1966, petitioner's aunt, Salud, executed a waiver of rights duly registered with the Office of the Register of Deeds under Entry No. 76392, thereby waiving her rights and participation over her 1/3 share of the property in favor of her siblings, Jesus and Concepcion. The two siblings

then became the owners of the property, each owning one-half (1/2) of the property. Jesus subsequently sold his share to his daughter, Elenita, for the sum of Five Thousand Pesos (P5,000.00), based on the deed of sale dated March 26, 1975. The deed of sale was duly registered with the Register of Deeds under Entry No. 76393. Concepcion also sold her share to her niece, Elenita, for the sum of Ten Thousand Pesos (P10,000.00), based on the deed of sale dated April 29, 1975, which was duly registered with the Register of Deeds under Entry No. 76394. By virtue of the sale transactions, TCT No. T-17541 was cancelled and a new title, TCT No. T-80054, was issued in the name of Elenita.<sup>[15]</sup>

The RTC gave credence to the testimony of Elenita on the circumstances surrounding the sale of the property. First, it was sold to her by her father and her aunt so that the family would remain on the lot. Second, the minimal and inadequate consideration for the 1,440 sq m property was for the purpose of helping her expand her capital in her business at the time. Thus, the sale was essentially a donation and was therefore gratuitous in character.<sup>[16]</sup>

Having declared that the property was the paraphernal property of Elenita, the RTC ruled that the civil liability of Eduardo, which was personal to him, could not be charged to the exclusive property of his wife.<sup>[17]</sup>

On appeal, the CA reversed the decision of the RTC. The dispositive portion of the Decision reads:

**WHEREFORE**, in view of all the foregoing, the instant appeal is **GRANTED**. The assailed decision of the Regional Trial Court of Bacolod City, Branch 54, dated September 2, 1999, in Civil Case No. 93-7942 is hereby **REVERSED** and **SET ASIDE**, and a new Decision is **entered DISMISSING** the complaint for lack of merit. Let a copy of this Decision be furnished to the Office of the Register of Deeds of Bacolod City, Negros Occidental [which] is hereby ordered to **cancel** Transfer Certificate of Title No. T-80054 or any transfer certificate of title covering Lot No. 234-C issued in the name of Elenita M. Dewara, and **reinstate** Transfer Certificate of Title No. 167403 **or issue** a new transfer certificate of title covering Lot No. 234-C in the name of Ronnie Lamela. No pronouncement as to costs.

**SO ORDERED.**<sup>[18]</sup>

In reversing the decision of the RTC, the CA elucidated that the gross inadequacy of the price alone does not affect a contract of sale, except that it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. Except for the assertions of Elenita, there was nothing in the records that would indicate a defect in Jesus and Concepcion Magallanes' consent to the sale.<sup>[19]</sup> The CA ruled that Elenita and Eduardo acquired the property by onerous title during their marriage through their common fund. Thus, it belonged to the conjugal partnership of gains and might be levied upon to answer for civil liabilities adjudged against Eduardo.<sup>[20]</sup>

Hence, this petition.

### ***The Issue***