

TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 02279-MIN, January 22, 2014]

MIRIAM L. MAGLANA, PLAINTIFF-APPELLEE, VS. MANUEL S. SANTAMARIA, DEFENDANT-APPELLANT.

D E C I S I O N

LOPEZ, J.:

This is an appeal under Rule 41 of the Rules of Court filed by defendant-appellant to assail the February 13, 2009 Decision^[1] of the Regional Trial Court of Davao City, Branch 14,^[2] which granted plaintiff-appellee's complaint in Civil Case No. 26,852-08 for Recovery of Possession of Real Property, of Owner's Transfer Certificate(s) of Title, Damages and Attorney's Fees. The assailed decision decreed thus:

WHEREFORE, Judgment is rendered in favor of the plaintiff ordering the defendant to:

Surrender to the plaintiff the Owner's Duplicate copy of titles as well as turn over the physical possession of the following lots/lands:

- 1) OCT No. P-1050
- 2) TCT No. T-4405
- 3) TCT No. T-61854
- 4) TCT No. T-23854
- 5) TCT No. T-7370
- 6) TCT No. T-68479
- 7) TCT No. P-979
- 8) TCT No. T-68480
- 9) OCT No. T-4030
- 10) TCT No. T-41637

No pronouncement as to attorney's fees. Cost de Officio.

SO ORDERED.

The Antecedents

On April 3, 1966, plaintiff-appellee Miriam L. Maglana and defendant-appellant Manuel S. Santamaria were married at Ellinwood-Malate Church, Malate, Manila.^[3] They were then blessed with four children, namely, Matthew Constancio, Michael Luke, Mark Apollo, and Manuel John, Jr., all surnamed Maglana Santamaria.

Sometime in 1980, appellee and appellant were separated de facto. A legal separation case was subsequently filed by appellee but it was denied by the trial court.^[4] Consequently, an annulment case was filed by appellee and this time, it was granted by the trial court on August 8, 2001 declaring their marriage as null and void.^[5]

In the meantime, or on October 24, 1989, appellee executed a duly notarized document denominated as "Irrevocable General Power of Attorney"^[6] (hereafter, IGPA) constituting appellant as her true and lawful attorney-in-fact, to do and perform the following acts and things:

1. To sell, transfer and convey and to take control, management and full administration of the following properties:

(a) Two (2) parcels of Agricultural land and one (1) residential lot, situated at Barrio Lagao, Municipality of Buayan, Province of Cotabato, covered by Transfer Certificate of Title No. T-4405 and containing an area of Four Hundred Ninety Five (495) square meters, more or less, Agricultural land situated at Barrio Batotitic, Municipality of General Santos, Cotabato covered by Original Certificate of Title No. OCT-(V-20698) (P-8613) P-1050, containing an area of Eighty Three Thousand Three Hundred Thirty (83,330) square meters, more or less;

(b) One (1) residential lot, containing an area of 1,000 square meters, more or less, covered by Transfer Certificate of Title No. T-61854 situated at Bucana, Davao City;

(c) One (1) Commercial lot located at Panabo, Davao del Norte (Lot of Bulalio Amano) per Transfer Certificate of Title No. TCT-23854, containing an area of 450 square meters, more or less;

(d) One (1) Commercial lot containing an area of 2,000 square meters located at Mati, Davao Oriental and covered by Transfer Certificate of Title No. 7370;

(e) Lot of Bartolome Amoguis at Bayabas, Guinga, covered by Original Certificate of Title No. OCT-979;

(f) Lot covered by Transfer Certificate of Title No. TCT No. TCT-T-68479 situated at Davao City and containing an area of 132,180 square meters, more or less;

(g) Lot covered by Transfer Certificate of Title No. TCT-68480 situated at Guianga, Davao City, containing an area of 180,298 square meters, more or less;

(h) Lot covered by Original Certificate of Title No. OCT-P-4030 situated at Barrio Bato, Davao City, containing an area of 16,664 square meters, more or less;

(i) Lot covered by Transfer Certificate of Title No. TCT-T-41637 situated at Guianga, Davao City, containing an area of ____ square meters, more or less.

(2) To ask, demand, sue for, recover, collect any and all sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, and other things of value of whatever nature or kind as may now be or may hereafter become due, owing, payable or belonging to me, and to have, sue, and to take any and all lawful ways and means for the recovery thereof by suit, attachment, compromise or otherwise;

(3) To make, sign, execute, and deliver contracts, documents, agreements, and other writings of whatever nature or kind, with any and all third persons, concerns, or entities, upon terms and conditions acceptable to my said attorney;

(4) To delegate in whole or in part any or all of the powers herein granted or conferred, by means of an instrument in writing in favour of any third person or persons whom my said attorney may select;

(5) To do all other acts as may effectuate the powers herein granted.

HEREBY GIVING AND GRANTING unto my said attorney full power and authority whatsoever requisite or necessary or proper to be done in and about the premises as fully to all intents and purposes as I might or could lawfully do if personally present, with power of substitution and revocation, and hereby, ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done under and virtue of these presents.

x x x x.

Appellee nonetheless alleged that the IGPA was executed with the verbal agreement between them that appellant will give a monthly support to their children in the amount of not less than Ten Thousand Pesos (P10,000.00) from the proceeds of the properties. Consequently, the titles of the properties subject of the IGPA were turned over by appellee to appellant and the same were duly acknowledged by appellant's counsel.^[7] However, she likewise alleged that in the meantime, appellant failed to comply with their verbal agreement and refused to give support to their children despite demands and reminders. She further alleged that appellant even conveyed a portion of one of the properties subject therein without giving a single centavo to their children. She likewise discovered that appellant has a live-in partner with whom appellant has three (3) children and with whom appellant supported out from the proceeds and fruits of the properties subject of the IGPA.

Thus, when appellant refused to heed her demands for the return of the possession of the properties, the proceeds thereof and the certificates of titles, she was forced to revoke the IGPA by executing a duly notarized document denominated as the "Revocation of General Power of Attorney"^[8] dated February 27, 1998.

Consequently, on October 14, 1998, appellee filed a complaint^[9] against appellant for Recovery of Possession of Real Property, of Owner's Transfer Certificate(s) of Title, Damages and Attorney's Fees with prayer for the issuance of a preliminary injunction before the Regional Trial Court (RTC) of Davao City docketed as Civil Case No. 26,852-08. Appellee prayed that before the trial on merits, an injunctive writ be issued prohibiting and enjoining appellant from selling, mortgaging or alienating any of the properties covered by the general power of attorney. Likewise, after trial on the merits, a permanent injunction be issued and that appellant be ordered to return to her the owner's copy of OCT No. P-1050, TCT No. T-4405, TCT No. T-61854, TCT No. T-23854, TCT No. T-7370, TCT No. T-68479, OCT No. P-979, TCT No. 68480, OCT No. P-4030, and TCT No. T-41637 within five (5) days from receipt of such order, otherwise the Register of Deeds where the properties are located be ordered to cancel the outstanding owner's copy and issue a new one to be delivered to appellee or her representative. Appellee further prayed for moral damages in the

amount of P200,000.00, exemplary damages of P10,000.00, attorney's fees of P50,000.00 plus appearance fee of P1,000.00, and that appellant be ordered to pay the cost.

On December 14, 1998, appellant filed his answer with special and affirmative defenses.^[10] Appellant, in gist, denied the allegations of appellee and argued, among others, that appellee has no cause of action against him and appellee has no more right to claim the properties subject of the IGPA. He alleged that the IGPA was executed by appellee in his favor in order to assuage his wounded feelings because he actually filed a bigamy case against appellee and while the case was pending, appellee offered him the complete management, administration and even the right to sell, transfer and convey to third party the remaining properties subject of the IGPA and in exchange he will execute an affidavit of desistance for the dismissal of the bigamy case. This notwithstanding, some of the properties subject of the IGPA were already surreptitiously mortgaged by appellee and used to secure a loan contracted by appellee alone and to which the latter failed to pay. Had it not through the intercession of his father, the properties had been long foreclosed by the bank. Likewise, some of the properties were already sold by appellee without his consent and the proceeds thereof which amounted to more than P100,000,000.00 were just wasted by appellee without reserving some amounts necessary for the future of their children.

Hence, appellant prayed that the petition be dismissed and appellee be ordered to pay him instead the sum of P500,000.00 as attorney's fees plus, P1,000.00 per court appearance, P2,500,000.00 as moral damages, P1,000,000.00 as exemplary damages, P10,000.00 as actual damages, and the cost of suit.

After due proceedings, the court *a quo* rendered the assailed decision in favor of appellee ordering appellant to return the possession and copies of the certificates of title of the properties subject of the IGPA.

Aggrieved, appellant filed the present appeal.

However, pending resolution of the instant appeal, appellee Miriam L. Maglana passed away on October 19, 2009 and she was substituted by her children, namely, Matthew Constancio, Michael Luke, Mark Apollo, and Manuel John, Jr., all surnamed Maglana Santamaria and Ivy Lois Maglana Lardizabal. In the present appeal, appellee's children are hereby represented by Matthew Constancio.^[11]

Assignment of Errors

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE IRREVOCABLE POWER OF ATTORNEY (EXHS. 1 AND B) ARE VALID AND SUBSISTING AND EFFECTIVE UNTIL THE PRESENT.

II

THE TRIAL COURT ERRED IN FINDING THAT THE PROPERTIES DESCRIBED AND MENTIONED IN THE IRREVOCABLE POWER OF ATTORNEY ARE PARAPHERNAL PROPERTY (sic) OF PLAINTIFF-APPELLEE, AND NOT CONJUGAL PROPERTY (sic) OF SPOUSES PLAINTIFF-APPELLEE AND DEFENDANT-APPELLANT.

III

THE TRIAL COURT ERRED IN ORDERING PLAINTIFF-APPELLANT (SIC) TO SURRENDER THE OWNER'S DUPLICATE COPY OF THE TITLES AS WELL AS THE PHYSICAL POSSESSION OF THE LOTS MENTIONED IN THE IRREVOCABLE POWER OF ATTORNEY.

This Court's Ruling.

The appeal is partly meritorious.

Appellant discussed the three assigned errors jointly. He contends that the agency created under the IGPA is an agency coupled with interest because a bilateral contract depends upon it or that it is a means of fulfilling the obligations already contracted. As such, it cannot be revoked by appellee unilaterally. He argues that the IGPA was executed by appellee in his favor in order that he will execute in exchange an affidavit of desistance so that the bigamy case he filed against appellee will be dismissed. Likewise, the IGPA was executed in lieu of a deed of transfer of the ownership of the subject lands because he is an American citizen and he is not allowed to own in his name a vast tract of land. Appellee in executing the agreement intends that he and their children will enjoy the properties in perpetual usufruct, or even encumber and sell said properties. Thus, the unilateral revocation of the IGPA by appellee, which copy of the revocation he did not receive, was null and void, invalid and of no legal effect. Appellant further contends that the court *a quo* erred in ordering the return of the properties subject of the IGPA without revoking the agreement. In fact, there was no allegation in appellee's complaint or a cause of action of appellee on the matter of revocation of said IGPA and there was no prayer in the complaint asking the court for the revocation of the said agreement.

Moreover, appellant posits that there is no merit to appellee's assertion that the reason why appellee wanted to revoke the agreement was because he failed to comply with their verbal agreement to give monthly support to their children. He argues that this verbal agreement cannot be admitted in evidence because appellee herself testified that while this verbal agreement was one of the conditions in the execution of the IGPA, yet, this condition was not integrated or incorporated therein. He further argues that appellee did not even complain to her lawyer before signing the document that this condition was not stated in the document. At most, the allegation on the verbal agreement was only fabricated by appellee in order that she could execute the revocation of the IGPA.

Furthermore, some of the properties which the court *a quo* directed him to return the possession to appellee were actually declared as conjugal properties by the trial court in the prior legal separation case docketed as Civil Case No. 15,312 and which decision had already attained finality. One of the properties declared as conjugal and which is also subject of the IGPA is the land located at Bato, Toril, Davao City covered by TCT No. 4030 containing an area of 16,006 hectares and which under the law should be administered by him as the husband of appellee. As such, it was erroneous for the court *a quo* to order the return thereof in the assailed decision because appellee has no more cause of action against the said property, it being barred by prior judgment or *res judicata*. Besides, appellee was not able to prove by preponderance of evidence that these properties are her paraphernal properties considering that under the law, all properties acquired by the spouses during their marriage are presumed conjugal properties. Considering that the properties