

FIRST DIVISION

[G.R. No. 102330, November 25, 1998]

TERESITA C. FRANCISCO, PETITIONER, VS. HON. COURT OF APPEALS; AND CONCHITA EVANGELISTA AND HER HUSBAND SIMEON EVANGELISTA; ARACELI F. MARILLA AND HER HUSBAND FREDDY MARILLA; ANTONIO V. FRANCISCO; AND EUSEBIO FRANCISCO, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This petition for review on certiorari seeks to reverse respondent appellate court's decision^[1] promulgated on October 7, 1991, affirming in toto the judgment of the Regional Trial Court which ruled,^[2] thus:

"WHEREFORE, premises considered, this Court renders judgment in favor of the defendants and against the plaintiff, as follows:

- 1) Ordering the dismissal of the Complaint with costs against the plaintiff;
- 2) Declaring the defendant Eusebio Francisco the administrator of the properties described in paragraph eight (8) of the Complaint; and
- 3) Sentencing the plaintiff to pay the defendants the sum of P10,000.00 as and for attorney's fees.

SO ORDERED."

Petitioner is the legal wife of private respondent Eusebio Francisco (Eusebio) by his second marriage. Private respondents Conchita Evangelista, Araceli F. Marilla and Antonio Francisco are children of Eusebio by his first marriage.

Petitioner alleges that since their marriage on February 10, 1962, she and Eusebio have acquired the following: (1) a sari-sari store, a residential house and lot, and an apartment house, all situated at Col. S. Cruz St., Barangay Balite, Rodriguez (formerly Montalban), Rizal, and; (2) a house and lot at Barrio San Isidro, Rodriguez, Rizal. Petitioner further avers that these properties were administered by Eusebio until he was invalidated on account of tuberculosis, heart disease and cancer, thereby, rendering him unfit to administer them. Petitioner also claims that private respondents succeeded in convincing their father to sign a general power of attorney which authorized Conchita Evangelista to administer the house and lot together with the apartments situated in Rodriguez, Rizal.

On August 31, 1988, petitioner filed a suit for damages and for annulment of said

general power of attorney, and thereby enjoining its enforcement. Petitioner also sought to be declared as the administratrix of the properties in dispute. In due course, the trial court rendered judgment in favor of private respondents. It held that the petitioner failed to adduce proof that said properties were acquired during the existence of the second conjugal partnership, or that they pertained exclusively to the petitioner. Hence, the court ruled that those properties belong exclusively to Eusebio, and that he has the capacity to administer them.

On appeal, the Court of Appeals affirmed in toto the decision of the trial court. Hence, this petition.

Petitioner raised the following errors allegedly committed by the appellate court:

"FIRST ASSIGNMENT OF ERROR

RESPONDENT COURT ERRED IN APPLYING ARTICLES 160 AND 158, UNDER TITLE VI OF THE (NEW) CIVIL CODE BECAUSE SAID TITLE, TOGETHER WITH THE OTHERS, HAVE (SIC) ALREADY BEEN REPEALED BY ARTICLE 253 OF THE FAMILY CODE.

SECOND ASSIGNMENT OF ERROR

RESPONDENT COURT FURTHER ERRED IN NOT APPLYING ARTICLE 124 OF THE FAMILY CODE."^[3]

But in her reply, petitioner posed the sole issue "whether or not Article 116 of the Family Code applies to this case because Article 253 of the same Code [which] expressly repeals Arts. 158 and 160 of the Civil Code".^[4]

To our mind, the crucial issue in this petition is whether or not the appellate court committed reversible error in affirming the trial court's ruling that the properties, subject matter of controversy, are not conjugal but the capital properties of Eusebio exclusively.

Indeed, Articles 158^[5] and 160^[6] of the New Civil Code have been repealed by the Family Code of the Philippines which took effect on August 3, 1988. The aforesaid articles fall under Title VI, Book I of the New Civil Code which was expressly repealed by Article 254^[7] (not Article 253 as alleged by petitioner in her petition and reply) of the Family Code. Nonetheless, we cannot invoke the new law in this case without impairing prior vested rights pursuant to Article 256^[8] in relation to Article 105^[9] (second paragraph) of the Family Code. Accordingly, the repeal of Articles 158 and 160 of the New Civil Code does not operate to prejudice or otherwise affect rights which have become vested or accrued while the said provisions were in force.^[10] Hence, the rights accrued and vested while the cited articles were in effect survive their repeal.^[11] We shall therefore resolve the issue of the nature of the contested properties based on the provisions of the New Civil Code.

Petitioner contends that the subject properties are conjugal, thus, she should administer these on account of the incapacity of her husband. On the other hand,

private respondents maintain that the assets in controversy claimed by petitioner as "conjugal" are capital properties of Eusebio exclusively as these were acquired by the latter either through inheritance or through his industry prior to his second marriage. Moreover, they stress that Eusebio is not incapacitated contrary to petitioner's allegation.

We find petitioner's contention lacks merit, as hereafter elucidated.

Article 160 of the New Civil Code provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife". However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage.^[12] Proof of acquisition during the coverture is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership.^[13] The party who asserts this presumption must first prove said time element. Needless to say, the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired.^[14] Moreover, this presumption in favor of conjugality is rebuttable, but only with strong, clear and convincing evidence; there must be a strict proof of exclusive ownership of one of the spouses.^[15]

In this case, petitioner failed to adduce ample evidence to show that the properties which she claimed to be conjugal were acquired during her marriage with Eusebio.

With respect to the land at Col. Cruz St., Balite, Rodriguez, Rizal, petitioner failed to refute the testimony of Eusebio that he inherited the same from his parents. Interestingly, petitioner even admitted that Eusebio brought into their marriage the said land, albeit in the concept of a possessor only as it was not yet registered in his name.

Whether Eusebio succeeded to the property prior or subsequent to his second marriage is inconsequential. The property should be regarded as his own exclusively, as a matter of law, pursuant to Article 148^[16] of the New Civil Code.

Essentially, property already owned by a spouse prior to the marriage, and brought to the marriage, is considered his or her separate property.^[17] Acquisitions by lucrative title refers to properties acquired gratuitously and include those acquired by either spouse during the marriage by inheritance, devise, legacy, or donation.^[18] Hence, even if it be assumed that Eusebio's acquisition by succession of the land took place during his second marriage, the land would still be his "exclusive property" because it was acquired by him, "during the marriage, by lucrative title."^[19]

As regards the house, apartment and sari-sari store, private respondents aver that these properties were either constructed or established by their father during his first marriage. On the other hand, petitioner insists that the said assets belong to conjugal partnership. In support of her claim, petitioner relied on the building permits for the house and the apartment, with her as the applicant although in the name of Eusebio. She also invoked the business license for the sari-sari store issued in her name alone.