

## SECOND DIVISION

[ G.R. No. 167139, February 25, 2010 ]

**SUSIE CHAN-TAN, PETITIONER, VS. JESSE C. TAN, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of (i) the 17 May 2004 Resolution<sup>[2]</sup> amending the 30 March 2004 Decision<sup>[3]</sup> and (ii) the 15 February 2005 Resolution<sup>[4]</sup> of the Regional Trial Court of Quezon City, Branch 107, in Civil Case No. Q-01-45743. In its 30 March 2004 Decision, the trial court declared the marriage between petitioner Susie Chan-Tan and respondent Jesse Tan void under Article 36 of the Family Code. Incorporated as part of the decision was the 31 July 2003 Partial Judgment<sup>[5]</sup> approving the Compromise Agreement<sup>[6]</sup> of the parties. In its 17 May 2004 Resolution, the trial court granted to respondent custody of the children, ordered petitioner to turn over to respondent documents and titles in the latter's name, and allowed respondent to stay in the family dwelling. In its 15 February 2005 Resolution, the trial court denied petitioner's motion for reconsideration of the 28 December 2004 Resolution<sup>[7]</sup> denying petitioner's motion to dismiss and motion for reconsideration of the 12 October 2004 Resolution,<sup>[8]</sup> which in turn denied for late filing petitioner's motion for reconsideration of the 17 May 2004 resolution.

#### The Facts

Petitioner and respondent were married in June of 1989 at Manila Cathedral in Intramuros, Manila.<sup>[9]</sup> They were blessed with two sons: Justin, who was born in Canada in 1990 and Russel, who was born in the Philippines in 1993.<sup>[10]</sup>

In 2001, twelve years into the marriage, petitioner filed a case for the annulment of the marriage under Article 36 of the Family Code. The parties submitted to the court a compromise agreement, which we quote in full:

1. The herein parties mutually agreed that the two (2) lots located at Corinthian Hills, Quezon City and more particularly described in the Contract to Sell, marked in open court as Exhibits "H" to "H-3" shall be considered as part of the presumptive legitimes of their two (2) minor children namely, Justin Tan born on October 12, 1990 and Russel Tan born on November 28, 1993. Copies of the Contract to Sell are hereto attached as Annexes "A" and "B" and made integral parts hereof.
2. Susie Tan hereby voluntarily agrees to exclusively shoulder and pay

out of her own funds/assets whatever is the remaining balance or unpaid amounts on said lots mentioned in paragraph 1 hereof directly with Megaworld Properties, Inc., until the whole purchase or contract amounts are fully paid.

Susie Tan is hereby authorized and empowered to directly negotiate, transact, pay and deal with the seller/developer Megaworld Properties, Inc., in connection with the Contract to Sell marked as Annexes "A" and "B" hereof.

The property covered by CCT No. 3754 of the Registry of Deeds of Quezon City and located at Unit O, Richmore Town Homes 12-B Mariposa St., Quezon City shall be placed in co-ownership under the name of Susie Tan (1/3), Justin Tan (1/3) and Russel Tan (1/3) to the exclusion of Jesse Tan.

The property covered by TCT No. 48137 of the Registry of Deeds of Quezon City and located at View Master Town Homes, 1387 Quezon Avenue, Quezon City shall be exclusively owned by Jesse Tan to the exclusion of Susie Tan.

The undivided interest in the Condominium Unit in Cityland Shaw. Jesse Tan shall exclusively own blvd. to the exclusion of Susie Tan.

The shares of stocks, bank accounts and other properties presently under the respective names of Jesse Tan and Susie Tan shall be exclusively owned by the spouse whose name appears as the registered/account owner or holder in the corporate records/stock transfer books, passbooks and/or the one in possession thereof, including the dividends/fruits thereof, to the exclusion of the other spouse.

Otherwise stated, all shares, bank accounts and properties registered and under the name and/or in the possession of Jesse Tan shall be exclusively owned by him only and all shares, accounts and properties registered and/or in the possession and under the name of Susie Tan shall be exclusively owned by her only.

However, as to the family corporations of Susie Tan, Jesse Tan shall execute any and all documents transferring the shares of stocks registered in his name in favor of Susie Tan, or Justin Tan/Russel Tan. A copy of the list of the corporation owned by the family of Susie Tan is hereto attached as Annex "C" and made an integral part hereof.

The parties shall voluntarily and without need of demand turn over to the other spouse any and all original documents, papers, titles, contracts registered in the name of the other spouse that are in their respective possessions and/or safekeeping.

3. Thereafter and upon approval of this Compromise Agreement by the Honorable Court, the existing property regime of the spouses shall be dissolved and shall now be governed by "Complete Separation of Property". Parties expressly represent that there are no known creditors

that will be prejudiced by the present compromise agreement.

The parties shall have joint custody of their minor children. However, the two (2) minor children shall stay with their mother, Susie Tan at 12-B Mariposa St., Quezon City.

The husband, Jesse Tan, shall have the right to bring out the two (2) children every Sunday of each month from 8:00 AM to 9:00 PM. The minor children shall be returned to 12-B Mariposa Street, Quezon City on or before 9:00 PM of every Sunday of each month.

The husband shall also have the right to pick up the two (2) minor children in school/or in the house every Thursday of each month. The husband shall ensure that the children be home by 8:00 PM of said Thursdays.

During the summer vacation/semestral break or Christmas vacation of the children, the parties shall discuss the proper arrangement to be made regarding the stay of the children with Jesse Tan.

Neither party shall put any obstacle in the way of the maintenance of the love and affection between the children and the other party, or in the way of a reasonable and proper companionship between them, either by influencing the children against the other, or otherwise; nor shall they do anything to estrange any of them from the other.

The parties agreed to observe civility, courteousness and politeness in dealing with each other and shall not insult, malign or commit discourteous acts against each other and shall endeavor to cause their other relatives to act similarly.

4. Likewise, the husband shall have the right to bring out and see the children on the following additional dates, provided that the same will not impede or disrupt their academic schedule in Xavier School, the dates are as follows:

- a. Birthday of Jesse Tan
- b. Birthday of Grandfather and Grandmother, first cousins and uncles and aunties
- c. Father's Day
- d. Death Anniversaries of immediate members of the family of Jesse Tan
- e. During the Christmas seasons/vacation the herein parties will agree on such dates as when the children can stay with their father. Provided that if the children stay with their father on Christmas Day from December 24<sup>th</sup> to December 25<sup>th</sup> until 1:00 PM the children will stay with their mother on December 31 until January 1, 1:00 PM, or vice versa.

The husband shall always be notified of all school activities of the children

and shall see to it that he will exert his best effort to attend the same.

5. During the birthdays of the two (2) minor children, the parties shall as far as practicable have one celebration.

Provided that if the same is not possible, the Husband (Jesse Tan) shall have the right to see and bring out the children for at least four (4) hours during the day or the day immediately following/or after the birthday, if said visit or birthday coincides with the school day.

6. The existing Educational Plans of the two children shall be used and utilized for their High School and College education, in the event that the Educational Plans are insufficient to cover their tuition, the Husband shall shoulder the tuition and other miscellaneous fees, costs of books and educational materials, uniform, school bags, shoes and similar expenses like summer workshops which are taken in Xavier School, which will be paid directly by Jesse Tan to the children's school when the same fall due. Jesse Tan, if necessary, shall pay tutorial expenses, directly to the tutor concerned.

The husband further undertake to pay P10,000.00/monthly support pendente lite to be deposited in the ATM Account of SUSIE CHAN with account no. 3-189-53867-8 Boni Serrano Branch effective on the 15<sup>th</sup> of each month. In addition Jesse Tan undertakes to give directly to his two (2) sons every Sunday, the amount needed and necessary for the purpose of the daily meals of the two (2) children in school.

7. This Compromise Agreement is not against the law, customs, public policy, public order and good morals. Parties hereby voluntarily agree and bind themselves to execute and sign any and all documents to give effect to this Compromise Agreement.<sup>[11]</sup>

On 31 July 2003, the trial court issued a partial judgment<sup>[12]</sup> approving the compromise agreement. On 30 March 2004, the trial court rendered a decision declaring the marriage void under Article 36 of the Family Code on the ground of mutual psychological incapacity of the parties. The trial court incorporated in its decision the compromise agreement of the parties on the issues of support, custody, visitation of the children, and property relations.

Meanwhile, petitioner cancelled the offer to purchase the Corinthian Hills Subdivision Lot No. 12, Block 2. She authorized Megaworld Corp. to allocate the amount of P11,992,968.32 so far paid on the said lot in the following manner:

(a) P3,656,250.04 shall be transferred to fully pay the other lot in Corinthian Hills on Lot 11, Block 2;

(b) P7,783,297.56 shall be transferred to fully pay the contract price in Unit 9H of the 8 Wack Wack Road Condominium project; and

(c) P533,420.72 shall be forfeited in favor of Megaworld Corp. to cover

the marketing and administrative costs of Corinthian Hills Subdivision Lot 12, Block 2.<sup>[13]</sup>

Petitioner authorized Megaworld Corp. to offer Lot 12, Block 2 of Corinthian Hills to other interested buyers. It also appears from the records that petitioner left the country bringing the children with her.

Respondent filed an omnibus motion seeking in the main custody of the children. The evidence presented by respondent established that petitioner brought the children out of the country without his knowledge and without prior authority of the trial court; petitioner failed to pay the P8,000,000 remaining balance for the Megaworld property which, if forfeited would prejudice the interest of the children; and petitioner failed to turn over to respondent documents and titles in the latter's name.

Thus, the trial court, in its 17 May 2004 resolution, awarded to respondent custody of the children, ordered petitioner to turn over to respondent documents and titles in the latter's name, and allowed respondent to stay in the family dwelling in Mariposa, Quezon City.

Petitioner filed on 28 June 2004 a motion for reconsideration<sup>[14]</sup> alleging denial of due process on account of accident, mistake, or excusable negligence. She alleged she was not able to present evidence because of the negligence of her counsel and her own fear for her life and the future of the children. She claimed she was forced to leave the country, together with her children, due to the alleged beating she received from respondent and the pernicious effects of the latter's supposed gambling and womanizing ways. She prayed for an increase in respondent's monthly support obligation in the amount of P150,000.

Unconvinced, the trial court, in its 12 October 2004 Resolution,<sup>[15]</sup> denied petitioner's motion for reconsideration, which was filed beyond the 15-day reglementary period. It also declared petitioner in contempt of court for non-compliance with the partial judgment and the 17 May 2004 resolution. The trial court also denied petitioner's prayer for increase in monthly support. The trial court reasoned that since petitioner took it upon herself to enroll the children in another school without respondent's knowledge, she should therefore defray the resulting increase in their expenses.

On 4 November 2004, petitioner filed a motion to dismiss<sup>[16]</sup> and a motion for reconsideration<sup>[17]</sup> of the 12 October 2004 Resolution. She claimed she was no longer interested in the suit. Petitioner stated that the circumstances in her life had led her to the conclusion that withdrawing the petition was for the best interest of the children. She prayed that an order be issued vacating all prior orders and leaving the parties at the *status quo ante* the filing of the suit.

In its 28 December 2004 Resolution,<sup>[18]</sup> the trial court denied both the motion to dismiss and the motion for reconsideration filed by petitioner. It held that the 30 March 2004 decision and the 17 May 2004 resolution had become final and executory upon the lapse of the 15-day reglementary period without any timely appeal having been filed by either party.