

## SECOND DIVISION

[ G.R. No. 116668, July 28, 1997 ]

**ERLINDA A. AGAPAY, PETITIONER, VS. CARLINA (CORNELIA) V. PALANG AND HERMINIA P. DELA CRUZ, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

Before us is a petition for review of the decision of the Court of Appeals in CA-G.R. CV No. 24199 entitled "Erlinda Agapay v. Carlina (Cornelia) Palang and Herminia P. Dela Cruz" dated June 22, 1994 involving the ownership of two parcels of land acquired during the cohabitation of petitioner and private respondent's legitimate spouse.

Miguel Palang contracted his first marriage on July 16, 1949 when he took private respondent Carlina (or Cornelia) Vallesterol as a wife at the Pozorrubio Roman Catholic Church in Pangasinan. A few months after the wedding, in October 1949, he left to work in Hawaii. Miguel and Carlina's only child, Herminia Palang, was born on May 12, 1950.

Miguel returned in 1954 for a year. His next visit to the Philippines was in 1964 and during the entire duration of his year-long sojourn he stayed in Zambales with his brother, not in Pangasinan with his wife and child. The trial court found evidence that as early as 1957, Miguel had attempted to divorce Carlina in Hawaii.<sup>[1]</sup> When he returned for good in 1972, he refused to live with private respondents, but stayed alone in a house in Pozorrubio, Pangasinan.

On July 15, 1973, the then sixty-three-year-old Miguel contracted his second marriage with nineteen-year-old Erlinda Agapay, herein petitioner.<sup>[2]</sup> Two months earlier, on May 17, 1973, Miguel and Erlinda, as evidenced by the Deed of Sale, jointly purchased a parcel of agricultural land located at San Felipe, Binalonan, Pangasinan with an area of 10,080 square meters. Consequently, Transfer Certificate of Title No. 101736 covering said rice land was issued in their names.

A house and lot in Binalonan, Pangasinan was likewise purchased on September 23, 1975, allegedly by Erlinda as the sole vendee. TCT No. 143120 covering said property was later issued in her name.

On October 30, 1975, Miguel and Cornelia Palang executed a Deed of Donation as a form of compromise agreement to settle and end a case filed by the latter.<sup>[3]</sup> The parties therein agreed to donate their conjugal property consisting of six parcels of land to their only child, Herminia Palang.<sup>[4]</sup>

Miguel and Erlinda's cohabitation produced a son, Kristopher A. Palang, born on December 6, 1977. In 1979, Miguel and Erlinda were convicted of Concubinage upon

Carlina's complaint.<sup>[5]</sup> Two years later, on February 15, 1981, Miguel died.

On July 11, 1981, Carlina Palang and her daughter Herminia Palang de la Cruz, herein private respondents, instituted the case at bar, an action for recovery of ownership and possession with damages against petitioner before the Regional Trial Court in Urdaneta, Pangasinan (Civil Case No. U-4265). Private respondents sought to get back the riceland and the house and lot both located at Binalonan, Pangasinan allegedly purchased by Miguel during his cohabitation with petitioner.

Petitioner, as defendant below, contended that while the riceland covered by TCT No. 101736 is registered in their names (Miguel and Erlinda), she had already given her half of the property to their son Kristopher Palang. She added that the house and lot covered by TCT No. 143120 is her sole property, having bought the same with her own money. Erlinda added that Carlina is precluded from claiming aforesaid properties since the latter had already donated their conjugal estate to Herminia.

After trial on the merits, the lower court rendered its decision on June 30, 1989 dismissing the complaint after declaring that there was little evidence to prove that the subject properties pertained to the conjugal property of Carlina and Miguel Palang. The lower court went on to provide for the intestate shares of the parties, particularly of Kristopher Palang, Miguel's illegitimate son. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered-

- 1) Dismissing the complaint, with costs against plaintiffs;
- 2) Confirming the ownership of defendant Erlinda Agapay of the residential lot located at Poblacion, Binalonan, Pangasinan, as evidenced by TCT No. 143120, Lot 290-B including the old house standing therein;
- 3) Confirming the ownership of one-half (1/2) portion of that piece of agricultural land situated at Balisa, San Felipe, Binalonan, Pangasinan, consisting of 10,080 square meters and as evidenced by TCT No. 101736, Lot 1123-A to Erlinda Agapay;
- 4) Adjudicating to Kristopher Palang as his inheritance from his deceased father, Miguel Palang, the one-half (1/2) of the agricultural land situated at Balisa, San Felipe, Binalonan, Pangasinan, under TCT No. 101736 in the name of Miguel Palang, provided that the former (Kristopher) executes, within 15 days after this decision becomes final and executory, a quit-claim forever renouncing any claims to annul/reduce the donation to Herminia Palang de la Cruz of all conjugal properties of her parents, Miguel Palang and Carlina Vallesterol Palang, dated October 30, 1975, otherwise, the estate of deceased Miguel Palang will have to be settled in another separate action;
- 5) No pronouncement as to damages and attorney's fees.

SO ORDERED."<sup>[6]</sup>

On appeal, respondent court reversed the trial court's decision. The Court of Appeals

rendered its decision on July 22, 1994 with the following dispositive portion:

“WHEREFORE, PREMISES CONSIDERED, the appealed decision is hereby REVERSED and another one entered:

1. Declaring plaintiffs-appellants the owners of the properties in question;
2. Ordering defendant-appellee to vacate and deliver the properties in question to herein plaintiffs-appellants;
3. Ordering the Register of Deeds of Pangasinan to cancel Transfer Certificate of Title Nos. 143120 and 101736 and to issue in lieu thereof another certificate of title in the name of plaintiffs-appellants.

No pronouncement as to costs.”<sup>[7]</sup>

Hence, this petition.

Petitioner claims that the Court of Appeals erred in not sustaining the validity of two deeds of absolute sale covering the riceland and the house and lot, the first in favor of Miguel Palang and Erlinda Agapay and the second, in favor of Erlinda Agapay alone. Second, petitioner contends that respondent appellate court erred in not declaring Kristopher A. Palang as Miguel Palang’s illegitimate son and thus entitled to inherit from Miguel’s estate. Third, respondent court erred, according to petitioner, “in not finding that there is sufficient pleading and evidence that Kristoffer A. Palang or Christopher A. Palang should be considered as party-defendant in Civil Case No. U-4625 before the trial court and in CA-G.R. No. 24199.<sup>[8]</sup>

After studying the merits of the instant case, as well as the pertinent provisions of law and jurisprudence, the Court denies the petition and affirms the questioned decision of the Court of Appeals.

The first and principal issue is the ownership of the two pieces of property subject of this action. Petitioner assails the validity of the deeds of conveyance over the same parcels of land. There is no dispute that the transfers of ownership from the original owners of the riceland and the house and lot, Corazon Iloin and the spouses Cespedes, respectively, were valid.

The sale of the riceland on May 17, 1973, was made in favor of Miguel and Erlinda. The provision of law applicable here is Article 148 of the Family Code providing for cases of cohabitation when a man and a woman who are not capacitated to marry each other live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage. While Miguel and Erlinda contracted marriage on July 15, 1973, said union was patently void because the earlier marriage of Miguel and Carlina was still subsisting and unaffected by the latter’s de facto separation.

Under Article 148, 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. It must be stressed that actual contribution is required by this provision, in contrast to Article 147 which