

## SECOND DIVISION

[ G.R. NO. 151967, February 16, 2005 ]

**JOSEFINA C. FRANCISCO, PETITIONER, VS. MASTER IRON WORKS & CONSTRUCTION CORPORATION AND ROBERTO V. ALEJO, SHERIFF IV, REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 142, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before us is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. No. CV No. 59045, which reversed and set aside the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Parañaque, Metro Manila, Branch 260, in Civil Case No. 94-2260 and the Resolution of the CA denying the petitioner's motion for reconsideration of the said decision.

Josefina Castillo was only 24 years old when she and Eduardo G. Francisco were married on January 15, 1983.<sup>[3]</sup> Eduardo was then employed as the vice president in a private corporation. A little more than a year and seven months thereafter, or on August 31, 1984, the Imus Rural Bank, Inc. (Imus Bank) executed a deed of absolute sale for P320,000.00 in favor of Josefina Castillo Francisco, married to Eduardo Francisco, covering two parcels of residential land with a house thereon located at St. Martin de Porres Street, San Antonio Valley I, Sucat, Parañaque, Metro Manila. One of the lots was covered by Transfer Certificate of Title (TCT) No. 36519, with an area of 342 square meters, while the other lot, with an area of 360 square meters, was covered by TCT No. 36518.<sup>[4]</sup> The purchase price of the property was paid to the Bank *via* Check No. 002334 in the amount of P320,000.00 drawn and issued by the Commercial Bank of Manila, for which the Imus Bank issued Official Receipt No. 121408 on August 31, 1984.<sup>[5]</sup> On the basis of the said deed of sale, TCT Nos. 36518 and 36519 were cancelled and, on September 4, 1984, the Register of Deeds issued TCT Nos. 87976 (60550) and 87977 (60551) in the name of "Josefina Castillo Francisco married to Eduardo G. Francisco."<sup>[6]</sup>

On February 15, 1985, the Register of Deeds made of record Entry No. 85-18003 at the dorsal portion of the said titles. This referred to an Affidavit of Waiver executed by Eduardo where he declared that before his marriage to Josefina, the latter purchased two parcels of land, including the house constructed thereon, with her own savings, and that he was waiving whatever claims he had over the property.<sup>[7]</sup> On January 13, 1986, Josefina mortgaged the said property to Leonila Cando for a loan of P157,000.00.<sup>[8]</sup> It appears that Eduardo affixed his marital conformity to the deed.<sup>[9]</sup>

On June 11, 1990, Eduardo, who was then the General Manager and President of Reach Out Trading International, bought 7,500 bags of cement worth P768,750.00

from Master Iron Works & Construction Corporation (MIWCC) but failed to pay for the same. On November 27, 1990, MIWCC filed a complaint against him in the RTC of Makati City for the return of the said commodities, or the value thereof in the amount of P768,750.00. The case was docketed as Civil Case No. 90-3251. On January 8, 1992, the trial court rendered judgment in favor of MIWCC and against Eduardo. The fallo of the decision reads:

Accordingly, the Court renders judgment in favor of the plaintiff Master Iron Works And Construction Corporation against the defendant [Eduardo] Francisco ordering the latter as follows:

1. To replace to plaintiff 7,500 bags at 50 kilos/bag of Portland cement or, in the alternative, to pay the plaintiff the amount of P768,750.00;
2. In either case, to pay liquidated damages by way of interest at 12% per annum from June 21, 1990 until fully paid;
3. To pay P50,000.00 as actual damages; and
4. To pay attorney's fees of P153,750.00 and litigation expenses of P20,000.00.

SO ORDERED.<sup>[10]</sup>

The decision in Civil Case No. 90-3251 became final and executory and, on June 7, 1994, the court issued a writ of execution.<sup>[11]</sup> On June 14, 1994, Sheriff Roberto Alejo sold at a public auction one stainless, owner-type jeep for P10,000.00 to MIWCC.<sup>[12]</sup> Sheriff Alejo issued a Notice of Levy on Execution/Attachment over the lots covered by TCT No. 87976 (60550) and 87977 (60551) for the recovery of the balance of the amount due under the decision of the trial court in Civil Case No. 90-3251.<sup>[13]</sup> On June 24, 1994, the sale of the property at a public auction was set to August 5, 1994.<sup>[14]</sup>

On July 3, 1994, Josefina executed an Affidavit of Third Party Claim<sup>[15]</sup> over the two parcels of land in which she claimed that they were her paraphernal property, and that her husband Eduardo had no proprietary right or interest over them as evidenced by his affidavit of waiver, a copy of which she attached to her affidavit. She, likewise, requested Sheriff Alejo to cause the cancellation of the notice of levy on execution/attachment earlier issued by him.

On July 7, 1994, Josefina filed the said Affidavit of Third Party Claim in the trial court and served a copy thereof to the sheriff. MIWCC then submitted an indemnity bond<sup>[16]</sup> in the amount of P1,361,500.00 issued by the Prudential Guarantee and Assurance, Inc. The sale at public auction proceeded. MIWCC made a bid for the property for the price of P1,350,000.00.<sup>[17]</sup>

On July 28, 1994, Josefina filed a Complaint against MIWCC and Sheriff Alejo in the RTC of Parañaque for damages with a prayer for a writ of preliminary injunction or temporary restraining order, docketed as Civil Case No. 94-2260. She alleged then that she was the sole owner of the property levied on execution by Sheriff Alejo in

Civil Case No. 90-3251; hence, the levy on execution of the property was null and void. She reiterated that her husband, the defendant in Civil Case No. 90-3251, had no right or proprietary interest over the said property as evidenced by his affidavit of waiver annotated at the dorsal portion of the said title. Josefina prayed that the court issue a temporary restraining order/writ of preliminary injunction to enjoin MIWCC from causing the sale of the said property at public auction. Considering that no temporary restraining order had as yet been issued by the trial court, the sheriff sold the subject property at public auction to MIWCC for P1,350,000.00 on August 5, 1994.<sup>[18]</sup> However, upon the failure of MIWCC to remit the sheriff's commission on the sale, the latter did not execute a sheriff's certificate of sale over the property. The RTC of Parañaque, thereafter, issued a temporary restraining order<sup>[19]</sup> on August 16, 1994.

When Josefina learned of the said sale at public auction, she filed an amended complaint impleading MIWCC, with the following prayer:

WHEREFORE, premises considered, it is most respectfully prayed to this Honorable Court that, after hearing, judgment be rendered in favor of the plaintiff and against the defendants and the same be in the following tenor:

1. Ordering the defendants, jointly and severally, to pay the plaintiff the following amounts:
  - A. The sum of P50,000.00 representing as actual damages;
  - B. The sum of P200,000.00 representing as moral damages;
  - C. The sum of P50,000.00 or such amount which this Honorable Court deems just as exemplary damages;
  - D. The sum of P60,000.00 as and for attorney's fees.
2. Declaring the levying and sale at public auction of the plaintiff's properties null and void;
3. To issue writ of preliminary injunction and makes it permanent;
4. Order the cancellation of whatever entries appearing at the titles as a result of the enforcement of the writ of execution issued in Civil Case No. 90-3251.

Plaintiff further prays for such other reliefs as may be just under the premises.<sup>[20]</sup>

In its answer to the complaint, MIWCC cited Article 116 of the Family Code of the Philippines and averred that the property was the conjugal property of Josefina and her husband Eduardo, who purchased the same on August 31, 1984 after their marriage on January 14, 1983. MIWCC asserted that Eduardo executed the affidavit of waiver to evade the satisfaction of the decision in Civil Case No. 90-3251 and to place the property beyond the reach of creditors; hence, the said affidavit was null and void.

Before she could commence presenting her evidence, Josefina filed a petition to annul her marriage to Eduardo in the RTC of Parañaque, Metro Manila, on the

ground that when they were married on January 15, 1983, Eduardo was already married to one Carmelita Carpio. The case was docketed as Civil Case No. 95-0169.

Josefina and Carmelita testified in Civil Case No. 95-0169. Josefina declared that during her marriage to Eduardo, she acquired the property covered by TCT Nos. 87976 (60550) and 87977 (60551), through the help of her sisters and brother, and that Eduardo had no participation whatsoever in the said acquisition. She added that Eduardo had five children, namely, Mary Jane, Dianne, Mary Grace Jo, Mark Joseph and Mary Cecille, all surnamed Francisco.

On September 9, 1996, the RTC of Parañaque rendered judgment<sup>[21]</sup> in Civil Case No. 95-0169, declaring the marriage between Josefina and Eduardo as null and void for being bigamous.

In the meantime, Josefina testified in Civil Case No. 94-2260, declaring, *inter alia*, that she was able to purchase the property from the Bank when she was still single with her mother's financial assistance; she was then engaged in recruitment when Eduardo executed an affidavit of waiver; she learned that he was previously married when they already had two children; nevertheless, she continued cohabiting with him and had three more children by him; and because of Eduardo's first marriage, she decided to have him execute the affidavit of waiver.

Eduardo testified that when his wife bought the property in 1984, he was in Davao City and had no knowledge of the said purchases; he came to know of the purchase only when Josefina informed him a week after his arrival from Davao;<sup>[22]</sup> Josefina's sister, Lolita Castillo, told him that she would collect from him the money his wife borrowed from her and their mother to buy the property;<sup>[23]</sup> when he told Lolita that he had no money, she said that she would no longer collect from him, on the condition that he would have no participation over the property,<sup>[24]</sup> which angered Eduardo;<sup>[25]</sup> when Josefina purchased the property, he had a gross monthly income of P10,000.00 and gave P5,000.00 to Josefina for the support of his family;<sup>[26]</sup> Josefina decided that he execute the affidavit of waiver because her mother and sister gave the property to her.<sup>[27]</sup>

On December 20, 1997, the trial court rendered judgment finding the levy on the subject property and the sale thereof at public auction to be null and void. The *fallo* of the decision reads:

WHEREFORE, PREMISES CONSIDERED, THIS COURT finds the Levying and sale at public auction of the plaintiff's properties null and void.

The court orders the defendants to, jointly and severally, pay plaintiff the following amounts:

- a. The sum of P50,000.00 as actual damages;
- b. The sum of P50,000.00 representing as moral damages;
- c. The sum of P50,000.00 as exemplary damages;
- d. The sum of P60,000.00 as and for attorney's fees.

The court orders the cancellation of whatever entries appearing at the Titles as a result of the enforcement of the writ of execution issued in Civil Case No. 90-3251.

SO ORDERED.<sup>[28]</sup>

The trial court held that the property levied by Sheriff Alejo was the sole and exclusive property of Josefina, applying Articles 144, 160, 175 and 485 of the New Civil Code. The trial court also held that MIWCC failed to prove that Eduardo Francisco contributed to the acquisition of the property.

MIWCC appealed the decision to the CA in which it alleged that:

- I. THE TRIAL COURT ERRED IN RULING THAT THE REAL ESTATE PROPERTIES SUBJECT OF THE AUCTION SALE ARE PARAPHERNAL PROPERTIES OWNED BY PLAINTIFF-APPELLEE JOSEFINA FRANCISCO;
- II. THE TRIAL COURT ERRED IN ALLOWING THE RECEPTION OF REBUTTAL EVIDENCE WITH REGARD TO THE ANNULMENT OF PLAINTIFF-APPELLEE'S MARRIAGE WITH EDUARDO FRANCISCO;
- III. THE TRIAL COURT ERRED IN RULING THAT THE LEVY ON EXECUTION OF PLAINTIFF-APPELLEE'S PROPERTIES SUBJECT OF THE PRESENT CONTROVERSY IS NULL AND VOID;
- IV. THE TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO PAY DAMAGES TO PLAINTIFF-APPELLEE FOR ALLEGED IMPROPER LEVY ON EXECUTION.<sup>[29]</sup>

The CA rendered judgment setting aside and reversing the decision of the RTC on September 20, 2001. The *fallo* of the decision reads:

**WHEREFORE**, premises considered, the Decision, dated 20 December 1997, of the Regional Trial Court of Parañaque, Branch 260, is hereby **REVERSED** and **SET ASIDE** and a new one entered dismissing Civil Case No. 94-0126.

**SO ORDERED.**<sup>[30]</sup>

The CA ruled that the property was presumed to be the conjugal property of Eduardo and Josefina, and that the latter failed to rebut such presumption. It also held that the affidavit of waiver executed by Eduardo was contrary to Article 146 of the New Civil Code and, as such, had no force and effect. Josefina filed a motion for reconsideration of the decision, which was, likewise, denied by the CA.

Josefina, now the petitioner, filed the present petition for review, alleging that:

- A. THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THERE EXISTS A CONJUGAL PARTNERSHIP BETWEEN PETITIONER AND EDUARDO FRANCISCO;
- B. THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THE SUBJECT PROPERTIES WERE NOT PARAPHERNAL PROPERTIES OF PETITIONER;