

THIRD DIVISION

[G.R. No. 137650, April 12, 2000]

GUILLERMA TUMLOS, PETITIONER, VS. SPOUSES MARIO FERNANDEZ AND LOURDES FERNANDEZ, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Under Article 148 of the Family Code, a man and a woman who are not legally capacitated to marry each other, but who nonetheless live together conjugally, may be deemed co-owners of a property acquired during the cohabitation only upon proof that each made an actual contribution to its acquisition. Hence, mere cohabitation without proof of contribution will not result in a co-ownership.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the November 19, 1998 Decision of the Court of Appeals ^[1] (CA), which reversed the October 7, 1997 Order of the Regional Trial Court (RTC). ^[2] The dispositive part of the CA Decision reads:

"WHEREFORE, the instant petition is GRANTED, and the questioned orders of the court a quo dated October 7, 1997 and November 11, 1997, are hereby REVERSED and SET ASIDE. The judgment of the court a quo dated June 5, 1997 is hereby REINSTATED. Costs against the private respondents." ^[3]

The assailed Order of the RTC disposed as follows:

"Wherefore, the decision of this Court rendered on June 5, 1997 affirming in toto the appealed judgment of the [MTC] is hereby reconsidered and a new one is entered reversing said decision of the [MTC] and dismissing the complaint in the above-entitled case." ^[4]

Petitioner also assails the February 14, 1999 CA Resolution denying the Motion for Reconsideration.

The Facts

The Court of Appeals narrates the facts as follows:

"[Herein respondents] were the plaintiffs in Civil Case No. 6756, an action for ejectment filed before Branch 82 of the MTC of Valenzuela, Metro Manila against [herein Petitioner] Guillerma Tumlos, Toto Tumlos, and Gina Tumlos. In their complaint dated July 5, 1996, the said spouses alleged that they are the absolute owners of an apartment building

located at ARTE SUBDIVISION III, Lawang Bato, Valenzuela, Metro Manila; that through tolerance they had allowed the defendants-private respondents to occupy the apartment building for the last seven (7) years, since 1989, without the payment of any rent; that it was agreed upon that after a few months, defendant Guillerma Tumlos will pay P1,600.00 a month while the other defendants promised to pay P1,000.00 a month, both as rental, which agreement was not complied with by the said defendants; that they have demanded several times [that] the defendants x x x vacate the premises, as they are in need of the property for the construction of a new building; and that they have also demanded payment of P84,000.00 from Toto and Gina Tumlos representing rentals for seven (7) years and payment of P143,600.00 from Guillerma Tumlos as unpaid rentals for seven (7) years, but the said demands went unheeded. They then prayed that the defendants be ordered to vacate the property in question and to pay the stated unpaid rentals, as well as to jointly pay P30,000.00 in attorney's fees.

"[Petitioner] Guillerma Tumlos was the only one who filed an answer to the complaint. She averred therein that the Fernandez spouses had no cause of action against her, since she is a co-owner of the subject premises as evidenced by a Contract to Sell wherein it was stated that she is a co-vendee of the property in question together with [Respondent] Mario Fernandez. She then asked for the dismissal of the complaint.

"After an unfruitful preliminary conference on November 15, 1996, the MTC required the parties to submit their affidavits and other evidence on the factual issues defined in their pleadings within ten (10) days from receipt of such order, pursuant to section 9 of the Revised Rule on Summary Procedure. [Petitioner] Guillerma Tumlos submitted her affidavit/position paper on November 29, 1996, while the [respondents] filed their position paper on December 5, 1996, attaching thereto their marriage contract, letters of demand to the defendants, and the Contract to Sell over the disputed property. The MTC thereafter promulgated its judgment on January 22, 1997[.]

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"Upon appeal to the [RTC], [petitioner and the two other] defendants alleged in their memorandum on appeal that [Respondent] Mario Fernandez and [Petitioner] Guillerma had an amorous relationship, and that they acquired the property in question as their 'love nest.' It was further alleged that they lived together in the said apartment building with their two (2) children for around ten(10) years, and that Guillerma administered the property by collecting rentals from the lessees of the other apartments, until she discovered that [Respondent Mario] deceived her as to the annulment of his marriage. It was also during the early part of 1996 when [Respondent Mario] accused her of being unfaithful and demonstrated his baseless [jealousy].

"In the same memorandum, [petitioner and the two other] defendants further averred that it was only recently that Toto Tumlos was

temporarily accommodated in one of the rooms of the subject premises while Gina Tumlos acted as a nanny for the children. In short, their presence there [was] only transient and they [were] not tenants of the Fernandez spouses.

"On June 5, 1997, the [RTC] rendered a decision affirming in toto the judgment of the MTC.

"The [petitioner and the two other defendants] seasonably filed a motion for reconsideration on July 3, 1997, alleging that the decision of affirmance by the RTC was constitutionally flawed for failing to point out distinctly and clearly the findings of facts and law on which it was based vis-à-vis the statements of issues they have raised in their memorandum on appeal. They also averred that the Contract to Sell presented by the plaintiffs which named the buyer as 'Mario P. Fernandez, of legal age, married to Lourdes P. Fernandez,' should not be given credence as it was falsified to appear that way. According to them, the Contract to Sell originally named 'Guillerma Fernandez' as the spouse of [Respondent Mario]. As found by the [RTC] in its judgment, a new Contract to Sell was issued by the sellers naming the [respondents] as the buyers after the latter presented their marriage contract and requested a change in the name of the vendee-wife. Such facts necessitate the conclusion that Guillerma was really a co-owner thereof, and that the [respondents] manipulated the evidence in order to deprive her of her rights to enjoy and use the property as recognized by law.

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"The [RTC], in determining the question of ownership in order to resolve the issue of possession, ruled therein that the Contract to Sell submitted by the Fernandez spouses appeared not to be authentic, as there was an alteration in the name of the wife of [Respondent] Mario Fernandez. Hence, the contract presented by the [respondents] cannot be given any weight. The court further ruled that Guillerma and [Respondent Mario] acquired the property during their cohabitation as husband and wife, although without the benefit of marriage. From such findings, the court concluded that [Petitioner] Guillerma Tumlos was a co-owner of the subject property and could not be ejected therefrom.

"The [respondents] then filed a motion for reconsideration of the order of reversal, but the same was denied by the [RTC]." [5]

As earlier stated, the CA reversed the RTC. Hence, this Petition filed by Guillerma Tumlos only. [6]

Ruling of the Court of Appeals

The CA rejected petitioner's claim that she and Respondent Mario Fernandez were co-owners of the disputed property. The CA ruled:

"From the inception of the instant case, the only defense presented by private respondent Guillerma is her right as a co-owner of the subject

property[.]

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This claim of co-ownership was not satisfactorily proven by Guillerma, as correctly held by the trial court. No other evidence was presented to validate such claim, except for the said affidavit/position paper. As previously stated, it was only on appeal that Guillerma alleged that she cohabited with the petitioner-husband without the benefit of marriage, and that she bore him two (2) children. Attached to her memorandum on appeal are the birth certificates of the said children. Such contentions and documents should not have been considered by the x x x (RTC), as they were not presented in her affidavit/position paper before the trial court (MTC).

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"However, even if the said allegations and documents could be considered, the claim of co-ownership must still fail. As [herein Respondent] Mario Fernandez is validly married to [Respondent] Lourdes Fernandez (as per Marriage Contract dated April 27, 1968, p. 45, Original Record), Guillerma and Mario are not capacitated to marry each other. Thus, the property relations governing their supposed cohabitation is that found in Article 148 of Executive Order No. 209, as amended, otherwise known as the Family Code of the Philippines[.]

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"It is clear that actual contribution is required by this provision, in contrast to Article 147 of the Family Code which states that efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry (*Agapay v. Palang*, 276 SCRA 340). The care given by one party [to] the home, children, and household, or spiritual or moral inspiration provided to the other, is not included in Article 148 (*Handbook on the Family Code of the Philippines by Alicia V. Sempio-Diy*, 1988 ed., p. 209). Hence, if actual contribution of the party is not proved, there will be no co-ownership and no presumption of equal shares (*Agapay*, *supra* at p. 348, citing *Commentaries and Jurisprudence on the Civil Code of the Philippines Volume I by Arturo M. Tolentino*, 1990 ed., p. 500).

"In the instant case, no proof of actual contribution by Guillerma Tumlos in the purchase of the subject property was presented. Her only evidence was her being named in the Contract to Sell as the wife of [Respondent] Mario Fernandez. Since she failed to prove that she contributed money to the purchase price of the subject apartment building, We find no basis to justify her co-ownership with [Respondent Mario]. The said property is thus presumed to belong to the conjugal partnership property of Mario and Lourdes Fernandez, it being acquired during the subsistence of their marriage and there being no other proof to the contrary (*please see Article 116 of the Family Code*).

"The court a quo (RTC) also found that [Respondent Mario] has two (2) children with Guillerma who are in her custody, and that to eject them from the apartment building would be to run counter with the obligation of the former to give support to his minor illegitimate children, which indispensably includes dwelling. As previously discussed, such finding has no leg to stand on, it being based on evidence presented for the first time on appeal.

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"Even assuming *arguendo* that the said evidence was validly presented, the RTC failed to consider that the need for support cannot be presumed. Article 203 of the Family Code expressly provides that the obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand. x x x.

"In contrast to the clear pronouncement of the Supreme Court, the RTC instead presumed that Guillerma and her children needed support from [Respondent Mario]. Worse, it relied on evidence not properly presented before the trial court (MTC).

"With regard to the other [defendants], Gina and Toto Tumlos, a close perusal of the records shows that they did not file any responsive pleading. Hence, judgment may be rendered against them as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein, as provided for in Section 6 of the Revised Rules on Summary Procedure. There was no basis for the public respondent to dismiss the complaint against them." [7] (emphasis in the original)

The Issues

In her Memorandum, petitioner submits the following issues for the consideration of the Court:

"I. The Court of Appeals gravely erred and abused its discretion in not outrightly dismissing the petition for review filed by respondents.

"II. The Court of Appeals erred in finding that petitioner is not the co-owner of the property in *litis*.

"III. Corollary thereto, the Court of Appeals erred in applying Art. 148 of the Family Code in the case at bar.

"IV. The Court of Appeals erred in disregarding the substantive right of support vis-à-vis the remedy of ejectment resorted to by respondents."

[8]

In resolving this case, we shall answer two questions: (a) Is the petitioner a co-owner of the property? (b) Can the claim for support bar this ejectment suit? We shall also discuss these preliminary matters: (a) whether the CA was biased in favor