

THIRD DIVISION

[G.R. NO. 137808, September 30, 2005]

**ALDEGONDA VDA. DE RAMONES, BEATRIZ AND MARGARITA,
BOTH SURNAMED RAMONES, PETITIONERS, VS. AURORA P.
AGBAYANI, ASSISTED BY HER HUSBAND FILEMON AGBAYANI,
RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated May 8, 1998 and the Resolution dated February 16, 1999 of the Court of Appeals in CA-G.R. CV No. 49807, entitled "*AURORA AGBAYANI, assisted by her husband, FILEMON AGBAYANI versus ALDEGONDA VDA. DE RAMONES, BEATRIZ AND MARGARITA, both surname RAMONES.*"

Spouses Santos and Aldegonda Ramones are the registered owners of a 358-square meter lot located at Calamagui, Ilagan, Isabela, covered by Transfer Certificate of Title (TCT)No. T-43468 of the Registry of Deeds, same province.

On May 23, 1979, Santos Ramones, without the knowledge of his wife, Aldegonda, sold to Aurora P. Agbayani a 100-square meter portion of the lot for P5,000.00. The Deed of Sale was annotated by the Register of Deeds as Entry No. 90 at the back of TCT No. T-43468.

On March 7, 1980, Santos Ramones died. Subsequently, Aldegonda and her daughters Beatriz and Margarita, herein petitioners, had a restroom and a concrete septic tank built on the area sold by Santos Ramones to respondent without the latter's knowledge. This prompted respondent to bring the matter to the barangay authorities but no settlement was reached by the parties.

On June 27, 1983, respondent filed with the Regional Trial Court of Isabela, Branch 17, a complaint for quieting of title and recovery of possession against petitioners on the basis of the Deed of Sale executed by Santos Ramones.

In their amended answer, petitioners averred that the 100-square meter lot subject of the Deed of Sale is the conjugal property of spouses Santos and petitioner Aldegonda Ramones. Even if Santos, during his lifetime, sold the property to respondent, the sale is void since it was executed without the consent of his wife, Aldegonda Ramones.

On October 11, 1995, the trial court rendered a Decision^[2] in favor of petitioners and against respondent, holding that the Deed of Sale is void because it was executed without the consent of his wife Aldegonda.

On appeal, the Court of Appeals rendered its Decision reversing that of the trial court, thus:

"WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the lower court dated October 11, 1995 is REVERSED, and a new judgment is rendered in favor of plaintiff-appellant Aurora P. Agbayani, confirming the Deed of Sale executed by Santos P. Ramones in her favor and declaring plaintiffs as absolute owners of the lot sold to them by the aforementioned vendor. No pronouncement as to costs.

SO ORDERED."^[3]

Petitioners' motion for reconsideration was denied.

In ruling that the Deed of Sale between Santos Ramones and herein respondent is valid, the Appellate Court held: Article 166 of the Civil Code prohibits alienation or encumbrance of real property by the husband without the consent of the wife. This provision should be read with Article 173 of the same Code providing that the wife may, during the marriage and within ten (10) years from the questioned transaction, ask the courts for annulment of any contract of the husband entered into without her consent. In other words, the lack of consent by the wife will not make the alienation of the conjugal property by the husband void. It is merely voidable. In the instant case, however, petitioner Aldegonda Ramones, wife of Santos, did not ask the courts for the annulment of the Deed of Sale involving a portion of their conjugal property within ten (10) years from the transaction. Thus, the sale is valid.

The only issue in this case is whether the sale of real property belonging to the conjugal partnership by the husband without his wife's consent is *void*.

In *Villaranda v. Villaranda, et al.*,^[4] this Court, through Mr. Justice Artemio V. Panganiban, ruled that without the wife's consent, the husband's alienation or encumbrance of conjugal property prior to the effectivity of the Family Code is not void, but merely **voidable**. However, the wife's failure to file with the courts an action for annulment of the contract during the marriage and within ten (10) years from the transaction shall render the sale valid. In the present case, the Deed of Absolute Sale was executed by Santos Ramones on May 23, 1979.^[5] The Family Code took effect much later, or only on August 3, 1988. Laws should be applied prospectively, unless a legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used.^[6] This exception is not present here. Therefore, the provisions of the Civil Code, not the Family Code, apply to the present case.

There is no dispute that the lot sold is the conjugal property of spouses Ramones. In this connection, Article 166 of the Civil Code, provides:

"Article 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. x x x"