

FIRST DIVISION

[G.R. No. 120594, June 10, 1997]

ALFONSO TAN AND ETERIA TEVES TAN, PETITIONER, VS. COURT OF APPEALS, SPOUSES CELESTINO U. TAN AND ROSARIO DY KUSHIN AND SPOUSES MAXIMO U. TAN AND TERESITA SY TAN, RESPONDENTS.

DECISION

KAPUNAN, J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals in CA-G.R. CV No. 37224 dated June 20, 1994 which reversed and set aside the decision of the Regional Trial Court of Cebu City, Branch 10, the decretal portion of which reads:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered ordering the defendants-spouses Celestino U. Tan and Rosario Dy, and Maximo U. Tan and Teresita Sy to partition the house and lot covered by TCT No. 46249, deliver to plaintiff Eteria Teves Tan the one-third share of plaintiffs-spouses Alfonso U. Tan and Eteria Teves Tan; to pay Eteria Teves Tan P10,000.00 as attorney's fees; P5,000.00 as litigation expenses; and to pay the costs.

SO ORDERED.^[1]

The antecedents are as follows:

On April 17, 1989, a case for partition and accounting was instituted by the spouses Alfonso and Eteria Tan against herein private respondents who are the Alfonso's brothers, Celestino and Maximo, and their respective wives, Rosario and Teresita. It was alleged in the complaint that the parties are co-owners of a 906-square meter residential lot with improvements thereon situated at Banaue, Cebu City acquired sometime in 1970. Pursuant to the provisions of Article 494 of the New Civil Code, the spouses Alfonso and Eteria Tan, being co-owners to the extent of one-third (1/3) portion of the aforesaid lot, sought partition of the same. Anent the action for accounting, the spouses claimed that on August 15, 1963, the brothers together with other siblings put up a business which they registered as Bel Air Auto Supply Company and was engaged in the sale and distribution of auto spare parts. They alleged that they are entitled to the fruits, proceeds and profits of the said family business, so that, an accounting of the assets and liabilities of the partnership, as well as the interests and participation of each member, is proper in the premises.^[2]

On October 16, 1989, private respondents filed their answer alleging that an accounting is not feasible because the company had long been dissolved by the

partners on September 30, 1982 on account of financial losses and that whatever was due to each partner was already given him. It was further alleged that Alfonso mismanaged the business during his incumbency as manager and, as a consequence thereof, incurred advances and indebtedness from the partnership in the amount of P130,000.00. Finally, private respondents asserted that Alfonso's one-third (1/3) share of the subject property was mortgaged by him to his sister, Lolita Tan-Go, in order to secure a loan he obtained from her.^[3]

On January 16, 1990, Alfonso U. Tan filed a Manifestation and Motion to Dismiss contending that the case was filed only at the instance of his estranged wife, Eteria, and that he had no claim whatsoever against his brothers insofar as the family business is concerned. He prayed that the case be dismissed.^[4] The trial court, in its Order dated July 4, 1990, denied Alfonso's motion but recognized his reluctance to prosecute.^[5]

Eteria Teves Tan testified that she is married to Alfonso U. Tan but they were now living separately by virtue of a decree of legal separation rendered by the then Juvenile and Domestic Relations Court on August 31, 1977;^[6] that during their marriage, they bought a residential lot consisting of 906 square meters covered by Transfer Certificate of Title No. 46249^[7] and that the funds used in the construction of the house standing thereon were drawn from a loan she and her husband secured, although it was her husband and mother-in-law who drew the loan.^[8]

Celestino and Maximo Tan and their spouses, on their part, tried to establish the following: (a) that the family business, Bel Air Auto Supply Company, was dissolved on September 25, 1982 on account of mismanagement brought about by Alfonso's incompetence; (b) that Alfonso had no more claim against the family business because he borrowed heavily on his equity in the family business and from his brothers and sisters; (c) that the subject property was inherited by them from their mother, Trinidad Uy; (d) that Alfonso borrowed money from their sister, Lolita, and as a consequence thereof, mortgaged his share of the disputed property to her; (e) that Alfonso failed to pay said loan; and (f) that the house on the lot in question was constructed using funds from a loan contracted by their mother from the Social Security System (SSS).^[9] No documentary evidence, however was submitted during the trial with respect to the allegation that the property was inherited from their mother.

As above-stated, a Decision^[10] dated July 12, 1991 was rendered after trial finding that the 906-square meter lot with improvements was acquired by the three (3) brothers by sale through installments and so it should be partitioned equally among them and their respective wives. Consequently, since the lot was acquired during the marriage of petitioner and Alfonso, the former could not be deprived of her share of the one-third portion which is the conjugal property of the spouses. However, with respect to the business dealing in auto spare parts, the same had been dissolved due to losses.

On September 19, 1991, private respondents filed a Motion for Reconsideration^[11] of the decision contending that the 906-square meter lot, together with other properties, was actually inherited by the Tan brothers and their sisters from their mother who died intestate on December 15, 1968 but said lot was adjudicated to

the three (3) brothers in a notarized "Extrajudicial Declaration of Heirs and Adjudication of Properties" executed by the heirs on September 8, 1969, xerox copy of which was attached to the motion.^[12] The lot was described in the document as:

A parcel of land (lot 6448-C-5 of the subdivision plan (LRC) Psd-21849 being a portion of Lot 6448-C with an area of 906 sq. meters and described on Transfer Certificate of Title No. 38759. Tax declaration No. 022318. Assessed at P2,800.00.

The trial court denied the motion for reconsideration on the ground that the Extrajudicial Declaration of Heirs which was the basis of private respondents' claim that they inherited the lot in question from their mother was not presented as part of their evidence during the trial.^[13]

Aggrieved by the ruling, private respondents, the spouses Celestino and Rosario Tan and the spouses Maximo and Teresita Tan, interposed an appeal to the Court of Appeals which, in turn, reversed and set aside the said judgment. Respondent court ruled that although the subject property was acquired during the marriage of the spouses Eteria and Alfonso, it was established by the Tan brothers that the same was inherited from their mother, hence, their exclusive property.

We quote the pertinent portion of the decision:

x x x. It is true that under the New Civil Code, all properties of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains to the husband or to the wife (Art. 160, NCC). The provision of law on presumption of the conjugal nature of the property requires the party who invoked it to prove first that the property in controversy was acquired during marriage. In other words, proof of acquisition during coverture is a condition sine qua non for the operation of the presumption in favor of conjugal ownership (*Cobb-Perez vs. Lantin*, L-22300, May 22, 1960, 23 SCRA 637-644).

On the other hand, the herein appellants, thru Maximo Tan, insist that the property in dispute was acquired by inheritance from their late mother Trinidad Uy Tan, who died on 15 November 1968 (pp. 17-17-a, TSN; Dec. 21, 1990). There is documentary proof to support the testimony of Maximo Tan that indeed the property in dispute was inherited by Alfonso, Celestino and Maximo from their late mother, Trinidad Uy Tan. We note that the 906-square meter lot is registered in the name of: ALFONSO U. TAN, Filipino, of legal age, married to Eteria Teves of Bulacao, Pardo, Cebu City; CELESTINO U. TAN, Filipino, of legal age, married to Rosario Dy Kushin of Banawa, Hill No. 2; and MAXIMO U. TAN, Filipino, of legal age, single; of Banawa, Hill No. 2, of Cebu City, Philippines, with equal shares. From the very wording of the title, it can be deduced that 1/3 portion of the property solely belongs to Alfonso Tan. The property is registered in the names of the three brothers as married to their respective spouses. In this regard, the Supreme Court observed:

(H)ad the property been acquired by them (spouses) during coverture, it would have been registered in the name not of Francisco Soriano, married to Tomasa