

EIGHTH DIVISION

[CA-G.R. CV NO. 100604, February 07, 2014]

TERESA F. DACILLO, PLAINTIFF-APPELLANT, VS. JULITO D. ELMA AND RUBEN SAVELLANO, DEFENDANTS-APPELLEES.

DECISION

REYES, JR., J.C., J.:

On appeal is the Resolution dated March 15, 2013 of the Regional Trial Court (RTC), Branch 49 of Puerto Princesa City in Civil Case No. 4858 which dismissed appellant's complaint by reason of prescription.

Teresa F. Dacillo (herein appellant) filed a complaint on August 28, 2012 against Julito De Elma, Jr. and Ruben Savellano (herein appellees) alleging that on February 29, 1988, appellant's husband, Rodrigo Dacillo, without appellant's knowledge and consent, entered into a Contract to Sell with appellees, selling a conjugal property, particularly a portion of Lot 7^[1] covered by Transfer Certificate of Title (TCT) No. 44049 situated in Brgy. San Pedro, Puerto Princesa. She claimed that under the Family Code, such contract was void from the beginning. Consequently any transaction derived therefrom is void for lack of basis. (Records, pp. 1-3).

Appellee Julito D. Elma (Elma) filed a Motion to Dismiss stating that: appellant's cause of action is barred by prior judgment; the complaint states no cause of action, and; the appellant is guilty of forum-shopping. (Records, pp. 33-35).

Elma pointed out that there was a prior civil case filed by appellant's husband, entitled "*Rodrigo Dacillo v. Julito D. Elma, Jr.*" docketed as Civil Case No. 2342 which sought the rescission of the Contract to Sell dated February 29, 1988, the very same contract subject of the instant case. Rodrigo could have raised in Civil Case No. 2342 the absence of appellant's signature on the contract, but he did not. Thus the spouses could no longer raise such matter in another case by reason of res judicata and/or conclusiveness of judgment. (Records, pp. 33-34)

Elma also argued that the appellant incorrectly invoked the Family Code, which became effective on August 3, 1988 since the contract was executed on February 29, 1988. Under Art. 173 of the Civil Code, the wife has 10 years from the date of transaction to file a complaint for the annulment of a contract of a husband without the wife's consent. She cannot feign ignorance of the transaction as her husband filed Civil Case No. 2342 way back August 1990 and it is recorded that she personally received a court order in said case dated January 15, 1998. (Records, p. 34).

Finally Elma averred that appellant failed to mention in the Certification against forum-shopping the pendency of Civil Case No. 2342 which involved the same property. Such failure constitutes forum-shopping. (Records, pp. 34-35).

The appellant filed a Comment arguing that *res judicata* does not apply in this case since the present case involved different issues and parties. Also, a void contract is imprescriptible. (Records, p. 59).

On March 15, 2013, the RTC rendered the herein assailed Resolution holding:

"WHEREFORE, Premises considered, the motion to dismiss is hereby GRANTED and the complaint in this case is hereby DISMISSED due to lack of cause of action in virtue of the latter's extinctive prescription.

SO ORDERED." (Rollo, pp. 13-14).

The RTC held that since the subject contract was executed before the effectivity of the Family Code, the contract shall be governed by Art. 173 of the Civil Code which provides that the disposition of a conjugal property without the wife's consent is not void but merely voidable. Article 173 further provides that an action for the annulment of any contract entered into by the husband without the wife's consent must be filed: (1) during the marriage, and; (2) within ten years from the transaction questioned. Where any one of these two conditions is lacking, the action will be deemed filed out of time. As the contract in this case was executed on February 29, 1988, plaintiff only had until March 1998 to challenge the contract's validity. In the present case, plaintiff filed her complaint only after 24 years from the time her husband executed the contract. Thus, her cause of action has already prescribed. (Rollo, pp. 9-11).

The appellant is now before the Court with the following assignment of errors:

A. The trial court (Regional Trial Court of Palawan Branch 49, Palawan) erred in applying the new civil code to the case;

B. The trial court erred in concluding appellant's cause of action had prescribed. (Rollo, p. 20).

Appellant argues that while the contract was executed on a date when the civil law provision was effective, the existence of such contract was discovered by her only when the Family Code was already in force. Thus, the Family Code should prevail over the civil code since the occurrence of appellant's cause of action started upon discovery of the fraud perpetrated against her. (Rollo, p. 20).

Appellant continues that the rescission case filed by her husband effectively tolled the running of the prescriptive period of her cause of action. This is because prescription of an action is interrupted by a filing of an action, a written extrajudicial demand by the creditor, and a written acknowledgment of the debt by the debtor. (Rollo, p. 21).

The Court finds NO MERIT in the appeal.

Jurisprudence has declared, in no uncertain terms, that when a sale of the conjugal property was made before the effectivity of the Family Code, the law that shall govern it is the Civil Code particularly Art. 173 thereof. (*Alfredo v. Borras*, 404 SCRA 145, 159 [2003]; *Heirs of Hernandez v. Mingoa*, 608 SCRA 394, 411 [2009]; *Villanueva v. Chiong*, 554 SCRA 197, 204 [2008]).