

# FIRST DIVISION

[ G.R. No. 233365, March 24, 2021 ]

**NIXON L. PEREZ, JR., • PETITIONER, VS. AVEGAIL PEREZ-SENERPIDA, ASSISTED BY HER HUSBAND MR. SENERPIDA, RESPONDENT.**

## DECISION

### CAGUIOA, J:

Recalling the 1971 landmark case of *Matabuena v. Cervantes*<sup>[1]</sup> (*Matabuena*) where the Court *en banc* was confronted with a question of first impression, whether the ban on a donation between spouses during the marriage applied to a common-law relationship, the Court is faced with a similar predicament in this case. This time the question is whether the gratuitous disposition of property acquired during a common-law relationship or cohabitation of a man and a woman without the benefit of marriage or under a void marriage requires the consent of both as is required from a lawfully married couple. But unlike in *Matabuena* where there was then a lacuna in the law, the Family Code has a provision which may be appropriately applied in this case.

Before the Court is the Petition for Review on *Certiorari*<sup>[2]</sup> (Petition) under Rule 45 of the Rules of Court filed by petitioner Nicxon L. Perez, Jr. (Nicxon) assailing the Decision<sup>[3]</sup> dated April 7, 2017 and Resolution<sup>[4]</sup> dated August 15, 2017 of the Court of Appeals<sup>[5]</sup> in CA-G.R. CV No. 105393. The CA Decision dismissed Nicxon's appeal and affirmed the Decision dated February 24, 2015 rendered by the Regional Trial Court (RTC) of Olongapo City, Branch 72<sup>[6]</sup> in Civil Case No. 135-0-2010<sup>[7]</sup> for Annulment of Donation and Title with Prayer for Temporary Restraining Order and a Writ of Preliminary Injunction. The CA Resolution denied Nicxon's motion for reconsideration.

### **The Facts and Antecedent Proceedings**

The CA Decision narrates the factual antecedents as follows:

Spouses Eliodoro Q. Perez (Eliodoro) and Adelita M. Perez (Adelita) x x x [were] the registered owners of a parcel of land known as Lot 2 Block 9 of the consolidation subdivision plan (LRC) Psc-13291 with a total area of 350 square meters located at Barangay Sta. Rita, Olongapo City [(subject property)] and covered by Transfer Certificate of Title (TCT) No. T-7396.

[Out of the marriage of Eliodoro and Adelita, which was celebrated on December 10, 1975 at Infanta, Pangasinan were born two children, Avegail and Adonis Perez (Adonis).<sup>[8]</sup> Prior to his marriage with Adelita,

Eliodoro was married and had several children, one of whom was Nicxon Perez, Sr., who sired Nicxon.]<sup>[9]</sup>

On [October 29, 1995], a sworn statement denominated as Renunciation (sic) and Waiver of Rights [(RWR)] was executed by Adelita in favor of her husband Eliodoro. Said instrument was inscribed on TCT No. T-7396 on [July 20, 2004].

On [July 27, 2004], Eliodoro donated the said parcel of land to [Nicxon] without the conformity of Adelita. TCT No. T-7396 was cancelled and in *lieu* thereof, TCT No. 12547 was issued to [Nicxon]. Subsequently, a Real Estate Mortgage was executed by [Nicxon] in favor of Rolando Ramos on [November 16, 2009].

[On February 1, 2005, Eliodoro filed against Adelita a petition for declaration of nullity of marriage under Article 36 of the Family Code before the RTC of Olongapo City, Branch 73 (RTC-Branch 73) and was docketed as Civil Case No. 44-0-2005. On June 15, 2005, RTC-Branch 73 rendered a Decision (Marriage Nullity Decision) declaring the marriage between Eliodoro and Adelita void *ab initio*. On July 11, 2005, an entry of judgment was issued, stating that the Marriage Nullity Decision became final and executory as of July 6, 2005.]<sup>[10]</sup>

Eliodoro died on [June 28, 2008]. On [April 14, 2009], an Extrajudicial Settlement Among Heirs with Waiver was executed and signed by his legitimate and compulsory heirs.

On [September 30, 2010], x x x Avegail Perez-Senerpida [(Avegail)] brought an action [before RTC-Branch 72 in Civil Case No. 135-0-2010] for Annulment of Donation and Title with Prayer for a Temporary Restraining Order and a Writ of Preliminary Injunction against [Nicxon]. [Avegail] alleged that she is one of the children of the late Eliodoro and Adelita. Eliodoro executed solely a Deed of Donation [(DoD)] involving the subject property on the basis of the alleged [RWR] executed by her mother Adelita. She claimed that the [RWR] and [DoD] are clearly prejudicial to her interest because it affected her future inheritance or legitime. Thus, the said documents, together with TCT No. T-12547 in the name of [Nicxon], should be annulled.

[Nicxon] filed his Answer (With Counterclaims) in which he denied [Avegail's] allegation that Adelita is part owner of the subject property together with the late Eliodoro and argued that even if she was indeed part owner, she has no more right thereon when she executed the [RWR] on [October 29, 1995]. [Nicxon] also denied that undue influence was exerted upon the late Eliodoro in executing the [DoD]. [Nicxon] further alleged that the late Eliodoro was of sound mind at the time he executed the [DoD] voluntarily as an act of pure liberality and generosity in exchange for his years of honest and faithful service to him; that the [RWR] and [DoD] did not prejudice [Avegail's] legitime as several properties had already been adjudicated to her which even far exceeded her legitime; that there was failure or neglect on the part of [Avegail] for an unreasonable length of time to question the validity of the [RWR]; that [Avegail] filed the instant case against him in order to discourage

him from testifying in Civil Case No. 110-0-2010, a case against [Avegail's] brother, Adonis M. Perez; and that [her] action has absolutely no basis, as the donation is not inofficious, and the prayer for moral and exemplary damages as well as attorney's fees and cost of suit has no legal or factual basis.

In her Reply x x x, [Avegail] contended that her mother, Adelita, was a part owner of the [subject property] considering that the [RWR] she executed in favor of the late Eliodoro was null and void as it was not supported by any valid consideration; that [Nixon] exerted undue influence on the late Eliodoro in the execution of the [DoD]; that she and her mother were clearly prejudiced by the execution of the [RWR] and the [DoD]; that she filed the instant case in good faith in order to protect her interest arising from the malicious and illegal execution of the said [DoD]; that she never received more than her alleged share of the legitime; that she just discovered recently the existence of the [DoD] and [RWR], hence, laches is not applicable herein; and that if ever [Nixon] suffered damages and incurred expenses by way of attorney's fees, he has no one to blame but himself for refusing to satisfy her valid claim.

[In the meantime, six years after the Marriage Nullity Decision had become final and executory, Adelita filed on July 5, 2011 a petition for annulment of judgment (Annulment of Judgment Petition) against the heirs of Eliodoro, who are the children of Eliodoro by his first marriage, on the ground of lack of jurisdiction over her person and the subject matter before the Court of Appeals,<sup>[11]</sup> and was docketed as CA-G.R. SP No. 120119.]<sup>[12]</sup>

After [trial], the [RTC-Branch 72] rendered the x x x Decision dated [February 24, 2015 (RTC Decision)], disposing as follows:

*WHEREFORE, in the light of the foregoing, the court finds the instant action meritorious, and hereby orders the following:*

- 1. Annulment of the Renunciation and Waiver of Rights executed by Adelita Perez in favor of Eliodoro Perez;*
- 2. Annulment of the Deed of Donation executed by the late Eliodoro Perez in favor of Nixon L. Perez, Jr.;*
- 3. Nullification of the Transfer Certificate of Title No. T-12547 in the name of Nixon L. Perez, Jr.;*
- 4. Cancellation by the Registry of Deeds of T.C.T. No. T-12547 in the name of Nixon L. Perez, Jr.: and*
- 5. Issuance of another title over the subject property in the name of Eliodoro Perez.*

*SO ORDERED.*<sup>[13]</sup>

Nixon appealed to the CA.

Meanwhile, in relation to the Annulment of Judgment Petition, the CA, after giving due course thereto and because of the allegations therein, among others, that

Adelita was not duly served any summons or a copy of Eliodoro 's second petition for declaration of nullity of marriage (second petition) and that the Marriage Nullity Decision was rendered barely four months from the filing of the second petition and without the required report of the prosecutor on the presence or absence of collusion between her and Eliodoro, the CA, in its Resolution<sup>[14]</sup> of March 5, 2012 referred the Annulment of Judgment Petition to the Executive Judge of the RTC of Olongapo City for assignment to a judge for further reception of evidence.<sup>[15]</sup>

Branch 75 of the RTC of Olongapo City received the respective evidence of Adelita and Nixon, with the other respondents heirs of Eliodoro<sup>[16]</sup> not participating because they were residing in the United States of America.<sup>[17]</sup> After the parties' submission of their respective memoranda, the RTC of Olongapo City, Branch 75 ordered the transmission of the entire records of the case to the CA.<sup>[18]</sup>

The CA, Special Former Fifth Division, rendered a Decision<sup>[19]</sup> dated September 22, 2015, denying the Annulment of Judgment Petition filed by Adelita.<sup>[20]</sup> Adelita filed a motion for reconsideration, which was also denied by the CA in its Resolution<sup>[21]</sup> dated January 13, 2016. Adelita filed before this Court, Second Division, a petition for review on *certiorari* assailing the said Decision and Resolution of the CA. On March 16, 2016, the Second Division denied Adelita's petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction in that case.<sup>[22]</sup>

### ***Ruling of the CA***

Going back to the present case, the CA in its Decision dated April 7, 2017 found the appeal filed by Nixon bereft of merit.<sup>[23]</sup> The CA noted that at the time of the donation made by Eliodoro in favor of his grandson Nixon, he was still legally married to Adelita given that Eliodoro died on June 28, 2008.<sup>[24]</sup> As such, Eliodoro should have first secured the conformity of his wife, Adelita, as expressly required under Article 98 of the Family Code, which provides that: "Neither spouse may donate any community property without the consent of the other."<sup>[25]</sup>

As to the RWR, the CA affirmed the RTC's ruling that the property regime of Eliodoro and Adelita was the absolute community property (ACP), there being no marriage settlement between them, and under Article 89 of the Family Code, which provides that: "No waiver of rights, interests, shares and effects of the absolute community property during the marriage can be made except in case of judicial separation of property," the RWR is considered a prohibited waiver.<sup>[26]</sup>

The CA further agreed with the RTC that there being no material consideration given by Eliodoro to Adelita in exchange for the execution of the RWR, it partook the nature of a donation or grant of gratuitous advantage between spouses, which is prohibited under Article 87 of the Family Code, which states that "[e]very donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void."<sup>[27]</sup>

In fine, the CA and the RTC ruled that the RWR and the DoD are void contracts that produce no legal effect whatsoever.<sup>[28]</sup> The dispositive portion of the CA Decision states:

**WHEREFORE**, premises considered, the instant appeal is hereby DISMISSED for lack of merit.

Accordingly, the assailed *Decision dated 24 February 2015* of the Regional Trial Court (RTC), Third Judicial Region, Branch 72, Olongapo City is **AFFIRMED**.

**SO ORDERED.**<sup>[29]</sup>

Nixon filed a Motion for Reconsideration dated May 6, 2017, which the CA denied in its Resolution<sup>[30]</sup> dated August 15, 2017.

Hence, the instant Petition. Avegail filed a Comment and/or Opposition<sup>[31]</sup> dated January 19, 2018.

### ***The Issues***

The Petition states the following issues to be resolved:

1. Whether the ruling of the CA and the RTC violated the rule on *res judicata* when they did not treat as final and executory the earlier Decision in the declaration of nullity of marriage case (Civil Case No. 44-0-2005<sup>[32]</sup>).
2. Whether the CA and the RTC erred in ruling that the property regime of Eliodoro and Adelita was still covered by the ACP despite the final decision declaring their marriage void *ab initio*.
3. Whether the DoD executed by Eliodoro in favor of Nixon is valid.<sup>[33]</sup>

### ***The Court's Ruling***

The Petition is partly meritorious.

The first two issues will be resolved jointly as they involve the correctness of the lower courts' finding that the earlier Marriage Nullity Decision declaring as null and void the marriage between Eliodoro and Adelita did not attain finality prior to Eliodoro's death on June 28, 2008.

While the rule is that a question of fact may not be entertained in a Rule 45 *certiorari* petition, this case is exceptional because of the **patent** error in the lower courts' factual finding.

It cannot be denied that the fact which is determinative of the issues in this case is the date when the June 15, 2005 Marriage Nullity Decision of RTC-Branch 73 in Civil Case No. 44-0-2005 — declaring the marriage between Eliodoro and Adelita celebrated on December 10, 1975 void *ab initio* pursuant to Article 36 of the Family Code — became final and executory. If the Marriage Nullity Decision had become final and executory prior to Eliodoro's death on June 28, 2008, then the marriage between Eliodoro and Adelita would have been void from the beginning. On the other hand, a contrary finding would make their marriage valid and subsisting until Eliodoro's death. The finding of the CA and the RTC is the latter.

The RTC Decision in this case states that the RTC took into consideration the fact that the Marriage Nullity Decision in Civil Case No. 44-0-2005 had not yet become