

## SECOND DIVISION

[ G.R. No. 201427, March 18, 2015 ]

**TEOFILO B. ADOLFO, PETITIONER, VS. FE. T. ADOLFO,  
RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> seeks to set aside: 1) the October 6, 2009 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 01783 reversing the October 2, 2006 Order<sup>[3]</sup> of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Mandaue City (RTC Mandaue), Branch 55 in Civil Case No. MAN-4821; as well as 2) the CA's March 2, 2012 Resolution<sup>[4]</sup> denying petitioner's Motion for Reconsideration<sup>[5]</sup> and Supplement<sup>[6]</sup> thereto.

#### **Civil Case No. MAN-4821**

On April 14, 2004, petitioner Teofilo B. Adolfo filed with the RTC Mandaue a Petition<sup>[7]</sup> for judicial separation of property against his estranged wife, respondent Fe Adolfo, nee Tudtud. Docketed as Civil Case No. MAN-4821 and assigned to Branch 55, the petition alleged that the parties were married on November 26, 1966; that the union bore one child; that during the marriage, they acquired through conjugal funds Lot 1087-A-2-E, a 3,652-square meter property in Brgy. Cabancalan, Mandaue City, Cebu (the subject property) covered by Transfer Certificate of Title No. (TCT) 18368; that later on, the parties separated due to irreconcilable differences; that since reunion was no longer feasible, petitioner suggested a separation of the conjugal property, but respondent adamantly refused; that respondent denied petitioner's co-ownership of the subject property, claiming the same as her paraphernal property; that several earnest efforts to amicably settle the matter between them proved unavailing; and that a judicial separation of property is proper under the circumstances and pursuant to Article 135(6) of the Family Code.<sup>[8]</sup> Petitioner thus prayed that judgment be rendered decreeing a separation of the conjugal property and the subdivision or sale thereof, to the end of dividing the same or the proceeds thereof; and ordering respondent to pay petitioner P50,000.00 as attorney's fees, appearance fees (P2,000.00 per hearing), and P20,000.00 litigation costs.

In her Answer<sup>[9]</sup> with counterclaim, respondent contended that while she remained married to petitioner, she is the sole owner of the subject property, the same being her paraphernal property which she inherited from her mother; that petitioner is a lazy bum, gambler, drunkard, wife abuser, and neglectful father; that respondent found all means to support the family even as petitioner neglected it; that respondent bought on installment a tricycle for the petitioner's use in business, but he kept the proceeds thereof to himself and used the same in his gambling and

drinking sprees; that respondent alone took the initiative to support the family and found ways to take care of the daily needs of her child; that she caused to be built on a portion of her mother's land a house even while petitioner was bumming around; that one day, petitioner destroyed the roof of the house that was then being built; that petitioner subsequently abandoned her and their child in 1968, and transferred to Davao City where he took a mistress and begot four children by her; that in 1986, petitioner returned to Cebu City seeking reconciliation with respondent; that respondent took petitioner back, but in 1987 they once more separated; that thereafter, respondent never again saw or heard from petitioner.

Respondent claimed in her Answer that the subject property was a portion of a bigger lot (mother lot) owned by her mother Petronila Tudtud which was covered by TCT T-15941. On October 11, 1967, her mother executed a quitclaim deed transferring a portion of the mother lot – the subject property – to respondent. The mother title TCT T-15941 was then cancelled and a new one, TCT (17216)-5415, was issued in respondent's name. Respondent then sold the subject property to her brother on January 19, 1968, and a new TCT (17833)-5515 was issued in her brother's name. Her brother then mortgaged the property to Development Bank of the Philippines (DBP), which foreclosed on the same. TCT 18231 was issued in DBP's name. DBP then sold the property to the spouses Antonio and Lucy Garcia (the Garcias), and TCT 18266 was in turn issued in their name. Finally, on May 25, 1983, the Garcias sold back the subject property to respondent, and a new title – TCT 18368<sup>[10]</sup> – was then issued in the name of respondent "FE M. TUDTUD, x x x married to Teofilo Adolfo."

Respondent argued that she is the sole owner of the subject property, the same being her paraphernal property which she alone redeemed from the Garcias; that the inclusion of petitioner's name in TCT 18368 does not make him a co-owner of the property, but was merely necessary to describe respondent's civil status; and that under Article 135<sup>[11]</sup> of the Civil Code, all property brought by the wife to the marriage as well as all property she acquires during the marriage in accordance with Article 148<sup>[12]</sup> of the same Code constitutes paraphernal property.

Respondent thus prayed that the petition be dismissed. By way of counterclaim, she sought the payment of moral, exemplary, and nominal damages, attorney's fees, and litigation expenses.

### ***Civil Case No. MAN-2683***

In 1996, respondent's sister Florencia Tudtud and her husband Juanito Gingoyon (the Gingoyons) filed a case for partition with damages against respondent. The case was docketed as Civil Case No. MAN-2683 and raffled to Branch 55 of the RTC Mandaue. The Complaint<sup>[13]</sup> therein alleged that in 1988, respondent executed a deed of sale in favor of the Gingoyons over a 300-square meter portion of the subject property, but that respondent refused to partition/subdivide the same even after the Gingoyons paid the taxes, fees and expenses of the sale. For her defense, respondent claimed in her Answer<sup>[14]</sup> that when the sale to the Gingoyons was made, the subject property constituted conjugal property of her marriage with petitioner; that as early as 1983, or when the Garcias executed the deed of sale in her favor, the subject property became a conjugal asset; since petitioner did not sign the deed of sale in favor of the Gingoyons as he was in Davao at the time and

knew nothing about the sale, the sale was null and void.

On May 15, 2002, the trial court rendered its Decision<sup>[15]</sup> in Civil Case No. MAN-2683, declaring that the subject property constituted conjugal property of the marriage. It thus nullified the 1988 deed of sale executed by respondent in favor of the Gingoyons for lack of consent on the part of petitioner, citing Article 124 of the Family Code.<sup>[16]</sup> The trial court likewise awarded moral and exemplary damages, attorney's fees and litigation expenses in favor of the respondent in the total amount of P107,000.00.

The Gingoyons filed an appeal with the CA, which was docketed as CA-G.R. CV No. 78971.

### ***Motion for Judgment Based on the Pleadings in Civil Case No. MAN-4821***

Meanwhile, during the pre-trial conference in Civil Case No. MAN-4821, petitioner submitted as part of his evidence and for marking certified true copies of the Gingoyons' Complaint in Civil Case No. MAN-2683, respondent's Answer thereto, and the trial court's May 15, 2002 Decision in said case.

On August 1, 2005, petitioner filed a Request for Admission<sup>[17]</sup> of 1) the genuineness of the duly marked certified true copies of the Complaint, Answer, and Decision in Civil Case No. MAN-2683 (Exhibits "F," "G" and "H," respectively); 2) respondent's declaration in said Answer that the subject property constituted conjugal property of the marriage; and 3) the trial court's pronouncement in said case that the subject property forms part of the conjugal estate.

Respondent failed to file her answer or response to the request for admission.

On September 5, 2005, petitioner filed a Motion for Judgment Based on the Pleadings,<sup>[18]</sup> stating that since respondent failed to answer his request for admission, the matters contained in the request are deemed admitted pursuant to Rule 26, Section 2 of the 1997 Rules of Civil Procedure<sup>[19]</sup> (1997 Rules); that as a consequence of the application of the rule, respondent is in effect considered to have admitted that the subject property is a conjugal asset of their subsisting marriage which may thus be the subject of his petition for judicial separation of property; and that on account of said admission, a hearing on the merits becomes unnecessary and, instead, Rule 34<sup>[20]</sup> of the 1997 Rules on judgments on the pleadings should apply. Petitioner thus prayed that the trial court render judgment in his favor based on the pleadings.

Respondent filed an Opposition.<sup>[21]</sup> In her Opposition to Plaintiff's Memorandum,<sup>[22]</sup> respondent argued among others that the request for admission was premature considering that the decision in Civil Case No. MAN-2683 was the subject of an appeal, and thus not yet final.

In an October 11, 2005 Order,<sup>[23]</sup> the trial court directed the transfer of Civil Case No. MAN-4821 to Branch 55 of the RTC Mandaue, since it is said court which decided the closely related Civil Case No. MAN-2683.

On October 2, 2006, Branch 55 issued an Order<sup>[24]</sup> granting petitioner's motion for judgment on the pleadings. It held as follows:

This court has painstakingly exerted effort in going over the record and took serious note of all the pleadings, documents and others on file. After serious consideration, the court believes and so holds that there is basis in rendering judgment. The Motion for Judgment Based on the Pleadings though denominated as such but [sic] shall be treated as a move to seek summary judgment. x x x

x x x x

The court in arriving at this resolution was guided by the following pronouncements by the Supreme Court in the case of Diman vs. Alumbres, G.R. No. 131466, November 27, 1998, 299 SCRA 459 x x x:

x x x x

In the same case, it was held –

"It is also the law which determines when a summary judgment is proper. It declares that although the pleadings on their face appear to raise issues of fact – e.g., there are denials of, or a conflict in, factual allegations – if it is shown by admissions, depositions or affidavits, that those issues are sham, fictitious, or not genuine, or, in the language of the Rules, that 'except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, the Court shall render a summary judgment for the plaintiff or the defendant, as the case may be. (Italics and underscoring supplied)

On the other hand, in the case of a summary judgment[,], issues apparently exist – i.e., facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or affirmative defenses are in truth set out in the answer – but the issues thus arising from the pleadings are sham, fictitious, not genuine, as shown by [affidavits], depositions or admissions. In other words, as a noted authority remarks, a judgment on the pleadings is a judgment on the facts as pleaded, while a summary judgment is a judgment on the facts as summarily proven by affidavits, depositions or admissions." (Italics and underscoring supplied)

x x x x

Defendant<sup>[25]</sup> did not file any verified answer or a pleading denying under oath the genuineness and authenticity of the documents attached

to the Request for Admission and of the other matters therein set forth. This failure has far reaching implications in that the following are deemed admitted: a) the genuineness of Exhibits F, G and H, all attached to the Request for Admission; b) that she admitted in paragraph 10 in her Answer to Civil Case No. MAN-2683 that Lot 1087-A-2-E was no longer paraphernal property but rather a conjugal property of Spouses Teofilo and Fe Adolfo and; c) that RTC, Branch 55, Mandaue City, sustained and/or held the view of defendant (Fe Tuditud) that Lot 1087-A-2-E is a conjugal property of Spouses Teofilo and Fe Adolfo, thus, dismissed Civil Case No. MAN-2683 and awarded damages to the defendant.

Judicial admissions may be made in (a) the pleadings filed by the parties, (b) in the course of the trial either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding, as in the pre-trial of the case. Admissions obtained through depositions, written interrogatories or requests for admission are also considered judicial admissions.” Page 686, Remedial Law Compendium, Vol. II, 9<sup>th</sup> Rev. Ed., Regalado

With the admission that Lot 1087-A-2-E is a conjugal property, it follows as its necessary and logical consequence, that plaintiff<sup>[26]</sup> is entitled to the relief demanded.

x x x x

A DECISION in Civil Case No. MAN-2683 had already been rendered by RTC, Branch 55, on the 15th day of May 2002 with the court finding that Lot 1087-A-2-E is a conjugal property x x x –

x x x x

For reason[s] of expediency and convenience, the court may even take judicial notice of its earlier decision finding Lot 1087-A-2-E as a conjugal property.<sup>[27]</sup>

x x x x

Under the circumstances, judicial separation of property is proper. Aware that the separation has the effect of a dissolution of the conjugal partnership property regime, the presumptive legitime of Nilo Adolfo (the only common child of the spouses) has to be delivered in accordance with Article 51 in relation to paragraph (8) Article 127 and Article 137 of the Family Code of the Philippines.

WHEREFORE, premises considered, judgment is hereby rendered directing the partition of Lot 1087-A-2-E between the plaintiff and the defendant in equal share of what remains after allocating to Nilo Adolfo a portion of Nine hundred thirteen (913) square meters representing his presumptive legitime.

The plaintiff is directed to submit to this court the proposed subdivision