

THIRD DIVISION

[G.R. No. 165803, September 01, 2010]

**SPOUSES REX AND CONCEPCION AGGABAO, PETITIONERS, VS.
DIONISIO Z. PARULAN, JR. AND MA. ELENA PARULAN,
RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

On July 26, 2000, the Regional Trial Court (RTC), Branch 136, in Makati City annulled the deed of absolute sale executed in favor of the petitioners covering two parcels of registered land the respondents owned for want of the written consent of respondent husband Dionisio Parulan, Jr. On July 2, 2004, in C.A.-G.R. CV No. 69044,^[1] the Court of Appeals (CA) affirmed the RTC decision.

Hence, the petitioners appeal by petition for review on *certiorari*, seeking to reverse the decision of the CA. They present as the main issue whether the sale of conjugal property made by respondent wife by presenting a special power of attorney to sell (SPA) purportedly executed by respondent husband in her favor was validly made to the vendees, who allegedly acted in good faith and paid the full purchase price, despite the showing by the husband that his signature on the SPA had been forged and that the SPA had been executed during his absence from the country.

We resolve the main issue against the vendees and sustain the CA's finding that the vendees were not buyers in good faith, because they did not exercise the necessary prudence to inquire into the wife's authority to sell. We hold that the sale of conjugal property without the consent of the husband was not merely voidable but void; hence, it could not be ratified.

Antecedents

Involved in this action are two parcels of land and their improvements (property) located at No. 49 Miguel Cuaderno Street, Executive Village, BF Homes, Parañaque City and registered under Transfer Certificate of Title (TCT) No. 63376^[2] and TCT No. 63377^[3] in the name of respondents Spouses Maria Elena A. Parulan (Ma. Elena) and Dionisio Z. Parulan, Jr. (Dionisio), who have been estranged from one another.

In January 1991, real estate broker Marta K. Atanacio (Atanacio) offered the property to the petitioners, who initially did not show interest due to the rundown condition of the improvements. But Atanacio's persistence prevailed upon them, so that on February 2, 1991, they and Atanacio met with Ma. Elena at the site of the property. During their meeting, Ma. Elena showed to them the following documents, namely: (a) the owner's original copy of TCT No. 63376; (b) a certified true copy of TCT No. 63377; (c) three tax declarations; and (d) a copy of the special power of

attorney (SPA) dated January 7, 1991 executed by Dionisio authorizing Ma. Elena to sell the property.^[4] Before the meeting ended, they paid P20,000.00 as earnest money, for which Ma. Elena executed a handwritten *Receipt of Earnest Money*, whereby the parties stipulated that: (a) they would pay an additional payment of P130,000.00 on February 4, 1991; (b) they would pay the balance of the bank loan of the respondents amounting to P650,000.00 on or before February 15, 1991; and (c) they would make the final payment of P700,000.00 once Ma. Elena turned over the property on March 31, 1991.^[5]

On February 4, 1991, the petitioners went to the Office of the Register of Deeds and the Assessor's Office of Parañaque City to verify the TCTs shown by Ma. Elena in the company of Atanacio and her husband (also a licensed broker).^[6] There, they discovered that the lot under TCT No. 63376 had been encumbered to Banco Filipino in 1983 or 1984, but that the encumbrance had already been cancelled due to the full payment of the obligation.^[7] They noticed that the Banco Filipino loan had been effected through an SPA executed by Dionisio in favor of Ma. Elena.^[8] They found on TCT No. 63377 the annotation of an existing mortgage in favor of the Los Baños Rural Bank, also effected through an SPA executed by Dionisio in favor of Ma. Elena, coupled with a copy of a court order authorizing Ma. Elena to mortgage the lot to secure a loan of P500,000.00.^[9]

The petitioners and Atanacio next inquired about the mortgage and the court order annotated on TCT No. 63377 at the Los Baños Rural Bank. There, they met with Atty. Noel Zarate, the bank's legal counsel, who related that the bank had asked for the court order because the lot involved was conjugal property.^[10]

Following their verification, the petitioners delivered P130,000.00 as additional down payment on February 4, 1991; and P650,000.00 to the Los Baños Rural Bank on February 12, 1991, which then released the owner's duplicate copy of TCT No. 63377 to them.^[11]

On March 18, 1991, the petitioners delivered the final amount of P700,000.00 to Ma. Elena, who executed a deed of absolute sale in their favor. However, Ma. Elena did not turn over the owner's duplicate copy of TCT No. 63376, claiming that said copy was in the possession of a relative who was then in Hongkong.^[12] She assured them that the owner's duplicate copy of TCT No. 63376 would be turned over after a week.

On March 19, 1991, TCT No. 63377 was cancelled and a new one was issued in the name of the petitioners.

Ma. Elena did not turn over the duplicate owner's copy of TCT No. 63376 as promised. In due time, the petitioners learned that the duplicate owner's copy of TCT No. 63376 had been all along in the custody of Atty. Jeremy Z. Parulan, who appeared to hold an SPA executed by his brother Dionisio authorizing him to sell *both* lots.^[13]

At Atanacio's instance, the petitioners met on March 25, 1991 with Atty. Parulan at the Manila Peninsula.^[14] For that meeting, they were accompanied by one Atty.

Olandesca.^[15] They recalled that Atty. Parulan "smugly demanded P800,000.00" in exchange for the duplicate owner's copy of TCT No. 63376, because Atty. Parulan represented the current value of the property to be P1.5 million. As a counter-offer, however, they tendered P250,000.00, which Atty. Parulan declined,^[16] giving them only until April 5, 1991 to decide.

Hearing nothing more from the petitioners, Atty. Parulan decided to call them on April 5, 1991, but they informed him that they had already fully paid to Ma. Elena.^[17]

Thus, on April 15, 1991, Dionisio, through Atty. Parulan, commenced an action (Civil Case No. 91-1005 entitled *Dionisio Z. Parulan, Jr., represented by Jeremy Z. Parulan, as attorney in fact, v. Ma. Elena Parulan, Sps. Rex and Coney Aggabao*), praying for the declaration of the nullity of the deed of absolute sale executed by Ma. Elena, and the cancellation of the title issued to the petitioners by virtue thereof.

In turn, the petitioners filed on July 12, 1991 their own action for specific performance with damages against the respondents.

Both cases were consolidated for trial and judgment in the RTC.^[18]

Ruling of the RTC

After trial, the RTC rendered judgment, as follows:

WHEREFORE, and in consideration of the foregoing, judgment is hereby rendered in favor of plaintiff Dionisio A. Parulan, Jr. and against defendants Ma. Elena Parulan and the Sps. Rex and Concepcion Aggabao, without prejudice to any action that may be filed by the Sps. Aggabao against co-defendant Ma. Elena Parulan for the amounts they paid her for the purchase of the subject lots, as follows:

1. The Deed of Absolute Sale dated March 18, 1991 covering the sale of the lot located at No. 49 M. Cuaderno St., Executive Village, BF Homes, Parañaque, Metro Manila, and covered by TCT Nos. 63376 and 63377 is declared null and void.
2. Defendant Mrs. Elena Parulan is directed to pay litigation expenses amounting to P50,000.00 and the costs of the suit.

SO ORDERED.^[19]

The RTC declared that the SPA in the hands of Ma. Elena was a forgery, based on its finding that Dionisio had been out of the country at the time of the execution of the SPA;^[20] that NBI Sr. Document Examiner Rhoda B. Flores had certified that the signature appearing on the SPA purporting to be that of Dionisio and the set of standard sample signatures of Dionisio had not been written by one and the same person;^[21] and that Record Officer III Eliseo O. Terenco and Clerk of Court Jesus P.

Maningas of the Manila RTC had issued a certification to the effect that Atty. Alfred Datingaling, the Notary Public who had notarized the SPA, had not been included in the list of Notaries Public in Manila for the year 1990-1991.^[22]

The RTC rejected the petitioners' defense of being buyers in good faith because of their failure to exercise ordinary prudence, including demanding from Ma. Elena a court order authorizing her to sell the properties similar to the order that the Los Baños Rural Bank had required before accepting the mortgage of the property.^[23] It observed that they had appeared to be in a hurry to consummate the transaction despite Atanacio's advice that they first consult a lawyer before buying the property; that with ordinary prudence, they should first have obtained the owner's duplicate copies of the TCTs before paying the full amount of the consideration; and that the sale was void pursuant to Article 124 of the *Family Code*.^[24]

Ruling of the CA

As stated, the CA affirmed the RTC, opining that Article 124 of the *Family Code* applied because Dionisio had not consented to the sale of the conjugal property by Ma. Elena; and that the RTC correctly found the SPA to be a forgery.

The CA denied the petitioners' motion for reconsideration.^[25]

Issues

The petitioners now make two arguments: (1) they were buyers in good faith; and (2) the CA erred in affirming the RTC's finding that the sale between Mrs. Elena and the petitioners had been a nullity under Article 124 of the *Family Code*.

The petitioners impute error to the CA for not applying the "ordinary prudent man's standard" in determining their status as buyers in good faith. They contend that the more appropriate law to apply was Article 173 of the *Civil Code*, not Article 124 of the *Family Code*; and that even if the SPA held by Ma. Elena was a forgery, the ruling in *Veloso v. Court of Appeals*^[26] warranted a judgment in their favor.

Restated, the issues for consideration and resolution are as follows:

- 1) Which between Article 173 of the *Civil Code* and Article 124 of the *Family Code* should apply to the sale of the conjugal property executed without the consent of Dionisio?
- 2) Might the petitioners be considered in good faith at the time of their purchase of the property?
- 3) Might the ruling in *Veloso v. Court of Appeals* be applied in favor of the petitioners despite the finding of forgery of the SPA?

Ruling

The petition has no merit. We sustain the CA.

Article 124, *Family Code*, applies to sale of conjugal properties made after the effectivity of the *Family Code*

The petitioners submit that Article 173 of the *Civil Code*, not Article 124 of the *Family Code*, governed the property relations of the respondents because they had been married prior to the effectivity of the *Family Code*; and that the second paragraph of Article 124 of the *Family Code* should not apply because the other spouse held the administration over the conjugal property. They argue that notwithstanding his absence from the country Dionisio still held the administration of the conjugal property by virtue of his execution of the SPA in favor of his brother; and that even assuming that Article 124 of the *Family Code* properly applied, Dionisio ratified the sale through Atty. Parulan's counter-offer during the March 25, 1991 meeting.

We do not subscribe to the petitioners' submissions.

To start with, Article 254^[27] the *Family Code* has expressly repealed several titles under the *Civil Code*, among them the *entire* Title VI in which the provisions on the property relations between husband and wife, Article 173 included, are found.

Secondly, the sale was made on March 18, 1991, or after August 3, 1988, the effectivity of the *Family Code*. The proper law to apply is, therefore, Article 124 of the *Family Code*, for it is settled that any alienation or encumbrance of conjugal property made during the effectivity of the *Family Code* is governed by Article 124 of the *Family Code*.^[28]

Article 124 of the *Family Code* provides:

Article 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

Thirdly, according to Article 256^[29] of the *Family Code*, the provisions of the *Family Code* may apply retroactively provided no vested rights are impaired. In *Tumlos v. Fernandez*,^[30] the Court rejected the petitioner's argument that the *Family Code* did