

SECOND DIVISION

[G.R. No. 136803, June 16, 2000]

EUSTAQUIO MALLILIN, JR., PETITIONER, VS. MA. ELVIRA CASTILLO, RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review of the amended decision^[1] of the Court of Appeals dated May 7, 1998 in CA G.R. CV No. 48443 granting respondent's motion for reconsideration of its decision dated November 7, 1996, and of the resolution dated December 21, 1998 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On February 24, 1993, petitioner Eustaquio Mallilin, Jr. filed a complaint^[2] for "Partition and/or Payment of Co-Ownership Share, Accounting and Damages" against respondent Ma. Elvira Castillo. The complaint, docketed as Civil Case No. 93-656 at the Regional Trial Court in Makati City, alleged that petitioner and respondent, both married and with children, but separated from their respective spouses, cohabited after a brief courtship sometime in 1979 while their respective marriages still subsisted. During their union, they set up the Superfreight Customs Brokerage Corporation, with petitioner as president and chairman of the board of directors, and respondent as vice-president and treasurer. The business flourished and petitioner and respondent acquired real and personal properties which were registered solely in respondent's name. In 1992, due to irreconcilable differences, the couple separated. Petitioner demanded from respondent his share in the subject properties, but respondent refused alleging that said properties had been registered solely in her name.

In her Amended Answer,^[3] respondent admitted that she engaged in the customs brokerage business with petitioner but alleged that the Superfreight Customs Brokerage Corporation was organized with other individuals and duly registered with the Securities and Exchange Commission in 1987. She denied that she and petitioner lived as husband and wife because the fact was that they were still legally married to their respective spouses. She claimed to be the exclusive owner of all real and personal properties involved in petitioner's action for partition on the ground that they were acquired entirely out of her own money and registered solely in her name.

On November 25, 1994, respondent filed a Motion for Summary Judgment,^[4] in accordance with Rule 34 of the Rules of Court.^[5] She contended that summary judgment was proper, because the issues raised in the pleadings were sham and not genuine, to wit:

A.

The main issue is -- Can plaintiff validly claim the **partition and/or payment of co-ownership share, accounting and damages, considering that plaintiff and defendant are admittedly both married to their respective spouses under still valid and subsisting marriages**, even assuming as claimed by plaintiff, that they lived together as husband and wife without benefit of marriage? In other words, can the parties be considered as co-owners of the properties, under the law, considering the present status of the parties as both married and incapable of marrying each other, even assuming that they lived together as husband and wife (?)

B.

As a collateral issue, can the plaintiff be considered as an unregistered co-owner of the real properties under the Transfer Certificates of Title duly registered solely in the name of defendant Ma. Elvira Castillo? This issue is also true as far as the motor vehicles in question are concerned which are also registered in the name of defendant.^[6]

On the first point, respondent contended that even if she and petitioner actually cohabited, petitioner could not validly claim a part of the subject real and personal properties because Art. 144 of the Civil Code, which provides that the rules on co-ownership shall govern the properties acquired by a man and a woman living together as husband and wife but not married, or under a marriage which is void *ab initio*, applies only if the parties are not in any way incapacitated to contract marriage.^[7] In the parties' case, their union suffered the legal impediment of a prior subsisting marriage. Thus, the question of fact being raised by petitioner, *i.e.*, whether they lived together as husband and wife, was irrelevant as no co-ownership could exist between them.

As to the second issue, respondent maintained that petitioner can not be considered an unregistered co-owner of the subject properties on the ground that, since titles to the land are solely in her name, to grant petitioner's prayer would be to allow a collateral attack on the validity of such titles.

Petitioner opposed respondent's Motion for Summary Judgment.^[8] He contended that the case presented genuine factual issues and that Art. 144 of the Civil Code had been repealed by the Family Code which now allows, under Art. 148, a limited co-ownership even though a man and a woman living together are not capacitated to marry each other. Petitioner also asserted that an implied trust was constituted when he and respondent agreed to register the properties solely in the latter's name although the same were acquired out of the profits made from their brokerage business. Petitioner invoked the following provisions of the Civil Code:

Art. 1452. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

Art. 1453. When the property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another grantor, there is an implied trust in favor of the person whose benefit is contemplated.

On January 30, 1995, the trial court rendered its decision^[9] granting respondent's motion for summary judgment. It ruled that an examination of the pleadings shows that the issues involved were purely legal. The trial court also sustained respondent's contention that petitioner's action for partition amounted to a collateral attack on the validity of the certificates of title covering the subject properties. It held that even if the parties really had cohabited, the action for partition could not be allowed because an action for partition among co-owners ceases to be so and becomes one for title if the defendant, as in the present case, alleges exclusive ownership of the properties in question. For these reasons, the trial court dismissed Civil Case No. 93-656.

On appeal, the Court of Appeals on November 7, 1996, ordered the case remanded to the court of origin for trial on the merits. It cited the decision in *Roque v. Intermediate Appellate Court*^[10] to the effect that an action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved. If the defendant asserts exclusive title over the property, the action for partition should not be dismissed. Rather, the court should resolve the case and if the plaintiff is unable to sustain his claimed status as a co-owner, the court should dismiss the action, not because the wrong remedy was availed of, but because no basis exists for requiring the defendant to submit to partition. Resolving the issue whether petitioner's action for partition was a collateral attack on the validity of the certificates of title, the Court of Appeals held that since petitioner sought to compel respondent to execute documents necessary to effect transfer of what he claimed was his share, petitioner was not actually attacking the validity of the titles but in fact, recognized their validity. Finally, the appellate court upheld petitioner's position that Art. 144 of the Civil Code had been repealed by Art. 148 of the Family Code.

Respondent moved for reconsideration of the decision of the Court of Appeals. On May 7, 1998, nearly two years after its first decision, the Court of Appeals granted respondent's motion and reconsidered its prior decision. In its decision now challenged in the present petition, it held --

Prefatorily, and to better clarify the controversy on whether this suit is a collateral attack on the titles in issue, it must be underscored that plaintiff-appellant alleged in his complaint that all the nine (9) titles are registered in the name of defendant-appellee, Ma. Elvira T. Castillo, except one which appears in the name of Eloisa Castillo (see *par. 9, Complaint*). However, a verification of the annexes of such initiatory pleading shows some discrepancies, to wit:

1. TCT No. 149046 (Annex A) =.Elvira T. Castillo, single
2. TCT No. 168208 (Annex B) =.....-do-
3. TCT No. 37046 (Annex C) =.....-do-
4. TCT No. 37047 (Annex D) = -do-
5. TCT No. 37048 (Annex E) =.....-do-

6. TCT No. 30368 (Annex F) = Steelhaus Realty & Dev. Corp.
7. TCT No. 30369 (Annex G) =.....-do-
8. TCT No. 30371 (Annex F) =.....-do-
9. TCT No. (92323) 67881 = Eloisa Castillo
(Annex I)

In this action, plaintiff-appellant seeks to be declared as 1/2 co-owner of the real properties covered by the above listed titles and eventually for their partition [*par. (a), Prayer; p. 4 Records*]. Notably, in order to achieve such prayer for a joint co-ownership declaration, it is unavoidable that the individual titles involved be altered, changed, canceled or modified to include therein the name of the appellee as a registered 1/2 co-owner. Yet, no cause of action or even a prayer is contained in the complaint filed. Manifestly, absent any cause or prayer for the alteration, cancellation, modification or changing of the titles involved, the desired declaration of co-ownership and eventual partition will utterly be an indirect or collateral attack on the subject titles in this suit.

It is here that We fell into error, such that, if not rectified will surely lead to a procedural lapse and a possible injustice. Well settled is the rule that a certificate of title cannot be altered, modified or canceled except in a direct proceeding in accordance with law.

In this jurisdiction, the remedy of the landowner whose property has been wrongfully or erroneously registered in another name is, after one year from the date of the decree, not to set aside the decree, but respecting it as incontrovertible and no longer open to review, to bring an action for reconveyance or, if the property had passed into the hands of an innocent purchaser for value, for damages. Verily, plaintiff-appellant should have first pursued such remedy or any other relief directly attacking the subject titles before instituting the present partition suit. Apropos, the case at bench appears to have been prematurely filed.

Lastly, to grant the partition prayed for by the appellant will in effect rule and decide against the properties registered in the names of Steelhouse Realty and Development Corporation and Eloisa Castillo, who are not parties in the case. To allow this to happen will surely result to injustice and denial of due process of law. . . .^[11]

Petitioner moved for reconsideration but his motion was denied by the Court of Appeals in its resolution dated December 21, 1998. Hence this petition.

Petitioner contends that: (1) the Court of Appeals, in its first decision of November 7, 1996, was correct in applying the *Roque* ruling and in rejecting respondent's claim that she was the sole owner of the subject properties and that the partition suit was a collateral attack on the titles; (2) the Court of Appeals correctly ruled in its first decision that Art. 148 of the Family Code governs the co-ownership between the parties, hence, the complaint for partition is proper; (3) with respect to the properties registered in the name of Steelhouse Realty, respondent admitted ownership thereof and, at the very least, these properties could simply be excluded