

SECOND DIVISION

[G.R. NO. 169698, November 29, 2006]

**LUPO ATIENZA, PETITIONER, VS. YOLANDA DE CASTRO,
RESPONDENT.**

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in this petition for review on certiorari is the Decision^[1] dated April 29, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 69797, as reiterated in its Resolution^[2] of September 16, 2005, reversing an earlier decision of the Regional Trial Court (RTC) of Makati City, Branch 61, in an action for *Judicial Partition of Real Property* thereat commenced by the herein petitioner Lupo Atienza against respondent Yolanda de Castro.

The facts:

Sometime in 1983, petitioner Lupo Atienza, then the President and General Manager of Enrico Shipping Corporation and Eurasian Maritime Corporation, hired the services of respondent Yolanda U. De Castro as accountant for the two corporations.

In the course of time, the relationship between Lupo and Yolanda became intimate. Despite Lupo being a married man, he and Yolanda eventually lived together in consortium beginning the later part of 1983. Out of their union, two children were born. However, after the birth of their second child, their relationship turned sour until they parted ways.

On May 28, 1992, Lupo filed in the RTC of Makati City a complaint against Yolanda for the judicial partition between them of a parcel of land with improvements located in Bel-Air Subdivision, Makati City and covered by Transfer Certificate of Title No. 147828 of the Registry of Deeds of Makati City. In his complaint, docketed in said court as Civil Case No. 92-1423, Lupo alleged that the subject property was acquired during his union with Yolanda as common-law husband and wife, hence the property is co-owned by them.

Elaborating, Lupo averred in his complaint that the property in question was acquired by Yolanda sometime in 1987 using his exclusive funds and that the title thereto was transferred by the seller in Yolanda's name without his knowledge and consent. He did not interpose any objection thereto because at the time, their affair was still thriving. It was only after their separation and his receipt of information that Yolanda allowed her new live-in partner to live in the disputed property, when he demanded his share thereat as a co-owner.

In her answer, Yolanda denied Lupo's allegations. According to her, she acquired the same property for Two Million Six Hundred Thousand Pesos (P2,600,000.00) using

her exclusive funds. She insisted having bought it thru her own savings and earnings as a businesswoman.

In a decision^[3] dated December 11, 2000, the trial court rendered judgment for Lupo by declaring the contested property as owned in common by him and Yolanda and ordering its partition between the two in equal shares, thus:

WHEREFORE, judgment is hereby rendered declaring the property covered by Transfer Certificate of Title No. 147828 of the Registry of Deeds of Makati City to be owned in common by plaintiff LUPO ATIENZA and the defendant YOLANDA U. DE CASTRO share-and-share alike and ordering the partition of said property between them. Upon the finality of this Decision, the parties are hereby directed to submit for the confirmation of the Court a mutually agreed project of partition of said property or, in case the physical partition of said property is not feasible because of its nature, that either the same be assigned to one of the parties who shall pay the value corresponding to the share of the other or that the property to be sold and the proceeds thereof be divided equally between the parties after deducting the expenses incident to said sale.

The parties shall bear their own attorney's fees and expenses of litigation.

Costs against the defendant.

SO ORDERED.

From the decision of the trial court, Yolanda went on appeal to the CA in *CA-G.R. CV No. 69797*, therein arguing that the evidence on record preponderate that she purchased the disputed property in her own name with her own money. She maintained that the documents appertaining to her acquisition thereof are the best evidence to prove who actually bought it, and refuted the findings of the trial court, as well as Lupo's assertions casting doubt as to her financial capacity to acquire the disputed property.

As stated at the threshold hereof, the appellate court, in its decision^[4] of April 29, 2005, reversed and set aside that of the trial court and adjudged the litigated property as exclusively owned by Yolanda, to wit:

WHEREFORE, the foregoing considered, the assailed decision is hereby **REVERSED** and **SET ASIDE**. The subject property is hereby declared to be exclusively owned by defendant-appellant Yolanda U. De Castro. No costs.

SO ORDERED.

In decreeing the disputed property as exclusively owned by Yolanda, the CA ruled that under the provisions of Article 148 of the Family Code *vis-à-vis* the evidence on record and attending circumstances, Yolanda's claim of sole ownership is meritorious, as it has been substantiated by competent evidence. To the CA, Lupo failed to overcome the burden of proving his allegation that the subject property was purchased by Yolanda thru his exclusive funds.

With his motion for reconsideration having been denied by the CA in its Resolution of September 16, 2005,^[5] Lupo is now with this Court via the present recourse arguing that pursuant to Article 144^[6] of the Civil Code, he was in no way burdened to prove that he contributed to the acquisition of the subject property because with or without the contribution by either partner, he is deemed a co-owner thereof, adding that under Article 484^[7] of Civil Code, as long as the property was acquired by either or both of them during their extramarital union, such property would be legally owned by them in common and governed by the rules on co-ownership, which apply in default of contracts, or special provisions.

We **DENY**.

It is not disputed that the parties herein were not capacitated to marry each other because petitioner Lupo Atienza was validly married to another woman at the time of his cohabitation with the respondent. Their property regime, therefore, is governed by Article 148^[8] of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime, *...only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions ...*^[9] Proof of actual contribution is required.^[10]

As it is, the regime of limited co-ownership of property governing the union of parties who are not legally capacitated to marry each other, but who nonetheless live together as husband and wife, applies to properties acquired during said cohabitation in proportion to their respective contributions. Co-ownership will only be up to the extent of the proven actual contribution of money, property or industry. Absent proof of the extent thereof, their contributions and corresponding shares shall be presumed to be equal.^[11]

Here, although the adulterous cohabitation of the parties commenced in 1983, or way before the effectivity of the Family Code on August 3, 1998, Article 148 thereof applies because this provision was intended precisely to fill up the hiatus in Article 144 of the Civil Code.^[12] Before Article 148 of the Family Code was enacted, there was no provision governing property relations of couples living in a state of adultery or concubinage. Hence, even if the cohabitation or the acquisition of the property occurred before the Family Code took effect, Article 148 governs.^[13]

The applicable law being settled, we now remind the petitioner that here, as in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. The petitioner as plaintiff below is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief.^[14] Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.^[15]