

FIRST DIVISION

[G.R. No. 147978, January 23, 2002]

**THELMA A. JADER-MANALO, PETITIONER, VS. NORMA
FERNANDEZ C. CAMAISA AND EDILBERTO CAMAISA,
RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

The issue raised in this case is whether or not the husband may validly dispose of a conjugal property without the wife's written consent.

The present controversy had its beginning when petitioner Thelma A. Jader-Manalo allegedly came across an advertisement placed by respondents, the Spouses Norma Fernandez C. Camaisa and Edilberto Camaisa, in the Classified Ads Section of the newspaper BULLETIN TODAY in its April, 1992 issue, for the sale of their ten-door apartment in Makati, as well as that in Taytay, Rizal.

As narrated by petitioner in her complaint filed with the Regional Trial Court of Makati, Metro Manila, she was interested in buying the two properties so she negotiated for the purchase through a real estate broker, Mr. Proceso Ereno, authorized by respondent spouses.^[1] Petitioner made a visual inspection of the said lots with the real estate broker and was shown the tax declarations, real property tax payment receipts, location plans, and vicinity maps relating to the properties.^[2] Thereafter, petitioner met with the vendors who turned out to be respondent spouses. She made a definite offer to buy the properties to respondent Edilberto Camaisa with the knowledge and conformity of his wife, respondent Norma Camaisa in the presence of the real estate broker.^[3] After some bargaining, petitioner and Edilberto agreed upon the purchase price of P1,500,000.00 for the Taytay property and P2,100,000.00 for the Makati property^[4] to be paid on installment basis with downpayments of P100,000.00 and P200,000.00, respectively, on April 15, 1992. The balance thereof was to be paid as follows^[5]:

	Taytay Property	Makati Property
6th month	P200,000.00	P300,000.00
12th month	700,000.00	1,600,000.00
18th month	500,000.00	

This agreement was handwritten by petitioner and signed by Edilberto.^[6] When petitioner pointed out the conjugal nature of the properties, Edilberto assured her of his wife's conformity and consent to the sale.^[7] The formal typewritten Contracts to Sell were thereafter prepared by petitioner. The following day, petitioner, the real

estate broker and Edilberto met in the latter's office for the formal signing of the typewritten Contracts to Sell.^[8] After Edilberto signed the contracts, petitioner delivered to him two checks, namely, UCPB Check No. 62807 dated April 15, 1992 for P200,000.00 and UCPB Check No. 62808 also dated April 15, 1992 for P100,000.00 in the presence of the real estate broker and an employee in Edilberto's office.^[9] The contracts were given to Edilberto for the formal affixing of his wife's signature.

The following day, petitioner received a call from respondent Norma, requesting a meeting to clarify some provisions of the contracts.^[10] To accommodate her queries, petitioner, accompanied by her lawyer, met with Edilberto and Norma and the real estate broker at Cafe Rizal in Makati.^[11] During the meeting, handwritten notations were made on the contracts to sell, so they arranged to incorporate the notations and to meet again for the formal signing of the contracts.^[12]

When petitioner met again with respondent spouses and the real estate broker at Edilberto's office for the formal affixing of Norma's signature, she was surprised when respondent spouses informed her that they were backing out of the agreement because they needed "spot cash" for the full amount of the consideration.^[13] Petitioner reminded respondent spouses that the contracts to sell had already been duly perfected and Norma's refusal to sign the same would unduly prejudice petitioner. Still, Norma refused to sign the contracts prompting petitioner to file a complaint for specific performance and damages against respondent spouses before the Regional Trial Court of Makati, Branch 136 on April 29, 1992, to compel respondent Norma Camaisa to sign the contracts to sell.

A Motion to Dismiss^[14] was filed by respondents which was denied by the trial court in its Resolution of July 21, 1992.^[15]

Respondents then filed their Answer with Compulsory Counter-claim, alleging that it was an agreement between herein petitioner and respondent Edilberto Camaisa that the sale of the subject properties was still subject to the approval and conformity of his wife Norma Camaisa.^[16] Thereafter, when Norma refused to give her consent to the sale, her refusal was duly communicated by Edilberto to petitioner.^[17] The checks issued by petitioner were returned to her by Edilberto and she accepted the same without any objection.^[18] Respondent further claimed that the acceptance of the checks returned to petitioner signified her assent to the cancellation of the sale of the subject properties.^[19] Respondent Norma denied that she ever participated in the negotiations for the sale of the subject properties and that she gave her consent and conformity to the same.^[20]

On October 20, 1992, respondent Norma F. Camaisa filed a Motion for Summary Judgment^[21] asserting that there is no genuine issue as to any material fact on the basis of the pleadings and admission of the parties considering that the wife's written consent was not obtained in the contract to sell, the subject conjugal properties belonging to respondents; hence, the contract was null and void.

On April 14, 1993, the trial court rendered a summary judgment dismissing the complaint on the ground that under Art. 124 of the Family Code, the court cannot

intervene to authorize the transaction in the absence of the consent of the wife since said wife who refused to give consent had not been shown to be incapacitated. The dispositive portion of the trial court's decision reads:

WHEREFORE, considering these premises, judgment is hereby rendered:

1. Dismissing the complaint and ordering the cancellation of the Notice of Lis Pendens by reason of its filing on TCT Nos. (464860) S-8724 and (464861) S-8725 of the Registry of Deeds at Makati and on TCT Nos. 295976 and 295971 of the Registry of Rizal.
2. Ordering plaintiff Thelma A. Jader to pay defendant spouses Norma and Edilberto Camaisa, FIFTY THOUSAND (P50,000.00) as Moral Damages and FIFTY THOUSAND (P50,000.00) as Attorney's Fees.

Costs against plaintiff.^[22]

Petitioner, thus, elevated the case to the Court of Appeals. On November 29, 2000, the Court of Appeals affirmed the dismissal by the trial court but deleted the award of P50,000.00 as damages and P50,000.00 as attorney's fees.

The Court of Appeals explained that the properties subject of the contracts were conjugal properties and as such, the consent of both spouses is necessary to give effect to the sale. Since private respondent Norma Camaisa refused to sign the contracts, the sale was never perfected. In fact, the downpayment was returned by respondent spouses and was accepted by petitioner. The Court of Appeals also stressed that the authority of the court to allow sale or encumbrance of a conjugal property without the consent of the other spouse is applicable only in cases where the said spouse is incapacitated or otherwise unable to participate in the administration of the conjugal property.

Hence, the present recourse assigning the following errors:

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN RENDERING SUMMARY JUDGMENT IN DISMISSING THE COMPLAINT ENTIRELY AND ORDERING THE CANCELLATION OF NOTICE OF LIS PENDENS ON THE TITLES OF THE SUBJECT REAL PROPERTIES;

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN FAILING TO CONSIDER THAT THE SALE OF REAL PROPERTIES BY RESPONDENTS TO PETITIONER HAVE ALREADY BEEN PERFECTED, FOR AFTER THE LATTER PAID P300,000.00 DOWNPAYMENT, RESPONDENT MRS. CAMAISA NEVER OBJECTED TO STIPULATIONS WITH RESPECT TO PRICE, OBJECT AND TERMS OF PAYMENT IN THE CONTRACT TO SELL ALREADY SIGNED BY THE PETITIONER, RESPONDENT MR. CAMAISA AND WITNESSES MARKED AS ANNEX "G" IN THE COMPLAINT EXCEPT, FOR MINOR PROVISIONS ALREADY IMPLIED BY LAW, LIKE EJECTMENT OF TENANTS, SUBDIVISION OF TITLE AND RESCISSION IN CASE OF NONPAYMENT, WHICH PETITIONER READILY AGREED AND ACCEDED TO THEIR INCLUSION;

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT CONTRACT OF SALE IS CONSENSUAL AND IT