

SECOND DIVISION

[G.R. No. 159889, June 05, 2008]

**WALTER VILLANUEVA AND AURORA VILLANUEVA, PETITIONERS,
VS. FLORENTINO CHIONG AND ELISERA CHIONG,
RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for review on certiorari seeks the modification of the Decision^[1] dated December 17, 2002 of the Court of Appeals in CA-G.R. CV. No. 68383, which had affirmed the Joint Decision^[2] dated July 19, 2000 of the Regional Trial Court (RTC) of Dipolog City, Branch 6, in Civil Case No. 4460. The RTC annulled the sale made by respondent Florentino Chiong in favor of petitioners Walter and Aurora Villanueva conveying a portion of a parcel of land which respondents acquired during their marriage.

The pertinent facts are as follows:

Respondents Florentino and Elisera Chiong were married sometime in January 1960 but have been separated in fact since 1975. During their marriage, they acquired Lot No. 997-D-1 situated at Poblacion, Dipolog City and covered by Transfer Certificate of Title (TCT) No. (T-19393)-2325,^[3] issued by the Registry of Deeds of Zamboanga del Norte. Sometime in 1985, Florentino sold the one-half western portion of the lot to petitioners for P8,000, payable in installments. Thereafter, Florentino allowed petitioners to occupy^[4] the lot and build a store, a shop, and a house thereon. Shortly after their last installment payment on December 13, 1986,^[5] petitioners demanded from respondents the execution of a deed of sale in their favor. Elisera, however, refused to sign a deed of sale.

On July 5, 1991, Elisera filed with the RTC a Complaint^[6] for Quieting of Title with Damages, docketed as Civil Case No. 4383. On February 12, 1992, petitioners filed with the RTC a Complaint^[7] for Specific Performance with Damages, docketed as Civil Case No. 4460. Upon proper motion, the RTC consolidated these two cases.^[8]

On May 13, 1992, Florentino executed the questioned Deed of Absolute Sale^[9] in favor of petitioners.

On July 19, 2000, the RTC, in its Joint Decision, annulled the deed of absolute sale dated May 13, 1992, and ordered petitioners to vacate the lot and remove all improvements therein. The RTC likewise dismissed Civil Case No. 4460, but ordered Florentino to return to petitioners the consideration of the sale with interest from May 13, 1992.^[10] The *fallo* of the decision reads:

WHEREFORE, by preponderance of evidence, judgment is hereby rendered as follows:

For Civil Case No. 4383, (a) annulling the Deed of Sale executed by Florentino Chiong in favor of Walter Villanueva, dated May 13, 1992 (Exhibit "2"); ordering defendant Walter Villanueva to vacate the entire land in question and to remove all buildings therein, subject to [i]ndemnity of whatever damages he may incur by virtue of the removal of such buildings, within a period of 60 days from the finality of this decision; award of damages is hereby denied for lack of proof.

In Civil Case No. 4460, complaint is hereby dismissed, but defendant Florentino Chiong, having received the amount of P8,000.00 as consideration of the sale of the land subject of the controversy, the sale being annulled by this Court, is ordered to return the said amount to [the] spouses Villanueva, with interest to be computed from the date of the annulled deed of sale, until the same is fully paid, within the period of 60 days from finality of this judgment. Until such amount is returned, together with the interest, [the] spouses Villanueva may continue to occupy the premises in question.

No pronouncement as to costs.

IT IS SO ORDERED.^[11]

The Court of Appeals affirmed the RTC's decision:

WHEREFORE, premises considered, the appealed decision dated July 19, 2000 of the Regional Trial Court, Branch 6, Dipolog City is hereby **AFFIRMED**.

SO ORDERED.^[12]

Petitioners sought reconsideration, but to no avail. Hence, this petition.

Petitioners assign the following errors as issues for our resolution:

I.

THAT THE COURT A *QUO* AS WELL AS THE HONORABLE COURT OF APPEALS ... GRAVELY ERRED IN NOT HOLDING THAT THE LAND IN QUESTION BELONGED SOLELY TO RESPONDENT FLORENTINO CHIONG AND ULTIMATELY TO THE HEREIN PETITIONERS.

II.

THAT THE LOWER COURT AS WELL AS THE HONORABLE COURT OF APPEALS ... LIKEWISE ERRED IN DECLARING AS NULL AND VOID THE DEED OF SALE EXECUTED BY RESPONDENT FLORENTINO CHIONG IN FAVOR OF THE HEREIN PETITIONERS.^[13]

Simply put, the basic issues are: (1) Is the subject lot an exclusive property of Florentino or a conjugal property of respondents? (2) Was its sale by Florentino without Elisera's consent valid?

Petitioners contend that the Court of Appeals erred when it held that the lot is conjugal property. They claim that the lot belongs exclusively to Florentino because respondents were already separated in fact at the time of sale and that the share of Elisera, which pertains to the eastern part of Lot No. 997- D-1, had previously been sold to Spouses Jesus Y. Castro and Aida Cuenca. They also aver that while there was no formal liquidation of respondents' properties, their separation in fact resulted in its actual liquidation. Further, assuming *arguendo* that the lot is still conjugal, the transaction should not be entirely voided as Florentino had one-half share over it.

Elisera, for her part, counters that the sale of the lot to petitioners without her knowledge, consent or authority, was void because the lot is conjugal property. She adds that the sale was neither authorized by any competent court nor did it redound to her or their children's benefit. As proof of the lot's conjugal nature, she presented a transfer certificate of title, a real property tax declaration, and a Memorandum of Agreement^[14] dated November 19, 1979 which she and her husband had executed for the administration of their conjugal properties.^[15]

Anent the first issue, petitioners' contention that the lot belongs exclusively to Florentino because of his separation in fact from his wife, Elisera, at the time of sale dissolved their property relations, is bereft of merit. Respondents' separation in fact neither affected the conjugal nature of the lot nor prejudiced Elisera's interest over it. Under Article 178^[16] of the Civil Code, the separation in fact between husband and wife without judicial approval shall not affect the conjugal partnership. The lot retains its conjugal nature.

Likewise, under Article 160^[17] of the Civil Code, all property acquired by the spouses during the marriage is presumed to belong to the conjugal partnership of gains, unless it is proved that it pertains exclusively to the husband or to the wife. Petitioners' mere insistence as to the lot's supposed exclusive nature is insufficient to overcome such presumption when taken against all the evidence for respondents.

On the basis alone of the certificate of title, it cannot be presumed that the lot was acquired during the marriage and that it is conjugal property since it was registered "in the name of Florentino Chiong, Filipino, of legal age, married to Elisera Chiong...".^[18] But Elisera also presented a real property tax declaration acknowledging her and Florentino as owners of the lot. In addition, Florentino and Elisera categorically declared in the Memorandum of Agreement they executed that the lot is a conjugal property.^[19] Moreover, the conjugal nature of the lot was admitted by Florentino in the Deed of Absolute Sale dated May 13, 1992, where he declared his capacity to sell as a co-owner of the subject lot.^[20]

Anent the second issue, the sale by Florentino without Elisera's consent is not, however, void *ab initio*. In *Vda. de Ramones v. Agbayani*,^[21] citing *Villaranda v. Villaranda*,^[22] we held that without the wife's consent, the husband's alienation or encumbrance of conjugal property prior to the effectivity of the Family Code on

August 3, 1988 is not void, but merely voidable. Articles 166 and 173 of the Civil Code^[23] provide:

ART. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, **the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent...**

This article shall not apply to property acquired by the conjugal partnership before the effective date of this Code.

ART. 173. **The wife may, during the marriage, and within ten years from the transaction questioned, ask the courts for the annulment of any contract of the husband entered into without her consent,** when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband. (Emphasis supplied.)

Applying Article 166, the consent of both Elisera and Florentino is necessary for the sale of a conjugal property to be valid. In this case, the requisite consent of Elisera was not obtained when Florentino verbally sold the lot in 1985 and executed the Deed of Absolute Sale on May 13, 1992. Accordingly, the contract entered by Florentino is annulable at Elisera's instance, during the marriage and within ten years from the transaction questioned, conformably with Article 173. Fortunately, Elisera timely questioned the sale when she filed Civil Case No. 4383 on July 5, 1991, perfectly within ten years from the date of sale and execution of the deed.

Petitioners finally contend that, assuming *arguendo* the property is still conjugal, the transaction should not be entirely voided as Florentino had one-half share over the lot. Petitioners' stance lacks merit. In *Heirs of Ignacia Aguilar-Reyes v. Mijares* ^[24] citing *Bucoy v. Paulino, et al.*,^[25] a case involving the annulment of sale executed by the husband without the consent of the wife, it was held that the alienation must be annulled in its entirety and not only insofar as the share of the wife in the conjugal property is concerned. Although the transaction in the said case was declared void and not merely voidable, the rationale for the annulment of the whole transaction is the same. Thus:

The plain meaning attached to the plain language of the law is that the contract, in its entirety, executed by the husband without the wife's consent, may be annulled by the wife. Had Congress intended to limit such annulment in so far as the contract shall "prejudice" the wife, such limitation should have been spelled out in the statute. It is not the legitimate concern of this Court to recast the law. As Mr. Justice Jose B. L. Reyes of this Court and Judge Ricardo C. Puno of the Court of First Instance correctly stated, "[t]he rule (in the first sentence of Article 173) revokes *Baello vs. Villanueva*, 54 Phil. 213 and *Coque vs. Navas Sioca*, 45 Phil. 430," in which cases annulment was held to refer only to the extent of the one-half interest of the wife... ^[26]