672 Phil. 447

FIRST DIVISION

[G.R. No. 157537, September 07, 2011]

THE HEIRS OF PROTACIO GO, SR. AND MARTA BAROLA, NAMELY: LEONOR, SIMPLICIO, PROTACIO, JR., ANTONIO, BEVERLY ANN LORRAINNE, TITA, CONSOLACION, LEONORA AND ASUNCION, ALL SURNAMED GO, REPRESENTED BY LEONORA B. GO, PETITIONERS, VS. ESTER L. SERVACIO AND RITO B. GO, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The disposition by sale of a portion of the conjugal property by the surviving spouse without the prior liquidation mandated by Article 130 of the *Family Code* is not necessarily void if said portion has not yet been allocated by judicial or extrajudicial partition to another heir of the deceased spouse. At any rate, the requirement of prior liquidation does not prejudice vested rights.

Antecedents

On February 22, 1976, Jesus B. Gaviola sold two parcels of land with a total area of 17,140 square meters situated in Southern Leyte to Protacio B. Go, Jr. (Protacio, Jr.). Twenty three years later, or on March 29, 1999, Protacio, Jr. executed an *Affidavit of Renunciation and Waiver*,[1] whereby he affirmed under oath that it was his father, Protacio Go, Sr. (Protacio, Sr.), not he, who had purchased the two parcels of land (the property).

On November 25, 1987, Marta Barola Go died. She was the wife of Protacio, Sr. and mother of the petitioners.[2] On December 28, 1999, Protacio, Sr. and his son Rito B. Go (joined by Rito's wife Dina B. Go) sold a portion of the property with an area of 5,560 square meters to Ester L. Servacio (Servacio) for P5,686,768.00.[3] On March 2, 2001, the petitioners demanded the return of the property,[4] but Servacio refused to heed their demand. After barangay proceedings failed to resolve the dispute,[5] they sued Servacio and Rito in the Regional Trial Court in Maasin City, Southern Leyte (RTC) for the annulment of the sale of the property.

The petitioners averred that following Protacio, Jr.'s renunciation, the property became conjugal property; and that the sale of the property to Servacio without the prior liquidation of the community property between Protacio, Sr. and Marta was null and void.[6]

Servacio and Rito countered that Protacio, Sr. had exclusively owned the property because he had purchased it with his own money.[7]

On October 3, 2002,[8] the RTC declared that the property was the conjugal property of Protacio, Sr. and Marta, not the exclusive property of Protacio, Sr., because there were three vendors in the sale to Servacio (namely: Protacio, Sr., Rito, and Dina); that the participation of Rito and Dina as vendors had been by virtue of their being heirs of the late Marta; that under Article 160 of the *Civil Code*, the law in effect when the property was acquired, all property acquired by either spouse during the marriage was conjugal unless there was proof that the property thus acquired pertained exclusively to the husband or to the wife; and that Protacio, Jr.'s renunciation was grossly insufficient to rebut the legal presumption.[9]

Nonetheless, the RTC affirmed the validity of the sale of the property, holding that: "xxx As long as the portion sold, alienated or encumbered will not be allotted to the other heirs in the final partition of the property, or to state it plainly, as long as the portion sold does not encroach upon the legitimate (*sic*) of other heirs, it is valid." [10] Quoting Tolentino's commentary on the matter as authority,[11] the RTC opined:

> In his comment on Article 175 of the New Civil Code regarding the dissolution of the conjugal partnership, Senator Arturo Tolentino, says" [*sic*]
>
> > "Alienation by the survivor. -- After the death of one of the spouses, in case it is necessary to sell any portion of the community property in order to pay outstanding obligation of the partnership, such sale must be made in the manner and with the formalities established by the Rules of Court for the sale of the property of the deceased persons. Any sale, transfer, alienation or disposition of said property affected without said formalities shall be null and void, except as regards the portion that belongs to the vendor as determined in the liquidation and partition. Pending the liquidation, the disposition must be considered as limited only to the contingent share or interest of the vendor in the particular property involved, but not to the corpus of the property.
> >
> > This rule applies not only to sale but also to mortgages. The alienation, mortgage or disposal of the conjugal property without the required formality, is not however, null *ab initio*, for the law recognizes their validity so long as they do not exceed the portion which, after liquidation and partition, should pertain to the surviving spouse who made the contract." [underlining supplied]
>
> It seems clear from these comments of Senator Arturo Tolentino on the provisions of the New Civil Code and the Family Code on the alienation by the surviving spouse of the community property that jurisprudence remains the same - that the alienation made by the surviving spouse of a portion of the community property is not wholly void *ab initio* despite Article 103 of the Family Code, and shall be valid to the extent of what will be allotted, in the final partition, to the vendor. And rightly so,

> because why invalidate the sale by the surviving spouse of a portion of the community property that will eventually be his/her share in the final partition? Practically there is no reason for that view and it would be absurd.
>
> Now here, in the instant case, the 5,560 square meter portion of the 17,140 square-meter conjugal lot is certainly mush (*sic*) less than what vendors Protacio Go and his son Rito B. Go will eventually get as their share in the final partition of the property. So the sale is still valid.
>
> WHEREFORE, premises considered, complaint is hereby DISMISSED without pronouncement as to cost and damages.
>
> SO ORDERED.[12]

The RTC's denial of their motion for reconsideration[13] prompted the petitioners to appeal directly to the Court on a pure question of law.

Issue

The petitioners claim that Article 130 of the *Family Code* is the applicable law; and that the sale by Protacio, Sr., *et al.* to Servacio was void for being made without prior liquidation.

In contrast, although they have filed separate comments, Servacio and Rito both argue that Article 130 of the *Family Code* was inapplicable; that the want of the liquidation prior to the sale did not render the sale invalid, because the sale was valid to the extent of the portion that was finally allotted to the vendors as his share; and that the sale did not also prejudice any rights of the petitioners as heirs, considering that what the sale disposed of was within the aliquot portion of the property that the vendors were entitled to as heirs.[14]

Ruling

The appeal lacks merit.

Article 130 of the *Family Code* reads:

> Article 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.
>
> If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of the six month period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.
>
> Should the surviving spouse contract a subsequent marriage without

> compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

Article 130 is to be read in consonance with Article 105 of the *Family Code, viz*:

> Article 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.
>
> **The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.** (n) [emphasis supplied]

It is clear that conjugal partnership of gains established before and after the effectivity of the *Family Code* are governed by the rules found in Chapter 4 (Conjugal Partnership of Gains) of Title IV (Property Relations Between Husband And Wife) of the *Family Code*. Hence, any disposition of the conjugal property after the dissolution of the conjugal partnership must be made only after the liquidation; otherwise, the disposition is void.

Before applying such rules, however, the conjugal partnership of gains must be subsisting at the time of the effectivity of the *Family Code*. There being no dispute that Protacio, Sr. and Marta were married prior to the effectivity of the *Family Code* on August 3, 1988, their property relation was properly characterized as one of conjugal partnership governed by the *Civil Code*. Upon Marta's death in 1987, the conjugal partnership was dissolved, pursuant to Article 175 (1) of the *Civil Code*,[15] and an implied ordinary co-ownership ensued among Protacio, Sr. and the other heirs of Marta with respect to her share in the assets of the conjugal partnership pending a liquidation following its liquidation.[16] The ensuing implied ordinary co-ownership was governed by Article 493 of the *Civil Code*,[17] to wit:

> Article 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (399)

Protacio, Sr., although becoming a co-owner with his children in respect of Marta's share in the conjugal partnership, could not yet assert or claim title to any specific portion of Marta's share without an actual partition of the property being first done either by agreement or by judicial decree. Until then, all that he had was an ideal or